







## **VOICES OF THE POOR**

## FRAMEWORK PAPER

Report produced for Urban LandMark by the Development Action Group

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MAKING URBAN LAND MARKETS WORK FOR THE POOR

22 June 2007

## **Acknowledgements**

This report was produced for Urban LandMark by the Development Action Group (DAG) as part of the Voices of the Poor project. The report was written by Warren Smit of DAG, and served as the basis for structuring the engagement with civil society organisations in the Voices of the Poor workshops.



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## **Contents**

	Acknowledgements	. 2
1.	INTRODUCTION	4
2.	CIVIL SOCIETY ORGANISATIONS AND ACCESS TO URBAN LAND BY THE POOR	. 4
	2.1 The urban poor	4
	2.2 Access to urban land	5
	2.3 Civil society organizations and access to urban land by the poor	. 5
3.	KEY THEMES	6
	3.1 Engagement with the state	. 7
	3.2 Regulatory framework	8
	3.3 Formal/ informal urban land markets	9
	3.4 Urban land and finance	11
	3.5 Urban land and livelihoods	12
	3.6 Location	13
	3.7 Urban-rural linkages	14
	3.8 Gender	14
4.	CONCLUSION	14
5.	REFERENCES	15

#### 1. INTRODUCTION

This framework paper discusses the key themes that were used to structure the literature review and engagement with civil society organisations for the Voices of the Poor project. This project involved reviewing literature relating to the perspectives and experiences of the poor with regard to accessing urban land in South Africa and engaging with civil society organisations to document their perspectives and experiences with regard to access to urban land by the poor.

# 2. CIVIL SOCIETY ORGANISATIONS AND ACCESS TO URBAN LAND BY THE POOR

The concepts of "the urban poor", "access to land" and "civil society" are central to the Voices of the Poor project. These concepts are therefore briefly discussed below.

## 2.1 The urban poor

Who are "the poor" in terms of access to urban land? The National Department of Housing defines households with incomes of R1501 - R3500 per month as "the poor" and households with incomes of 0 - R1500 per month as "the hardcore poor". Although a definition of poverty that is based solely on income and ignores differences in household size is problematic, in terms of access to urban land it does appear that households with incomes of below R3500 per month can be classified as "poor". Households with an income of less than R3500 per month are unable to access mortgage finance from financial institutions and are thus unable to formally purchase land and housing through formal market processes. The below R3500 per month income group is the target of the Housing Subsidy Scheme, intended to assist low-income households to access land and housing.

Households with incomes of more than R3500 per month do have at least some access to mortgage finance, which potentially enables them to purchase land and housing through formal market processes (although it should be noted that there is a severe undersupply at the lower end of the formal market). The National Department of Housing defines households with a joint income of R3501 - R7000 per month as the "affordable housing" group and the Finance-Linked Individual Subsidy, linked to housing loans from accredited lenders and ranging from R3 369 to R23 584 (depending on income) was introduced by the National Department of Housing for this group in 2006, as a contribution towards a deposit for a mortgage loan. This programme is linked to the Financial Sector Charter, which is a commitment by banks to extend their services to lower-income people who were not adequately served by financial institutions, and the National Department of Housing collaborated with the Banking Council on formulating this programme. Banks have subsequently launched affordable mortgage products for households with joint incomes of less than R7500 per month, for example, ABSA's MyHome affordable mortgage loan package.

It is important to note that the poor is not a homogenous group. Informal settlement residents, backyard shack dwellers and communities who have obtained



subsidized housing might have very different experiences and perspectives with regard to accessing urban land. Similarly, there is a vast difference between households with stable incomes from formal employment and households with no regular income.

The Voices of the Poor study focuses on the below R3500 per month income group, but does not exclude households in the affordable housing group with incomes of more than R3500 per month, who may also have limited access to urban land.

## 2.2 Access to urban land

Urban land is used for a range of purposes, for example, for residential purposes, for business purposes, for urban agriculture and for community purposes. The term "access to land" means the variety of ways in which people (either individuals, households or groups of individuals or households) gain access to formal or informal rights with regards to the use of land, which is at its minimum "the guarantee or reinforcement of routine association with land by a person or group by social and legal structures" (Wallace and Williamson, 2006: 127).

Secure tenure is a key component of adequate access to land. Land tenure determines how and by whom a specific piece of land can be used and how and by whom it can be traded. Secure tenure has been defined by UN-Habitat as a "formal title deed to land and/or residence, enforceable agreement or any document as proof of a tenure arrangement" and as "protection from involuntary removal from land or residence except through due legal process" (Herr and Karl, 2002; UN-Habitat, 2003). Secure tenure is a precondition for a functioning property market, and a functioning property market can be a way of accessing secure tenure.

It is important to note that secure tenure can take a variety of forms other than ownership, for example, rental agreements and permission-to-occupy certificates. It is also important to note that tenure may relate to a specific housing unit on a piece of land that has a number of housing units on it, for example, in the case of a tenant renting a flat in a block of flats.

## 2.3 Civil society organizations and access to urban land by the poor

Civil society organizations can be divided into community-based organizations (CBOs), who directly represent a particular constituency or membership, and non-government organizations (NGOs), which are non-profit organizations which generally provide some form of support to individuals and communities that goes beyond the forms of support provided by the state.

There are broadly three types of CBO of relevance to urban land and housing issues:

 Voluntary housing project organizations. These organizations consist of a voluntary membership formed around land and housing issues. Typical examples include organizations of domestic workers who want to access land and housing close to their places of work and groups of backyard dwellers who want to access land and housing close to the places where they are currently renting backyard accommodation.



- Community organizations representing specific geographically-defined communities. These organizations are typically called civic associations or residents associations. They are usually concerned with a wide range of issues, but, especially in the case of residents associations representing informal settlement communities, access to land and housing is often a priority. Civic associations also often represent people who have accessed land and housing through the Housing Subsidy Scheme or the private market.
- Umbrella organizations, consisting of a number of different communities, that have been formed around land and housing issues. These organizations can play a variety of roles, ranging from resisting evictions to proactively engaging in processes to access land and housing for the poor. Notable organizations include the Federation of the Urban Poor (FEDUP), the Coalition of the Urban Poor (CUP), the Landless People's Movement (LPM) and the Anti-Eviction Campaign (AEC).

There are various types of NGOs, but the ones of relevance to urban land and housing issues generally fall in one of the following two categories:

- Development NGOs generally provide technical and capacity building support for CBOs and advocate and lobby for changes in policy and practice. There is a small number of urban development NGOs in South Africa, for example, Planact in Johannesburg, the Built Environment Support Group (BESG) in Durban, and the Development Action Group (DAG) and the Community Urban Resource Centre (COURC) in Cape Town.
- Legal/rights NGOs provide legal assistance to individuals and communities and have a strong focus on human rights. Examples include national organizations such as the Legal Resources Centre (LRC), Lawyers for Human Rights (LHR) and the Black Sash, and university-based organizations such as the Centre for Applied Legal Studies (CALS) at the University of the Witwatersrand and the Community Law Centre (CLC) at the University of the Western Cape.

## 3. KEY THEMES

There are a number of key issues that need to be addressed when investigating the perspectives and experiences of the poor with regard to accessing urban land. These key issues are:

- Engagement with the state regarding access to urban land: community perspectives and experiences of engaging with local government and other state institutions about access to urban land.
- The regulatory framework for accessing urban land: community perceptions of the regulatory framework, and experiences of 'red tape' blockages in accessing urban land.
- Formal/ informal land market: perceptions of, and actual encounters with, formal and informal land market processes and institutions, and how well they work (or do not work).



- Urban land and finance: community perceptions and experiences of the gap between urban land costs and affordability/subsidy levels and of attempts to bridge that gap.
- **Urban land and livelihoods**: community perceptions and experiences of the linkages between urban land and livelihood strategies.
- Location: Community perceptions and experiences of the implications of location and of accessing (or not accessing) well-located land.
- **Urban-rural linkages**: Community perceptions and experiences of urbanrural linkages (and circulatory migration between urban and rural areas) and the implications of this for access to urban land by the poor.
- Gender: the different perceptions and experiences of/by men and women (and man-headed and woman-headed households) with regard to accessing urban land and obtaining secure tenure.
- Potential solutions for improving access to well-located urban land by the poor.

## 3.1 Engagement with the state

Engagement by civil society organizations with the state regarding access to urban land by the poor has, since 1994, generally occurred within the following three contexts:

- The housing delivery programme
- The land restitution programme
- Evictions (or attempted evictions)

## The housing delivery programme

The housing delivery programme is the main way in which the "poor" are able to get secure land tenure through formal processes. In 1994 a new housing policy, which provided a range of capital subsidies to ensure that low-income households could get access to secure tenure, services and "starter houses" was introduced. The Project-Linked Subsidy, which assists households with incomes of less than R3500 per month to get access to land, infrastructure and housing on an individual ownership basis in specific projects, is the main subsidy mechanism. The Institutional Subsidy, which assists households to get access to rental and cooperative housing, has been used on a relatively small scale and has generally not been aimed at the poor (although initially targeted at the below R3500 per month income bracket, it is now generally targeted at households in the R2500 - R7000 per month income bracket).

Most housing projects have been for predefined communities, and community organizations have thus engaged at the project level. In contractor-driven projects, the level of engagement by the beneficiary community has often been minimal, but for People's Housing Process (PHP) projects, which are are projects in which the beneficiaries build or organize the building of their own houses, the level of participation has usually been greater.

The demand for subsidized housing has greatly outstripped supply and there has thus often been conflict around the prioritization of housing projects and the selection of subsidized housing beneficiaries.

#### Land restitution

The land restitution process has been an important remedial programme to partially address the forced removals in urban areas in terms of the Group Areas Act. The urban land restitution process has been relatively slow (although faster than the rural land restitution process) and initially caused delays and uncertainties with low-income housing projects on sites affected by land claims, A number of groups of land claimants have obtained access to well-located urban land, however. In some cases, though, there has been insufficient support available for the beneficiaries to develop the land, as land restitution has often taken place in an unintegrated way, divorced from other urban development processes.

## Evictions (and attempted evictions)

Many households are unable to access secure land tenure through formal processes and therefore resort to unlawful occupation of vacant land (informal settlements) or the occupation of abandoned inner city buildings.

There are various forms of protection against arbitrary evictions. Section 26 of the Bill of Rights in the South African Constitution states that "no one may be evicted from their home or have their home demolished, without an order of court made after considering all the relevant circumstances", and the Prevention of Illegal Eviction From and Unlawful Occupation of Land Act fleshes out this right. There have been various court cases that have confirmed the responsibility of the state to prevent arbitrary evictions and to provide alternative accommodation where necessary<sup>1</sup>. Nevertheless, the eviction of informal settlement residents has continued, and recently the eviction of inner city residents has also hit the headlines, with calls by the UN Special Rapporteur on the Right to Adequate Housing for a moratorium on evictions in South Africa (AFP, 2007; IRIN, 2007).

## 3.2 Regulatory framework

The main components of the formal regulatory framework for accessing urban land that CBOs generally would encounter are:

 Spatial development frameworks, which broadly identify proposed land uses for vacant land. In many cases, however, spatial development frameworks have had little practical effect on decision-making relating

<sup>&</sup>lt;sup>1</sup> Irene Grootboom & Others v. Oostenberg Municipality, Cape Metropolitan Council, Premier of the Western Cape, the Republic of South Africa and the National Housing Board (Constitional Court, 2000); Modderklip Boerdery v. Modder East Squatters and Another (High Court, 2001) & Modderklip Boerdery v. President of the Republic of South Africa and Others (High Court, 2003); The City of Cape Town v. Neville Rudolph and Forty Nine Others (High Court – Cape of Good Hope Provincial Division, 2003); Cecil Baartman and Eleven Others v. Port Elizabeth Municipality (Supreme Court of Appeal, 2003); The City of Cape Town v. The Various Occupiers of the Road Reserve of Appellant Parallel to Sheffield Road in Philippi (High Court – Cape of Good Hope Provincial Division, 2003).



to where developments and infrastructure are to go. For example, the Cape Town Metropolitan Spatial Development Framework (MSDF) was widely ignored in practice - since its adoption in the 1990s it has been estimated that 65% of public and private investment in Cape Town has occurred outside the urban corridors, located along public transport routes, identified in the MSDF as priority zones for investment) (City of Cape Town, 2003).

- Land development processes, i.e. processes for the subdivision of land. The options are essentially the conventional Land Use Planning Ordinances (LUPO), the Less Formal Township Establishment Act (LFTEA) and the Development Facilitation Act (DFA). Complex and time consuming land development procedures, and delays associated with the need for Environmental Impact Assessments, have been a major obstacle to delivery of land and housing for the urban poor.
- Land use management, i.e. zoning schemes. Zoning schemes are generally not enforced in low-income areas, but could have a severe impact (for example, on restricting home-based enterprises and informal extensions) if they were enforced.
- The registration of deeds system: South Africa's land registration and transfer system is very rigid and complex. Individual land ownership is the predominant form of tenure (although there are also some intermediate forms of tenure which have survived from the past). The complexity and expensiveness of the formal system, and its inappropriateness for the needs of the urban poor, has resulted in informal practices for the buying, selling and allocation of land becoming increasingly prevalent after its subdivision and initial transfer.

## 3.3 Formal/informal urban land markets

Urban land markets cannot be considered in isolation; they are closely related to housing markets (since most urban land has a predominantly residential use) and financial markets (which provide finance for the purchase of land and housing) (Urban LandMark, 2005).



In this section, the buying/selling and renting/leasing of land and housing are discussed. Access to credit for the buying of properties is looked at in the next section.

#### Formal market processes

The key ingredients of land markets are the land itself, land rights ("legal statements defining the relationship between subjects in relation to areas of, activities on and products derived from land and resources") and "supports, structures and capacities" such as land registration and cadastral systems (Wallace and Williamson, 2006: 135).

The formal property market, which predominantly operates through estate agents and mortgage loans from financial institutions, mainly serves the needs of middle and upper income households (i.e. above R3500 per month). The formal property market therefore primarily serves only about 10% of all households in South Africa (Rust, 2006). There has, however, been some extension of the formal property market to "township" areas and there has been some movement of lower-income people to "inner city" areas where functioning property markets existed. Although the formal property market, both in terms of ownership and rental, seems to be almost entirely limited to households in the above R3500 per month income bracket (Rust, 2006), in some cases, however, households in the below R3500 per month income bracket may have encountered and engaged with formal land and housing market processes, both in terms of buying/selling and renting properties.

## Informal/ local processes

Outside of the formal regulatory framework, there are informal/ local practices with regard to accessing and transferring land, for example, in informal settlements. In "formal" townships, informal practices for the buying and selling of properties often exist parallel to the formal system (i.e. formally subdivided and registered properties are informally bought and sold without going through conveyancers and the Deeds Registry). The renting of backyard structures is also typically subject to undocumented informal arrangements.

Fourie (2001: 16) sums up the reasons why these informal practices have persisted outside the formal property registration system: "Land registration is generally seen as centralized and costly to the user, as the systems are designed for use by the middle classes... In addition, registration systems are based on colonial laws with regard to inheritance, forms of evidence, administrative procedures, etc., and are, therefore, not relevant to local conditions. Finally, they are based on individual rights and are unable to accommodate group and/or family rights, especially the rights of women".

Although informal practices can work well, they have limitations, especially in terms of their interface with the formal processes of the state and the market. Informal practices work well when use value predominates, but are less effective when exchange values grow more important (Jenkins, 2000). The main reason why informal practices are not as effective in situations where exchange values are important as they are when use value predominates is essentially because "when a buyer cannot be sure that a household will honour the 'sale' of its property, and when a property owner cannot be sure that a renter will honour his commitment to leave, households have a more limited range of people with whom they can transact, perhaps including only friends and family members. In general this



limitation impedes the allocation of properties to households who would value them most" (Lanjouw and Levy, 1998: 48).

#### 3.4 Urban land and finance

The major constraint to access to urban land by the poor is finance. The two main forms of finance are "housing subsidies" and "housing credit". The availability and amounts of subsidies and credit that low-income households can access is far less than the demand and far less than the amounts required for adequate housing on well-located land.

Household savings is another form of finance, and while the amounts are generally too low to be of much significance in terms of getting formal access to land and housing, it can be significant in terms of the informal buying of properties.

#### Subsidies

Table 1 shows the main subsidies and current subsidy amounts. The subsidy amounts are based on theoretical costs of R21 498 for a 30m<sup>2</sup> house and R15 029 for a serviced plot.

Table 1: Housing subsidy amounts (2006/2007)

Main housing subsidy types	0 - R1500 p.m. income band (and the "aged, disabled or health stricken" in the R1501- R3500 category)	R1501 - R3500 p.m. income band
Project-Linked Subsidy: for access to land, infrastructure and housing on an individual ownership basis	R36 528	R34 049
Institutional Subsidy: for access to land, infrastructure and housing on a communal ownership or rental basis (i.e. for housing owned and managed by a housing institution)	R34 049	R34 049
Consolidation Subsidy: for upgrading of houses by households that already own serviced sites	R21 499	R19 020

Note: An extra amount of R5 479.20 per housing unit is available for difficult site conditions (R4 349.85 for Consolidation Subsidies) and there is an extra amount of R3 900 per housing unit for projects in the Southern Coastal Condensation Area. There is also an establishment grant of R570 per unit to contribute to the costs of establishing and running a Housing Support Centre for People's Housing Process projects. Households in the R1 501 - R3 500 per month income band (except the "aged, disabled or health stricken") have to pay a R2 479 contribution in order to acquire the Project-Linked Subsidy or Consolidation Subsidy. This contribution amount is not required for the Institutional Subsidy as institutional housing usually requires a contribution to capital cost through a monthly payment.

#### Credit

Households in the R1500 - R3500 income group form part of the Financial Sector Charter target group for "low-income housing credit", but households in the below R3500 per month income bracket are usually only able to access micro-credit from non-traditional retail lenders. The housing subsidy in some cases can thus be supplemented with a micro-loan (of up to R10 000). Access to micro-loans from formal retail lenders is generally restricted to formally-employed people with payroll deduction facilities at their place of employment, but some innovative housing loans funds such as the Kuyasa Fund have successfully been able to target informally employed people.

Households with incomes of more than R3500 per month (up to R7000 per month) are the target of new affordable mortgage programmes introduced in terms of the Financial Sector Charter, but the numbers of housing units being delivered by the private sector for this income bracket are far less than demand (Rust, 2006).

Loans from informal moneylenders are generally not used for accessing land and housing.

#### 3.5 Urban land and livelihoods

The value of land for the urban poor has to be seen within the context of sustainable livelihoods. The sustainable livelihoods approach is a way of thinking holistically about poverty and development (Chambers, 1995). A livelihood comprises "the capabilities, assets (including both material and social resources) and activities required for a means of living. A livelihood is sustainable when it can cope with and recover from shocks and stresses and maintain and enhance its capabilities and assets both now and in the future, whilst not undermining the natural resource base" (Carney et al, 1994: 4). Desirable livelihood outcomes can include: more income, increased well-being, reduced vulnerability, improved food security, more sustainable use of natural resource base. Land is an important asset that can play an important role in the sustainable livelihoods strategies of the urban poor, and the potential role of access to land and secure tenure in reducing poverty and vulnerability needs to be understood. The value of urban land (e.g. a private residential plot) to the poor can include the following (USN/Development Works, 2004):

- Land is a natural asset that provides space for other physical assets, such as a housing unit.
- Land provides living/social space (family life, sleeping, cooking, eating, relaxing, studying and socialising).
- Land can give access to infrastructure (roads, water, sanitation, electricity).
- Land can be an economic asset that can be sold or bequeathed to one's heirs, and that can potentially increase in value over time (asset accumulation). Land can also potentially be used as collateral for credit.
- Land can be used for income generation purposes, for example, through providing space for home based micro-enterprises, for providing the opportunity for generating income through the rental of accommodation,



- through the renting out of rooms/backyard accommodation, and for providing space for urban agriculture.
- Land can be a political asset that acts as a key mechanism for accessing rights. Some of the socio-economic rights in the Constitution can only be fully accessed by households with formal tenure (for example, free basic services and "indigent grants").
- Land can be a social asset: it can be a basis for membership networks of trust and reciprocity, and for membership of community organisations. Social support networks play an important role in the survival strategies of poor households. Land can play an important social role in that it can provide opportunities for assisting relatives or friends with permanent or temporary accommodation, and also plays a role in hosting certain cultural practices.

#### 3.6 Location

South African urban settlements are characterized by spatial segregation and inequity, with vast differences between well-resourced areas, with a wide range of facilities and good transport networks, and poorly resourced areas (where the poor generally stay), where there is inadequate access to facilities and poor transport linkages.

Location can thus have an immense impact on people's lives. For example, when thousands of households were relocated from the Joe Slovo informal settlement in Langa, Cape Town, to Delft, an area about 15 kilometres away by road, it had a very severe impact on households. Langa is a well-located township within walking distance of job opportunities and has a rail link. Delft, on the other hand, is a stereotypical peripheral low-income housing area, with poor transport links and no job opportunities anywhere close by. A survey of residents showed the severe impact that this relocation had on households' income and expenditure. There was a dramatic decrease in income for 20% of households surveyed due to a member of the household losing their job as a result of the transport difficulties in getting to their place of work from Delft. For those who managed to keep their jobs, expenditure on transport increased dramatically (by up to five times in some cases, where people who used to pay R70 per month for a train ticket to travel to work, subsequently had to pay over R350 per month in taxi fares).

Although policies introduced after 1994 had a rhetorical commitment to restructuring South African cities and overcoming the spatial legacy of apartheid, in reality, little has happened. In fact, since the demise of apartheid, spatial inequality has, if anything, increased. Changing global social and economic conditions have tended to exacerbate social and spatial divisions in virtually all cities around the world, and South African cities have been no exception. The global trend over the past few decades has been for market forces to increasingly become the dominant factor determining the nature of urban development. Market forces, either directly or indirectly, have tended to ensure that the poor remain in undesirable peripheral areas where land is cheap, whereas the high demand for well-located pieces of urban land has resulted in exorbitant land prices in certain areas.



## 3.7 Urban-rural linkages

A cross-cutting issue is that of urban households which also have a rural home at which members of the extended family stay and/or which members of the urban based component(s) of the extended family frequently visit or migrate between. Surveys in South Africa have been unanimous in showing that a large proportion of urban households have strong rural links. For example, 59% of household heads in Soweto had been born outside the metropolitan area. Although more than half of migrants had lived in the urban area for more than 20 years, a majority of migrants considered that they still had a family home in a rural district and more than half of all migrants had some of their dependent children living at the rural home. One third of migrants said that they wanted to retire to their family home (Gilbert and Crankshaw, 1999). Similarly, a survey of five representative low-income areas in Durban found that 39% of households had both an urban and a rural home, and 49% of multiple-home households visited the rural home at least once a month (Smit, 1998).

The maintenance of both urban and rural homes is partially a risk minimization strategy - income diversification in a wide range of activities can act as protection against sudden loss of income in any one activity. The rural home is often also seen as a more suitable place for raising children and for retirement. It should, however, be noted that the intensity of rural linkages, and the associated level of urban commitment, can vary considerably.

The persistence of rural links clearly has major implications for the nature of the demand for urban land by the poor, but the implications of this are poorly understood.

## 3.8 Gender

Discriminatory legislation in terms of some customary law practices and marriage laws can prevent equal access to security of tenure for some women, for example, the customary inheritance law. In addition, although subsidised housing is allocated to both the head of household and their spouse/partner, ownership of the property is often only registered in the name of the head of the household, which is usually the man. If the couple split up, the woman (and often the children as well) can find themselves homeless. In addition, women's position in the labour market and economy more generally, and their lesser involvement in formal employment positions, can further restrict their access to secure tenure, for example, due to lack of access to credit.

#### 4. CONCLUSION

Civil society organizations intersect with the issue of access to urban land by the poor in many ways. Engagement with the informal practices and the state are probably the main ways in which the poor access urban land, but this occurs in many different variations. Different types of CBOs and different types of NGOs may have very different experiences and very different viewpoints. In order to be able to work towards increasing the access of the poor to urban land it is essential that the diversity of their perspectives are recognized and understood.



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