



NELSON MANDELA  
FOUNDATION

*Living the legacy*

# URBAN LAND REDISTRIBUTION

A PROPOSED APPROACH TO EQUITABLE  
ACCESS TO URBAN LAND

**SERI**

socio-economic rights institute  
of south africa



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## A EXECUTIVE SUMMARY

The Nelson Mandela Foundation commissioned a series of papers on urban land reform in April 2019. Their aim was to inform debate about and propose a feasible approach to urban land reform which could, in the near future, be implemented. This document is a summary of the Socio-Economic Rights Institute's<sup>1</sup> paper on urban land redistribution.

Our paper adopts the redistribution clause in section 25 (5) of the Constitution as its starting point:

***“the state must take reasonable legislative and other measures, within its available resources, to foster conditions which enable citizens to gain access to land on an equitable basis.”***

## 1 LAND REDISTRIBUTION FRAMEWORK ACT

On this basis we argue, in line with the Presidential Advisory Panel and High-Level Panel reports<sup>2</sup> that a law should be developed and enacted which gives effect to section 25(5) and that in order to operationalise the approach we propose a process for fine-tuning urban equitable access principles, the main legislative measure (the Framework Act) and the policy measures (the various programmes). We develop this proposal in three ways.

### Office of Equitable Access

Firstly, we argue that the mandate for this law, and the institutional location of urban land reform, is a vexing question which we propose be addressed via an inter-ministerial dialogue between the Presidency, Human Settlements, Water and Sanitation, Public Works and Infrastructure and Cooperative Governance and Traditional Affairs. Our “straw man” proposal is that an “Office of Equitable Access” should be established within the Presidency with responsibility for the law, and for monitoring and evaluating the performance of key sector departments which are accountable for the range of multi-sector programmes or measures which constitute urban land reform.

### Guiding principles

Secondly, we propose provisional content of the Framework Act: a set of principles and a range of measures in the human settlements, planning and urban development sectors to give effect to equitable access. We propose some points of departure which frame the urban land reform debate and our approach to urban land redistribution and argue that these could become

the basis for the urban equitable access principles. They include: the urban silence in land reform; the non-material meaning and value of land; the institutional / sectoral dilemma; lessons from rural land reform; proactive and responsive approaches to land reform; mechanisms for redistribution, including expropriation; the role of state land in land reform; managing the urban land market; ensuring a multiple land use focus; disaggregating “the poor” and targeting appropriately.

### Equitable access measures

Thirdly on the basis of a preliminary review of existing measures, we make a set of recommendations. Some of the measures comprise of existing programmes while others are new. In some cases, existing measures assessed from an urban land reform perspective or on their own terms have not been implemented and / or contain significant gaps or shortcomings and we recommend how these problems should be overcome. In summary they are:

- Social housing must be expanded and its “down-market reach” extended.
- Inclusionary housing must be used as a mechanism for equitable access. We recommend that mechanisms should be included to ensure that the majority of inclusionary housing units are made available to low-income households (households who earn less than R3,200 a month).
- Private rental market must be regulated to effectively foster conditions for equitable access.
- Regarding livelihoods measures, we recommend that an in-depth review of existing measures be undertaken by the Office of Equitable Access or Cooperative Governance and Traditional Affairs, and that a gap / shortcoming analysis be developed in order to meaningfully address equitable access to urban land for non-residential, productive uses and for economic inclusion.
- The human settlements legal and policy review process should include an equitable access strategy and mechanisms. The 1994 White Paper predates the Constitutional dispensation and should be aligned with it.
- The potential of SPLUMA, its regulations and municipal by-laws to accommodate the introduction of special zones for informal settlements be enhanced. Extending land use regulation over an informal settlement is a way to legalise the land use ‘informal settlement’. In addition: IDPs should set targets for equitable land access.

1. SERI is a registered non-profit organisation and public interest law clinic that provides professional, dedicated and expert socio-economic rights assistance to individuals, communities and social movements.

2. Parliament, Report of the High Level Panel on the assessment of key legislation and the acceleration of fundamental change, 2017. Republic of South Africa, Final report of the Presidential Advisory Panel on Land Reform and Agriculture, for His Excellency the President of South Africa, 2019.



- Value capture mechanisms should be employed by metropolitan municipalities for equitable access purposes, including inclusionary housing and the progressive management of development and land use rights.
- Expropriation should be employed as a significant mechanism in urban land redistribution. The voices of the urban landless should be heard on what land should be expropriated and when, either directly or indirectly. Ordinary South Africans and communities, who have not been able to gain access to land on an equitable basis, should be able to approach the Minister of Public Works to consider expropriation. Alternatively, municipalities should bring requests from communities to the Ministry for consideration. Expropriations should be transparently conducted and publicly monitored. Procedures should be developed so that, in the event of cases of elite capture, the public should be able to both identify and object to such expropriations. Nil compensation has an important role to play in acquisition in situations of speculatively held and abandoned land and property, as well as land occupied by previously disadvantaged communities.

## 2 TEST CASES

We also propose that carefully selected urban equitable access test cases should be identified with key stakeholders in government, civil society and the private sector to operationalise key aspects of urban land redistribution under the authority of the Office of Equitable Access and the relevant sector departments. We make some provisional proposals for selection criteria that could determine the test cases.

## 3 CONCLUSION

Finally, we identify short term actions required to operationalise the approach as follows:

1. The Presidency should convene an inter-ministerial dialogue with Human Settlements, Water and Sanitation, Public Works and Infrastructure and Cooperative Governance and Traditional Affairs and Rural Development and Land Reform to resolve the vexing institutional question we identify about the location of urban land reform.
2. The Department of Rural Development and Land Reform and the proposed Office of Equitable Access, or an alternative coordinating department for urban land reform as identified via the proposed inter-ministerial dialogue, should convene a multi-sector

consultation on the proposed Land Redistribution Framework Act, with both urban and rural inputs. This act should, at minimum, define “equitable access”, develop principles for land redistribution and identify the measures (existing and new) required to give effect to equitable access

3. The Department of Human Settlements, Water and Sanitation should include an equitable access strategy in the proposed new human settlements law and white paper, clearly identifying which measures contribute to giving effect to the provisions in section 25(5).
4. The Department of Cooperative Governance and Traditional Affairs should develop a new equitable access / urban land reform chapter in the IUDF, outlining the measures which contribute to giving effect to the provisions in section 25(5).
5. The Department of Public Works and Infrastructure should prioritise the use of surplus state land for land reform purposes.







## 1 INTRODUCTION

### 1.1 Background and Purpose

The Nelson Mandela Foundation has commissioned papers on “Models of Urban Land Reform”, specifically in relation to land redistribution and tenure security, to help address an identified knowledge gap. The initiative is aimed at stimulating informed discussion and debate on different approaches to urban land reform in South Africa.

This paper, submitted by the Socio-Economic Rights Institute (SERI)<sup>1</sup>, focusses on urban land redistribution. The aim of the paper, as framed by the Foundation, is both to inform debate about and propose a feasible approach to urban land redistribution which could, in the near future, be implemented.

### 1.2 Framing the scope and content of Urban Land Redistribution

Our paper adopts the redistribution clause in section 25 (5) of the Constitution as its starting point:

“the state must take reasonable legislative and other measures, within its available resources, to foster conditions which enable citizens to gain access to land on an equitable basis.”

Our approach to urban redistribution is therefore about the measures that the state should take to foster conditions for access to land in urban areas on an equitable basis. We explore the extent to which legislation and policy measures could be fostering conditions for equitable access. We argue that urban land redistribution should consist of measures that do, and based on a brief review, we make proposals about which existing measures do in fact, foster conditions for access to land on an equitable basis, or could if gaps in implementation and other shortcomings were to be overcome. Further, we identify where new measures are required.

One of the problems with the equitable access clause is that it has never been interpreted by legislation or jurisprudence, as other rights have. For example, the Restitution Act 22 of 1994, gives effect to section 25(7) and the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act 19 of 1998 (the PIE Act) gives effect to section 26. A considerable body of case law has

<sup>1</sup> SERI is a registered non-profit organisation and public interest law clinic that provides professional, dedicated and expert socio-economic rights assistance to individuals, communities and social movements.



been developed in respect of protection against unlawful eviction, and a set of principles can be inferred from the judgments<sup>2</sup>. For redistribution, the absence of a law means that equitable access has never been interpreted. What is the meaning of equitable access? What constitutes “reasonable”? And for us the key question, which we address in the paper, is what measures (legal, policy and other) foster the conditions for equitable access?

As the High Level Panel report stated:

“The meaning of section 25(5) has not in the past 20 years been interpreted judicially; in other words, while other provisions, such as the right to restitution and to secure tenure, have been extensively challenged and adjudicated in the courts, what constitutes adequate measures to ‘enable citizens to gain access to land on an equitable basis’ has not. There is no existing jurisprudence related to this right”.

What would be required to give meaning to this right? A response to this question is at the heart of our proposal: a land redistribution law is required to give effect to section 25(5) in both urban and rural contexts. Our paper contributes to the urban aspects of the proposed law.

### 1.3 Paper Outline

In this section we introduce and provide an overview of our proposal for the development of a Land Redistribution

Framework Act which includes both urban and rural land reform. Section 2 sets out our proposal, as requested by the brief. To begin, we propose a series of starting points for urban land redistribution which both frame the debate and set the parameters of our approach. In Section 2.2, we take our cue from section 25(5) and review the legislative and policy measures that already exist, which could foster conditions for access to land on an equitable basis.

Our brief review also analyses gaps and shortcomings which then lead into recommendations in Section 2.3. Our review and recommendations focus on legislative and policy measures, and on urban land redistribution test cases. In the Conclusion we propose a series of short-term steps that should be taken to operationalise the proposal.



<sup>2</sup> SERI's publication in 2014 and its revision in 2016 does just this.





## 2 PROPOSAL

In this section of the report we present our proposal. We begin with our points of departure which aim to position an urban land redistribution agenda. They are part problem statement and part principle. The discussion we record gives us an opportunity to frame the debate around urban land reform and to delineate the key issues that inform the proposed approach.

In the current discourse, redistribution tends to refer to expropriation and compensation, due to the politicised context of the “expropriation without compensation” debate and the constitutional amendment public consultations. The points of departure are intended to broaden that debate and locate expropriation as one mechanism, albeit a significant one, for land redistribution.

### 2.1 Points of Departure

Our points of departure identify the following needs of an urban land redistribution programme:

- The urban silence in land reform
- The non-material meaning and value of land
- The institutional / sectoral dilemma
- Lessons from rural land reform
- Proactive and responsive approaches to land reform
- Mechanisms for redistribution
- The role of state land in land reform
- Managing the urban land market
- Multiple land uses (Ensuring a multiple land use focus)
- Disaggregating “the poor” and targeting appropriately.

#### 2.1.1 The urban silence in land reform

Understanding the reasons behind the silence on “the urban” in land reform is an important starting point if a more inclusive approach to land reform in general, and to redistribution in particular, is to be adopted.

One of the reasons that the “urban” is absent from land reform is institutional: urban land is “hidden” inside the housing, human settlements, planning and municipal finance sectors, while land reform has always been located in a rural development department and has focused on rural land reform and agrarian reform. The multi-sectoral nature of urban land reform poses an institutional dilemma which we address in the proposal. Another reason is that there are powerful interests vested in the urban land question due primarily to the investment value of urban land. These interests are financial (developers, banks), professional (planners, surveyors, conveyancers), municipal (property rates, revenue generation) and middle-class households (purchasing property is the largest investment that middle-class households make).

There are political interests, too, which speak to patronage and, as recent news reports attest, corrupt practices in the allocation of farms intended to facilitate land reform.

Another factor that contributes to a relative silence about urban land reform post-1994 is that the property market dominates the policy discourse. This is not to say that an urban land redistribution framework can ignore the property market, on the contrary. However, it does contribute to an explanation around the silence. Even the programmes that have explored the limits of the



market do so from the perspective of making it work or work better for the poor. The thinking has been about bringing people into the system that does not work for them<sup>3</sup>, instead of starting with the systemic flaws and the ways in which people have themselves attempted to secure land access despite their exclusion. We take up this issue in more detail below in the point of departure about managing the urban land market.

Another example is how, in our housing policy, the livelihoods framework was adopted and adapted in service of the market logic of asset creation and wealth accumulation with insufficient attention to a range of other factors including the extent or scale of market exclusion, the limitations of asset creation as a poverty alleviation intervention, and the vulnerability and risk mitigation intentions of the framework.



The result of the all-pervasive property market logic in prevailing policy discourse is that “informal” (as in not “market” and not state) allocation has been invisibilised, criminalised or pathologised. Take for example terms such as “land grabs”, “hijackers”, “invaders”, “eradication” and “queue jumpers”. As a result, urban land allocation has been poorly conceptualised, without the language to adequately identify what people do for themselves. Is it informal, community or self-allocation?

## 2.1.2 The non-material meaning and value of land

The meaning of land in an urban context is under-researched. Very little urban research identifies the non-material, non-technical or non-infrastructure-based aspects of urban development, human settlements development or occupation and upgrading. Recent SERI research in three research sites (Marikana informal settlement, Siyanda informal settlement, and Ratanang informal settlement) identifies the importance of non-material needs<sup>4</sup>.

Over and above the material needs for access to land and services, protection against unlawful eviction and access to adequate housing, and linked to their provision, the research found that achieving recognition and a sense of belonging were fundamental, non-material priorities for the occupiers in the three research sites. In Siyanda, residents expressed a profound sense of exclusion, of being “left behind”. In Marikana, occupiers identified their struggle as being as much about land as it was about belonging and actively built a sense of community to assert it. Similarly, in Ratanang, residents articulated their claims as being for recognition, as well as interim services and housing rights.

Inclusive participatory processes in which state and residents engage in a meaningful way about the future are pre-requisites for meeting these non-material needs. Furthermore, the findings link the claims for recognition and belonging to the historical legacy of dispossession and the contemporary, ongoing exclusions from market and state land access. Equitable access in this context should respond to both historical and contemporary discriminations and exclusions. It suggests a mind-set shift in which occupation is seen more as an expression of agency under severe hardship than it is criminalised and pathologised.

## 2.1.3 The institutional / sectoral dilemma

Where to locate urban land reform? The dilemma here is about having a clear institutional location for a programme which should be multi-sectoral and multi-dimensional in nature. Housing, planning, governance, services, state land and economy are all implicated in the proposed programme. For example:

- Regarding housing: the Department of Human Settlements, Water and Sanitation should be responsible for the urban land for housing component. It should be developed as a component of the proposed new human settlements white paper and legislation.

<sup>3</sup> The ideas promoted by Hernando de Soto around land titling in his book “The Mystery of Capital” have reference here. His argument is that title brings dead capital to life, thereby providing a solution to poverty. His ideas have been extensively critiqued, although they have traction with many governments in the developing world, including our own, as can be seen in the asset creation argument in *Breaking New Ground*.

<sup>4</sup> SERI as produced three site-based research reports on Ratanang informal settlement in Klerksdorp (City of Matlosana), Marikana informal settlement in Philippi (City of Cape Town) and Siyanda informal settlement in KwaMashu (eThekweni Municipality) in a research series titled, “Informal Settlements: norms, practices an agency” available at [seri-sa.org](http://seri-sa.org).

- Regarding urban development and governance: the Department of Cooperative Governance and Traditional Affairs should be responsible for an urban land reform chapter in the Integrated Urban Development Framework; for the land for livelihoods component of urban land reform (see below for the multiple land use focus of urban land reform) as a dimension of local economic development; and for the municipal planning processes that set targets for land reform and undertake area based land audits, and integrated development plans (IDPs)<sup>5</sup>.
- Regarding spatial planning and land use management: the Department of Rural Development and Land Reform, where SPLUMA is currently located, should be responsible for making more explicit, and where necessary making amendments for, the urban land reform dimension of the development principles, spatial development frameworks, land use management and development decision making.
- Regarding state land: The Department of Public Works and Infrastructure, where responsibility for state land disposal and acquisition, as well as the Expropriation Bill, currently reside.
- Regarding land administration: Since 1994, land administration has been a major gap in land reform from conceptualisation through to implementation. LandNNEs<sup>6</sup> has identified it as a missing fourth component of land reform (in addition to restitution, redistribution and tenure reform). Although proposals are still being developed, the Law Reform Commission has been identified as a possible location for the legislative reform that is required for a comprehensive system of land administration<sup>7</sup>.

## 2.1.4 Lessons from rural land reform

An urban land reform programme should take into account the lessons and failures of rural land redistribution in order to avoid replication of errors, including “elite capture”, corruption and the willing-seller willing-buyer principle and market related price<sup>8</sup>. Some of the consequences of these shortcomings, and the lessons for urban land redistribution, include:

The original intended “beneficiaries” of land reform have been excluded in favour of a commercial farming class<sup>9</sup>. Land reform has failed the farm dwellers, labour tenants and small-scale farmers it was originally intended to address. In many respects, this outcome was the result of a political choice.

An urban redistribution programme will need to make a policy choice about targeting. Our proposal is that the legacy of dispossession and the racially skewed land outcomes it gave rise to, as well as the ongoing, contemporary land market exclusion should inform the prioritisation. This means a focus on both race and class. Segmenting the beneficiary group is critical in this regard. The urban land redistribution programme should be pro-poor in its targeting, prioritising people without access to markets.

The willing-buyer willing-seller approach had the implication of releasing low value, marginal rural land. The experience of the housing subsidy programme is similar: due to the cost of well-located land, ownership housing has been largely located on the peripheries of towns and cities, entrenching apartheid geography and doing little to address the jobs/housing mismatch<sup>10</sup>. The questions of land price, value and compensation arise in an urban context as well, especially from a spatial justice perspective. More work is needed on the issue of value, including how to value occupied land. (The issue of expropriation is discussed further under the mechanisms section below). Another urban land reform implication is that, in a context of massive unmet housing needs, the redistribution of well-located land is likely to have unintended policy outcomes via “downward raiding”<sup>11</sup>. As a result, policy choices will need to be made about the private ownership model.

## 2.1.5 Proactive and responsive approaches to land reform

Urban land reform should have two distinct but related dimensions: a proactive approach and a responsive approach. The responsive dimension should consist of legal and policy measures that foster equitable access to occupied land in two different urban contexts: occupied land in informal settlements and occupied buildings in urban, often inner city, contexts.

- In respect of the first, the National Housing Code already contains a mechanism for informal settlement upgrading: the Upgrading of Informal Settlement Programme (UISP). Rather than a policy gap, the problem is one of implementing an existing programme, one that is potentially redistributive in nature. Municipal implementation of in situ upgrading according to the UISP is generally poor. The relocation of informal settlements to vacant land (Greenfield development) and “roll-over” upgrading remain common practices amongst municipalities<sup>12</sup>.

<sup>5</sup> Note that in this paper we focus on the human settlements aspect, or land for settlement / residential use. We make reference to land for livelihoods but we flag this question for further attention.

<sup>6</sup> The Land Network National Engagement Strategy in South Africa, a national engagement strategy around land.

<sup>7</sup> Working document produced by Dr Rosalie Kingwill for LandNNEs work group on land administration.

<sup>8</sup> We do not unpack these constraints in significant detail here. The HLP report provides in depth insight. Report of the High Level Panel on The Assessment of Key Legislation and the Acceleration of Fundamental Change (November 2017), available at: [https://www.parliament.gov.za/storage/app/media/Pages/2017/october/High\\_Level\\_Panel/HLP\\_Report/HLP\\_report.pdf](https://www.parliament.gov.za/storage/app/media/Pages/2017/october/High_Level_Panel/HLP_Report/HLP_report.pdf).

<sup>9</sup> Ruth Hall and Themba Kepe, “Elite capture and state neglect: new evidence on South Africa’s land reform.” *Review of African Political Economy*, 44.151 (2017): pp.122-130.

<sup>10</sup> SERI, *Edged Out: Spatial Mismatch and Spatial Justice in South Africa’s Main Urban Centres* (December 2016).

<sup>11</sup> The unintended policy consequence of poorer households targeted by state subsidised intervention being displaced by better off households who can afford to buy them out.

The prohibition on the sale of RDP houses was meant to prevent this from happening, at least for a few years. It is impossible to enforce however. A more implementable approach would be to reconsider the ownership model.

<sup>12</sup> See Marie Huchzermeyer, “Consent and Contradiction: Scholarly Responses to the Capital Subsidy Model for Informal Settlement Intervention in South Africa”, *Urban Forum*, 12 (1) (2001), p. 71 and SERI synthesis report (Forthcoming) p. 7 for a fuller discussion of this point.



- With respect to the second, the National Housing Code also contains the Emergency Housing Programme, which goes some way towards addressing the need for alternative accommodation. However, we propose that an alternative accommodation programme, customised to address the section 26 context of relocation where eviction would lead to homelessness, should be developed. Furthermore, the more systemic rationale underpinning building occupation should be addressed: i.e. the need for affordable accommodation in well located areas. Our proposal here is for a revival of public rental accommodation<sup>13</sup>.

The proactive dimension has a vacant land focus and a broad spatial ambit: vacant land redistribution in a range of different urban contexts including cities, secondary cities, and towns. Within these diverse urban settings, the spatial focus should cut across townships, suburbs, inner cities, urban customary, etc. in order to overcome spatial inequality. A focus on urban transport routes has been proposed elsewhere<sup>14</sup>. Afesis-Corplan advocates a “managed land settlement” programme<sup>15</sup>. Gauteng Province’s rapid land release programme has relevance here too<sup>16</sup>, as does the province’s early experiences with rapid land release: the Rapid Land Delivery Programme and the Mayibuye Programme.

The IRDP and other vacant land development subsidy instruments are the most significant existing mechanisms in this respect. However, the issue of location needs to be addressed, as do the shortcomings of the “mega-project” approach<sup>17</sup>.

## 2.1.6 Mechanisms for redistribution

The programme should employ a range of different mechanisms for redistributing land, many of which exist already but have not been effectively utilised. These include willing-seller willing-buyer acquisition, expropriation with compensation that is “just and equitable”<sup>18</sup>, donation and value capture.

Land price is the most critical determinant of where land for redistribution is located, and of more spatially equitable outcome. Peripherally located subsidised housing faced this dilemma. New mechanisms are required to address this shortcoming, such as value capture.

Value capture is “a public financing technique that ‘captures’ a part or all of the increases in private land values that result from new public investment, by imposing a tax on the land”<sup>19</sup>. Land value capture can be

used for different purposes including municipal revenue generation and to achieve (or for the purpose of) redistribution or equitable access. Indirect value capture is where “the increase in land value that happens near a transport interchange can be captured and transferred to other parts of the municipality, using indirect methods ... include(ing) cross-subsidies”<sup>20</sup>.

Indirect land value capture therefore has redistributive potential as it could be used to finance land purchase for equitable land access, urban infrastructure provision or compensation for expropriation of land in the public interest for urban land reform objectives. Direct land value capture refers to on-site development, such a proposed development being approved provided that a percentage is allocated to affordable housing. Inclusionary housing policies can capture value for a city by diverting some of the increased value of developed land to the benefit of the city and its residents, specifically lower income earners.

Value capture has been identified as a key mechanism for encouraging infrastructure growth in South Africa’s cities as it can shift the burden of financing spatial transformation to the private sector who is able to funnel money into the development process. State sponsored infrastructure and economic development places a strain on public finances that can be mitigated through value capture.

For the indirect route, the method of value capture is a fee or levy that would be allocated to a municipal fund. However, the risk is that, without a policy to regulate the ring-fencing of a value capture fund, it could be general municipal revenue for any purpose.

Compensation methods need to be clarified for land acquisition in the public interest, including rejection of willing-seller-willing buyer in all cases, a targeted approach to the determination of compensation, clear administrative procedures and so on<sup>21</sup>. The proposed Framework Act should address compensation methods for land reform, including urban land redistribution. It would however need to articulate with the existing legislative provisions for land reform or public interest expropriation contained in other laws such as the Housing Act, ESTA, the Labour Tenants Act, etc., as well as public purpose expropriation contained in a revised Expropriation Act. Furthermore, the expropriation provisions of the proposed Act should ensure public involvement in the expropriation process<sup>22</sup>.

Both public and private land holdings should be considered for redistribution, identified via area-based land audits. Public land should be prioritised for public

<sup>13</sup> SERI, Affordable Public Rental Housing: Policy Brief (July 2016), available at: [https://www.seri-sa.org/images/Policy\\_brief\\_FINAL.pdf](https://www.seri-sa.org/images/Policy_brief_FINAL.pdf).

<sup>14</sup> See for example, South African Cities Network, How to build transit orientated cities: exploring options (2014), available at: [http://www.sacities.net/wp-content/uploads/2014/09/1978\\_SACN\\_Transit\\_Oriented\\_Cities\\_Web.pdf](http://www.sacities.net/wp-content/uploads/2014/09/1978_SACN_Transit_Oriented_Cities_Web.pdf). And South African Cities Network, The Urban Land Series Volume 2: a transit-orientated development lens (2018) available at: <http://www.sacities.net/wp-content/uploads/2017/10/The-Urban-Land-Paper-Series-Vol.2.pdf>.

<sup>15</sup> See Afesis-Corplan, Managed Land Settlement (2017) available at: <http://afesis.org.za/managed-land-settlement/>

<sup>16</sup> Gauteng Provincial Government, Gauteng Executive Council adopts a rapid land release approach to deal with the land question in the province (16 May 2018) Media Statement.

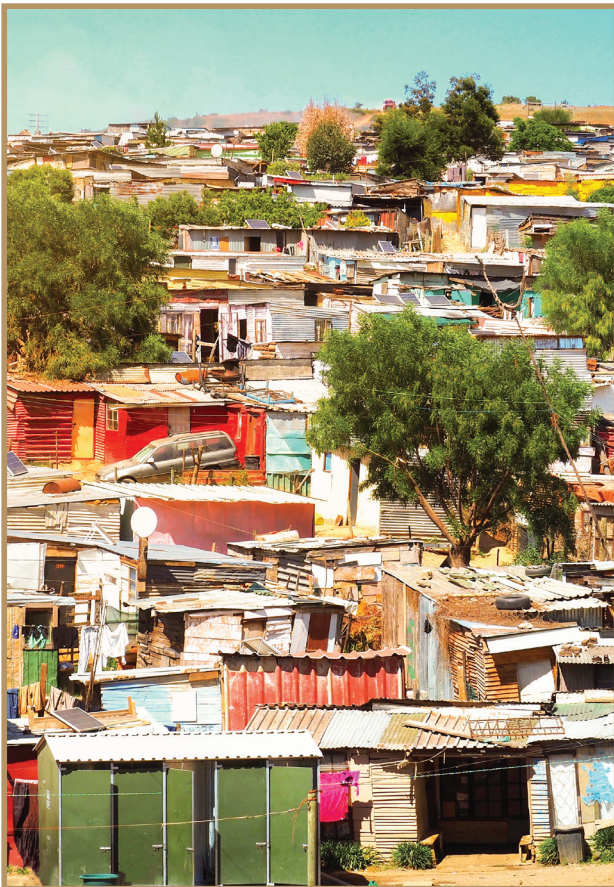
<sup>17</sup> Lauren Royston and Yahia Shawkat, “The idea of new cities may be folly”, Business Live (11 September 2015) available at: <https://www.businesslive.co.za/archive/2015-09-11-the-idea-of-new-cities-may-be-folly/>

<sup>18</sup> Section 25(3) of Constitution.

<sup>19</sup> Urban LandMark, Managing Urban Land: a guide for municipal practitioners (2011), p. 134, available at: [http://www.urbanlandmark.org.za/downloads/managing\\_urban\\_land\\_guide\\_guide\\_2012.pdf](http://www.urbanlandmark.org.za/downloads/managing_urban_land_guide_guide_2012.pdf). Ibid.

<sup>21</sup> Tembeka Ngcukaitobi, “Clear policies needed for land reform”, Mail and Guardian (9 June 2019). Ngcukaitobi also makes the point that the political home of the Expropriation Act needs attention, proposing that the public good component remain with Public Works as the custodian of state property and that a new act should focus on the public interest component (land reform), thereby avoiding “mandate creep and policy duplication”.

<sup>22</sup> See SERI, Submission on draft Expropriation Bill, February 2019, available at: [http://www.seri-sa.org/images/SERI\\_submission\\_on\\_Draft\\_Expropriation\\_Bill22FEB2019pdfup.pdf](http://www.seri-sa.org/images/SERI_submission_on_Draft_Expropriation_Bill22FEB2019pdfup.pdf).



interest purposes. The expropriation of land for housing is legally possible using section 9 of the Housing Act. Section 9(3) provides for expropriation of land for projects funded by a programme in the Housing Code. UISP funding can be allocated to the “acquisition of land, where the land to be developed is in private ownership, through negotiation or expropriation” during the implementation of phase 2 of the programme. The expropriation provision in the Housing Act remains largely untested<sup>23</sup>. The envisaged new Human Settlements Act should retain the expropriation provision. However, further work is required on municipal reluctance to employ the current provision, as well as on compensation methods.

Regarding donations, a proactive approach to engaging individual and corporate private land owners about land donations should be developed. A donations policy is required to guide the process, including such issues as the costs of transfer.

### 2.1.7 The role of state land in land reform

Under-utilised or surplus state land has not yet been prioritised for land reform purposes. The Government Immovable Asset Management Act of 2007 (GIAMA) requires that “when an immovable asset is acquired or disposed ‘best value for money’ must be realised”<sup>24</sup>. This clause appears to have created the impression that financial return should be prioritised<sup>25</sup>. However, this assumption is at odds with GIAMA’s definition of ‘best value for money’ which includes ‘social return’ as well as functional, financial and economic value. Furthermore, GIAMA stipulates that when a disposal is being considered Public Works must take into account whether the immovable asset can be used for “social development initiatives of government” and “government’s socio-economic objectives including land reform, black economic empowerment, alleviation of poverty, job creation and the redistribution of wealth” (emphasis added)<sup>26</sup>.

When it comes to state land and land reform, acquisition as well as disposal should be considered. For example, acquisition may be required for rapid land release or for securing the land underlying informal settlements.

<sup>23</sup> See SERI, “Marikana informal settlement: Our place to belong”, Informal Settlement Action Research (2019); SERI, Note on Expropriation, (2018), available at: [http://seri-sa.org/images/SERI\\_Note\\_on\\_Expropriation\\_final.pdf](http://seri-sa.org/images/SERI_Note_on_Expropriation_final.pdf); And UISP, p. 51.

<sup>24</sup> See Section 5(1)(e).

<sup>25</sup> See for example the Presidential Advisory Panel report.

<sup>26</sup> See Section 5(1)(f).



## 2.1.8 Urban land market management

The way in which the urban land market operates is a crucially important determinant in inequitable access to land for poorer urban residents. A business-as-usual approach will not lead to pro-poor market outcomes, nor to spatial equity. Municipalities have a range of existing tools at their disposal to manage land for improved outcomes. As well as their planning levers for more spatially just and equitable outcomes, municipalities can use their regulatory role in respect of development and land use rights to manage the market.

These include<sup>27</sup> :

- Land use management;
- Property rates, including residential exclusion for poor households;
- Rebates and exemptions for vulnerable groups; and,
- Capturing value, especially at transport nodes.

## 2.1.9 Multiple uses for land

We propose two related dimensions: urban land for settlement and urban land for livelihoods. Urban land for settlement falls within the ambit of the Department of Human Settlements, Water and Sanitation, nationally and provincially. Urban land for livelihoods is harder to locate institutionally but we suggest that it is a local economic development mandate with the Department of Cooperative Governance and municipalities.

Elements of the urban land for livelihoods dimension should include increasing opportunity for access to productive land uses and promoting secure access to small scale urban agriculture, small scale rental accommodation provision, and informal economic activities.

## 2.1.10 Disaggregating “the poor” and targeting appropriately

In discussing the issue of equitable access to land, one key question arises: who should land reform benefit? Policies generally focus on beneficiaries living on farms and communal areas, ignoring the growing numbers of people living in urban areas. The 1997 White Paper on South African Land Policy described a beneficiary of land redistribution as a historically disadvantaged adult who meets the criteria set for a land redistribution program and aimed to assist poor and disadvantaged people to purchase land from willing sellers using state subsidies<sup>28</sup>. This definition has continued to influence the way in which “beneficiaries” are viewed.

While the need to centre the land reform process around “the poor and disadvantaged” and to consider land problems in their “social, economic and historical context” is highlighted in the High Level Panel report, the conversation around land reform beneficiaries rarely shifts away from a primarily rural focus and on providing subsidies to assist individuals or communities to purchase land or property<sup>29</sup>.

The proposals set out in this paper aim to shift the focus from subsidies targeted at individual beneficiaries to the development of access opportunities that will benefit entire beneficiary classes. We argue that interventions should be targeted towards groups who have been excluded from accessing land and property, specifically, vulnerable groups, especially women-headed households; households earning less than R3,500 a month; people living in dilapidated inner-city buildings and people living in informal settlements.

The new framework should take into consideration the rights of vulnerable groups such as the disabled, the elderly and women. The PIE Act, which sets out to prevent arbitrary evictions, specifically requires consideration of the rights of the elderly, children, people with disability, and households headed by women as particularly vulnerable groups<sup>30</sup>.

The majority of poor people in South Africa are women. Redistributive policies have acknowledged the need to focus on the marginalised and women as discriminatory practices against women acquiring property and accessing land impact on half of South Africa’s population<sup>31</sup>. Redistribution should promote women’s access to land, property and economic opportunities.

Formal housing remains inaccessible to the lowest income households in South Africa. According to StatsSA, the average income in South Africa in 2014 was R3,033 a month<sup>32</sup>. Households earning less than R1,500 a month represent approximately 23% of the population, while those earning less than R3,500 constitute 48% of the population<sup>33</sup>.

The City of Johannesburg, the largest metropolitan municipality in South Africa, has acknowledged the need for public rental housing that caters for households who can afford between R300 and R600 a month, including utilities<sup>34</sup>. These figures suggest where a public interest land redistribution programme should focus.

Informal settlement residents and inner-city occupiers should be key beneficiary groups for any urban land redistribution programme. Urban inner cities are home to thousands of occupiers living in “slum” buildings, under dire general conditions, with high rates of overcrowding,

<sup>27</sup> See, UrbanLand Mark, supra note 19.

<sup>28</sup> Department of Land Affairs, White Paper on South African Land Policy, Pretoria (1997), Available at: <http://www.ruraldevelopment.gov.za/phocadownload/White-Papers/whitepaperlandreform.pdf>.

<sup>29</sup> In 2018, the Presidential Panel on Land Reform discussed the question of beneficiaries. They key focus was subsistence farmers, farm dwellers, small to large scale commercial farmers, small scale farmers who have been farming for subsistence purposes and selling their produce at local markets and women. Available at: <https://www.fin24.com/Economy/Labour/land-reform-who-are-the-right-beneficiaries-20181207>.

<sup>30</sup> The Prevention of Illegal Eviction from and Unlawful Occupation of Land Act 19 of 1998 (PIE).

<sup>31</sup> The White Paper on Reconstruction and Development (1994) highlighted the need to target development programmes towards women who have traditionally faced discrimination and exclusion from economic opportunities.

<sup>32</sup> StatsSA, Labour market dynamics in South Africa, 2014 (2015), available at: <http://www.statssa.gov.za/publications/Report-02-11-02/Report-02-11-022014.pdf>.

<sup>33</sup> Gauteng Partnership Fund (GPF), Leveraging Housing Finance In Sustainable Integrated Housing Developments (2012), available at: <https://www.gpf.org.za/wp-content/uploads/2018/04/LeveragingHousingFinance.pdf>.

<sup>34</sup> Jackie Dugard with Michael Clark, Kate Tissington and Stuart Wilson, The Right to Housing in South Africa, Foundation for Human Rights Position Paper Series (2017).

poor or no sanitation, limited access to water and no proper waste management or disposal<sup>35</sup>. Occupiers in these buildings are unable to afford formal housing and face the persistent risk of displacement, which in turn often renders them homeless or forces them to find accommodation in peripheral informal settlements.

According to conservative estimates, in 2011, between 1.1 and 1.4 million households, or between 2.9 and 3.6 million people, lived in informal settlements in South Africa<sup>36</sup>. However, given the insecure tenure arrangements in informal settlements and the fluidity of residence in these areas, the number is likely to be significantly higher. Informal settlements are characterised by a lack of access to water and sanitation services, lack of access to basic infrastructure such as paved roads and electrification, and inadequate policing and emergency services. This lack of basic infrastructure makes informal settlement households especially vulnerable to natural disasters and devastating fires<sup>37</sup>. These factors combined with high levels of poverty and high population density make households in informal settlements especially vulnerable to events that can undermine their health and livelihoods and have catastrophic consequences<sup>38</sup>.

Targeting housing interventions to the millions of people living in informal settlements, inner-city buildings, the elderly, disabled, women-headed households, and households earning less than R3,500 a month will provide equitable access to land and property to the most vulnerable members of society.

### 2.1.11 Conclusion

This section set out the parameters of our proposed approach and identified a few of the core complexities of urban land reform. From this we suggested that provisional principles for the Framework Act be developed, examples of which could be: adopting a holistic approach to land redistribution, including urban and rural contexts; redressing inequity through recognition of historical legacy and current inequities; redistributive in nature by managing market distribution of land access and land use rights; accommodating multiple land uses; cognisant of urban heterogeneity; “pro-poor”; and appropriately targeted.

## 2.2 Review of Prospective Urban Land Redistribution Measures

As set out in the introductory section, on the basis of the constitutional mandate, urban land redistribution should comprise of measures that foster equitable access to land.



In this sub-section we review existing policy and legal measures in the housing, land and planning sectors which could be considered to foster the conditions for equitable access to urban land. Our review is neither comprehensive nor exhaustive, but we hope it offers a useful starting point. Although an important element of our approach is that redistribution should include land for livelihoods as well as land for settlement, we do not at this stage consider our review of the land for livelihoods measures to be complete.

### 2.2.1 Land reform measures

The White Paper on Land Reform (1997) outlined the structure of the land reform process which focused on a willing-buyer willing-seller approach to land redistribution aimed at assisting the poor, farm workers and aspiring farmers, labour tenants and women. Land reform was partly predicated on the idea that well-located land would be made readily available and partly on the idea that the state could expropriate land in the public interest under various laws with redistributive components, including the Land Reform (Labour Tenants) Act 3 of 1996, The Extension of Security of Tenure Act 62 of 1997 and the Housing Act 107 of 1997. Section 9(3) of the Housing Act provides for expropriation of land for projects funded by a programme in the Housing

<sup>35</sup> Medicines Sans Frontières, *Nowhere Else to Go* (March 2011), p.1. Available at: [https://www.msf.org.za/system/tdf/publications/nowhereelsetogo\\_report1.pdf?file=1&type=node&id=6652&force=](https://www.msf.org.za/system/tdf/publications/nowhereelsetogo_report1.pdf?file=1&type=node&id=6652&force=).

<sup>36</sup> These figures are based on conservative estimates from 2011 and are therefore likely to be under-representative.

<sup>37</sup> See Mark Napier, “Government Policies and Programmes to Enhance Access to Housing: Experience from South Africa” (29 September 2011), paper delivered at the Bank of Namibia Annual Symposium in Windhoek; and Hopolang Selebalo and Dennis Webster, *Monitoring the Right of Access to Adequate Housing in South Africa*, SPII Working Paper No 16 (September 2017), p. 33, available at: [http://www.spil.org.za/wp-content/uploads/2018/02/Right-to-Housing\\_2017.pdf](http://www.spil.org.za/wp-content/uploads/2018/02/Right-to-Housing_2017.pdf). Mark Pelling and Benjamin Wisner, “Disaster Risk Reduction: Cases from Urban Africa”, Earthscan (2008), p. 113.

<sup>38</sup> Ibid, p. 106.





Code. UISP funding can be allocated to the “acquisition of land, where the land to be developed is in private ownership, through negotiation or expropriation” during the implementation of phase 2 of the programme. Notwithstanding that these powers of expropriation are legally enforceable they have seldom been applied.

## 2.2.2 Housing and human settlement measures

A number of housing and human settlements measures have been developed and operationalised since 1994, starting with the White Paper which was negotiated at the National Housing Forum in the transition to democracy. It was followed by the Housing Act (1997) and then the Housing Code (2000). In 2004, a process of policy adjustment followed, leading to the Comprehensive Plan for Sustainable Human Settlements, known as “Breaking New Ground”<sup>39</sup>.

Revised in 2009, the Housing Code contains the human settlements measures (programmes, funding instruments), such as the Upgrading of Informal Settlements Programme (UISP) and the Emergency Housing Programme (EHP). The EHP was a direct outcome of section 26 litigation<sup>40</sup>. At the time of writing, a legal and policy review process was underway in the Department of Human Settlements with the intention of new legislation and policy, a Human Settlements Act and White Paper respectively.

Public rental housing, or social housing, offers affordable income-linked housing options in urban areas. It offers access to land in a variety of locations. The Social Housing Programme operates on the principles that social housing must restructure urban inner-city housing development; develop well-managed quality rental housing options to meet the housing demand; deliver housing options that are accessible to the working poor, and support economic development and safe and socially responsible housing and urban environments. The policy specifically

encourages the involvement of the private sector.

The Community Residential Unit (CRU)<sup>41</sup> Programme runs parallel to Social Housing. CRU and the Enhanced Extended Discount Benefit Scheme (EEDBS)<sup>42</sup> both provided options for rehabilitating hostels into low-income housing in townships, suburban and inner-city areas.

Housing stock funded by the CRU programme remains publicly owned while EEDBS is transferred to individual owners. The CRU programme specifically applies to abandoned and distressed inner-city or township buildings that will be taken over by municipalities.

Most recently, President Ramaphosa promised to release strategically located land in urban and peri-urban areas to address housing needs as part of his in the 2019 State of the Nation Address<sup>43</sup>. In 2018, Gauteng launched a Rapid Land Release Programme (RLRP) under which the Gauteng Department of Human Settlements pledged to allocate 60,000 land parcels in Johannesburg that would be provided with bulk infrastructure including roads, water, sanitation and electricity<sup>44</sup>. Under the programme, provincial land and buildings not currently in use would be allocated to those who could afford to build their own homes, those interested in starting township businesses, and those interested in using the land for urban agriculture.

## 2.2.3 Planning measures

The planning context

The post-apartheid government inherited a patchwork of multiple planning laws based on apartheid era geography: former Bantustans and urban Group Areas were regulated by their own planning frameworks. It took decades for a unitary planning system to emerge, starting with the introduction of the Development Facilitation Act 67 of 1995 and the work of the Development and Planning Commission of the national department of land reform in the late-nineties.

<sup>39</sup> In 2004, the Breaking New Ground (BNG) strategy was adopted. It changed the focus from providing subsidised units to promoting an integrated society by developing sustainable human settlements and quality housing. BNG focuses on using property ownership to help raise households out of poverty through asset creation. It envisions using housing to develop sustainable human settlements that support spatial restructuring. The strategy focused on flexibility and demand-responsiveness, to be achieved through the production of non-uniform housing. Urban housing concerns are specifically addressed through the use of social housing to encourage urban renewal and integration and to facilitate the purchase and repurposing of vacant and dilapidated buildings in urban areas. However, the private sector is still presented as the primary way in which housing will be delivered. The strategy also focused on the “eradication” of informal settlements in favour of asset creation. The redistribution of land through the provision of privately-owned housing has encountered numerous challenges, most notably that subsidised houses, commonly referred to as RDP housing, do little to redistribute land or to redress the exclusion of the poor from well-located land. RDP beneficiaries are only eligible to receive title deeds to their houses after eight years, and in many instances do not receive their deeds at all. This regulation is meant to discourage beneficiaries from selling their RDP homes but instead creates confusion as homes are transferred and sold with no accurate record as to who the actual owner is. In addition, those who qualify for subsidies do not have sufficient income to maintain their units. Many RDP units have become dilapidated and a large number have been appropriated by third parties, failing to alleviate the housing shortage. In many instances, these units have been sold in execution. Subsidy recipients who have received but are no longer in possession of their RDP homes are subsequently excluded from qualifying for future subsidies under current rules.

<sup>40</sup> Government of the Republic of South Africa and Others v Grootboom and Others (CCT11/00) [2000] ZACC 19; 2001 (1) SA 46; 2000 (11) BCLR 1169 (4 October 2000).

<sup>41</sup> The Community Residential Unit (CRU) programme is designed to provide low income housing by redeveloping hostels into affordable housing. CRU targets individuals and households earning between R800 and R3,500 a month. The program aims to stabilize the housing markets in townships, suburb and inner-cities by ensuring the production of sustainable public housing units. The program is meant to provide a solution to the problem of dilapidated buildings in urban areas while simultaneously providing access to affordable rental accommodation to the households at the lowest end of the earning scale. CRU housing is included as a housing option during the last phase of informal settlement upgrading in terms of the UISP and as a more permanent housing option under the EHP. The housing stock funded by the CRU Programme must remain in public ownership and cannot be sold or transferred to individual residents. In addition, CRU funding is limited to capital works and long-term maintenance with the costs to run the buildings expected to be earned from rental income. This likely skews towards tenants with higher incomes who are able to contribute more substantial amounts to the operational costs of running the buildings. The programme has proven to be largely ineffective, between 2007 and 2016, an estimated 29,837 units were built at a cost of R9.5 billion (less than 3,000 units per year). The programme has suffered from a lack of knowledge by implementers of how to use the funding, in addition the costs to refurbish individual units are significantly higher than the costs of new construction, and the programme management was poor. See DPME review available at: <https://pmg.org.za/committee-meeting/22158/>.

<sup>42</sup> The Enhanced Extended Discount Benefit Scheme (EEDBS) provides state subsidies for the redevelopment of government rental housing built before 1994 which can then be transferred to occupants. The EEDBS aims to give pre-1994 residents of state-funded rental stock the opportunity to take ownership of their units. Beneficiaries include 1) people who have a direct housing arrangement with the provincial department or municipality, 2) have not benefited from any other housing subsidy or programme, 3) or have an outstanding debt with the municipality or provincial department.

A flurry of new planning law developed in the provincial sphere and legal clarification emerged on planning as a municipal function following an appeal of the City of Johannesburg in the Constitutional Court. The Spatial Planning and Land Use Management Act (SPLUMA) was finally signed into law in 2013. Since then, regulations have been promulgated (2015), municipal development planning by-laws and SPLUMA-compliant land use management schemes and spatial development frameworks (SDFs) have been developed.

Land reform is not an explicit concern in SPLUMA, although it contains redistributive elements that will require much greater clarification and support if they are to give effect to equitable land access.

The Spatial Planning and Land Use Management Act, 2013

SPLUMA came into effect in 2015 and has a number of aims, which include: addressing the fragmented, unsustainable spatial patterns; creating a single, integrated legal framework to deal with planning and to stipulate the role of each sphere of government in planning.

This Act comprises over-arching legislation which defines the scope of South Africa's planning system. It also addresses 'normative direction, planning instruments, planning processes, institutional arrangements and supportive intergovernmental relations.'

The Act provides tools in the form of spatial plans and a land use management system by which spatial and social



transformation can potentially be levered. The legislation has a dual character, partly direct legislation and partly a framework. Some parts can be applied directly, while other parts require synchronicity with other legislation such as regulations, ministerial norms and standards, environmental law, land law, mineral law and so on.

Prior to this Act, most municipal planning decisions were taken in terms of provincial planning law. The Act has changed the emphasis and now most municipal planning will take place in terms of municipal by-laws. National and provincial government must assist municipalities to develop their by-laws (for example, through model by-laws). Each province may pass provincial planning law further regulating municipal planning in that province as well as provincial planning. Municipalities must establish municipal planning tribunals and appeals structures to determine, and decide on, land development applications.

A single and inclusive land use scheme for each entire municipality is to be developed. All three spheres of government must prepare Spatial Development Frameworks (SDFs) based on norms and standards guided by development principles. These must be synchronised, since no sphere of government may trump another with regard to municipal planning, including forward planning such as SDFs. Each has its own autonomous powers. It is not yet clear how potential differences in SDFs between the three spheres will be resolved.

SPLUMA contains potentially progressive provisions with regard to informal settlement upgrading including the incremental upgrading definition<sup>45</sup>, principles<sup>46</sup>, municipal spatial development plans<sup>47</sup> and land use management schemes<sup>48</sup>. It also makes inclusionary housing a requirement of the content of municipal spatial development plans: "A municipal spatial development framework must ... identify the designated areas where a national or provincial inclusionary housing policy may be applicable"<sup>49</sup>. Principles of spatial justice and spatial resilience could arguably be applied in service to an urban land reform agenda. Although a redistributive agenda could be read into SPLUMA, urban land reform is not explicit in the Act.

SPLUMA does not recognise that many users of land are not the owners. It places significant emphasis on the involvement of land owners, and fails to provide occupiers, land users and interested parties with sufficient spaces for participation. On the other hand, the use of land for a purpose other than in the land use scheme is penalised with a maximum penalty of 20 years' sentence<sup>50</sup>.

<sup>43</sup> State of the Nation Address 2019, available at: <https://www.gov.za/sona2019>

<sup>44</sup> Pelane Phakgadi, "Rapid Land Release" Programme to Offer Joburg South Residents Land" Eyewitness News (13 May 2018), available at: <https://ewn.co.za/2018/05/13/rapid-land-release-programme-to-offer-joburg-south-residents-land>.

<sup>45</sup> The progressive introduction of administration, management, engineering services and land tenure rights to an area that is established outside existing planning legislation and may include any settlement or area under traditional tenure.

<sup>46</sup> "... development procedures must include provisions that accommodate access to secure tenure and the incremental upgrading of informal areas".

<sup>47</sup> Must "include previously disadvantaged areas. . . informal settlements, slums... and address their inclusion and integration into the spatial, economic, social and environmental objectives of the relevant sphere".

<sup>48</sup> Must "include provisions that permit the incremental introduction of land use management and regulation in areas under traditional leadership, rural areas, informal settlements, slums and areas not previously subject to a land use scheme"; may include provisions for "specific requirements regarding any special zones identified to address the development priorities of the municipality".

<sup>49</sup> Section 21(i).

<sup>50</sup> For a fuller discussion see SERI's submission on the City of Johannesburg draft planning by-law, available at: [http://seri-sa.org/images/Col\\_Municipal\\_Planning\\_By-Law\\_-\\_SERI\\_comments.pdf](http://seri-sa.org/images/Col_Municipal_Planning_By-Law_-_SERI_comments.pdf).



## 2.2.4 Urban Development

The Integrated Urban Development Framework (IUDF) was adopted in 2016. The Department of Cooperative Governance and Traditional Affairs (CoGTA) developed the policy framework to create a common approach across government about how to manage urbanisation while achieving economic development, job creation and improved living conditions.

The IUDF was largely influenced by Goal 11 of the Sustainable Development Goals (SDGs) which links sustainable urbanisation to ensuring that cities are “inclusive, safe, resilient and sustainable”<sup>51</sup>. It is also reflective of African Union Agenda 2063, a strategic framework for achieving inclusive and sustainable development. It has four overall strategic goals: spatial integration, defined as forging new spatial forms in settlement, transport, social and economic areas; ensuring people have access to social and economic services and infrastructure; sustainable economic growth and development, and improving governance.

The IUDF is primarily aimed at spatial transformation. It focuses specifically on integrated urban planning and management as a tool for redressing apartheid spatial mismatch; highlights the need to focus on regenerating inner cities; focuses on providing a variety of housing typologies, and on identifying and making land available for settlement<sup>52</sup>.

As an integrative policy framework with an urban focus, the IUDF is well placed to “hold” a multi-sectoral land reform framework within a broader urban development mandate. On the other hand, it lacks the human settlements sector focus, expertise and legal mechanisms to be the sole department with an urban land reform mandate. A new chapter should be introduced to the IUDF. The new urban land reform chapter should be one of the policy measures to foster conditions that to give effect to Section 25(5). This mechanism should be identified in the proposed Framework Act.

## 2.3 Recommendations

Our paper takes its cue from section 25(5) by reviewing the legislative and policy measures that already exist, which could foster conditions for access to land on equitable basis. In the preceding section our brief review also analysed gaps and shortcomings which are the basis of our recommendations for:

- a Land Redistribution Framework Act;
- an Office of Equitable Access;
- ways to improve mechanisms in the planning and human settlements sectors that ensure equitable access to land; and

- urban land redistribution test cases to apply the different mechanisms and assess their performance against the right to equitable land access.

### 2.3.1 Land Redistribution Framework Law

A new Framework Act should be developed in a consultative manner with government, civil society and the private sector. The purpose of the proposed act is to give effect to section 25(5). At minimum the Act should:

- Provide a definition of “equitable access”.
- Establish the guiding principles for redistribution, including adopting an holistic approach to land redistribution, including urban and rural contexts; maximising the use of surplus state land for land reform purposes; redressing inequity through recognition of historical legacy and current inequities; redistributive in nature by managing market distribution of land access and land use rights; accommodating multiple land uses; cognisant of urban heterogeneity; “pro-poor”; and appropriately targeted<sup>53</sup>.
- For the urban components of land redistribution, identify the scope and purpose of urban land redistribution including:
  - equitable access to urban land with a “pro-poor” focus;
  - proactive vacant land identification, release and assembly;
  - responsive upgrading and alternative accommodation provision on occupied land and (inner city) buildings;
  - land for human settlements and land for livelihoods; and the imperative of addressing urban spatial inequality and promoting spatial justice.
- Provide the means for the identification of a government-wide, transversal, multi-sectoral, integrated urban land reform programme with different components located in the appropriate sector departments.
- Identify where accountability for the act and responsibility for monitoring implementation lie. This could be the department of rural development and land reform, but our concern is that an urban dimension of land reform will fail, once again, to

<sup>51</sup> Integrated Urban Development Framework (IUDF) 2018.

<sup>52</sup> IUDF, pp. 64, 65, and 67.

<sup>53</sup> It should also address Restitution, tenure reform and land administration, which we do not address in this proposal. Further, in this paper we consider principles for urban land redistribution, although the framework act should develop both urban and rural principles.

receive the prioritisation required and that this department will fall short on the urban knowledge and competencies required. Hence our proposal for a dedicated office in the presidency.

- Identify existing mechanisms that give effect to equitable access, including funding mechanisms.

## 2.3.2 Institutional Location of Urban Land Reform

An Office of Equitable Access should be housed in the Presidency and have the authority to oversee the myriad programmes and policies in place to ensure equitable access to land. The office should have a monitoring and evaluation function, reporting on progress in a transparent and accessible way. The proposed structure of the Office is described in more detail below.

The State has the specific responsibility to redress the imbalances in distribution of wealth in South Africa.

An Office of Equitable Access, housed in the Presidency, would fulfil the state's constitutional obligation to take reasonable means within its available resources to enable the poor to have equitable access to land.

Over the past two decades, measures to enable access to land have failed to grant the vast majority of people in South Africa with equitable access to land.

The largest impediments to a functioning system have been a lack of funding, poor alignment of budgets and priorities, and a lack of capacity and political will to implement progressive programs. Implementation of housing programmes and the use of programmes that would give poor people access to land are inconsistently implemented across the country, and often only after a challenge in court. An Office of Equitable Access (OEA) would serve the role of an oversight body, with accountability to the nation, to ensure that housing programmes are implemented in an efficient and effective way and that all three spheres of government are held to account for fulfilling their mandates.

The OEA, guided by the Framework Act, would ensure that municipalities are developing the integrated development plans with clear goals in place and utilising the funding available to finance land reform projects; that provincial governments are allocating funding in a transparent manner, and that national policies and legislation facilitates locally identified priorities.

A key measure of success for the OEA would be the achievement of the National Development Plan goal that “by 2050, visible results from effectively coordinated spatial planning systems shall have transformed human settlements in South Africa into equitable and efficient

spaces with citizens living in close proximity to work with access to social facilities and essential infrastructure”. In addition, the OEA would serve as a non-litigious check on municipalities to ensure that they implement the UISP and make full use of the EHP.

## 2.3.3 Measures for Urban Land Redistribution

The review we have conducted in this paper is provisional and it should be supplemented with a comprehensive, multi-sectoral gap analysis. A definition of equitable access will be required for this assessment.

Regarding human settlement measures, the process of legislative and policy review currently underway is an opportunity to ensure that existing and new human settlements measures foster conditions for equitable access.

In particular, we recommend that:

- An urban land reform component be firmly located in human settlements legislation and policy.
- The review currently underway retains existing mechanisms for redistribution and where necessary enhances them, such as the expropriation provisions in the Housing Act and the UISP.
- Existing measures be implemented (especially the UISP and the EHP), amended or adjusted (including the Social Housing Programme) in order to more effectively foster conditions for equitable access.
- New measures, such as inclusionary Housing and Rental Housing norms and standards, be appropriately targeted towards equitable access ends.

The expansion of social housing is critical in this regard. That millions of South Africans lack secure tenure has been identified as “one of the salient features and causes of the housing crisis in South Africa”<sup>54</sup>.

A key recommendation of the 1994 White Paper was the provision of a wide range of ways in which people could secure tenure as this would encourage individuals and communities to invest in their own housing.

Expansion of social housing to cater more directly to the non-working poor will encourage the creation of an environment which will enable individuals to gain access to land on an equitable basis. This will result in the poor and low-wage earning residents of urban areas having equitable access to property and land.

The social housing programme is capable of acquiring and repurposing well-located land for use by a wide range of beneficiaries. This includes vacant, abandoned,

<sup>54</sup> White Paper, 1994.





speculatively held land, and dilapidated and abandoned properties in urban areas. Well-located social housing will provide medium-density housing options in urban areas and will contribute to urban renewal and integration.

The potential benefits of expanded social housing are significant. Providing individuals with access to land and property through the provision of affordable housing will allow for mobility by providing access to housing that is not tied to a subsidy. Beneficiaries will be able to move to different state-subsidised housing in various parts of the city to locate work opportunities and more easily access social amenities as their needs change. In addition, the provision of housing in various parts of the city will address apartheid spatial patterns by providing equitable access to land in various parts of urban areas, thereby integrating communities.

Inclusionary housing should be a mechanism for equitable access. We recommend that mechanisms should be included to ensure that the majority of inclusionary housing units are made available to low-income households (households who earn less than R3,200 a month). This could include qualification criteria (and eligibility assessment), a percentage quota of how many inclusionary housing units should be made available to low-income households (as opposed to low-middle income households), or circumscribing the application of the inclusionary housing policy to low-income households. The rental in inclusionary housing units should be calculated at a rate of 30% of the household's income, which, in the case of low-income households, should not exceed more than R960 a month. This should include utilities. The policy should include provisions that would enable municipalities to conduct a qualification criteria and eligibility assessment of the households that apply for inclusionary housing<sup>55</sup>.

Regulation of the private rental market is also necessary to effectively foster conditions for equitable access.

In 2006, FinMark Trust estimated that the majority of South Africans access land through home ownership (approximately 50% of population), while 35% rent from a private or state entity and 12% live with informal tenure and in informal housing conditions<sup>56</sup>.

Most rental housing in urban areas, from individual rentals to multi-storey high-rises, is made available through the private market. The Rental Housing Act 50 of 1999 is underpinned by section 26 of the Constitution. Section 2(3) of the Act requires national government to introduce a policy framework on rental housing which sets norms and standards intended to facilitate provincial and local government's efforts to promote rental housing. The Act authorizes the Minister of Housing to introduce "assistance measures to stimulate the supply of rental housing property for low income persons."

These measures should include limitations on rental increase for five to ten year periods as well as regulation of private market rental prices.

Commonly known as rent control the provision of affordable rental accommodation at predictable and stable prices creates a security of tenure that simultaneously ensures that poor people in urban areas are guaranteed access to housing and have equitable access to "land". The Rent Control Act 80 of 1976 included provisions to limit rent increases and a landlord's ability to terminate a lease. These provisions helped to limit gentrification and maintain a stable supply of low cost rental housing<sup>57</sup>. The Act was repealed by the Rental Housing Act. However, the Rental Housing Act requires that the norms and standards must "promote a stable and growing market that progressively meets the latent demand for affordable rental housing among persons historically disadvantaged by unfair discrimination and poor persons"<sup>58</sup>. We argue that protections against unfair rental practices are fundamental in this regard.

<sup>55</sup> See SERI, Submission on the City of Johannesburg's Draft Inclusionary Housing Incentives, Regulations and Mechanisms, 2018 (May 2018), available at: [http://www.seri-sa.org/images/SERI\\_submission\\_on\\_COJ\\_Inclusionary\\_Housing\\_Policy.pdf](http://www.seri-sa.org/images/SERI_submission_on_COJ_Inclusionary_Housing_Policy.pdf).

<sup>56</sup> FinMark Trust, Analysis of South Africa's Housing Sector Performance, (2006), p. 15.

<sup>57</sup> Stuart Wilson, The Law of Dispossession: Property Law, Power and Social Change, PhD, School of Law, University of the Witwatersrand (2019), Ch. 5.

<sup>58</sup> See section 2(1)(a).

Regarding planning measures, we recommend that:

- The potential of SPLUMA, its regulations and municipal by-laws to accommodate the introduction of special zones for informal settlements be enhanced. Extending land use regulation over an informal settlement is a way to legalise the land use 'informal settlement'. Legal declaration allows for public investment in services and potential improvements in tenure security, thereby fostering conditions for more equitable access. However, the Act criminalises informal land use in the interim and makes it possible to criminally prosecute informal settlement residents. For the progressive potential to be realised it is imperative that guidelines be developed and support be provided to zone informal residential areas.
- Land audits that distinguish public and private land holdings, as well as vacant and occupied land should be explicitly written into the requirements for IDPs, norms and standards and performance measurement.
- IDPs should set targets for equitable land access.
- Value capture mechanisms should be employed by metropolitan municipalities for equitable access purposes, including inclusionary housing and the progressive management of development and land use rights.
- The Rental Housing policy framework should include provisions for limiting increases in rent and regulating the standard rents to be charged in specific areas.
- The sources of land will be identified by individual municipalities following an audit of all the available land within their jurisdiction. Land in this context will include vacant land and abandoned land, suitable for Greenfield development; abandoned and dilapidated buildings (suitable for rehabilitation, renovation, or demolition); and informal settlements (suitable for in situ upgrading).

Land could be acquired through various mechanisms including purchase, donation, and attachment due to unpaid debts or expropriation. Municipalities and state agencies are already empowered to acquire land for various purposes, including to give effect to section 25 of the constitution. A municipality may obtain a judgment against a property owner who has become delinquent in paying city rates and fees. Under section 66 of the Magistrates' Court Act, buildings can be sold in execution of that debt, as long as it does not violate an owner's constitutional right to adequate housing.

For the purchase and expropriation of land, the Housing Development Agency (HDA) has within its mandate the responsibility "identify, acquire, hold, develop and release state, privately and communally owned land for residential and community development."

To that end, the Minister responsible for housing may expropriate land for purposes of providing housing. The Housing Act requires municipalities to ensure that its residents have access to adequate housing and identify and designate land for housing development as a part of its process of integrated development planning. Municipalities are authorized under Section 9(3) of the Act to expropriate land for the purposes of housing development if unable to reach a reasonable agreement to purchase the land from the owner.

The state is able to donate land directly to individuals through programmes such as Gauteng's Rapid Land Release Programme. Land owners are also able to donate land directly to individuals or to the state. Donated land is subject to a tax of a percentage of the value of the property donated. This rate ranges between 20% and 25% of the value of the land. However, an exemption of this tax is granted when the donated land will be used for a land reform programme. The state must decide whether or not it will accept the donation and whether the exemption will be granted. Regarding livelihoods measures, we recommend that an in-depth review of existing measures be undertaken by the Office of Equitable Access or Cooperative Governance and Traditional Affairs, and that a gap / shortcoming analysis





be developed in order to meaningfully address equitable access to urban land for non-residential, productive uses.

Central to this process will be questions of the location of residential land to overcome spatial mismatch; opportunities for securing livelihood opportunities in the informal sector; appropriate business and land use regulation of informal livelihoods in existing and new residential developments; and opening up land based opportunities in different urban settlement typologies including the township economy, informal settlements, inner cities and suburbs. Some of the existing livelihoods are hidden, like domestic work, or precarious, like informal work.

Small scale rental, urban agriculture and urban informal economic activities will be central to this review. The double impact of residential and economic precarity will need to be assessed. The gendered nature of vulnerability will also be central. For example, women, men and children experience inequitable access in differentiated ways<sup>59</sup>. The spatial and land based dimensions of the existing strategies that people use to make a living should be included, such as the location and accessibility of

social grant pay-points given the centrality of this form of distributive income in the lives of millions of South Africans.

### 2.3.4 Urban Land Redistribution Test Cases

The purpose of test cases is to assess the application of the different mechanisms against the right to equitable land access. We propose an inclusive, consultative process with government, civil society and the private sector to define the criteria and select test cases in the areas of expropriation, inclusionary housing, approaches to speculatively held land, the use of state land for land reform purposes including disposal and acquisition, and accessing land through donation. Mechanisms for reflection and learning should be built into the test case process.



<sup>59</sup> See for example, SERI's informal settlement action research in which we identify that inadequate policing, poor public lighting, emergency water and sanitation services have profound safety, security and health implications for women and children.

### 3 CONCLUSION

In this paper we propose an approach to equitable land access which takes section 25(5) as its starting point. On this basis we argue that a law should be developed and enacted which gives effect to section 25(5) and that the High Level Panel proposal to develop a Land Redistribution/Reform Framework Act should be adopted. In order to operationalise the approach we propose a process for fine-tuning urban equitable access principles, the main legislative measure (the Framework Act) and the policy measures (the various programmes).

We develop this proposal in three ways:

Firstly, we argue that the mandate for this law, and the institutional location of urban land reform, is a vexing question which we propose be addressed via an inter-ministerial dialogue between the Presidency, Human Settlements, Water and Sanitation, Public Works and Infrastructure and Cooperative Governance and Traditional Affairs. Our “straw man” proposal is that an “Office of Equitable Access” should be established within the Presidency with responsibility for the law, and for monitoring and evaluating the performance of key sector departments which are accountable for the range of multi-sector programmes or measures which constitute urban land reform.

Secondly, we propose provisional content of the Framework Act: a set of principles and a range of measures to give effect to equitable access. We propose some points of departure which frame the urban land reform debate and our approach to urban land redistribution and argue that these could become the basis for the urban equitable access principles.

We offer provisional principles. On the basis of a preliminary review of existing measures, we make a set of recommendations. Some of the measures comprise of existing programmes while others are new. In some cases, existing measures assessed from an urban land reform perspective or on their own terms have not been implemented and / or contain significant gaps or shortcomings and we recommend how these problems should be overcome.

Thirdly we propose that carefully selected urban equitable access test cases should be identified with key stakeholders in government, civil society and the private sector to operationalise key aspects of urban land redistribution under the authority of the Office of Equitable Access and the relevant sector departments. We make some provisional proposals for selection criteria that could determine the test cases.

We identify short term actions required to operationalise the approach as follows:

1. The Presidency should convene an inter-ministerial dialogue with Human Settlements, Water and Sanitation, Public Works and Infrastructure and Cooperative Governance and Traditional Affairs and Rural Development and Land Reform to resolve the vexing institutional question we identify about the location of urban land reform.
2. The Department of Rural Development and Land Reform and the proposed Office of Equitable Access, or an alternative coordinating department for urban land reform as identified via the proposed inter-ministerial dialogue, should convene a multi-sector consultation on the proposed Land Redistribution Framework Act, with both urban and rural inputs. This act should, at minimum, define “equitable access”, develop principles for land redistribution and identify the measures (existing and new) required to give effect to equitable access.
3. The Department of Human Settlements, Water and Sanitation should include an equitable access strategy in the proposed new human settlements law and white paper, clearly identifying which measures contribute to giving effect to the provisions in section 25(5).
4. The Department of Cooperative Governance and Traditional Affairs should develop a new equitable access / urban land reform chapter in the IUDF, outlining the measures which contribute to giving effect to the provisions in section 25(5).
5. The Department of Public Works and Infrastructure should prioritise the use of surplus state land for land reform purposes.



## 4 SUMMARY TABLE

Background	<p>Over the past two decades, measures to enable access to land have failed to grant the vast majority of people in South Africa with equitable access to land. The largest impediments to a functioning system have been a lack of funding, poor alignment of budgets and priorities, and a lack of capacity and political will to implement progressive programs. Our approach to urban redistribution is about the measures that the state should take to foster conditions for access to land on an equitable basis in urban areas, following Section 25(5)'s imperative.</p> <p>One of the problems with the equitable access clause is that it has never been interpreted by legislation or jurisprudence, as other rights have. The absence of a law means that equitable access has never been interpreted. What is the meaning of equitable access? What constitutes "reasonable"? And for us the key question, which we address in the paper, is what measures (legal, policy and other) foster the conditions for equitable access?</p>
Proposals	<p>We propose an approach to equitable land access which takes section 25(5) as its starting point. To that end we propose that:</p> <ul style="list-style-type: none"> <li>• A new Framework Act should be developed in a consultative manner with government, civil society and the private sector. The purpose of the proposed act is to give effect to section 25(5).</li> <li>• An Office of Equitable Access should be created and housed in the Presidency and have the authority to oversee the myriad programmes and policies in place to ensure equitable access to land. The office should have a monitoring and evaluation function, reporting on progress in a transparent and accessible way.</li> <li>• Social housing must be expanded.</li> <li>• Inclusionary housing must be used as a mechanism for equitable access. We recommend that mechanisms should be included to ensure that the majority of inclusionary housing units are made available to low-income households (households who earn less than R3,200 a month).</li> <li>• Private rental market must be regulated to effectively foster conditions for equitable access.</li> <li>• Regarding livelihoods measures, we recommend that an in-depth review of existing measures be undertaken by the Office of Equitable Access or Cooperative Governance and Traditional Affairs, and that a gap / shortcoming analysis be developed in order to meaningfully address equitable access to urban land for non-residential, productive uses.</li> </ul>
Purpose	To give effect to section 25(5) of the Constitution in urban contexts. The section states that "the state must take reasonable legislative and other measures, within its available resources, to foster conditions which enable citizens to gain access to land on an equitable basis."
Beneficiaries	We propose to shift the focus from subsidies targeted at individual beneficiaries to the development of access opportunities that will benefit entire beneficiary classes. Interventions should be targeted towards groups who have been excluded from accessing land and property, specifically, vulnerable groups, especially women-headed households; households earning less than R3,500 a month; people living in dilapidated inner-city buildings and people living in informal settlements.
Source of land	The sources of land will be identified by individual municipalities following an audit of all the available land within their jurisdiction. Land in this context will include vacant land and abandoned land, suitable for Greenfield development; abandoned and dilapidated buildings (suitable for rehabilitation, renovation, or demolition); and informal settlements (suitable for in situ upgrading). Surplus state land is another significant source of land.
Land rights	Land redistribution does not automatically imply ownership, rather, we propose interventions that provide beneficiaries with secure tenure in a variety of land holding arrangements. Equitable access is itself a right to land.

Process	<p>In addition to the creation of a Framework Act and Office of Equitable Access, we recommend urban land redistribution test cases in a range of different urban settings for both proactive and responsive programmes. The purpose of test cases is to assess the application of different mechanisms against the right to equitable land access.</p> <p>We propose an inclusive, consultative process with government, civil society and the private sector to define the criteria and select test cases in the areas of expropriation, inclusionary housing, approaches to speculatively held land, and accessing land through donation. Mechanisms for reflection and learning should be built into the test case process.</p>
Policy	<p>The human settlements legal and policy review process should include an equitable access strategy and mechanisms. The 1994 White Paper predates the Constitutional dispensation and should be aligned with it.</p> <p>The potential of SPLUMA, its regulations and municipal by-laws to accommodate the introduction of special zones for informal settlements be enhanced. Extending land use regulation over an informal settlement is a way to legalise the land use 'informal settlement'. In addition: IDPs should set targets for equitable land access.</p> <p>Value capture mechanisms should be employed by metropolitan municipalities for equitable access purposes, including inclusionary housing and the progressive management of development and land use rights.</p>
Support for beneficiaries	Support engaging with state actors in the development process.
Stakeholders	<ul style="list-style-type: none"> <li>• People in occupation</li> <li>• People excluded from markets</li> <li>• State actors: Municipalities, Departments of Human Settlements, CoGTA, the Department of Land and Rural Development, the Office of the Presidency, Public Works and Infrastructure</li> <li>• Private land owners (individuals and corporates)</li> </ul>
Desired outcomes	Poor people in South Africa have equitable access to land for housing, livelihoods, or mixed-uses. And spatial justice is achieved.



## 5 REFERENCES

### Books / chapters in books:

Pelling, Mark and Wisner, Benjamin. *Disaster Risk Reduction: Cases from Urban Africa*, Earthscan (2008).

### Journal articles:

Hall Ruth and Kepe, Thembele, "Elite capture and state neglect: new evidence on South Africa's land reform." *Review of African Political Economy*, 44(151) (2017): 122-130.

Huchzermeyer, Marie. "Consent and Contradiction: Scholarly Responses to the Capital Subsidy Model for Informal Settlement Intervention in South Africa", *Urban Forum*, 12(1) (2001): 71-106.

### Website:

Afesis-Corplan, "Managed Land Settlement", (2017), available at: <http://afesis.org.za/managed-land-settlement/>.

StatsSA. *Labour market dynamics in South Africa, 2014 report* (2015), available at: <http://www.statssa.gov.za/?p=4445>.

### Research reports/publications:

Dugard, Jackie, Clark, Michael, Tissington, Kate and Wilson, Stuart. *The Right to Housing in South Africa*, Foundation for Human Rights Position Paper Series, (2017).

High Level Panel on the Assessment of Key Legislation and the Acceleration of Fundamental Change. *Report of the High Level Panel on The Assessment of Key Legislation and the Acceleration of Fundamental Change* (November 2017).

Medicines Sans Frontières. *Nowhere Else to Go*, (March 2011).

Socio-Economic Rights Institute. *Affordable Public Rental Housing: Policy Brief* (July 2016).

Socio-Economic Rights Institute. *Edged Out: Spatial Mismatch and Spatial Justice in South Africa's Main Urban Centres* (December 2016).

Socio-Economic Rights Institute, Submission on the City of Johannesburg's Draft Inclusionary Housing Incentives, Regulations and Mechanisms, 2018 (May 2018).

Wilson, Stuart. *The Law of Dispossession: Property Law, Power and Social Change*, PhD, School of Law, University of the Witwatersrand (2019).

Urban LandMark. *Managing urban land: a guide for practitioners* (2011).

### Cases:

Government of the Republic of South Africa and Others v Grootboom and Others (CCT11/00) [2000] ZACC 19; 2001 (1) SA 46; 2000 (11) BCLR 1169 (4 October 2000).

### Legislation/policy documents:

Department of Human Settlements, *Breaking New Ground: A comprehensive plan for the development on integrated sustainable human settlements* (2004).

Department of Human Settlements, *The White Paper: A New Housing Policy and Strategy for South Africa* (1994).

Department of Land Affairs, *White Paper on South African Land Policy*, Pretoria (1997).

Emergency Housing Programme, Part 3, Volume 4 of the National Housing Code (2009).

Integrated Urban Development Framework (IUDF) (2018).

Housing Act no. 107 of 1997 amended by Acts 28 and 60 of 1999; Act 4 of 2001.

The Spatial Planning and Land Use Management Act 16 of 2013.

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

Upgrading of Informal Settlements Programme, Part 3, Volume 4 of the National Housing Code (2009).

City of Johannesburg, *Inclusionary Housing Policy* (2019).

### Media articles:

Tembeka Ngcukaitobi, "Clear policies needed for land reform", *Mail and Guardian*, 9 June 2019.

Pelane Phakgadi, "Rapid Land Release' Programme to Offer Joburg South Residents Land", *Eyewitness News*, 13 May 2018.







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