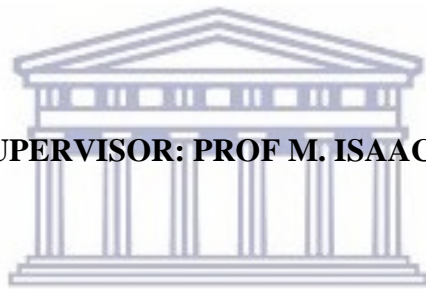**URBAN LAND TENURE, TENANCY AND WATER AND SANITATION SERVICES DELIVERY IN SOUTH AFRICA**

SIBANDA, DARLINGTON (2841632)

A THESIS SUBMITTED IN FULFILMENT OF THE REQUIREMENTS FOR THE DEGREE OF DOCTOR PHILOSOPHIAE (PHD) IN LAND AND AGRARIAN STUDIES

SUPERVISOR: PROF M. ISAACS

PHD THESIS PRESENTED TO THE INSTITUTE FOR POVERTY, LAND AND AGRARIAN STUDIES (PLAAS): FACULTY OF ECONOMIC AND MANAGEMENT SCIENCES, UNIVERSITY OF THE WESTERN CAPE

2017

DEDICATION

I dedicate this work to my late parents, Magaret and James Makaya Nyama who planted and natured the seeds of hard work and diligence from a very early age. May your souls rest in peace.

DECLARATION

I declare that *Urban Land Tenure, Tenancy And Water And Sanitation Services Delivery In South Africa* is my own work, and that it has not been submitted for any degree or examination in any other university, and that all the sources I have used or quoted have been indicated and acknowledged by complete references.

Full Name: Darlington Sibanda   Date:

Signature:

ACKNOWLEDGEMENTS

To successfully complete Ph.D. studies, one gets support from several people. While l won't be able to exhaust the list, l will mention just a few. Firstly, l would want to thank God for guiding me through my studies.

This work would not have been possible without the help of Professor Isaacs, who took over after Dr Tapela could not continue due to ill-health. The amount of work we had to catch up in such a short space of time was incomparable. Your tough responses every time you gave me feedback strengthened me and shaped the outcome of this work. Your patience and diligence in guiding this process is unmatched. In addition, l want to thank Dr Tapela for her support during the initial stages of this work, including exposure in various research projects.

I would like to acknowledge financial support from the Water Research Commission of South Africa, especially during the initial stages of my studies. In addition, l want to acknowledge PLAAS for financial support and work space in the final stages of this thesis. The team at PLAAS was always readily available to support me during my numerous visits and l shall mention a few: Prof Hara, Ursula Arends, Carla Henry, Joy van Dieman and Babongile Malama.

I want to thank the residents of Nkanini (Khayelitsha), Langa, Mshini Wam (Joe Slovo Park) and Kensington for opening their doors during the field work. I also want to acknowledge officials from the City of Cape Town the Provincial government and NGOs such as the Social Justice Coalition and Ndifuna Ukwazi for being available through the study.

Last but not least, l want thank my friend and dear wife, Dr Martha Sibanda for her unwavering support throughout my studies. May the Lord bless you!

ABSTRACT

The aim of the study was to develop a clear understanding of the relationship between land tenure, tenancy and water and sanitation services development planning and delivery in the context of rapid urbanisation in post-apartheid South Africa. The study revolved around mismatches which exist due the largely binary polarisation of urban land tenure in the form of the 'formal' and 'informal' view by municipalities which rely on technocratic approaches on one hand, and fragmented, sectorial interventions, to basic services delivery on the other. In addressing the problem for the research, emphasis was on lower-income working class neighbourhoods in the Western Cape Province, City of Cape Town in particular. Using a mixed methods approach where both quantitative and qualitative methods were used, data was collected from the following study sites: Nkanini (Khayelitsha), Mshini Wam (Joe Slovo Park, Milnerton), Langa (Old Hostels) and Kensington. These study sites were carefully selected for contrast and comparison, as the initial research in the area has revealed various prior tenure arrangements.

The theoretical underpinnings of the study draw on a rich Marxist tradition on one hand and neo-liberal approaches on the other. The study does not, however, address other components which make up the capitalist system, such as class formations and surplus labour, among others. Although less emphasis was put on race and gender dynamics, it was nearly impossible to highlight some of these given South Africa's historical past. Marx's primitive accumulation is used to situate dispossession, exclusion and separation in the context of urban land in South Africa. This is further elaborated by Li's 'let live' and 'let die' which demonstrate how some authorities' policies result in other sections of the society, particularly the poor, having to barely survive. Hardin's Tragedy of Commons situates neo-liberal debates on land and water, in particular enclosures, land titling and private property (Hardin, 1968; de Soto, 1989, 2000). Ostrom (2010, 2013) provides grounding in terms of institutions and institutional processes while North's (1990, 1995) rules-in-use versus rules-in-book explains informality in land tenure settings. Scott's (1985) analysis of weapons of the poor provides a lens through which the urban poor mobilise, contest and demand foothold in the cities.

The key finding of the study was that policy approaches in urban land tenure, which are based on the so-called 'formal' or 'legal' systems, are exclusionary to the poor and deprives them of much-needed basic services. Other forms of urban land tenure (such as social tenure) arrangements, which are found regarding informal settlements, and 'backyard' and tenancy settings are not fully understood and easily dismissed by authorities. In addition, failure to

incorporate social tenures in broader policy and planning results in, sadly, failing to provide access adequate water and sanitation. Additionally, it was discovered that despite strides made in the provision of services highlighted through numbers by authorities, these are far removed from lived realities by having to live in informal settlements and backyards. Exchange of urban land outside the 'formal' system is not well documented. This is due to various reasons, such as insistence by authorities to follow technocratic approaches which are complex, expensive and time consuming. New forms of wealth accumulation within social tenures revealed other powerful players and process, giving rise to a new class of 'slum-lords'. Power dynamics and loopholes in the systems at the local levels result in politically and economically advantaged elite reproducing the same systems which exclude the rest of the urban poor. Lastly, tenants in informal settlements and backyard dwellings are invisible, highly mobile and under-reported leading to constraints in adequate water and sanitation provision.

The study concludes that the current approaches to urban land tenure and tenancy ignore lived realities on the ground, where actual access to quality services is different from what if officially provided. Continuation of policies which have failed to address insecure tenure for the poor, have led to inadequate access to basic services such as water and sanitation. The insistence by authorities to operate rules-by-the-book side lines the majority of the urban poor who live under social tenures. This must also be seen within the context of scarcity of urban land, which is highly commercialised and inaccessible for the urban poor through current systems. User-pay principles and inclination towards commercialisation of services such as water and sanitation results in exclusion of those who cannot afford better alternatives and who live subject to insecure tenure arrangements.

KEY WORDS

Land tenure, tenancy, social tenure, primitive accumulation, water and sanitation services, bio-politics, urbanisation, informal settlements, City of Cape Town

LIST OF ACRONYMS

AU	:	African Union
ANC	:	African National Congress
ACCEDE	:	African Centre for Citizenship and Democracy
BAB	:	Bantu Administration Boards
BNG	:	Breaking New Ground
CSO	:	Civil Society Organisations
CSIR	:	Council for Scientific and Industrial Research,
CORC	:	Community Organisation Resource Centre
CoCT	:	City of Cape Town
CLARA	:	Communal Land Rights Act
CLTP	:	Communal Land Tenure Policy
CPI	:	Communal Property Institutions
DA	:	Democratic Alliance
DWA	:	Department of Water Affairs
DWS	:	Department of Water and Sanitation
DCD	:	Department of Community Development
DWAF	:	Department of Water Affairs and Forestry
DWF	:	Department of Water Affairs
DHS	:	Department of Human Settlements
DESR	:	Declaration on Economic and Social Rights
DRDLR	:	Department of Rural Development and Land Reform
ERA	:	Echelons of Rights Analysis
ESA	:	Equitable Share Allocation
EWWS	:	Electricity, Water, Waste and Sanitation
FAO	:	Food and Agriculture Organisation
FBS	:	Free Basic Services
GVA	:	Gross Value Added
HCES	:	Household Centred Environmental Sanitation
HLPE	:	High Level Panel of Experts

HRA	:	Human Rights Approach
HRBA	:	Human Rights-based Approach
LEAP	:	Legal Entity Assessment Project
LFTEA	:	Less Formal Township Establishment Act
LUPO	:	Land Use and Planning Ordinance
Ibid	:	ibidem, meaning "in the same place"
IMF	:	International Monetary Fund
ISN	:	Informal Settlement Network
IRC	:	International Rescue Committee
ICESCR	:	International Covenant on Economic, Social and Cultural Rights
IPILR	:	Interim Protection of Informal Rights Act
IDP	:	Integrated Development Plan
MDG	:	Millennium Development Goals
MLGI	:	Multi-Level Governance Initiative
MIG	:	Municipal Infrastructure Grant
MIIF	:	Municipal Infrastructure Investment Framework
NGO	:	Non-governmental organisation
NIE	:	New Institutional Economic Theory
NWA	:	National Water Act
NPDP	:	National Physical Development Plan
OECD	:	Organisation for Economic Co-operation and Development
PCA	:	People-Centred Approach
PA	:	Primitive Accumulation
PES	:	Post-Enumeration Survey
PTO	:	Permission to Occupy
RDP	:	Reconstruction and Development Programme
SALGA	:	South African Local Government Association
StasSA	:	Statistics South Africa
SACN	:	South African Cities Network,
SADC	:	Southern African Development Community

SAIRR	:	Institute of Race Relations
SANCO	:	South African National Civic Organisation
SANRAL	:	South African National Roads Agency Limited
SERI	:	Socio-Economic Rights Institute of South Africa
SPSS	:	Statistical Package for Social Scientists
SPLUMA	:	Spatial Planning and Land Use Management Act
SGO	:	Surveyor General's Office
SDG	:	Sustainable Development Goals
UNESCO	:	United Nations Educational, Scientific and Cultural Organisation
UNICEF	:	United Nations Children's Fund
UNCHS	:	United Nations Centre for Human Settlements
UNCESCR	:	United Nations Committee on Economic, Social and Cultural Rights
UN	:	United Nations
UNDP	:	United Nations Development Programme
UDHR	:	Universal Declaration of Human Rights
VPUU	:	Violence Protection through Urban Upgrading
WCWSS	:	Western Cape Water Supply System
WSA	:	Water Service Authorities
WSP	:	Water Services Providers
WSNIS	:	Water Services National Information System
WRC	:	Water Research Commission
WHO	:	World Health Organisation
WPI	:	Worcester Polytechnic Institute

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CHAPTER ONE: INTRODUCING URBAN LAND, TENANCY; WATER AND SANITATION SERVICES

"They said let's take the poor people and dump them here. Don't give them any water or sanitation" – Prince Mthethwa (News24, Aftermath of the death of more than seven people due to fire in a 'hijacked' building in Johannesburg).

1.1 Introduction

Prince Mthethwa's claim above presents at a typical scenario for residents in informal settlements such as Marikana. Marikana is an informal settlement located in Philippi East, Cape Town. Key major events took place in the informal settlement in 2017 which were widely covered by media outlets across the country. The first was a High Court ruling in August 2017 which declared that the City of Cape Town must negotiate purchase the land from the private owner which the reseidents of Marikana had occupied, and the second, the murder of 11 people in a single night, and subsequently 23 people, all reported as gang-related violence (Nombembe and Hyman, 2017). Though seemingly unrelated, the events are closely linked to access to land and ownership on one hand, while on the other, to access to basic services such as housing, water, sanitation and electricity.

The land which makes up the Marikana informal settlement is owned by three different private owners, among them an elderly woman. Media reports and court documents indicate that land occupations started around 2006, mainly by homeless people and backyarders who had either been evicted or could not afford to pay rent (Charles, 2017). There was a rapid increase in population to such an extent that at the time of the High Court judgement in August of 2017, there was an estimated population of about 60 000 people.

The City of Cape Town's Anti-Land Invasion Unit started to demolish the occupiers' dwellings between April and August 2013 and in early 2014. NGOs such as the Socio-Economic Rights Institute (SERI), Abahlali baseMjondolo and Legal Resources Centre (LRC) represented the evicted and homeless households. What followed was a series of court interdicts, challenges and orders beginning with private land owners and City of Cape Town's interdict in January 2014 (SERI, 2017). Reports show that the City of Cape Town had filed four reports during the earlier stages explaining why it could not accommodate the residents elsewhere and why it could not purchase the property itself. In one judgement, the City's approach was found to be flawed as it claimed that all structures in which people or signs of human habitation were found, were regarded as "homes" and not demolished, while

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structures that were vacant (in the sense that there were no people found therein, or that there were no signs of human habitation therein such as furniture or personal effects) were demolished (SERI, 2017, p. 1). Still the Supreme Court set aside the High Court Order, referring the case back for further oral representations. The City of Cape Town's fifth report showed signs of thawing and indicated that it could accommodate the residents on an existing development, but only in four to five years' time (Charles, 2017). The final High Court judgement by Judge Chantal was summarised by SERI as follows:

> *On 30 August 2017, the Western Cape High Court dismissed the application to evict the 60 000 people living in the settlement. The Court found that the City had infringed the constitutional property rights of the owners of the Marikana land, and had also breached the housing rights of the Marikana residents by its unreasonable failure to do anything to secure the tenure of the Marikana residents. The Court directed the City to initiate the process provided for in terms of section 9(3) of the Housing Act, by entering into good faith negotiations to purchase the Marikana land, and expropriating the land in the event that purchase negotiations failed* (SERI, 2017, p. 1).

In the midst of all these court challenges residents of Marikana have had to walk long distances to access water and sanitation facilities on the informal settlement's edge (Haller, 2017). In addition, the killings currently happening have partly been blamed on the lack of street lighting, leaving residents to deal with dangerous gangs, especially at night. In midst of this crisis, the City of Cape Town went on to appeal the ruling, much to the dismay of residents who then expected speedy provision of basic services.

The first implication of the tragic case of Marikana settlement and the statement by Prince Mthethwa a former resident of inner city 'hijacked' building in Johannesburg, is that, dealing with cities is very complex. Turok (2016) states that the infinite number of pieces in the urban jigsaw do not fit together in a simple pattern. One cause of such complexity according to Turok (2016), is the imposition of technocratic reforms from the top, which include legal procedures, codifies operating rules, and intricate requirements meant to prescribe of municipalities must operate. There is growing evidence that municipalities tend to spend their effort and resources attempting to conform vertical rather than horizontal policy alignment. As demonstrated by countless court judgements and interdicts, the City of Cape Town would clearly rather pursue and exhaust all available legal channels while households are homeless and have no access to services. Another example of this conclusion is the strict compliance to other regulations such as audit reports by the Auditor General of

South Africa (2017) results, where most municipalities opt to conform and aim for clean audits at the expense of services delivery.

Access to urban land in post-apartheid South Africa is complex . These complexities arise from the past in which race was used as a basis to relegate most people to the margins of financial power and property ownership (Hornby, et al. 2017, 3). According to these margins, people accessed land and housing in very different ways from those required by the formal property system (Hornby, at al. 2017). The story of the Marikana informal settlement in Cape Town is a typical example of how the poor urban households devise ways outside the 'formal' or 'legal system' to access urban land. In their quest to realise their 'right to the city', (Huchzemeyer, 2011), the poor access, hold and exchange urban land outside the ambits of the formal system. Dominant narrative has been to simply use binary polarisation of formal and informal, with mainly the poor relying on the informal systems to access and hold urban land for housing and other activities. For Hornby, et al. (2017), the problem is more complex than the simplistic rhetoric of exclusion and inclusion allows.

An attempt to deal with such complexity in post-apartheid South Africa through policy and legislative frameworks has fallen short as demonstrated by the Marikana informal settlement narrative. At play in Marikana is commercial interest, private property, rigid local government on hand, and poor landless masses on the other. According to Turok (2016), governing large and diverse social systems present complex scenarios, such as reconciling conflicting interests, constructing diverse coalitions and coordinating different interventions. These may include finite land resources, interactions between different land uses, other externalities, trade-offs and interdependences that exist (Turok, 2016).

Another far reaching implication of the Marikana story is the simple declaration by the City of Cape Town: that there is no supply of basic services on private land. As already pointed out, few community water stand pipes and insufficient sanitation facilities were placed on the edges of the settlement. Electricity was not also supplied, resulting in precarious illegal connections. Lack of street lights and high mast lights gave gangs free reign to terrorise residents, particularly at night. This also did not spare the vulnerable, specifically children and women, who were forced to walk long distances to sources of water and sanitation facilities at night.

Litigation of socio-economic rights in South Africa has been on an upward trend since the landmark Grootboom judgment by the Constitutional Court of South Africa (Wilson and

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Dugard, 2014). The residents of Marikana informal settlements were defended in court by attorneys from SERI and other interested parties. This is despite the Constitution of South Africa recognising the rights to housing, water, sanitation among others. The State's failures to adequately respond to these dire needs have often resulted in the urban poor using informal channels to access those basic services they are denied. There has been a rise in litigation where articulation of the State's positive socio-economic rights was made (Dugard, 2014). While some cases have been unsuccessful, socio-economic rights have justifiability been brought into the recent debates. Using the law to exclude a huge section of the population on one hand, and using the same law to address and adjudicate such cases on another, remains conflicted and contradictory.

In addition to the violence the Marikana informal settlement is already suffering at the hands of gangs, organs of state (represented by City of Cape Town's Anti-Land Invasion Unit, police and in various other ways), and also instituted violence through countless evictions. There is no doubt that residents were caught between competing interests. Similarly, accessing and holding urban land in post-apartheid South Africa has been dominated by multiple interests, and the State has seemed unhesitant to use force to support mainly private interests, at the expense of the majority of people.

This study uses a political economic approach in analysing the link between urban land tenure, tenancy and water and sanitation services in South Africa. Using four study sites, namely Nkanini (Khayelitsha), Mshini Wam (Joe Slovo Park), Langa Hostels and Kensington which are all located in Cape Town. It is important to mention from the outset that the City of Cape Town is located in a province which, according to the Auditor-General, is characterised by "leadership insisted on a culture of accountability and sound management practices, while the political leadership continued to focus on clean administration" (Auditor General of South Africa, 2017). This shows that the City of Cape Town is epitomised as an example of clean governance and efficiency, while on the other hand it remains highly unequal and little spatial transformation has taken place (Lemanski, 2007). I found that water and sanitation services planning and development largely ignores tenure arrangements, resulting in blanket approaches which obscure lived realities or the actual situation on the ground. In addition urban land tenure is polarised into the binary informal and informal by local authorities, while existence of social tenures is hugely fluid and impacts who gets basic services at what level. This study used Marx's Primitive Accumulation (PA) to explain the process of dispossession, separation and exclusion in South African cities and how this also plays out in

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persistent lack or inadequate access to water and sanitation services. The complex interactions between urban land tenure (and tenancy) and water and sanitation services is often presented as clear cut. However, through unbundling this relationship, this study reveals the ambiguity of the legislative framework which, on one hand, appears to accommodate alternative political and economic trajectories "but [is] situated within strictures of a liberal frame" (Langford, 2014, p. 4). The result is equally convoluted and policy mismatches, while Sisyphean efforts create opulence amidst poorer communities.

1.2 Background to the study

South Africa is among countries in the global South currently experiencing rapid urban growth, evident though informal settlements currently burgeoning across mainly urban areas (Davis, 2006, Huchzermeyer, 2003). While the increase of population in urban areas is not a problem in itself, the problem lies, perhaps, in the response or failure to respond by authorities, resulting in the majority failing to access basic socio-economic rights. Satterthwaite (1997) suggests that there are two dynamics: urbanisation and the urbanisation of poverty - a situation where there is a huge increase of poorer people in urban areas, who have little hope of climbing the socio-economic ladder. This does not mean that countries in the global North did not experience close to similar conditions, but suffice it to argue that this would have taken place in completely different contexts. Current developments are taking place in a highly financialised and mechanised global system which no longer requires masses of surplus labour (Sassen, 2010). Realisation that this is a global challenge has resulted in the recent signing of the so-called New Urban Agenda (Habitat 111) by the United Nations Conference on Housing and Sustainable Urban Development held in Quito (Ecuador) in 2016, with an intention to find sustainable solutions facing urban centres across the world (Scruggs, 2016).

According to Hornby, et al. (2017), South Africa's complexities in urban cities are deeply rooted in a past in which race was used as basis to relegate most people to the margins of financial power and property ownership. Colonial cities failed to deal with a rapidly changing urban landscape (South African Cities Network, 2015) and to continue to provide adequate services for their citizens. According to Royston and Narsoo (2006) the urbanisation process in South Africa was managed by influx control, using administrative means to limit influx of particularly African people into urban areas, and also by segregating living areas. These measures broke down and as urbanisation gained momentum, huge backlogs emerged in water, sanitation and other services (ibid.) By 2016, the post-apartheid goal of creating

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stronger and more secure forms of land rights for the majority of citizens had not been achieved (Hornby, et al. 2017).

It is widely accepted that access to clean water and adequate sanitation is crucial for public health. Despite setting standards and claims of monitoring by government departments, these milestones set out are rarely achieved. For Howard and Bartram (2005), the goal for monitoring water services makes a contribution into the general improvement and wide coverage in service delivery, thereby securing the public health, economic and human rights that we seek from improved water supply. Recognizing that secure access to water services is a basic human right, the National Planning Commission's National Development Plan Vision 2030 (2012, p. 166) states that by 2030 all South Africans will have affordable access to sufficient safe water and hygienic sanitation to live healthy and dignified lives. Grey and Sadoff (2007) emphasise the importance of water resources management and development in enabling responsible economic growth and poverty alleviation. Despite policy directives over the years with the aim to redress wrongs and establish equitable access, backlogs remain across the country. The White Paper on Water Supply and Sanitation (1994) set out to make sure that all South Africans have access to basic water supply and sanitation services. In this context, basic water supply is defined as a standpipe supplying 25 litres per capita per day within 200 metres of the household and with a minimum flow of 10 litres per second (Department of Water Affairs and Forestry, 2004). This became the RDP standard on water services provision, which was later amended to also include 'interruptions of less than 48 hours and a cumulative interruption time during the year of less than 15 days' as well as of 'potable standard SANS241' (Department of Water Affairs, 2013). The 2011 Census indicates that the total population of South Africa is at 51.77 million, with over 30,000 settlements (StatsSA, 2011). According to the Millenium Development Goals (MDG) Country Report (2010), 93% of the total population had access to improved drinking water supply by the year 2010 and the country had surpassed the MDG of halving the proportion of people without sustainable water by 2005.

There has been growing frustration among the poor and unserved, sometimes leading to violent protests. It should be noted that that while this thesis is not focussed on protests, it is however important to highlight how these protests are symptoms of underlying frustrations. According to Pithouse (2010), protests and dissatisfaction by communities is an indication that South Africa's democracy has failed in a variety of ways, all which come down to the fact that it has always been the 'elite deal' that excludes the majority from substantive access

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to its political and economic benefits. This deal is epitomised by the political and economic elite forming pacts which continuously side-line the poor. This massive increase in protests, according to Pithouse (2010), shows that the time when an 'elite deal' could be passed off as real democratisation, will soon be up. There is growing evidence that since 2004 South Africa has been, and continues to be, plagued by violent protest action, mainly related to service delivery (Tapela, 2012; Alexander, 2010; Dugard, 2014). The recent Mothuhlung water service delivery protest claimed four lives (Peterson, 2015) and subsequently spawned a high volume of media reports about the prevalence of grievances over water services delivery across the country, particularly in urban lower income neighbourhoods. This development seems to indicate that despite efforts by the State to ensure secure access to water services, there is a need to develop clear a understanding of structural and institutional factors underpinning the mismatches between official records and water users' perceptions of water services delivery on the ground, particularly in light of the cumulative effect of backlogs inherited from the past and contemporary challenges of urban governance amid rapid urbanisation.

By the end of 2015, media reports showed that more than five provinces in South Africa had declared water or drought related disasters. Disaster zones and the impact of drought in Southern Africa resulted in serious water and food shortages. Towns like Senekal in the Free State went for some months without regular water supply. In Cape Town, by December 2015 most dams were below half their capacity. This resulted in the City of Cape Town (CoCT) implementing Level 2 Water Restrictions effective from the 1st of January 2016 (CoCT, 2016). By midyear 2017, the City of Cape Town had declared Level 5 water restrictions and severe measures were taken to ensure basic supply as expected winter rains were not received (CoCT, 2017). Informal settlements and poorer sections of the City struggled to cope with further restrictions on already inadequate water services.

While it is well recognised that South Africa is a water scarce country, with such scarcity complicated by significant spatial and temporal variations in the distribution of rainfall, perhaps one of the biggest water security challenges is not the absolute scarcity of water but 'social water scarcity' (Tapela, 2012). The concept of social water scarcity provides a useful political economy perspective on prevailing water service delivery issues in contemporary South Africa. According to the scholar, 'social' water scarcity refers to a social construct of 'resource management', which is determined by political, economic and social power dynamics underpinning the institutions that provide security of access to bases of

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social power and productive wealth, and stability to the social organisation of human societies. Such conceptualisation appears to clarify some of the issues underlying the challenge of water services delivery in the working class neighbourhoods and informal settlements mushrooming in most urban areas of South Africa (Tapela, 2012; Schreiner, et al. 2002). While the absolute number of households served with water connections has improved significantly since 1994, the growth in the population of households and relocation of people from rural areas to urban centres has meant that the proportion of urban households without effective services on site (i.e. yard or house connection) has mostly remained static at an average of approximately 21% of households (DWAF, Undated). Such households are yet to realise their basic 'right of access' to water.

The concept of rights is deeply enshrined in the constitution. Chapter 3 of the Constitution of the Republic of South Africa (1997), states that;

1) Everyone has a right of access to basic water supply and basic sanitation.

2) Every water services institution must take reasonable measures to realise these rights.

3) Every water services authority must, in its water services development plan, provide for measures to realise these rights.

Rapid urbanisation, epitomised by rapid increase in informal settlements and informal tenancy, has undoubtedly left a dent on official perspectives on achievements in urban water and related services delivery. Owing to rural-urban migration, many cities in South Africa are experiencing high volume of households living in informal settlements. According to HDA (2013) 6.3% (3.3 million) of the total population were living in informal settlements in 2011. Table 1.1 below shows some of the most recent statistics on type of dwelling across South Africa.

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Table 1: Housing Provision in South Africa

	1996	*2016*	*Change: Number*	*Change: Proportion*	*Average daily change*
Total dwellings/households	9,059,606	16,921,183	7,861,577	86.8%	1,077
Formal	5,794,399	13,404,199	7,609,800	131.3%	1,042
Informal	1,453,018	2,193,968	740,950	51.0%	102
Traditional	1,644,394	1,180,745	-463,649	-28.2%	-64
Other	167,795	142,271	-25,524	-15.2%	-4
Population	*40,583,573*	*55,653,654*	*15,070,081*	*37.1%*	*2,064*

Source: South African Institute of Race Relations, SAIRR (2017)

As shown on the table above, there was a substantial increase of the number of formal houses between 1996 and 2016, from 5,794,399 to 7,609,800. On the other hand, informal dwellings also increased from 1,453,018 in 1996 to 2,193,968 in 2016. 'Other' is any housing type which includes caravan/tent, hostels and compounds, and other unspecified dwellings. Backyard and rental accommodation also rapidly increased, with estimates show that as much as 35% of households live in rented accommodation (Hornby, et al. 2017). Abandoned inner city buildings have shown a rise in occupation, with civil society stating that it has reached crisis levels (SERI, 2017).

As already mentioned, rapid growth in these urban centres is mostly case unplanned, which makes infrastructure development and service provision difficult (Nealer and Raga, 2008). The UN-Habitat (2003b) states that in sub-Saharan Africa, urbanisation is stressing infrastructural and institutional capacity. Africa's growing cities and towns are characterised by a proliferation of informal settlements, which are characterised by poverty, overcrowding, low access to water and sanitation, lack of secure tenure and poor housing quality (UN-Habitat, 2003). As pointed out earlier, the South African context is more complex because of a history of exclusion and separation, as well as the changing complexity of civil society mobilisations and political engagements.

The 'Breaking New Ground' government policy document recognised the important role played by tenure issues in services provision (South Africa, 2004). The approach was to provide tenure in terms of title deed and provision of social services, such as water, sanitation, housing and electricity. Furthermore, the two were interlinked; if households did not have title, their ability to access services, including free basic services, was severely circumscribed (Royston and Narsoo, 2006). For Payne, et al. (2007), tenure and development

are inextricably linked as key issues in managing urbanisation and poverty reduction. The informal development of settlements, sometimes on unsuitable land (Scott, 2011) exacerbates the difficulties faced by the local government regarding service provision. It is the scope and nature of these relationships between legal tenure, tenure status (that is, tenant or landlords) and tenure security with urban water services (and to some extent sanitation) development which are central to this study.

1.3 Statement of the problem

The study investigated and examined linkages between urban land tenure, tenancy and water and sanitation services delivery in South Africa. The research aimed to develop a clear understanding of the relationship between land tenure systems, tenancy arrangements and water service development planning and delivery in the rapidly changing urban milieu in South Africa. With largely binary polarisation of urban land tenure in the form of the 'formal' and 'informal' view by municipalities who rely on technocratic approaches on one hand, and fragmented, sectorial interventions to basic services delivery on the other, mismatches are likely to exist. Langford (2013) casts a shadow of doubt on the current approach used in measuring access to services such as water and sanitation. Infrastructural connections are largely quantitative and often do not include critical qualitative aspects of the services that affect their inadequacy (Dugard, 2014). For Langford (2013), the indicators do not take into account constraints on physical access; the affordability of water (Smets, 2009), informal monopolies over water points and wells (Hellum, et al. 2015), and disconnection of piped water supplies (Mc Donald, 2002), amongst other issues. Against such background, the research problem revolves around FOUR key issues.

Firstly, access to urban land for the urban poor in South Africa has been hugely difficult. As shown by the earlier narration of the events in Marikana informal settlements, well-located land for housing and other socio-economic activities is scarce and inaccessible. The City of Cape Town in particular, demonstrated that they could easily team up with private land owners to displace an estimated 60 000 people. This is despite the fact that some had occupied the land since 2006. Evictions carried out as of 2013 did not take into consideration where the families should be accommodated. This means that urban land tenure and tenancy, specifically in the context of informal settlements is very complex.

Secondly, while urban land tenure and tenancy is subject to different interests, hence complex, there seem to be by-laws or policies at local level which prohibit adequate access to

basic services such as water and sanitation. This is evident when one considers that despite official perspectives on achievements made in broadening access to water and sanitation services in South Africa, there are discrepancies between official data and actual quantitative and qualitative access at the neighbourhood and household levels of water use. According to Dugard (2014), official statistics tend to paint a rosier picture, not the lived conditions of basic services, particularly in poor areas. Langford (2013) argues that drinking water supply may be marked as improved in surveys, yet in practice the water supply is far from being regular and potable. There is also an over-reliance on census data and municipal registers, which often do not accurately reflect the rapid pace of urbanisation and growth of demand for water and sanitation services. In addition, national statistics on household connections to basic services derive from municipal data which in many instances is not properly verified (Dugard, 2014). According to UN-Habitat (2003) most of the data on which national or global surveys of provision for water and sanitation rely are drawn from censuses or household surveys that do not ask most of the critical questions regarding the adequacy of provision – so they cannot provide information on who has 'safe and sufficient' water and adequate sanitation. For instance, questions are usually asked about whether there is a piped supply to the house or water available on the premises and in some cases the respondent's perception of its quality, the cost and whether the household uses other water sources, but not about the regularity of the supply and the distance to the water source.

Data collected for official statistics is aggregated and does not reveal entrenched inequalities or areas which still remain underserviced (Dugard, 2014) due to various reasons, including tenure and tenancy. Scott (2011) argues that, at the plot level of informal tenure and tenancy, the mere presence of infrastructure and facilities does not necessarily reflect access to water and sanitation services. Current official approaches and models to service provision do not seem to take this into account (Shaidi, 2013). According to Scott (ibid.), "tenants are often invisible and mobile, hidden as 'backyard' tenants intentionally underreported by landlords and simply often do not appear in census statistics and reporting". There is a plausible need to examine the ways in which the unfolding patterns of urban land tenure and tenancy affect water users' access to water services, on the one hand, and institutional pre-emption and/or reaction in terms of water services development planning and delivery in various types of tenure and tenancy in urban residential areas on the other.

Thirdly, the linkage between investments in water and sanitation infrastructure and access to land, tenure security and tenure status seems to suggest that water services

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development planners might be hamstrung by complexities associated with informal settlements located within servitude, private or other allocated land, as well as the invisibility of informal tenancy. Although a few isolated case studies attest to this problem, the paucity of data on water services profiles and standards on a wider range of urban tenure and tenancy profiles, particularly in informal settings, raises a need to test this supposition on a national scale. Municipalities have also cited their lack of resources, such as land, funding and human resources capacity, as major constraints to water services infrastructure development. While it may indeed be possible that municipalities lack the land, finance and human resources required for constructing new infrastructure and/or lack the funding to purchase available land and/or refurbish and upgrade existing infrastructure (Tapela, 2012), this assertion has yet to be tested with respect to urban water services development and delivery in various urban tenure and tenancy settings in South Africa.

Fourthly, although much of water services delivery by municipalities and water services providers (WSPs) takes place within the ambit of formal institutional arrangements, informal land markets exist outside the formal sector, especially in informal settlements and informal tenancy. Given municipal constraints to developing water services infrastructure on private property accommodating informal tenants, there is need to develop insights on reasons why informal landlords fail to invest in enhancing their tenants' access to water and sanitation services.

Lastly, there is the possible association between urban land tenure, tenancy and water services delivery issues, on the one hand, and political dynamics around rapid urbanisation in post-1994 South Africa and issues of 'slum eradication' and 'rights to the city', on the other. For this reason, the study will need to examine the roles of stakeholders other than water services institutions and landlords, such as slumlords and civil society organisations, which may or may not be linked to international social movements associated with slum dwellers' issues, and how these roles intersect with the agency of water users in respective local contexts.

These issues show that cities, such as the City of Cape Town, are diverse and complex systems. The process of governing them goes beyond the attempt to reconcile conflicting interests, constructing diverse coalitions and coordinating different interventions. This needs to be done while taking into consideration historical context and the ever-widening poverty gap in the post-apartheid South Africa. Urban land tenure and tenancy required unpacking

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within and also outside specific localities such as suburb or broad generalisations of formal or informal settlements. Just as in the scenario in Marikana, tenure security in informal settlements is unclear, largely regarded as outside formal settlements hence the need to eradicate them. It is also unclear under what conditions authorities should demolish residents' homes, or in the Marikana case, where those destroyed were considered 'unoccupied'. Inasmuch as rights to basic services such as water and sanitation are guaranteed, why then should they be denied or limited because they are in informal tenure settings?

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1.4 Research Questions

The research problem is captured in the following overarching research question:

- *In the context of rapid urbanisation in post-apartheid South Africa, what are the processes through which the poor access urban land, hold and pass it on or transact? How does this affect access to basic services such as water and sanitation?*

Specific research questions are:

1. How do the urban households under social tenures access and hold urban land for housing and other purposes? What are the historical and current processes affecting such access?

2. In what ways do the unfolding patterns of urban land tenure and tenancy affect water users' access to water and sanitation services at plot level, on the one hand, and institutional pre-emption and/or reaction in terms of water and sanitation services development planning and delivery in various types of tenure and tenancy in urban residential areas, on the other?

3. What are the rules and institutions governing urban tenure arrangements and how is the effectiveness of water and sanitation services delivery different in the tenure settings?

4. Given that constitutional imperatives advocate for access to water and sanitation as basic human rights, in what ways are these rights accessed or denied?

5. In light of political dynamics around rapid urbanisation in post-1994 South Africa and the possible associations between land tenure, tenancy and water and sanitation services delivery issues, who are the major players and what are their key interests?

1.5 Significance of the Study

The study was initially part of a broader PLAAS project entitled 'Land Tenure, Tenancy and Water Services Delivery in South Africa', which was funded by the South African Water Research Commission (WRC). Through such institutional grounding, the study contributed to policy dialogue and engaged with stakeholders regarding requisite interventions to address challenges of effective delivery of water and sanitation services in the rapidly changing urban residential milieu. Whereas other studies have separately examined issues of urban land tenure, tenancy and water and sanitation services delivery

(Nleya, 2011, Scott, 2011), the study attempted to unpack the link between these seemingly separate sectors. Earle, et al. (2005) argued that post-apartheid land and water reform policies run parallel to each other, and it was important to unpack the mismatches emanating from the approaches. This added new knowledge to existing understanding and interventions for grappling with problems associated with the delivery of water services in post-apartheid South Africa. It is hoped that such insights are a useful contribution to efforts to enhance the effectiveness of institutional interventions in water and sanitation services delivery and water security for users at the local neighbourhood and household level.

At the macro-economic policy level, the study raises critical questions around simply embracing policies and frameworks developed by international development agencies such as the United Nations among others. While there seems to be promotion of human-rights based approaches, the study makes it clear that success is simply likely to be limited if such approaches are developed within conflicting interests and agendas. While such frameworks might assist as guidelines to developing policy, they tend to fail when they are localised. Tenure rights for instance, are often conflated within broad market-based policies, resulting in perpetuation of dispossession, separation and exclusion of the majority of people. This study showed that the State participates both directly and indirectly in such situations. As new targets such as the Sustainable Development Goals are set, meeting them is still unlikely as long as fundamental changes are not made.

1.6 Research Aim and Objectives

The aim of the research was to develop a clear understanding of the relationship between land tenure, tenancy and water and sanitation services development planning and delivery in the context of rapid urbanisation in post-apartheid South Africa.

Specific objectives

The specific objectives of the study are:

1) To examine the ways in which urban households under social tenures access and hold urban land for housing and other purposes and how the historical and current processes impact their conditions.

2) To identify rules and institutions governing urban tenure arrangements and how they affect the effectiveness of water and sanitation services delivery in different tenure settings;

3) To identify the municipal constraints to developing water and sanitation services infrastructure and providing services outside the ambit of the state and failure by water users and informal landlords to invest in enhancing access to water and sanitation services at the plot level;

4) To identify the roles of stakeholders, such as slumlords, civil society organizations and the state, and the manner in which these roles have intersected or not with the access to urban land, housing and basic services such as water and sanitation.

1.7 Research Methods and Analysis

This study adopted a mixed-methods approach where four different sites namely; Nkanini, Mshini Wam, Langa Hostels and Kensington were selected for in-depth study. Given tenure arrangements, specifically social tenures cannot simply be explained in the context of numbers, a variety of methods provided ability not only triangulate, but access in depth insights on these relationships play out in different geographical areas. In addition, Ostrom (2010, 2013) and North (1990, 1995) allude to the 'formal rules' or rules in the book and 'informal' rules or rules-in-use, meaning that for one to deeply understand social tenures, research tools need to go beyond simple checklists. Selection of primary research sites took into account, firstly, discrepancies between official records regarding access to water services and pertinent grievances associated with violent and non-violent social protests. For cross-referencing purposes, secondary research reports by institutions such as PLAAS, the UWC-based Multi-Level Governance Initiative (MLGI) and others were used.

A second site selection criterion was based on representability. Site selection criteria was discussed in-depth in chapter 4, but at this moment it is suffice to state that the study attempted to include, as far as is practicable, a fair diversity of urban land tenure and tenancy arrangements in formal and informal settings. Research sites were selected mainly from the Western Cape Province, specifically City of Cape Town. The ultimate use of the diversity of

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sites will be to attempt a typology of appropriate water service delivery arrangements for different urban land tenure and tenancy settings. However, the fact that grievances over water services delivery seem to affect virtually the whole country raises a methodological challenge regarding the degree to which research findings based on a selection of study sites can be extrapolated to the country at large. While a fairly representative sample can generate useful findings, the extent to which study findings can be applied elsewhere will be largely determined by context-specific situations and flexibility of approach used in extrapolation. The study examined four (4) study sites in depth, while a broader understanding was examined through a combination of rapid appraisal and secondary literature review. Specific informal settlement sites in the Western Cape are Nkanini in Khayelitsha, Mshini-Wam (Joe Slovo) in Milnerton, Langa (Old Hostels) and Kensington.

Raw data was coded and arranged according to their respective themes. Questionnaire data was coded, processed and analysed using either the Statistical Package for Social Scientists (SPSS) or Microsoft Excel and presented in the form of frequencies, tables, graphs and charts. Responses from focus group discussions and semi-structured interviews was be grouped into related themes, patterns and categories in order to answer the different research questions under study. The data will presented in prose form or graphics, such as frequency graphs, pie charts, tables, maps and other figures.

1.8. Ethics Statement

This study was conducted after the University approved the proposal. Given the sensitivities around urban land, and specifically social tenures and issues of municipal service delivery, particularly around election times, the researcher tried to adhere to all ethical rules of confidentiality, anonymity and informed consent. This was meant to protect the integrity of all interviewees. As far as possible, the researcher worked within existing engagement protocols, including multi-stakeholder collaborations and local community entry requirements. However, since the study was initially part of the bigger WRC-funded project, getting gate-keepers' letters from the City of Cape Town for example, was delayed. While under the impression that this had already been obtained, the researchers conducted initial stages of the field work in the communities. Initial permission was sought from local leaders and gate-keepers. The researcher eventually obtained the letter from the City of Cape Town. This did not impact on the integrity of study, however.

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Another key ethics issue was trust. Given the fact that the researcher is a foreigner, there was always suspicion. Research assistants were trained and utilised, especially in areas such as Nkanini, Langa and Mshini Wam. Owing to issues of crime, surveys and in-depth interviews could not be conducted late in the evening, and this had an impact in that it was difficult to get hold of occupants of some houses and structures, or adults would be at work or pursuing other opportunities. In such cases, it was decided to return on weekends and public holidays.

In-depth interviews with key informants, among them officials in the City of Cape Town required sensitivity in terms of confidentiality and non-disclosure. This became easier once a permission letter was obtained from the authorities. In addition, real names were not used in direct and indirect quotes to protect their identity.

1.9 The Structure of the Thesis

In **Chapter Two** the researcher considers perspectives of urban land tenure, tenancy, water and sanitation within broader views of Marx's process of Primitive Accumulation and Hardin's Tragedy of Commons. The transformational sequence appropriation-displacement-exploitation-accumulation (Li, 2007, p. 19) as evident in Marx's PA, helps us to understand the process of dispossession, separation and exclusion in South African urban land tenure systems and water and sanitation systems. As well as how bloody legislation is used to forcibly maintain exclusion, and perpetuate ways of 'letting die of the poor' (Li, 2009). South Africa's adoption of neoliberal policies, which were deeply rooted in Hardin's Tragedy of Commons, means 'formal' and 'legal' private property is the ultimate goal for everyone. Counter arguments in the form of a neo-liberal approach are also presented, through de Soto's arguments (1989, 200) among others. This chapter also explores the works of political economists such as Ostrom (2010, 2013) and North (1990). Scott's weapons of the weak attempts to explain how the poor attempt to resist and attempt to break the 'edifice' (Hornby, et al. 2017). The chapter also provides a working definition of key concepts used in this thesis, such as land tenure, tenure security, and property rights, informal and formal among others.

Chapter Three provides the methodology of the study. Research into social tenure arrangements required going beyond quantitative approaches or qualitative approaches. Recognition of processes, rules and norms (Ostrom, 2010, 2013) outside so-called formal systems required an all-encompassing approach. While simple and reductionist economic

lenses which de Soto (1989, 2000) and others proposed can be explained on graphs and numbers, deeper human stories reflecting lived-realities (Dugard, 2014) required a combination of different methods. The study uses the mixed-methods approaches to explain developed insights into and an understanding of the relationship between urban land tenure and water and sanitation services. Methods used include households' survey, in-depth semi-structured interviews with key informants and focus group discussions in each study site.

Chapter Four presents an historical description and timeline of legislative and policy frameworks of South African urban land tenure from colonial to transitional period at the end of apartheid. The chapter unfolds how dispossession and separation was enabled by bloody legislation to maintain the oppressive regime. The chapter provides a brief history of water legislation, and how it favoured big business at the expense of mainly black South Africans. Tenure policies in mainly urban areas are also explored, though at times reference has been made to rural contexts. Chapter 3 also provides the scenario leading into a post-apartheid South Africa of inequality and poverty.

Chapter Five provides a description of urbanisation in the international perspective, before moving back into the South African Context, drawing on the works of Davis (2006) on the international perspective, and Huchzermeyer (2003, 2013) on informal settlements in South Africa. In addition, literature on eradication of informal settlements is debated. The Chapter also purports that approaches to urban land tenure, water and sanitation are largely rights-based. In contradiction, overall neo-liberal policies eclipse these rights as mismatches between contradictory agendas are adopted.

Chapter Six is an overview of the City of Cape Town, highlighting the socio-economic situation of the City, before embarking on demographic profiles of all the study sites. For comparison, key variables are highlighted and using various sources of data, insights into tenure arrangements and levels of water and sanitation services are provided.

Chapter Seven provides key findings of the study. Drawing from the conceptual framework, this Chapter argues that because of tenure status, households in informal settlements do not have access to adequate and quality water and sanitation services. In addition, the poor struggle to access, hold and transact in urban land. Tenure typology complete with rights is also provided in the Chapter.

Chapter Eight discusses the findings against the concepts and methodology. Firstly, the broad views through which urban land tenure is viewed are presented. A typology of

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tenure arrangements across the four study sites is presented. This has been discussed against the backdrop of access to basic services. Social tenures in all the study sites were also presented and how the authorities and other stakeholders viewed access to land, housing and basic services. Social tenures, which the majority of informal settlement dwellers find themselves, result in poor access to water and sanitation.

Chapter Nine is the conclusion of the thesis. In the concluding chapter, research questions are revisited and the conclusion is reached that approaches to urban land tenure are largely viewed within formal titling, which depends on the cadastre system. Current policy and legislative framework does not fully embrace social tenures, resulting in an edifice (Hornby, et al. 2017). This scenario impacts water and sanitation services directly as the cadastre system provides these as a 'package'. Local authorities' intention to eradicate informal settlements results in those settlements living permanently in 'temporary settings', where services such as water and sanitation are inadequate.

CHAPTER TWO: CONCEPTUALISING LAND TENURE, TENANCY AND WATER SERVICES DEVELOPMENT PLANNING AND DELIVERY: A THEORETICAL PERSPECTIVE

Human settlements began where people saw a chance of establishing lifestyles on fertile land where water was more or less regularly available. Thus the inhabitants came to create social arrangements for sharing of land and water for various purposes within their own communities. Because it is fixed and stable, land can be divided by hedges and walls. Thus land has the potential to be held in common or to become, as it has done for many countries, the foundation of private property, personal wealth and inheritance. By contrast, water has to become a communal asset because it will not stay still. For thousands of years, legal systems across the world have accepted; and insisted that there can be no ownership of running water (David Kinnersley, 1988)

2.1 Introduction

In unbundling urban tenure (and tenancy) and water services planning and development, this study bases its arguments in the rich Marxist tradition and Hardin's Tragedy of Commons. Marx's process of Primitive Accumulation (PA) is used to explain the transformational sequence appropriation-displacement-exploitation-accumulation (Li, 2007, p. 19) currently at play in urban settings in South Africa. Through the PA, this chapter

demonstrates that the process of separation and exclusion of mainly the poor and vulnerable continues to play out in the global South. This cuts across all sectors as some are 'let live' and some 'let die' (Li, 2009). Marx's PA demonstrates that current urban tenure arrangements continue to be reproduced in the current settings, though in some cases with slight variation.

On the other hand, Hardin's Tragedy of Commons provides insights into the key neo-liberal arguments put forward to support private ownership of land. Later, fierce proponents of land titling as the key to economic success in market-based economies (de Soto, 1989, 2000) and Bretton Wood Institutions (e.g. World Bank) have been persuasive to follow Western examples in a Rostowian world-view (Graaf and Venter, 2001). While PA demonstrates how 'bloody legislation' was used in the process of dispossession, neo-liberal view presents the need for such legislation to protect 'private property'.

Other key concepts include informality of institutions (North, 1990) and 'rule in use' versus 'rules in form' (Ostrom, 2013). It is argued that current approaches in governance are largely based on neo-liberal theories and this has resulted in binary representation of 'formal' and 'informal' tenure arrangements. Marx's P.A provided the process of transformational sequence appropriation-displacement-exploitation-accumulation, North (1990) and Ostrom (2013) allow us to analyse both the nature and outcome of such as process. Flaws in governance as argued by North and Ostrom is a counter to Hardin's TOC.While current institutions fail to recognize 'rules in use', they continue to encourage accumulation by dispossession, exclusion and in some instances brutal force for the urban poor. Scott (1985) however argues that the urban poor are able mobilise, contest and demand foothold in the cities through what he terms 'weapons of the weak'.

In attempt to allow some of the 'surplus' population to 'let live', the human-based approaches are presented and international organisations currently championing such approaches are themselves established within the neo-liberal agenda. For Li (2007), this results in capitalism and improvement being locked in an 'awkward embrace'. This chapter shows that human-rights based approaches, while being largely funded by transnational institutions, are in fact part of the narrative of 'letting die' and 'letting live' (Li, 2009; du Toit, 2017). Instead of improving the lives of mainly the poor, policies developed by State institutions further separate people, and in this instance, it is class-based. The poor populations are presented as helpless and unable to escape their situation, but this chapter

also argues that 'rights to the city' debates are part of the grand narrative of allowing voices while choking the action. Caught within the state of informality in urban settings, poor people continue to face exclusion in water and sanitation development planning in most cities of the global South. The informality becomes a basis upon which services are either allowed, restricted or denied. It is argued that the surplus population, who are largely poor, continue to face exclusion even with regard to the most basic services due to their so-called informality.

2.2 Setting the Scene: Land and Marx's Primitive Accumulation (PA)

Put simply, PA is the historical process of divorcing the producer from the means of production (Marx, 1867). It entails 'appropriation and co-optation of pre-existing cultural and social achievements as well as confrontation and supersession' (Harvey, 2003, p. 146). While Marx argues that it is primitive because 'it forms the prehistoric stage of capital and of the mode of production corresponding with it' (Marx, 1867, p. 508), its application may not be limited to the change from feudalistic society to a capitalist one. Harvey (2003, p. 147) subsequently argues that modern forms of PA can be viewed as accumulation by dispossession when one takes into consideration credit systems and finance, which have become 'major levers of predation, fraud and thievery'. While PA initially intended to explain how the economic structure of capitalist society has grown out of the economic structure of feudal society (Marx, 1867), the overall process of transformational sequence appropriation-displacement-exploitation-accumulation (Li, 2009) can be used to explain urban land scenarios in the global South.

Marx's category of primitive accumulation (PA) is useful in providing insights into debates currently dominating urban land discourse in the global south. While it can be argued that enormous amounts of scholarly work has been written on Marx, locating useful arguments he raises particularly under PA can help explain formality and informality in urban settings. However, this thesis does not intend to provide Karl Marx's arguments in detail, but seeks to use PA as an entry point in understanding urban land tenure in the cities of the global South. This is done through raising critical points raised by PA and relating them to the current situation.

Firstly, in Marx's view, pre-capitalist modes of production were incorporated into capitalist relations through a process marked by violence, destruction and appropriation (Sassen, 2010, p. 24). The first key feature which is vital to this study is the introduction of enclosures. Marx quotes Bacon who states that:

"(i)nclosures at that time (1489) began to be more frequent, whereby arable land (which could not be manured without people and families) was turned into pasture, which was easily rid by a few herdsman; tenancies for years, lives and at will (whereupon much of yeomanry lived) were turned into demesnes" (Marx, 1867, p. 511).

Harvey (2003) argues that the key processes Marx describes in PA are the commodification and privatisation of land and the forceful expulsion of peasant populations; the conversion of various forms of property rights into exclusive private property rights; the suppression of rights to the commons; the commodification of labour power and the suppression of alternative forms of production and consumption. For the purposes of this study, the new forms of tenure and subsequent neo-liberal approaches to land tenure are of interest. Although neo-liberal approaches to land tenure are covered in subsequent sections, it is important to note that enclosures formed the basis to private property and ownership currently used across the world.

Secondly, violence of the system as a result of separation and exclusion is evident in Marx's PA, as in the context of Marx, 'capitalist system presupposes the complete separation of the labourers from all property in the means by which they realise their labour' (Marx, 1867, p. 507). This is accompanied by violence - its history, according to Marx (1867), 'is written in the annals of humanity in characters of fire and blood'. While Marx assumed that the violence which preceded the earliest periods of capitalist expansion would recede with maturing capitalist relations, when exploitation and disciplining of labour is accomplished through economic laws (Federici, 2004), violence appears to continue and manifest itself in various ways, including evictions in modern cities of the South. Li (2009, p. 66) posits a crucial question: "Why (would) governing authorities … elect not to intervene when they could, or select one subset of the population for life enhancement while abandoning another". For her, letting die is stealthy violence that consigns large numbers of people to lead short and limited lives (ibid. p. 66). As Li (2009) shows, violence experienced in Marx's PA continues to play out through separation where a certain section of the population owns land and their rights are well protected, while the other section with limited rights experiences violence through evictions and exclusion. Once the capitalist production is established, Marx argues that it maintains the separation and is continually reproduced as experienced currently in the global South where the gap between the surplus (which is poor and landless) continues to widen with the obscenely rich class.

Thirdly, legislation and policies are used to support exclusion and separation. Li (2009) argues that politics are at the centre of letting die and letting live though laws and policies put in place. As shown by Marx's PA, appropriation and proletarisation of the majority of the masses was largely enforced by laws passed by the ruling class. While arguing that capitalism came into the world 'dripping from head to toe, from every pore, with blood and dirt', Marx shows that the introduction of what Marx (1867, p. 522) (Neocleous, 2012, p. 949) regards as 'blood legislation' to specifically deal with those who resisted to be incorporated into the labour force. One example Marx quotes is under Henry VIII (1530) which states that;

Beggars old and unable to work receive a beggar's licence. On the other hand, whipping and imprisonment for sturdy vagabonds. They are to be tied to the cart-tail and whipped until the blood streams from their bodies, then swear an oath to go back to their birthplace or to where they have lived the last three years and to "put themselves to labour" (Marx, 1867, p. 522, Neocleous, 2012, p. 950).

Repeat offenders under Henry VIII legislation were whipped and half the ear sliced off, and if one was caught on the third offence execution was ordered (Marx, 1867). Subsequent rulers added similar laws, which spread to colonies as well. Neocleous (2012, p. 951) cites Marx in the argument that a series of 'terroristic laws' was perfected through four centuries of 'capitalist development, through which agricultural people were first forcibly expropriated from the soil, driven from their homes, turned into vagabonds, an then whipped, branded, tortured by laws grotesquely terrible, into the discipline necessary for the wage system'. The legal system justified the use of force linked to a right, specifically the right of property (Neocleous, 2012). The role of the state in enforcing these bloody laws is key. Marx states that the 'parliamentary form of the robbery is that of Acts for enclosures of Commons' (Marx, 1867, p. 513). The complicity of the state or ruling elite enabled the permeation of the capitalist system. Another example of bloody legislation according to Davis (2006, p. 174) is where the structural adjustment programs of the 1980s and the 1990s were a form of 'letting die' in the sense that the rhetoric was economic growth and development, while the results were the opposite (Li, 2009). In this study it is argued that bloody legislation plays out in urban land, housing, tenure, water services and sanitation services. While urban land is closely related to housing, tenure and tenancy, it is the nature of whose interests are best served and at whose cost. If the quality and quantity of water and sanitation services heavily depends on the tenure arrangement people find themselves in, then it can be argued that the bloody legislation permeates in all quarters of people's lives. The use of bloody legislation

cannot be separated from the current evictions which currently take place in cities in the global South, where 'land invaders' who are occupy land 'illegally'' are forcibly removed in the democratic state. This aspect of PA will be discussed later under evictions and legislation in South African urban areas.

Production of a surplus population is another aspect of PA relevant to land and water resources. According to Marx (1867, p. 603) pauperism is the "hospital of the active labour-army and the dead weight of the industrial reserve army. Its production is included in that of the relative surplus-population, its necessity in theirs; along with the surplus-population, pauperism forms a condition of capitalist production, and of the capitalist development of wealth. It enters into the *faux frais* of capitalist production; but capital knows how to throw these, for the most part, from its own shoulders on to those of the working-class and the lower middle class". Li (2009) agrees with Marx's assertion as she posits that spatial and temporal unevenness of capital investment is visible today because it incorporates some places and peoples and ejects or rejects others. This results in a surplus population which is unskilled and unemployable. In addition, Ferguson (2005) argues that most transnational investment capital 'hop' over Africa's useless peoples and places to land in the few spots where superior profits are readily made. These places or resources are useful but the people are not, resulting in dispossession detached from any prospect of labour absorption.

Sassen (2010) refers to this as 'counter-geographies of survival' where huge government debt and high unemployment in the global South countries have brought with them the need for survival alternatives not only for the ordinary people, but also for governments and enterprises. While this can easily be likened to how the ordinary people who had lost their land and livelihoods through PA, and resorted to other forms of survival such as criminal activities, 'alternative survival circuits' (Sassen, 2010, p. 32) have emerged in the global South. While Li (2009) argues that these large numbers of abandoned populations are 'let die', Sassen (2010) recognises that these population attempt to forge their survival strategies in a system kicking them out. For Li (2009), the desire to live a fuller life with better food, housing, education and healthcare offers is frustrated for the poorest people, who are routinely disposed through the very process that enables other people to prosper. The State's capacity to provide resources for people-oriented development has been paralysed and high unemployment and poverty has resulted in a systemic condition characterised by alternative circuits of survival. These circuits of survival include migration, as witnessed in the recent global migration crisis, human trafficking and other forms of survival.

Interestingly, the new dynamics of proliferation of sites concentrate a growing demand of particular labour supplies, particularly low-wage workers (often women in the global South), while on the other hand, a sharp demand of highly paid professionals both in sphere of production and the sphere of social reproduction (Sassen, 2010). Furthermore, these survival circuits are dynamic and constantly change depending on the location, while others are part of a shadow economy (Sassen, 2010). This means that 'informality' has become a phenomenon in all spheres of life in the global South, including settlements and livelihoods tactics.

Colonialism and slavery are some of the most visible forms of PA. Neocleous (2012) argues that international law became a tool to enable accumulation of other territories and their governance. For him, similar "ideas about 'improving' the waste lands of the Old World were applied to the waste lands of the New World, as the analogy between expropriating idle and unproductive workers and idle and unproductive Indians became standard in political discourse" (Neocleous, 2012). Closer to home, while the issue of colonialism is widely covered in other disciplines such as history and anthropology, what this researcher needs to raise here, perhaps of huge significance is what was raised by Mamdani (1996). His analysis of the post-colonial states in Africa shows how the colonial state is reproduced in the current democratic state. Using Smut's understanding of 'institutional segregation' as the answer to dealing with natives in the colonies, Mamdani demonstrated how this approach was used to preserve native institutions while meeting labour demands of the growing economy through institution of migrant labour (Mamdani,1996). According to Mamdani, African colonial experience was characterised by direct rule and indirect rule. Direct rule was the form of urban civil power where the natives were excluded from civil freedoms guaranteed to citizens in civil society. On the other hand, indirect rule signified a rural tribal authority where natives were incorporated in a state-enforced customary order. For Mamdani, both formed centralised despotism (direct rule) and decentralised (indirect rule). They formed a bifurcated state, which 'contained a duality: two forms of power under single hegemonic authority' (Mamdani, 1996, p. 18). Furthermore, the democratic state seems to have reproduced itself in both form and practice, epitomised by the 'police state' in the post-colonial states.

Lastly, some of the emerging works on bio-politics reveal startling results where seemingly genuine and well-meaning enclosures with purposes of environmental protection and conservation results in displacement of mostly poor people. For Li (2009) (see also, du Toit, 2017), huge numbers of people have been deprived access to land and sources of

livelihood through conservation programmes. In most cases, conservation agencies and the donors that fund them make no commitment to resettle, compensate or identify alternative livelihoods for the people their programmes dispossess (Li, 2009). Since Marx's PA has shown that enclosures are simultaneously an act of dispossession (Marx, 1867; Li, 2007), the assumption is that these dispossessed people will find somewhere to go and something else to do (Li, 2009). In some cases, governments are expected to provide land for these people, which might not be successful due to various reasons. However, for Li (2009), letting die was not an oversight, but in fact, it was a calculated decision.

2.3 Neo-Liberal Approaches to Land Tenure

Having discussed Marx's PA and its implications to modern understanding of land tenure, it is imperative to present counter arguments which have dominated the discourse in the past century. There is no consensus on the meaning of neo-liberalism. Bourdieu views it as an ideological system that holds the 'market' sacred, born within the 'human' or social sciences and refined in a network of Anglo-American-centric knowledge producers, expressed in different ways within the institutions of the post-war nation-state and their political fields (Mudge, 2008, p. 706).

When Hardin (1968) proposed his Tragedy of Commons theory, it radically changed contemporary land policy discourse and influenced contemporary debates around land ownership and titling. Hardin (1968, p. 1224) argued that the tendency for all systems of shared property lead to systematic over-use and degradation of the resource base, which meant that common property should be enclosed and hence privatise their ownership. As a rational being, so the TOC says, each headsman seeks to maximise his gain so he asks 'What is the utility to me of adding one more animal to my herd?' (ibid. p. 1224). In this context the positive component of this utility lies in the function of the increment of one animal. The herdsman receives all the proceeds, while on the other hand the negative is the function of additional overgrazing created by one animal, of which the effects are shared by the herdsman. Meanwhile, the conclusion is shared by each herdsman, resulting in each man locked into a system that compels him to increase his herd without a limit, in a world that is limited. Ultimately the 'freedom in commons brings ruin to all' (Hardin, 1968, p. 1224). Hardin's analysis of pastures shows that despite land degradation as a result of overgrazing, shepherds continued to increase their flock despite the detrimental impact. In Hardin's view, this was because the pastures were a shared common property, hence everyone attempted maximise the number of their flocks at the expense of overgrazing and land degradation.

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The first implication of Hardin's TOC is that the tragedy of commons may be averted by private property. On the other hand, Marx's PA has shown that as result of enclosures, separation and exclusion took place and resulted in the inevitable suffering of the poor and what Hardin presents is the ultimate way for survival as resources are finite. One can draw similarities from Hardin's thesis to what is has been Demsetz's central contention that 'communal systems are relatively inefficient and more costly to sustain than private property systems when there is pressure on the land' (UN-Habitat/GTLN, p. 21, Demsetz, 1967). As a result, land rights evolve into individualisation and eventually landholders apply pressure for private property rights. Privatisation of land and other resources has not only resulted in exclusion and separation in Marx's view, but a necessary inescapable consequence of the capitalist system. Hardin and other later neo-liberal writers such as de Soto (1989, 2000) argue that the key to successful economies and development is private ownership.

The second implication of Hardin's TOC is that of land tenure, and more specifically titling. Inevitably, in order to identify and delimitate each private property and related rights, recording which forms the basis for property law becomes the imperative. The records which become 'formalised' become titles and fully recognised 'legally'. Modern scholarly debate surrounding land titling and economic development have been championed by de Soto (1989, 2000). According to Williamson (2011, p. 97), the de Soto arguments can be divided into two assumptions: (a) property rights impact development by altering the ability and incentives for capital formation, (b) land titling provides the means to secure property rights. Davis (2006) argues that de Soto's approach is a 'bootstrap model of development'; where you get the state (and formal sector labour unions) out of the way, add micro-credit for micro-entrepreneurs and land titling for squatters, then let the markets take their course to produce the transubstantiation of poverty into capital. Property rights also affect investment and economic development by encouraging entrepreneurship (Williamson, 2011, p. 97). This forms the basis of de Soto's thesis - the poor already possess assets, they hold them in a defective form, rendering them "dead capital" (de Soto, 2000). Natives would benefit from participating in markets of land and labour for them to progress and they must be set free to find their own destiny (Li, 2007, p. 21) According to Payne, et al. (2009, p. 445) through granting the poor titles to their land, de Soto claims that they can "enliven" such "dead capital" and use their properties as collateral for loans to improve their houses, or open businesses to lift themselves out of poverty. Through the records, land records are clearly outlined and make it possible for the poor to participate in formal economic systems. On the contrary, informal

tenure arrangements normally lack formal records, hence the need to move towards secure tenure by recognising local practices (Royston, 2013). Mitchell (2002) warns that winners and losers do not emerge naturally through the magic of the market as de Soto and others (Acemoglu and Johnson, 2005; Williamson and Kerekes, 2011) would want us to believe - they are selected. Instead, displacement and impoverishment are co-produced with growth (Li, 2007, p. 20).

I must point out that traditional and contemporary scholars in social sciences and law have long grappled with the issue of the merits of land titling to improve economic growth and development (Knack, Stephen and Philip Keefer, 1995; Rosenberg, Nathan and L. E. Birdzell, Jr, 1986; de Soto, 1989; Acemoglu and Johnson, 2005; Williamson and Kerekes, 2011). Despite arguments that land titling might provide tenure security and stimulate economic development (rooted in Rostow's modernisation theory as pointed out earlier), there is growing evidence that this is not generally the case. Contrary to ideas punted by de Soto and other liberal economists, there is strong evidence to suggest that 'formal' institutions are not the means to an end. A counter argument by Benson (1989) postulates that customary law existed in primitive societies to govern and enforce property rights. In the current context these will be recognised as informal. It is generally agreed that this occurred as individuals realised that the gains of respecting others' property outweighed the costs (Benson, 1989). This, according to Benson (1989) signifies that informal institutions arise from the ground up; are based on norms, customs, and traditions; and allow for an evolutionary process that reflects the local conditions of a society.

The third implication of Hardin's TOC is that legislative frameworks are necessary to define and delineate private property. Not so different from Marx's bloody legislation, the legal system is key in private property. For Li (2000, p. 720), the laws that support private property enforce exclusion and produce 'free' labour constitute a form of violence by other means. Through the legal system, a 'false' polarisation exists between 'formality' and 'informality', 'illegal' and 'legal (Hornby, et al. 2017) 'customary' and 'statutory' (Toulmin and Quan, 2000). While Hornby, et al. (2017) argue that it is false polarisation because of the existence of other tenure arrangements and while it cannot be simply referred to as legal or illegal, it is important to identify the separation resulting from private property. For Letsoalo (1987, p. 77), the true "tragedy of commons" was the transformation of peasants from co-equal owners of the commons with secure tenure to landless workers on feudal and post-feudal estates. The legislative framework becomes an enabling system to label, separate and

litigate. These terms are discussed (North, 1995) in the later sections but it is important to point out that the current land governance systems across the world are largely interpreted in legalistic 'formal' and 'informal' terms.

One of the key implications of Hardin's TOC is that governance of common pool resources is difficult if not impossible. For Ostrom (2010), overharvesting of a valuable resource is assured when the resource has no established property rights. The political economy of resource governance has occupied scholarship in last decades as more and more research shows that, instead of finding only private or government ownership arrangements that helped users to sustain common-pool resources, there are other mechanisms which can be put in place (Ostrom, 1990, 2010, 2013). Cousins (2000) has shown the value in common pool resources for the livelihoods of many rural communities. This means that while Hardin's thesis view is that common lands must the enclosed to prevent overgrazing, research has shown that solutions are possible through conferring of rights as well supporting user groups to maintain responsibility for the management of common pool resources (Toulmin and Quan, 2000).

Another implication of Hardin's TOC and neo-liberalism is the portrayal of the citizen as being helpless. According to Ostrom (2010), Hardin's TOC, the Prisoner's Dilemma and the Logic of Collective inaction are all models which portray man as permanently trapped in a situation they cannot change themselves. Man is helpless to do anything else but overharvest when they have jointly used a resource system that was not privately owned or the property of a government unit (Ostrom, 2010). There is a similarity of such helplessness in Marx's PA, where through the process of separation and exclusion, the proletarianism is bound to happen to the helpless peasant (Marx, 1867). Ultimately this peasant is sucked into the capitalist system. Inaction by particular governments, according to Li (2009), has resulted in letting die of poorer classes. The rise of social movements in Latin America for example (Thompson and Tapscott, 2010; Tilly and Tilly, 1981) may be a sign that sometimes the lower classes can be rise to fight for their rights. Some critics might interpret this as 'circuits of survival' (Sassen, 2010) or just smokescreens as nothing really changes, however.

2.4 Weapons of the Weak

In most cases the poor are portrayed as weak and unlikely to deal with 'bloody legislation'. Marx's PA revealed a process of dispossession, separation and exclusion and how the surplus is forced labour. Enclosures which form modern conceptions of private

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property ownership do not mean that the poor are completely helpless and incapable of challenging or attempt to fight back. There are some situations where the poor find ways to fight or attempt to push back. In his study on peasants in Malaysia, Scott (1985, p. xvi) observes that:

> In the Third World it is rare for peasants to risk an outright confrontation with the authorities over taxes, cropping patterns, development policies, or onerous new laws; instead they are likely to nibble away at such policies by noncompliance, foot dragging, and deception. In place of a land invasion, they prefer piecemeal squatting; in place of open mutiny, they prefer desertion; in place of attacks on public or private grain stores, they prefer pilfering. When such stratagems are abandoned in favour of more quixotic action, it is usually a sign of great desperation.

The key implication of Scott's argument is that when the 'weak', are let die, they do possess some forms of resistance against the authorities. The acts of defiance, no matter how insignificant may, at times, add up to effective tools of resistance. Some of these may be based on claims of citizenship. According to Neocosmos (2009, p. 276), from an emancipatory perspective, citizenship is not about subjects bearing rights conferred by the state, as in human rights discourse, but rather about people who think, becoming agents through engagement as militants or activists and not politicians. However, as long as these strategies operate within the framework set by the dominating institutional arrangements, their cry for change becomes hollow as they are drowned out by state machinery. Post-colonial states in the global South have resorted to force and policing of the weak is common-place (Benson and Meyer, 2015).

Community protests are also signs that the poor communities are frustrated with the delay in accessing services (Dugard, 2014). These forms of weapons of the poor are usually not based on underlying social networks - they lack some degree of organisation, they also fail to develop collective identity and thus they do not develop the capacity to maintain sustained challenges against the elite (Madlingozi, 2014). Some of the weapons of the weak can develop to social movements. Social movement represents those "sequences of contentious politics that are based on underlying social networks and resonant collective action frames, and which develops on underlying social networks and resonant collective action frames, and which develops the capacity to maintain sustained challenges against

powerful opponents" (Tarrow, 1998, p. 2). Social movements may differ from non-governmental organisations (NGOs), NGO coalitions, modern trade unions and other interest groups however, because their action repertoires are generally skewed in a non-institutional direction (Snow, et al. 2004). This does not mean that social movements are homogenous across the world but for the purposes of this study, the ability of the poor to express dissatisfaction with the status quo, whether spontaneously or in organised form, represents some form of power they wield.

Weapons of the poor may play out in demanding 'rights to the city' through actions such as, but not limited to, land occupations. Timing for such actions has sometimes been key (Tarrow, 1988). Just like in India where land invasions are more or less synchronised to political cycles of elections (Davis, 2006), mobilisation by social movements in South Africa have also shown spikes during election years (Municipal IQ, 2012). On the other hand Mamdani (1996) argues that civil society and mobilisation in African countries is a result of failures of post-colonial states; except in South Africa, where it was both a cause and a consequence of deracialisation. Recent media reports of urban land invasions in parts of Gauteng following the African National Congress August 3, 2016 election loss can be viewed in the lens of Tarrow's political opportunity theories (1988).

Power is at the centre of weapons of the weak. According to Habib (2014), the poor's interests are not respected because the poor do not exhibit power. For him, to unlock the logic of development, there is a need to enable the poor to discover and develop leverages, so that their power can be displayed and evident to other stakeholders, leading to political and economic elites becoming responsive to their interests (Habib, 2014). This does not happen automatically and smoothly as one may expect because winners and losers are carefully selected (Mitchell, 2002) and therefore institutions to keep the poor in perpetual servitude are intricate, even overwhelming at times. The answer to this according to Habib (2014) is for the poor to form social pacts, and these are established by State elites with willing participation of the organised expressions of relevant social actors to manage the expectations of citizens, workers and the business community. However, the earlier debates have shown that as long the agendas, such as when market-based approaches and human rights approaches are contradictory, the poor are most likely to be losers. Terms of these social pacts tend to ignore locally developed institutions as they tend to promote rules in the book rather than rules-in-use (Ostrom, 2010, 2014; North, 1990).

Some civic society organisations which champion for rights of poor communities do not always oppose the state and authorities however. McFarlane and Silver show how social movements such as the Social Justice Coalition, through its auditing 'opens up the possibility to reclaim the state by speaking and seeing as the state does, but in a way that commits to radical redistribution' in Cape Town (Mcfarlane and Silver, 2016, p. 19). In this way, Social Movements can be able to capitalise on these areas of convergence, hence finding ways to "being in the room" rather than 'shouting from outside' (ibid. p. 19). For the purposes of this study, it is also important to identify ways in which ordinary people, and other stakeholders such as social movements or other interest groups, play out in the context of urban land tenure (tenancy) and water services delivery.

2.5 Understanding Land Tenure: Towards the middle way

After providing debates around Marx's PA and Hardin's TOC thesis, it is very important to revisit the working definitions of some of the key terms used in the study.

Land tenure: There have been debates on what exactly land tenure is, depending on which school of thought you come from. Current understanding of tenure is based on both the neo-liberal and human rights-based approaches. It cross-cuts the social, economic, religious, cultural and political aspects of tenure. A growing number of scholars is starting to agree that land tenure should primarily be viewed as a social relation involving a complex set of rules that governs land use and land ownership (Payne G and Durand-Lasserve, 2012; FAO, 2012). Land tenure is 'the relationship, whether legally or customarily defined, among people, as individuals or groups, with respect to land (Payne G and Durand-Lasserve, 2012, p. 7). According to Payne (1997, p. 3), land tenure can be defined as the mode by which land is held or owned, or the set of relationships among people concerning the use of land and its product. Royston and Narsoo (2006) assert that although tenure tends to be understood in terms of parcels of land, it also has to take into account landlord-tenant relationships in highly densified areas such as in urban areas. The dominant neo-liberal view, mainly championed by transnational agencies such as the United Nations, widely define land tenure as 'the way land is held or owned by individuals and groups, or set of relationships, legally or customarily defined amongst people with respect to land'(UN-HABITAT, 2008, p. 5). The emphasis on the legality cannot be downplayed, leading to persistent binary polarisation of land tenure across the world (Hornby, et al. 2017). Inclination towards some legal recognition leads to further debates in the global South as to which policy direction to take which eventually holistically places everyone on the same level. It is generally agreed that tenure reflects

relationships between people and land directly, and between individuals and groups of people in their dealings in land (Payne and Durand-Lasserve, 2012).

For purposes of this study, this researcher concurs with broader definitions provided by LEAP in Hornby, et al. 2017, which state that tenure arrangements comprise a set of connected relations and processes which include:

- Rights and obligations to property, and benefits flowing from property.

- The social processes and procedures through which rights, obligations and benefits are invoked and materialised.

- Authority in relation to these rights, obligations and procedures.

- Local institutions that reflect the arrangements of rights, obligations and benefits, and support the passage of property over time (Hornby, et al. 2017, p. 13).

The above definition transcends ideological boundaries as it steers off the narrow 'legalistic' neo-liberal interpretation to also accommodate other social tenures. It broadens our understanding to encompass what the scholars term 'social tenures' (Hornby, et al. 2017). In addition, the definition recognises the social process, rights and obligations as well as local institutions. Lastly the definition recognises the evolutionary nature of tenure rights, obligations and benefits. This is in light of a rapidly urbanising world and rapidly changing tenure relationships, which are more 'fluid' and which transcend simple conceptual labels.

Security of tenure describes 'an agreement between an individual or group to land and residential property, which is governed and regulated by a legal and administrative framework (UN-Habitat, 2004, p. 31). While one should be cautious regarding how UN-Habitat views tenure and the neo-liberal agenda they drive, its reliance on the 'legal' is largely ideologically one-sided. A person or household can be said to have secure tenure when they are protected from involuntary removal from their land or residence by the state, except in exceptional circumstances, and then only by means of a known and agreed legal procedure, which must itself be objective, equally applicable, contestable and independent. UN-Habitat (2011, p. 5) refers to the degree of confidence that land users will not be arbitrarily deprived of the rights they enjoy over land and the economic benefits that flow from it. Patel (2013) disputes this approach on tenure security. In Patel's view studies of tenure security and insecurity tend to focus on the lack of tenure rights for certain groups in society and given that tenure rights are largely legalistic and engender a logical relationship

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between tenure security and formal tenure rights (Patel, 2013). Using ethnographic studies carried out in informal settlements in Kwa Zulu-Natal, Patel argues that the current definition on tenure security should be broadened. Simply put, tenure security is therefore "the desire and ability to live in a particular space" (Patel, 2013, p. 272). Tenure insecurity is a variable condition that shifts over time and is tied to other types of insecurity such as income and job insecurity, and the physical insecurity that stems from a lack of public safety (Patel, 2013, p. 272). This study adopts Patel's argument on tenure security and its unpredictability especially in South African informal settlements.

Insecure tenure covers a wide range of situations, from illegal occupation to various forms of tolerated occupation, as well as occupation legitimised by customary practices but not considered to be legal by government or local authorities (Patel, 2016; Payne, 1997). Payne (2002) suggested a step-classification system to describe how tenure status and property rights contribute to overall tenure security of a given locality. For him, tenure security depends heavily on tenure status and property rights associated with it. As reflected in the 'duality' of formal and informal, legal or illegal, secure tenure is the right of all individuals and groups to effective protection by the state against forced evictions.

Property rights may vary within, as well as between, tenure systems. It is therefore possible to have a high level of security, but restricted rights to use, develop or sell land, or a limited level of security, but a wide range of rights. For Payne and Durand-Lasserve (2012) property rights are defined as recognised interests in land or property vested in an individual or group and can apply separately to land or development on it. In some instances, a recognised interest may include customary, statutory or informal social practices which enjoy social legitimacy at a given time and place and may be regarded as property rights (ibid.) Furthermore, 'property rights' can be defined as a recognised interest in land or property vested in an individual or group and can apply separately to land or development on it (Payne, 1997). Rights may cover, inter alia, access, use, development or transfer and, as such, exist in parallel with ownership. In as much as the term informal settlement is shrouded with ambiguity and negative connotations (Huchzermeyer, 2003), it is paramount to recognise land tenure systems in informal settlements so as to understand approaches and processes which result in valuable interventions .

de Soto argues that secure and well-defined property rights transform assets from "dead capital" into resources that can be used to generate additional capital and obtain credit (de

Soto, 2000). de Soto also argues that a lack of easily understandable, formal property rights explains why people in developing countries have not been able to transform their (natural) resources into productive capital (Rutten, 2009). According to Williamson (2011, p. 103), de Soto believes that 'government codification of unarticulated, informal property rights is needed in order to realise the positive benefits associated with secure and well-defined property rights that promote economic development'. Expanding this capitalist view of the world system, those who support titling indicate the ability of owners to utilise their titled property as collateral to secure financing for investments as an essential advantage (Williamson, 2011, p. 103). In addition, if secure property is achieved via land titling programmes, then land titling should provide access to credit markets not previously attainable and access to enforcement of these rights as defined by the land titles (Williamson. 2010, p. 103). This shows that land can be treated as a "commodity" even though it is affected by a range of economic and political factors (Gordon, Nell and Bertoldi, 2007, p. 30). It is crucial to note that the degree of formality in rights agreements or lease contracts can affect the level of rights as they can range from informal unwritten agreements to formal contracts between land owners and occupants (leaseholds).

2.6 Informality in the context of Urban Land

In the earlier sections Ostrom (2010) raises an interesting argument around private ownership of property. She claimed that Hardin's Tragedy of Commons and the Prisoner's Dilemma game theory (Kogut and Zander, 1996) intend to demonstrate that overharvesting of a valuable resource is assured when the resource is an open access resource with no established property rights. This challenges the notion that only private property can save the commons as suggested by Hardin and others. As pointed out earlier, there is always a way to manage common-pool resources (Cousins, 2000; Ostrom, 2010) as governance of institutions is executed with beneficiaries in mind. For Ostrom (2010), there is a need to confront complexity in governance and robust governance system recognises the multi-scale aspects of the natural resource governance as well as the presence of individual incentives and seeks to correct them (Futemma, et al. 2002). Existence of provision or consumption units has the authority to contribute resources toward the provision of the collective good whose participants can then craft a diversity of rules that help them overcome the free rider problem by deciding who is included and who is excluded (Ostrom, 2010). The provision system, according to Ostrom (2010) can develop further and can devise rules that specify allowable forms of access and use, some methods for monitoring behaviour and sanctioning of violators

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of rules and conflict resolution. Some of these self-governed institutions have been ignored or misclassified (ibid. p. 327).

This brings us to another debate. The concept of 'informality' in institutions, rules or processes versus 'formality' and which takes precedence in land tenure governance. The concept of duality has dominated many fields of study, for example: religion (Ward, 1974); literature and creative writing (Brereton, 1968); mathematics and engineering (Rice, 2007); and sociology (Giddens, 1986). The concept of dualism is often used in the context of institutions (albeit formal and informal, legal and illegal, regular and irregular among others). Menard and Shirley (2005) argue that institutions are the written and unwritten rules, norms and constraints that humans devise to reduce uncertainty and control their environment. Furthermore, institutions are viewed as systems of hierarchical man-made rules that structure behaviour and social interaction. In context of urban land, Hornby, et al. (2017) warns against simply polarising descriptions of reality in ways that are unhelpful and often inaccurate. The use of opposed terms, e.g. 'informal' and 'formal' (UN-Habitat, 2012), 'customary' and 'statutory' (Toulmin and Quan, 2000) and 'illegal'/ 'extra-legal' and 'legal' (de Soto, 2000) is misleading or problematic (Hornby, et al. 2017, pp. 8-9). Instead, there is need to realise that actual situations on the ground cannot be simply be located on binary poles and possible arrangements found elsewhere overlooked.

Ostrom (2013) recognises the need to clarify the meaning of the following terms: strategies, norms and rules because in rendering particular institutions informal or formal there is often confusion as to what the terms mean. According to Ostrom (2013), strategies are plans of actions that individuals adopt primarily for prudential reasons to achieve preferred outcomes in light of expectations of the likely strategies of others. On the other hand, norms represent preferences related to prescriptions about actions or outcomes that are not focused primarily on short-term material payoffs to self (ibid. p. 11). Furthermore, norms are normally acquired in context of the community in which the individual interacts frequently and change in this context, although, on the other hand, norms can evolve internal to an individual.

Rules are linguistic statements similar to norms but rules carry an additional assigned sanction if forbidden actions are taken and observed by a monitor (Ostrom, 2013, p. 11). Rules may be crafted in any of a wide diversity of collective-choice or constitutional-choice arenas in local, regional, national or international domains (ibid. p. 11). For her, rules operate

on three levels: operational situation is the first level where an individual interacts and directly affects some worldly variables, while on the second level, there are policy situations where individuals interact to choose some of the rules that are in effect at operational levels. Lastly, the third level of rules involves constitutional rules that are created and used by institutions such as legislatures.

The first implication for these debates on rules is that while Ostrom (2013) and North (1995) discuss rules from a general perspective, they both agree that so-called formal rules take precedence. For Ostrom (2013), contemporary scholarship tends to focus on formal rules prescribed by national government, not locally generated rules. As North (1990, p. 36) states, "formal rules ... make up a small ... part of the sum of constraints that shape choices; ... the governing structure is overwhelmingly defined by codes of conduct, norms of behaviour and conventions". The evident bias towards rules produced by formal institutions results in some rules being considered as inferior (Hornby, et al. 2017) and at times illegal. Formal rules are a product of neo-liberal agenda, and their application as already shown in the earlier sections are pro-private property and legalistic ownership of land. In addition, recent research carried out by Legal Entity Assessment Project (LEAP) indicates that besides recognition of current tenure arrangements as a continuum, recent versions of the continuum show that, in practice, tenure arrangements can move both towards higher levels of informality (or extra-legality) or towards formality (or legality) (Hornby, et al. 2017, p. 9).

Another implication is that there is a need to understand the difference between *rules in use* and *rules in form* (Ostrom, 2013). Both Ostrom (2013) and North (1995) agree that formal rules exist in writing but might not be followed or even known to the participants. Multiplicity of specific rules-in-use is found in operational settings (Ostrom, 2010). For Menard and Shirley (2005), there is need to search out the gap between de jure and de facto rules, however, most of the studies of legal origin focus on 'rules-on-the-books', not 'rules-in-practice'. Formal institutions are regarded as public rules, are designed by public authority with legislative power and in most cases, enforced by public power with executive authority or judiciary power (Groenewegen, et al. 2010). For Hornby, et al. (2017) the perception that tenure security can be achieved through registered title results in reductionist understanding that tenure is essentially a matter of 'legal form' rather than involving social and institutional relationships. Legal approach represents the rules in form, or 'rules-on-the books' not 'rules-in-practice'. On the other hand, informal rules which are normally locally developed over time are in use. In relation to land tenure, Hornby, et al. (2017) refer to social tenures to

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explain locally developed tenure arrangements which made use of rules and norms which are not recognised 'legally'.

In his study of Indian informal settlements or 'bastis', Bhan (2016) argues that only 23.7% of the City of Delhi lived in 'planned colonies' according to 2009 data. He questions the 'unplanned', 'illegal' and 'informal'. Bhan suggest that 'if illegality is indeed the dominant mode of production of urban housing as the data suggests, then we must understand and account for the differentiated implications of various illegalities when exercised by different urban actors' (ibid. p. 20).This analysis of rules epitomizes the institutional setup of South Africa. In relation to the aim of the study: *to develop a clearer understanding of the linkages between land tenure, tenancy and water and sanitation service delivery,* it is crucial to analyse the role played by both formal and informal rules. In an attempt to encourage innovative ways to deal with high rates of urbanisation and slums in cities in developing countries, Napier (2013: 1) poses a key question:

The question is, how do people manage to access land and shelter under these conditions where the formal governance system and the market in registered land is failing to supply what is essentially a basic need, the need for space to live?

Royston (2013) however, warns us against simply defining urban land tenure as formal and informal. She argues that due to the demands of rapid urbanisation, systems have adapted over time and continue to do so today. In addition such 'systems co-exist as they adapt, often resulting in hybrids that are either exclusively Western or African, neither legal nor illegal, are neither formal nor formal, neither private nor customary, neither local nor official' (ibid, p. 49). Royston's assertion is supported by earlier work on tenure arrangements which calls for using 'tenure continuum' instead of using the binary representations of 'formal and informal' arrangements.

Butcher and Oldfield (2009, p. 45) argue that "deceptively clear binaries that separate owners and non-owners become blurred, challenging arguments that suggest that legal ownership is a straightforward policy and political empowerment, and exclusion from ownership its polar opposite". This clearly supports Du Plessis's argument that tenure rights 'do not lie on a single line, and they may overlap with one another' (Du Plessis, 2012; Hornby, et al. 2007). This is problematic because it does not take other tenure arrangements into consideration. Several scholars (Du Plessis, 2012; Payne, 1997, 1998; Royston and Kihato, 2012) have agreed that land tenure should be viewed as a continuum, where on the

far side of the continuum, one finds informal land rights, which are insecure, and ideally, a more secure form of tenure is formal and encapsulated in registered freehold tenure. Figure 2.2 below shows the tenure continuum.
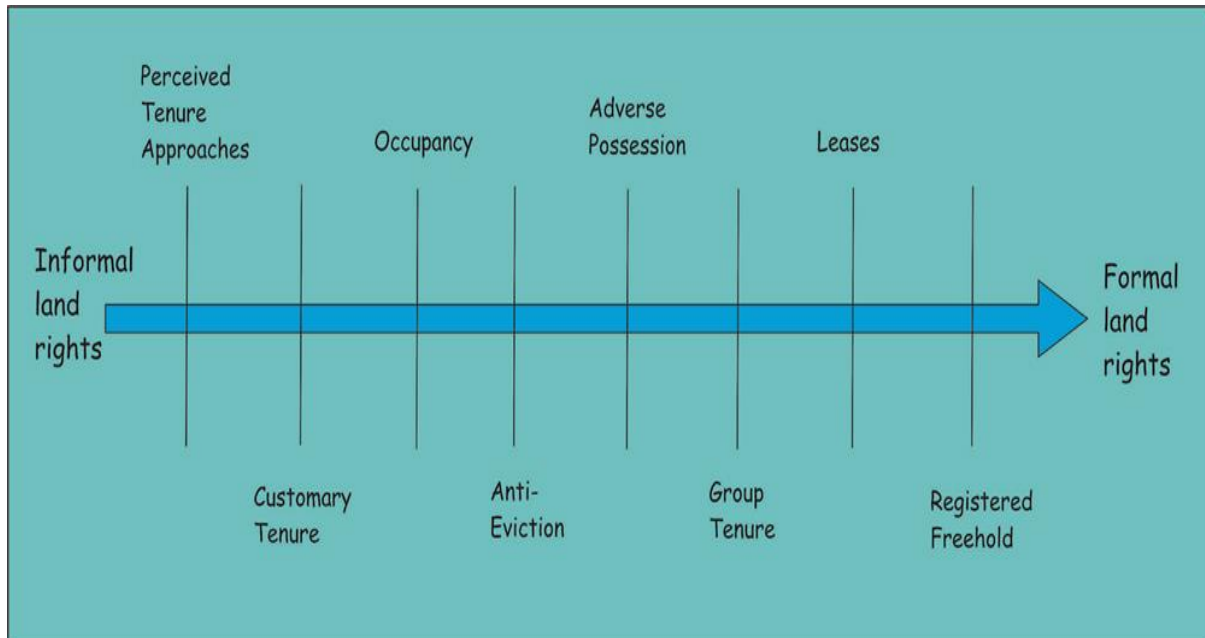
Figure 1: Tenure Continuum:
Source UN- HABITAT (2008, p. 8)

Another important implication is the evolution of rules. Rules are not static and they change over time. According to Ostrom (2013), as an evolutionary process there must be a generation of new alternatives, selection of new and old combinations of structural attributes, and retention of those combinations of attributes that are successful in particular situations. Hornby, et al. (2017) has already shown that tenure arrangements along the continuum can move towards formality or informality. While formal rules might be reformed overtime, this might take considerable time as they are normally prescribed by a national government, not locally generated rules (Ostrom, 2013). According to North (1995), while formal rules can be changed overnight, the informal rules change only gradually. This is because informal norms provide legitimacy to any set of formal rules. This also plays out where the majority of transactions and myriad of relationships in South Africa's mostly working class environments, and informal rules and sometimes inherited traditional hierarchies are brought into urban spaces (Mamdani, 1996). These practices are common among poorer urban residents, with Legal Entity Assessment Project (LEAP, 2005) referring to them as neo-customary practices.

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Lastly, Li (2009) reminds us that there are rules designed to either 'let live' or 'let die'. Depending on whose interests these rules are designed to serve, Marx's PA has shown that the capitalist system designs the 'bloody legislation' to ensure that extraction, exclusion and separation takes place. While this might be directly related to a formalised system such as the constitution, these rules favour particular political and economic interests. In the context of land tenure, the fact remains that a certain group of mostly poor 'surplus' population are locked out of the formal system of rules which works for few (Bhan, 2016). Taking from Li's analysis, one can argue that while formal rules are designed for letting live and while 'informal' rules are locally generated, they are ignored or dismissed as the 'surplus' population is let die. Even when one considers urban land markets which happen outside the ambits of the 'formal' markets system, little recognition is given to rules which govern informal land markets. Inasmuch as formal and informal markets exist alongside one another, Chakrabarti and Thakur (2010, p. 417) the informal sector is rendered inferior as a third world representation and ideally ought to be truncated in scope and size and even ultimately eradicated; yet, what is perceived as the informal sector continues to grow through its connection with the circuits of global capital.

2.7 Urban Land Governance and Water Services in South Africa: Towards a Governance Theory

Having presented debates around Marx's PA and the counter arguments which are largely informed by neo-liberal understanding, this section seeks to provide a working definition of governance. Governance as a system is influenced in one way or another by the broad debates presented in the earlier sections. Governance is a highly contested concept and this study will only provide a working understanding. It is generally accepted that the concept is complex or even a heterogeneous phenomenon which can be observed across a variety of different dimensions, levels, territories, institutions and policies (Bang and Esmark, 2013).

The process if governance refers to a much larger universe of discourse both inside and outside formal governmental units, not merely what proceeds within the walls of a particular unit (Ostrom, 1993). Ostrom (2010) argues that in governance, there is a need to confront complexity. This might require multi-tier or polycentric governance systems rather than reliance on only a single type or level of governance. Dismissing the Hardin's TOC and Prisoner's Dilemma, Ostrom (2010) insists that a key to effective governance lies in the relationships among actors who have a stake in the governance of the resource and not just one level of government or private ownership. Ostrom (2013) views governance as operating

on multiple levels as pointed out in the section on informality. She identifies seven types of rules which operate on all levels of governance:

- Boundary rules affect which participants can enter or leave (and under what conditions) a particular situation.

- Position rules create the positions (such as a member if a committee, judge etc.)

- Choice rules assign action sets to positions filed by participants.

- Aggregation rules affect the level of control that individuals' or participants exercise at a linkage within or across situations.

- Information rules affect the level of information available to participants about actions and the link between actions and outcome linkages.

- Payoff rules affect the benefits and costs assigned to participants in light of the outcomes achieved and the actions chosen by the participant.

- Scope rules affect which outcomes may, must or must not be affected within a situation (Ostrom, 2013).

Rules as shown above, can determine who is in and who is out when it comes to accessing resources. As shown in the earlier sections, it is usually the rules-in-use rather than rules-in-book which is important (Ostrom, 2013). This is despite ruling regimes which tend to develop rules which favour exclusion and ignore locally developed rules in favour of 'formal' rules. In addition, most regimes wrestle with a more complex sense of 'leadership' that involves of balance between contradictory agendas (productivity, equity) and an obligation to make live that has become integral to the modern sense of what it means to govern (Li, 2009). In such situations rules are likely to be not clear cut, they tend to straddle and oscillate between market-based policies and human rights agenda, within the strictures of a neo-liberal framework (Langford, 2014). Ostrom's (2013) concept of governance is a clear shift from the more 'formal', 'legalistic' and largely top-to-bottom understanding championed by mostly neo-liberal perceptions of the world.

Current neo-liberal understanding of governance has been championed by Bretton Wood institutions such as the World Bank. Simply put, governance involves the exercise of political, economic, administrative and legal authority in the management of a nation's affairs (World Bank, 1994). Bang and Esmark (2013) consider governance to be an empirically

observable politico-administrative way of making public policy-making reforming and organising. In addition to politico-administrative approach, there is need to recognise that governance also involves quality and performance of government and public administration (Batley and Larbi, 2004). Kooiman (2003) however cautions that governance is not just linear, but it is highly dynamic and a nonlinear nature of governance, society, and governability.

Good governance according to Bang and Esmark (2013) is a set of guidelines for the politico-administrative practice which is evident in three ways: how to conduct public governance; a political agenda and lastly particular stances and notions about organisational reform of the public sector. For Cloete and Auriacombe (2007, p. 195), good governance is conceptualised as the achievement by a democratic government of the most appropriate developmental policy objectives to develop its society in a sustainable manner. Public governance, policy and organisation are the main tenets of good governance (Bang and Esmark, 2013). Cloete and Auriacombe (2007) further argue that transparency is key to good governance. Transparency is regarded as 'the ability of the citizen to obtain information in the possession of the state' (Martin and Feldman, 1998, p. 1) and this can be achieved through democratic participation (Cloete and Auriacombe, 2007). Cloete and Auriacombe (2007) are however quick to point out that inasmuch as transparency is important, it does not immediately translate to accountability. The fact remains that transparency both at political and administrative level, with adequate support mechanisms, lead to good governance. Collapse of good governance at all levels has been blamed on the socio-economic failure in many developing countries (Lall et al, 2017).

Patel (2016, p. 103) argues that a legal tenure system is both a governing technique of rule that makes explicit the legal rights and responsibilities between citizen and state in the exercise of property rights, and a process through which citizens come to learn of, engage with and understand aspects of the state. According to McGaffin and Kihato (2013), well-located land can be subject to unfair bidding power with certain forces having unfair advantage, resulting in exclusion and poverty. It is for this reason that governance institutions, both state and community-based, must intervene to address the skewed power relations. According to Napier (2013), national governments tend to see land as a national resource to be planned, regulated and allocated by the state on a broadly equitable basis. However the reality on the ground is more complex, with registered and unregistered land existing in the markets. UN-Habitat (2003) argues that in many developing countries the legal

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and regulatory frameworks, particularly with regard to land markets and land acquisition (including land registry, land valuation, and legal instruments to facilitate land acquisition), are ineffective. Poor land governance has resulted in the exponential growth of informal settlements in many cities in developing nations. "Slums must be seen as the result of a failure of housing policies, laws and delivery systems, as well as of national and urban policies" (UN-Habitat, 2003, p. 4).

Governance is key to dealing with urban land. According to Berrisford (2013), in order to have a vibrant and liveable city, there needs to be a combination of the state (national, subnational or local), individual investment and judicious exercise of state regulatory power and state investment. Additionally, qualities of urbanity rely on the balancing of individual interests and this is achieved by rules and norms (ibid, 2013). Berrisford suggests a virtuous cycle of urban land governance:
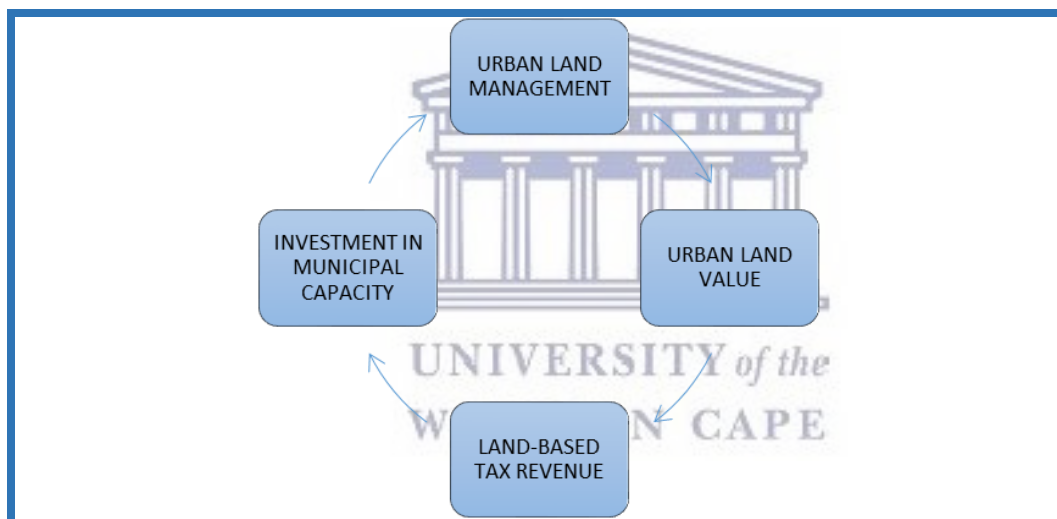
Figure 2: Virtuous Cycle of Urban Land Governance
Source: Berrisford (2013)

For Berrisford (2013), in the virtuous cycle of urban land governance shown above, the state is responsible for establishing the institutions and rules (regulatory framework) to manage and administer land tenure, land use and land development. While this model is celebrated by policy-makers there are serious threats which affect its full functionality. One of these threats according to Berrisford (2013) is that regulatory frameworks for urban land governance prescribe standards for legal procedures, for land tenure certainty, for physical construction, and for land use that impose costs that are not affordable for most citizens. In some instances, state institutions - at all levels - lack the political confidence and capacity to apply these prescribed standards to the wealthy and powerful, who tend to be the only people

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materially in a position to comply with them. There is widespread non-compliance, where it manifests itself in poor building quality and relative scarcity of secure, formal land tenure rights. Selective and punitive application of standards where they are applied, result in the poor being vulnerable and marginalised. In addition, where land value is created through the application of the regulatory framework, it arises from the scarcity value created by rules that apply to a limited part of the city and which exclude the majority of both citizens and properties. Consequently the price of land and land development opportunities in those areas rises rapidly.

One of the points Berrisford (2013) raises which is key to this study, is that most land in the city is not registered in official land registration systems, does not have official building permission, and falls instead under a range of more localised land governance systems in which the State invariably plays a limited role and in which community or customary leaders exercise *de facto* power. The capacity of the State to levy property-based taxes or indeed any taxes at all is limited. There is thus no revenue-based incentive for the state to extend the application of the land governance regulatory framework since doing so is unlikely to give rise to material improvement in the public fiscus. Instead, such application is more likely to generate community hostility, incur the anger of local politicians and aggravate officials' own and already overwhelming experience of conflict and frustration (Berrisford, 2013). UN Habitat (2006) and other institutions such as the World Bank, also point out that governance is weak in most urban cities. This, for Berrisford (2013), constitutes a threat in some cases where, even in instances where there is effective collection of property-based revenue, the weak, often corrupted, governance structures are under immense pressure to direct those funds towards meeting a host of needs other than re-investment in the management of the urban environment.

In the context of water resources, poor governance, as pointed out earlier, results in both direct and indirect ramifications in services such as water. According to Goldin (2010) poor governance has resulted to lack of or skewed access to water. For Goldin (2010) despite strides made to improve water governance such as policy and legislative frameworks, establishment of water management areas (governed by Catchment Management Agencies), access to water remains racially and class skewed. Water governance in South Africa is guided by three pillars as outlined in the National Water Act (NWA; Act 36 of 1998). These pillars are: social equity, economic efficiencies and environmental sustainability (Pietersen.,

Beekman., Holland and Adams, 2012). Key principles which guide water law in South Africa are:

- All water resources are common to all (water considered as a public asset), and are subject to national control (trusteeship vested in the state).

- All water has a consistent status in law, irrespective of where (and where in the water cycle; includes groundwater) it occurs (Pietersen, et al. 2012, p. 454).

Boelens (2008) suggests that contrary to depoliticized assumptions, water rights are generated, constituted and distributed according to the prevailing class, gender (Goldin, et al. 2016) and ethnic relations and contradictions in both intra-community and wider socio-political arenas. While New Institutional Economics (NIE) has demonstrated institutions, both formal and formal are key to transactions in economics (North, 1995), it is how these institutions are produced and reproduced to serve particular interests, and exclude others (Marx, 1867; Sassen, 2010) on the basis of class, race or gender. According to Boelens, (2008), since water rights are fiercely challenged by supra-local agents with material and/or political interests, the struggle for water rights increasingly entails a battle in which both local and larger national, regional, and international forces enter the community. In the struggle over water, infrastructure, and other material resources, at a second abstraction level, there is the contest over the formulation and contents of water rights and operational norms (Rules). The third level deals with the struggle over decision-making authority and the legitimacy of rights systems (Regulatory Control). The fourth level analyses the diverging discourses that defend or challenge particular water policies, normative constructs and water hierarchies (Regimes of Representation) (Boelens, 2008).

As shown from the arguments provided above, the neo-liberal understanding tends to champion individual ownership, legal (formal), economic benefits and the government as central to conducting good governance. There is little emphasis on locally developed processes and rules governance. Scholarship into governance has therefore mainly been echoing the neo-liberal narrative (Bang and Esmark, 2013; World Bank, 2017; UN-Habitat, 2006). This understanding is reductionist and fails to acknowledge the possibility of governance of common-pool resources.

This study adopts Ostrom's (2010, 2013) view that governance lies in the relationships among actors who have a stake in the governance of the resource and not just one level of

government or private ownership. In addition, Olowu and Sako (2002, p. 37) argue that governance is 'a system of values, policies and institutions by which a society manages its economic, political and social affairs through interaction within and among the state, civil society and private sector'. Olowu and Sako builds on Ostrom's work around governance. This researcher proposes that governance should involve institutions, relationships and rules that participants and related networks develop in order successfully control resources for their benefit. In the context of urban land, these should include so-called 'informal' rules and tenure arrangements not recognised by the government, as well as access to water points, particularly in households of varying tenure arrangements, including informal settlements. Participatory approaches to water resource management are encapsulated in the Dublin Principles (Brown, 2010) and there is a need for all stakeholders to be actively involved in water governance (Goldin, 2010).

2.8 Situating Slum Eradication and Evictions Versus Rights to the City Debate

Closely related to governance is how authorities react to what they deem 'illegal' and 'informal', especially in the context of 'surplus population'. Earlier Li (2009) argued that some are let live while some are let die through policies adopted by governing structures. On the other hand, the so-called surplus population has demanded space and access to resources using different means. One of these is through the concept of 'rights to the city'.

The rights to the city discourse is accredited to Henri Lefebvre, a French radical thinker and revolutionary principally (Purcell, 2014). Inasmuch as other critics have tended to label his work as socialism, Purcell argues that Lefebvre's work is "a Marxism that rejects the state, that maintains itself as an open and evolving project, and that comes to understand itself as more than anything a democratic project, as a struggle by people to shake off the control of capital and the state in order to manage their affairs for themselves". Lefebvre sees the right to the city as a struggle to "de-alienate" urban space, to reintegrate it into the web of social connections. He argues that capitalist industrialisation imposes itself on the city by asserting the primacy of exchange value, including space (Purcell, 2014). To counter this process, Lefebvre argued for a new right to the city that 'manifests itself as a superior form of rights: right to freedom, to individualisation in socialisation, to habit and to inhabit. The right to the oeuvre, to participation and appropriation (clearly distinct from the right to property), are implied in the right to the city' (Lefebvre, 1968, p. 174)). His argument is that capitalist systems commodify city space, giving property owners rights to spaces which otherwise should be shared.

Under capitalism the space of the city is carved up into isolated segments by the system of private property. The system is hegemonic, and property rights dominate all other claims to the space of the city. The production of space is thus driven by the needs of property owners. Capitalism then manages that commodified space in a particular way. It segregates uses into discrete zones by producing detailed plans for land use (Lefebvre, 1974, p. 317).

The right to the city, according to Lefebvre, enfranchises citizens to participate in the use and production of all urban space (Brown 2013). According to Marx's PA, earlier separation or exclusion of the ordinary people from the means of production, seems to play out in urban spaces. It is a 'cry and a demand' by urban insurgents, marginalised masses and malcontents, to be accommodated in city life, to share the spoils of the city and to participate in the making and remaking of the urban form (Swilling, 2008, 2014, p. 178, Mitchell, 2003). Fernandes (2007, p. 208) defines the 'right to the city' as 'the right of all city dwellers to fully enjoy urban life with all its services and advantages - the right to habitation - as well as taking direct part in the management of cities - the right to participation'. Started in Brazil and spread across the world: 'there are ongoing efforts to concretize a normative regime' for a right to the city that would 'enshrine the legal entitlements of all city inhabitants' (Fajemirokun, 2010). "Driven toward the cities by brutal and irresistible forces, the poor eagerly asserted their 'right to the city', even if that meant only a hovel on its periphery" (Davis, 2006, p. 55). For Purcell (2014), the overall goal of rights to the city discourse is to encourage urban policies that promote justice, sustainability, and inclusion in cities.

Critics such as Brown (2013) would like to argue that Lefebvre's original thesis is now distorted and the discourse has somewhat degenerated to meaningless postulations. One should ask pertinent questions, such as; 'whose rights and what rights' (Brown, 2013). Pieterse (2014, p. 175) argues that cities are where socio-economic rights are enacted, asserted, struggled for, attained and denied. Pieterse's assertion reveals the complex forces, where access to socio-economic rights goes beyond simple services delivery, but cities become sites of contestation and contradictions. This seems to be in line with Lefebre's imagination of a good city as summarised in this statement:

The right to the city ... should … make more practical the rights of the citizen as an urban dweller … and user of multiple services. It would affirm, on the one hand, the right to users to make known their ideas on the space and time of their activities in the urban area; it

would also cover the right to the use of the centre, a privileged place, instead of being dispersed and stuck into ghettos (Amin and Thrift, 2002, p. 142).

In Purcell's view, most agree that it is the everyday experience of inhabiting the city that entitles one to a right to the city, rather than one's nation-state citizenship. "Currently, in almost every city in the world, the property rights of owners outweigh the use rights of inhabitants, and the exchange value of property determines how it is used much more so than its use value" (Purcell, 2014, p. 142). In this way, right to the city is viewed as a struggle to augment the rights of urban inhabitants against the property rights of owners (Purcell, 2014). No wonder Lefebvre clarifies that the right to the city cannot be a simple visiting right or as return to traditional cities. It is a right to urban life (Lefebvre, 1996).

In Brazil, as pointed out earlier, rights to the city led to the introduction of the City Statute, which regulates urban development including integration of Brazil's famous favelas into the formal economy. The law also establishes that the development of urban land (whether in the formal sector or in the favelas) should be determined not only by its exchange value, but also by the "social use value" of the land and its surrounding area (Fernandes, 2006). The implication is that, the law must serve a very complex social function of moving beyond the rights of property owners, and include the social needs of the poor.

In the process of demanding the 'rights to the city' poor people have resorted to claiming their land and constructing their own housing. This has resulted in the unprecedented increase of informal settlements. The state has responded by forcibly evicting and destroying informal settlements, typical with brutal force used to separate peasants from land in order to proletarise them according to Marx's PA (Marx, 1996). Violence in primitive accumulation (PA), currently plays out during evictions of vulnerable and desperate urban population. In this case, brutal force is used accompanied by 'bloody legislation' to keep surplus population out of the cities. In the South African context, the apartheid regime kept urbanisation in check through its repressive laws and following the subsequent fall of the regime, unprecedented migration from mostly rural homelands to cities took place. These newcomers into the cities, normally well-organised by civil society groups, were well aware of their 'rights to the city'. The courts have attempted to protect the vulnerable people through ruling against the evictions, as demonstrated by the Constitutional Court of South rulings (SERI, 2013, 2017). In other circumstances, the same courts have been used to legalise the evictions, where the court itself orders the eviction (Bhan, 2016). In some case

the courts have ended up intervening in political processes or governance failures, resulting in what Bhan describes as 'judicialisation of politics' (Bhan, 2016, p. 33).

Key to evictions is the issues of legitimacy. According to Bhan (2016), legitimacy can be seen as a marker of the probability to achieving particular outcomes, such as sure tenure, basic services (e.g. water and sanitation) capital and resources. This lies in the governance concept discussed earlier as well letting live and letting die of the surplus population (Li, 2009).

2.9 Conclusion

This chapter started with Kinnersley's (1988) quote, presenting a somewhat complex world view of land tenure and while for him it is easier to deal with land because it can either be held in 'common' or private ownership, on the other hand because water flows from one place to the next, it is near impossible. While this seems true at first value, Kinnersley seems to gloss over serious debates on land tenure. He raises crucial governance issues as well, and his view that water cannot be privatised might have been true at that time, but recent decades have shown that the opposite is true.

This chapter set out present key debates on urban land tenure using Marx's PA lens on one hand, and neo-liberal discourse on the other (Hardin's TOC). The process of appropriation-displacement-exploitation-accumulation replayed in the post-colonial states of the global South where the surplus population is let die (Li, 2009). Enclosures, according to Hardin's TOC are key to common-pool resources as man is helpless and likely to overuse to the detriment of everyone else. de Soto (2000, 1989) and others champion the concept of land titling and private ownership. On the other hand Ostrom (1993, 2010, 2013) and Cousins (2005) argue that it is possible to successfully govern common pool resources such as land and water. This raised further debates on what is deemed 'formal' or 'informal', with North (1995) demonstrating that there is a need to understand 'rules-in-use' and 'rules-on-the-book'. In this sense, while formal institutions appear to be made up of formal and legalistic rules, it is usually the locally produced rules that are effective. In addition, its drive towards 'formal' tenure at the expense of other forms of tenure is highly debatable. In the case of land tenure, 'social tenures' (Hornby, et al. 2017) cannot be related to the side lines. In addition, the polarisation of land tenure arrangements as on the tenure continuum, is flawed as there is evidence that some forms of 'formal' tenure have moved towards 'informal' arrangements, and vice versa, with little clarity in some cases (Hornby, et al. 2017). While the surplus

population fights for survival through various social movements such as the 'rights to the city', much of their work has been largely putting up 'big' shows with little effect on the ground.

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CHAPTER THREE: RESEARCHING URBAN LAND TENURE, TENANCY AND WATER AND SANITATION

3.1 Introduction

Chapter Two provided a conceptual framework to the study and some of the key scholarly debates around tenure, tenancy and water services delivery. Although current tenure debates are deeply embedded neo-liberal policies (de Soto, 1989, 2000), Marx's PA demonstrated that current tenure, water and sanitation services can be explained within the lens of dispossession, separation and exclusion. At the same time, there is need to recognise that South Africa's past colonial and apartheid system underlies the process of dispossession, separation, exclusion and accumulation. The legislative framework developed during the same period reveals a direct relationship between land and water. Attempting to unpack the complex relationship between urban land tenure and water services in the post-apartheid milieu called for a research approach which could straddle these key sectors without falling into the trap of reductionism. As the conceptual framework revealed, a methodology was needed to unpack a scenario where contrasting policy and legislative framework operate within the strictures of neo-liberalism (Langford, 2014). A mixed methods approach was chosen to unpack how the current approaches in both urban land and basic services fall short of addressing the needs of the poor. This chapter will start by briefly outlining both quantitative and qualitative research, shedding light on their philosophical underpinnings as well as their strengths and limitations. What follows is a detailed mixed methods approach, done by giving the overview of the approach, justifying its choice for this particular study. The section will end with a detailed research procedure followed by this candidate in order to meet the study's objectives and provide recommendations.

3.2.1 Methodological Underpinnings to Research

Research refers to the systematic process of enquiry to create new knowledge (Scott, 2011). In other words, it is an organised, pre-emptive and deliberate process to explain specific phenomena. Creswell (2003) identifies two ways of knowing; the positivist epistemological perspective and the constructivist epistemological perspective. Different philosophical underpinnings inform both quantitative and qualitative research. In social science, proponents of quantitative methodologies advanced philosophies of realism, objectivity, privileged causal explanation and universal truth, while advocates of qualitative methodologies underscored the interpretive, value-laden, contextual and contingent nature of social knowledge (Greene, et al. 2011, p. 260). Gilbert (2008) states that quantitative

research aims to measure using numbers and may involve (but is not limited to) surveys, in which many respondents are asked questions and their answers are averaged and other statistics calculated or research based on administrative data. On the other hand, qualitative research most often describes scenes, gathers data through interviews or analyses the meaning of documents (Gilbert, 2008). In qualitative research, one creates accounts, descriptions or interpretations without necessarily depending on numerical data. The choice of the research design of this study depended on understanding these different approaches in social science.

3.2.2 The Research Design

Given the philosophical standpoint discussed above, it is important to select a relevant and appropriate research design. Put simply, a research design is the overall plan or framework which guides the research process. The plan provides details on how, when and where data is to be collected and also how it is to be analysed (Parahoo (1997:142). Furthermore, Verhoeven (2011, p. 40) adds that: research design is the conceptual structure that articulates the type of data required, the methods to be used to collect and analyse the data, and how these processes will link in answering the research questions. Yin (1994, 2003) argues that an appropriate research design is fundamental in ensuring a logical flow from the research objectives, to guide the data collection and ultimately lead to its conclusions (Yin, 1994). The research design links and provides the purpose of the inquiry which includes: exploration; description; explanation; prediction; evaluation and history (Verhoeven, 2011, p. 40).

The appropriateness of the research strategy depended on this candidate's ontological assumptions: that social reality can be understood from an external point of view (Maree, 2016). Additionally, this also depended on the availability of resources for the research. The choice of the research strategy was also influenced by fact that the study was conceptualised as part of a larger Water Research Commission-Funded Project (NO: K5/2358) **Land Tenure, Tenancy and Water Services Delivery in South Africa.** The overall aim of the project was:

To develop a clear understanding of challenges to water and sanitation services delivery in the context of rapid urbanisation and, thereby, develop a practical framework for assessing options for enhancing security of access to water and sanitation services under

different urban and rural land tenure and tenancy settings in low and middle-income residential areas of South Africa.

Inasmuch as Ph.D. research was based on the project, this study mainly focused on urban settings while the project covered both urban and rural settings across South Africa. Additionally, objectives of the study were developed to attempt to unravel complex tenure arrangements in one specific metropolitan area. In order to answer the main research question: *In the context of rapid urbanisation in post-apartheid South Africa, what are the processes through which the poor access urban land, hold and pass it or transact? How does this affect access to basic services such as water and sanitation?,* points this candidate to first establish any linkages between urban land tenure (tenancy) and water services delivery, then, if there are any, further examine the nature of such linkages in the overall water services delivery system. Since there is paucity of data in this subject, one finds it difficult to employ history, evaluation, prediction, explanation or descriptive approaches. In order to establish if there are any linkages, the study uses the explorative enquiry.

Household surveys, semi-structured interviews and focus group discussions were used in a mixed method design which was deemed the most suitable for this exploratory study. To elicit data across the different sites chosen across the City of Cape Town, different approaches were necessary to reach both the households and key informants and decision makers as well as city officials (and provincial authorities). At the household level, household surveys were used to elicit mostly quantitative data, and to a certain extent qualitative data. To some extent, this gave a clear picture on different tenure profiles as well as levels of services delivery. In addition to this, in-depth interviews were conducted with key informants (provincial, city officials) and representatives of civil society to construct the wider service provision. The purpose of the key informants was to elicit different views of various stakeholders on urban land tenure and water services delivery. Focus group discussions also provided different perspectives on community level around tenure (and tenancy) and water services. Each of these various methods is discussed later in the chapter.

3.2.3 The Rationale Behind Choosing Mixed Methods

In order to answer the central research question: In the context of rapid urbanisation in post-apartheid South Africa, what are the processes through which the poor access urban land, hold and pass it or transact? How does this affect access to basic services such as water and sanitation? This researcher used the mixed methods approach. This study differed with

the project in the choice of the methodology as this researcher deemed it important to zoom into the one metropolitan area to provide an in-depth analysis.

Simply put, the mixed methods approach involves the use of two or more methods in a single study or research project. The mixed methods approach is often defined as a procedure for collecting, analysing and combining both quantitative and qualitative data at some stage of the research process within a single study or a series of studies to understand a research problem more completely (Creswell and Plano Clark, 2011, cited in Ivankova, Creswell and Clark, 2016, p. 313). This approach involves using methods that gather and represent human phenomena with numbers, along with methods that gather and represent human phenomena with words (Greene, et al. 1989). In this approach, quantitative and qualitative data or the findings are explicitly brought together through either merging, connecting and/or embedding in at least one stage within the study (Ivankova, 2016, p. 314). Inasmuch as many authors mixed methods, authors simply refer to the approach as bringing together qualitative and quantitative methods (Creswell, 2003, Tashakkori and Teddlie, 2003). Alexander, et al. (2008) warns that the mixed methods approach goes beyond taking 'a bit of this and a bit of that to form a complete picture' (Pawson, 1995, p. 9). For the purposes of this study, this researcher decided to go beyond simply providing descriptive narratives about the tenure and tenancy, but examined how this affects the level and quality of water services. Therefore, the mixed methods approach encompasses a large range of work using more than one method (Alexander, et al. 2008). For Brannen (2005), mixed methods is a multi-strategy research approach implying the application of a number of different research strategies related to a complex range of research questions and a complex research design. In Chapter One of this study this candidate indicated that the majority of previous studies either provide tenure issues on their own (Kingwill, 2014) or water services delivery (Nleya, 2011). Straddling both already well-researched and successfully established research areas, and combining both requires more than one research method.

Another consideration in choosing the mixed methods approach was how workable the study was going to be. During the initial stages of the project, there was little progress in terms of agreeing on suitable methodology. Given the experience of the previous project (Social Protests and Water Services Delivery), researchers had learnt that approaching similar studies armed with one clear-cut method does not do justice. A need to leave room for flexibility in terms of adopting other methods during rapid appraisals was realised. Similarly, mixed methods were chosen with the view that it accords this candidate the pragmatic

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approach in understanding the link between tenure (and tenancy) and water services delivery. Seale (1999) encourages the need to accept pragmatism in choosing the appropriate method for addressing specific research questions, rather than focusing too much on the underlying philosophical debates.

The philosophical underpinnings of the mixed methods approach are found in post-positivism (quantitative research) and constructivism (qualitative research). More directly, pragmatism has been considered as the major philosophical foundation for justifying the combination of different methods within study (Ivankova, et al. 2016, p. 312). Pragmatists believe that the truth is "what works" best for understanding a particular research problem (Patton, 2014). Additionally, the primary concern of a pragmatist is more to open up the world to social enquiry and hence to be less purist in terms of methods and preconceptions. This means that these researchers are oriented to the production of research results such that they seek to link to practical and policy ends (Hammersley, 2000). Pragmatism attempts to demonstrate that both quantitative and qualitative research methods are compatible, have similarities in fundamental values (Ivankova, et al. 2016, p. 15) as well as complement each other, which allows them to be used in a single study. In the mixed methods approach, statistical and narrative data are collected, analysed and conclusions are drawn from the same research question. In this approach, this candidate often constructs knowledge about real-world issues based on the philosophy of pragmatism that places more emphasis on finding the answers to research questions than on the methods used (Patton, 2014).

Attempting to develop a clear understanding in urban land tenure, tenancy and water and sanitation services is a complex exercise. No wonder Sammons, et al. (2005, p. 221) justifies the use of mixed methods in situations where 'complex and pluralistic social contexts demand analysis that is informed by multiple and diverse perspectives'. This suggests that inferences made from this study are generally, strengthened by the use of mixed methods (Brannen, 2005). Furthermore, a pragmatic rationale for mixed methods research may relate to availability of resources to researchers (Brannen, 2005). Resources may include finances, time and human resources, and in the context of this study, this candidate had very limited access to conduct the study. Subsequently, the mixed methods approach became a more reasonable choice in order to answer the research questions.

Greene, et al. (1989) provide a typology of the purposes to which researchers may put mixed methods to use, which include: triangulation, complementarity, development, initiation

and expansion. Key to contemporary research, triangulation involves measuring a phenomenon in two or three different ways in order to generate a more accurate measure of it (Bryman, 2004; Alexander, et al. 2008). Put simply, triangulation enables an understanding of a social phenomenon from different vantage points (Denzin, 1970, cited in Brannen, 2005). On the other hand, complementarity to mixed methods, this means that different dimensions of a phenomenon are revealed and hence enriches understandings of the multifaceted, complex nature of the social world (Greene, et al. 1989, Alexander, et al. 2008). Furthermore, mixed methods is used to develop more accurate research instruments; to initiate further study and lastly to broaden and deepen their enquiry using different methods for different components of the study (Greene, et al. 1989). Key to the mixed methods approach is its flexibility and allowance for contextual interpretations (Ivankova, et al. 2016, p. 312). Quantitative and qualitative strategies are combined within one study, where numeric and textual data is collected at the same time or in sequence, and choosing variables and units of analysis that are most appropriate for addressing the study's research purpose and finding answers to the research questions (Teddlie and Tashakkori, 2009).

The mixed methods approach is valuable in that it helps to researchers to gain an in-depth understanding of trends and personal perspectives, explaining the relationship among variables and how their linkage works, generating and testing the theories, and developing new measurement instruments. A more elaborate approach to the research problem is achieved when both quantitative and qualitative methods are combined. Additionally, the mixed methods approach produces a deeper understanding of a phenomenon, identifying and taking practical action to improve a practical problem, evaluating both the development and outcomes of a programme, or advancing social justice concerns based on multiple perspectives. This study aims to develop insights into the linkages between urban land tenure and tenancy, and water services delivery in answering the broad research question: is there any link between urban land tenure, tenancy and water services delivery in South Africa.

A mixed methods approach becomes valuable when conducting enquiry into social justice, particularly with respect to invisible groups and those who are difficult to reach via large scale surveys (Mertens, 1998). This study attempts to address access to water and sanitation services to different tenure profiles in lower working classes in Cape Town, South Africa. Given the invisibility of other urban residents (Scott, 2011), such as informal settlement residents as well as back-yard dwellers, the mixed methods approach was valuable to develop a clear understanding of the relationship between land tenure, tenancy and water

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and sanitation services development planning and delivery in the context of rapid urbanisation in post-apartheid South Africa. Most mixed methods scholars emphasise the need to clarify at which stage the mixing of the methods will take place (Greene, et al. 1989), whether it's at the philosophical stage, at analysis stage or throughout the research process. These strategies will be further clarified under the procedures to mixed methods research section.

3.3 The Concurrent Triangulation Design

Mixed methods consist of various designs, namely: sequential design; explanatory sequential mixed methods design; exploratory sequential mixed methods design; convergent parallel mixed methods design/convergent parallel design; and advanced mixed methods designs (Ivankova, et al. 2016). The study aims to *develop a clear understanding of the relationship between land tenure systems, tenancy arrangements and water service development planning and delivery in the rapidly changing urban milieu in South Africa*. It seeks to unravel the complexities surrounding tenure, tenancy, water and sanitation services. This indicates that the most appropriate is convergent parallel design (also known as the concurrent triangulation design in an attempt). Figure 3 below shows the concurrent triangulation design according to Creswell and Plano Clark (2011). Unlike both the explanatory and exploratory sequential designs which involve different study components in steps over time (Ivankova, et al. 2016), this candidate uses both quantitative and qualitative methods to develop more complete and valid understanding of the phenomenon of interest (Ivankova, et al. 2016). Creswell and Plano Clark (2011) argue that this design is most suitable when a researcher wants to collect both types of data at the same time about a single study in order to merge different results
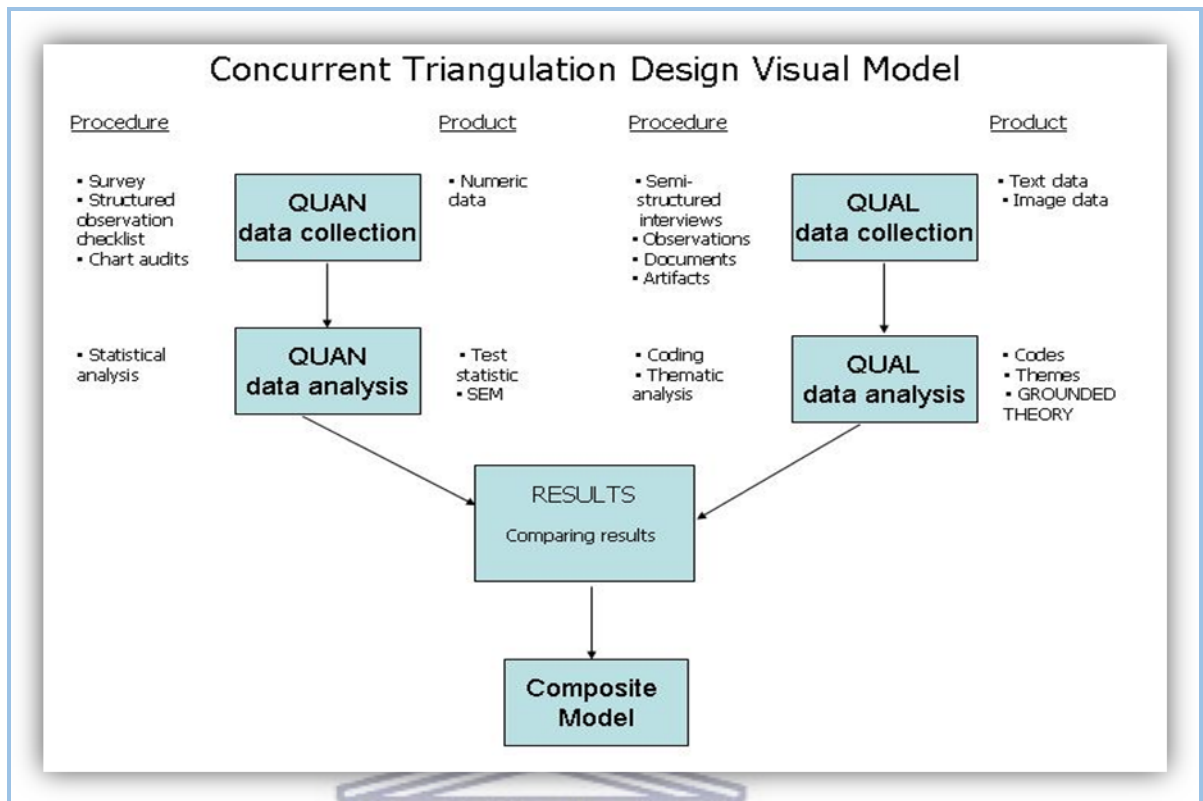
Figure 3: Convergent parallel mixed methods design
Source: Creswell and Plano Clark (2011)

To be able to conduct the parallel study, this candidate initially depended on the data which was supposed to be collected by the rest of the team in the project. Different teams were supposed to initially conduct field trips in the selected sites across the field between April 2014 and August, 2014. Data was then supposed to be analysed and reports written in September and October. Unfortunately several changes took place and other members of the team left. There was also a delay in the approval of the project's ethical clearance. After the ethical clearance of this study, this candidate approached local gate-keepers in the study sites. In attempt to keep in line with the convergent parallel mixed methods design, three research assistants were recruited to assist in the study. Training for the research assistants (who were both undergraduate students at the time) was conducted at the University of the Western Cape and Chris Hani High School in Khayelitsha over a period of two weeks. Weekdays after 16:00hrs and weekends were utilised because all team members were occupied during the course of the day. Figure 4 below shows the convergent parallel mixed methods used in the study.

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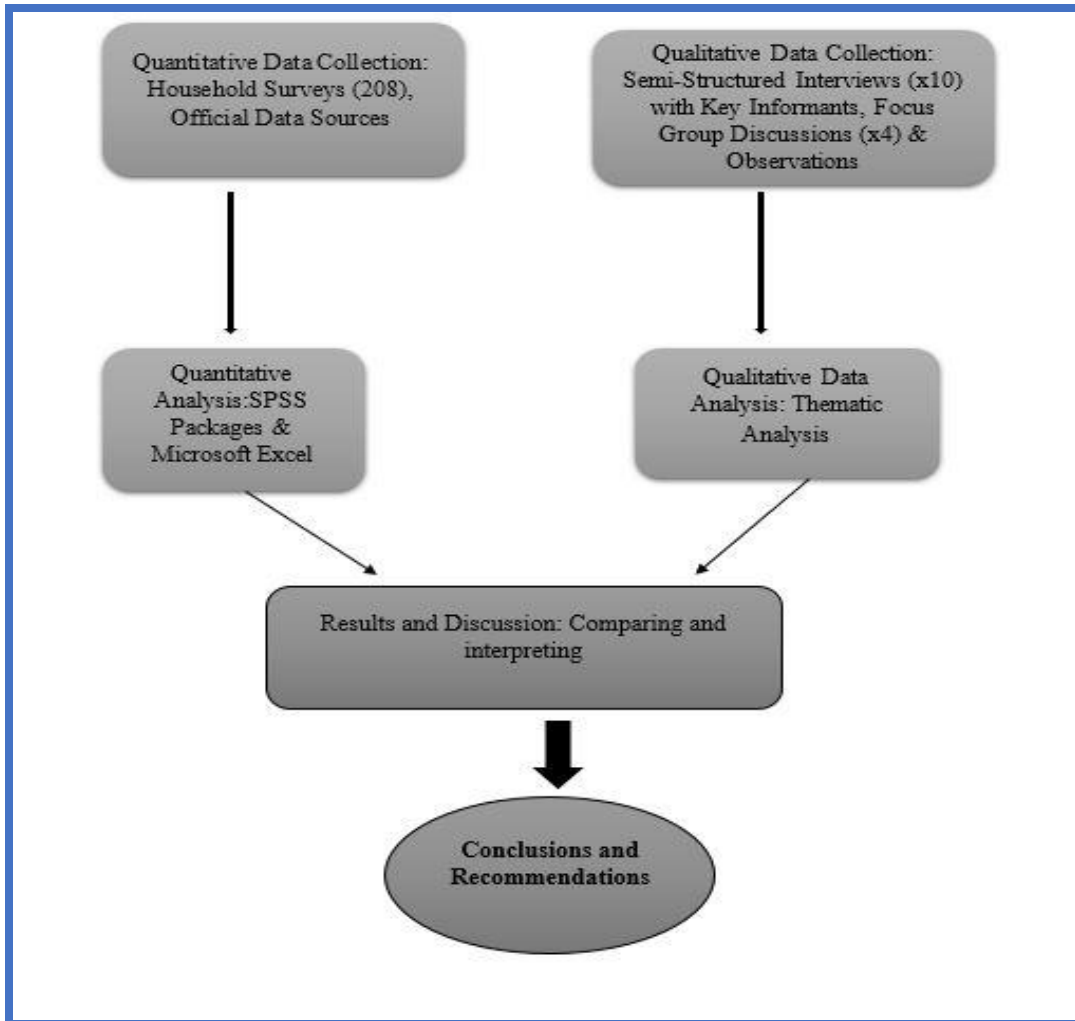
Figure 4: Convergent Parallel Mixed Methods Design for the study
Source: Author's perspective

3.4 Rationale for Choosing Research Location and Study Sites

Figure 5: Location of study sites

World-wide, water and sanitation has dominated development agenda in the recognition that success in providing quality services will subsequently impact positively on other areas of public health, poverty reduction, social and economic productivity and the general well-being of billions of people. Literature has shown that there are commendable gains in the provision of water and sanitation services, but huge backlogs remain, especially in sub-Saharan countries. This is despite that the fact that it is generally agreed that:

Clean water and sanitation are among the most powerful drivers for human development. They extend opportunity, enhance dignity and help create a virtuous cycle of improving health and rising wealth… "Not having access" to water and sanitation is a polite euphemism for a form of deprivation that threatens life, destroys opportunity and undermines human dignity. Being without access to water means that people resort to ditches, rivers and lakes polluted with human or animal excrement or used by animals. It also means not

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having sufficient water to meet even the most basic human needs (Salman and Mcnerney-Lankford, 2004, p. 5)

Most countries failed to meet water and sanitation- related targets set under the Millennium Development Goals. This prompted another post-2015 Development Agenda, which gave birth to yet another set of goals, the Sustainable Development Goals (Ndikumana and Pickbourn, 2017; Satterthwaite, 2014).

The South African context is slightly different. According to the MDG Country Report (2010), 93% of the total population had access to improved drinking water supply by the year 2010 and the country had surpassed the MDG of halving the proportion of people without sustainable water by 2005. However, sanitation targets still lag behind as the government has failed to meet its set targets. The Department of Human Settlements (DHS) lamented that despite these new targets, new challenges were faced, among them, the shift of functions, inadequate resources, lack of bulk and internal water infrastructure and sewerage reticulation infrastructure (DHS, 2012). Water and sanitation services became a complex issue with unprecedented rise of violent social protests since 2004, some citing lack of water and sanitation as one of their major grievances (Tapela, Ntwana and Sibanda, 2015).

The initial intention was to purposively select sites across the country's major metros, but due to limited resources the study settled on one metro. As discussed in the literature review (Section 2.5) measuring tenure is complex. There are many operational, methodological, conceptual and institutional complexities inherent in defining the indicators for tenure studies (Laksa and El-Mikawy 2009). Selecting a metro was based on the availability of different urban tenure (and tenancy) profiles, providing possible comparable linkages within one service area. In addition, this candidate considered a metro with a high rate of urbanisation, which brought challenges in planning and services provision. Being the second metro to experience rapid urbanisation (Stats SA, 2011), City of Cape Town provided a suitable study area. Furthermore, specific sites within the City of Cape Town were purposively selected using the section criteria in Table 2 below.

Table 2: Site Selection Criteria

BROAD CATEGORIES	CRITERIA	SIGNIFICANCE
Geographical typologies	• Settlements on servitude, private, state or municipal land • Settlement is considered an informal settlement • Settlement is not undergoing upgrading or reblocking • Settlement is considered urban	• Commonalities for comparability of investment trends by settlement typology • Heterogeneity for comparison by settlement typology to understand trends
Policy and legislative approach to WSA to settlement typologies	• Policy on provision of water and sanitation in informal settlements • No policy on the provision of water and sanitation to informal settlements • Presence or absence of informal settlement upgrading/reblocking programme • By-laws on illegal land occupation	• Policy and regulation on trends by WSAs regarding water and sanitation and investment in services in varied settlement and dwellings environments
Water and Sanitation	• Communal standpipes, yard taps and household taps in informal and formal settlements • Level and type of sanitation service: VIP, bucket system, waterborne system, shared water-borne system, pit latrine, chemical toilets • Unserviced areas	• Level of water and sanitation services in formal and informal dwellings

3.5 Detailed Research Methods
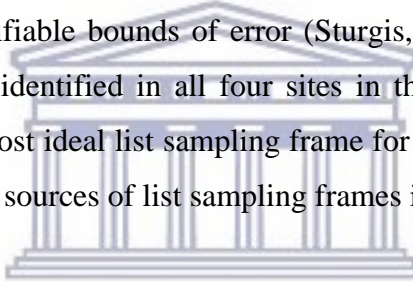
This chapter has thus far provided research into a background of different research approaches, justifying the choice of the research design, in line with the demands of the research question. The mixed methods approach was chosen as suitable in order to answer the main research question: In the context of rapid urbanisation in post-apartheid South Africa, what is the relationship between land tenure, tenancy and water and sanitation service delivery? The following section is crucial as it gives the actual details on the tools and approaches in field work.

3.5.1 Household survey

The most important part of this process was to develop a tool which not only addresses key objectives of the study, but one which can be used in different tenure (and tenancy) arrangements with little or no major changes. The survey questionnaire in Appendix 1 was constituted by adapting the African Centre for Citizenship and Democracy (ACCEDE) Citizenship Survey 2013. ACCEDE is a Centre based at the University of the Western Cape (School of Government). The initial intention was to

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use the household survey for the whole Water Research Commission-Funded Project, but later changes by the project leaders resulted in the tool not being used. The survey was tested in Nkanini (Khayelitsha) in May 2014 and the team (this candidate and assistants) realised that the tool was too long and spending an excess of two hours with respondents was not feasible. Changes were made to reduce time and also include informal tenants in informal settlements. The team also agreed to actually complete the survey by reading the questions to the respondents and writing down the responses.

When research is carried out, we are mostly interested in explaining phenomenon in a total population. Population is regarded as the totality of objects in the real world in which we are interested (Sturgis, 2008). Because populations are often extremely large, or even infinite, it is impossible to take measurements on every element in the population due to constraints in costs and practicability. Samples can be drawn from the populations and valid and reliable generalisations can be made in terms of the broader population within quantifiable bounds of error (Sturgis, 2008). A list sampling frame for each site had to be identified in all four sites in the city of Cape Town. Turner (2003) argues that the most ideal list sampling frame for a household survey is a newly completed census. Other sources of list sampling frames include:

- Civil register

- Register of utility connections (e.g. electricity connections)

- Register of telephone subscribers (most suitable in developed countries)

- Election Voters' Roll

- Community register

Selecting a sample for this study was very complex, reflecting the complexity and dynamism in the field of tenure and tenancy and services delivery. It is complex in the sense that informal settlements are normally unplanned and rapidly transforming in terms of the structures and ownership. A simple, random sample would have been preferred as it produces more valid and reliable results. It gives equal probability for all units of analysis to be selected. This candidate had to take into consideration various issues:

- Complex tenure (and tenancy) arrangements in South Africa (especially change of ownership of dwellings rife in informal settlements)

- Skewed structural planning prevalent in South African urban environments

- Unpredictable socio-political atmosphere

- Unreliable secondary data sources

- Rapid urbanisation

A proportion of 10% or more was selected from each study site. The sample frame was mainly from 2011 statistics. In presenting the data (Chapters Six and Seven), each study site was considered. In some cases, such as running the chi-square tests, the data from Nkanini and Mshini Wam are combined, as they are both regarded as informal settlements or unplanned settlements. On the other hand, Kensington and Langa are regarded as formal, hence for the sake of comparability the findings are presented as Nkanini-Mshini Wam, and Langa-Kensington. A total of 108 survey questionnaires were distributed in Nkanini-Mshini Wam, and 95 were completed whereas 12 were either incomplete or not returned. This represents 88.9% of the sample. In Langa-Kensington 115 survey questionnaires were distributed, and 113 were completed, representing 98.3% of the sample.

In order to overcome of the issues raised above the team decided to first identify structures and houses to be visited using aerial photographs. With the help of a planner, the team managed to access the most recent aerial photographs, then meticulously mark households to be visited. At each household each one of the team introduced themselves. This worked well in some households where they found someone present, but in instances where there was no-one they would simply move to the next house. During the initial stages, this candidate accompanied research assistants to the field. This helped a lot because of the availability of a car and student card which easily identified the members. In some instances, this candidate felt that at times, once members identified themselves as students and undertaking research, some of the respondents became a little uncomfortable and felt intimidated. The team applied tactics to help ensure honesty in informants when contributing data - each person approached was given an opportunity to refuse to participate in the project so as to ensure that the data collection sessions involved only those who were genuinely willing to take part and prepared to offer free data freely (Shelton, 2004). Furthermore, on some of the follow-up sessions, the team could not find particular respondents because

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they may have moved to another rental space, especially if they were tenants. Backyard dwellers also posed a challenge because at times the landlords would either deny access to them (for example in Kensington) or simply deny that there were backyarders on their plot. In such cases this candidate would move to the next household/plot or structure.

Inasmuch as this candidate would have preferred the easily available Statistics South Africa census data to draw samples, with the last census having been held in 2011, this presented challenges. Both theoretical and literature chapters indicated that tenure arrangements in South African urban areas are highly complex and dynamic and therefore it would have been inaccurate to only rely on 2011 census data. With the high rate of urbanisation especially in the Cape Town Metropolitan (City of Cape Town - 2015/16 Review), informal dwellings change hands rapidly (Marx and Royston 2007). To rely on only utility connections would not have reflected the situation on the ground, as some informal dwellings are not connected to the electricity grid (for example some parts of Nkanini and Mshini Wam in Joe Slovo Park). Furthermore, neither register of telephone subscribers nor community registers could be relied on, as most informal settlements do not have land line telephones, and community registers were unreliable. The most updated source of sampling frame could have been the Independent Electoral Commission as Local Government Elections held in 2016 required an updated electoral roll complete with addresses, but there was no response when the local offices were contacted. The study therefore relied on Statistics South Africa Census data as well as cross-referencing with Community Survey, 2016. Coupled with other data sources such as aerial photographs, GIS and GPS samples consisting of 10% were drawn for all four study sites.

In order to ensure validity and objectivity, a probability sampling method was followed in each site. Maree and Pietersen (2016) state that there are two mechanisms used to obtain random numbers in simple random sampling. This can be precompiled tables of random numbers or computer software. Being aware that most households in informal settlements such as Mshini Wam in Joe Slovo Park and Nkanini, this candidate initially identified the total number of households in the specific site as supplied by the Statistics South Africa, and then pragmatically worked to obtain 10% from each site. Given that some of the informal settlements have not been enumerated and therefore have no numbers, aerial photographs were helpful to identify some of the

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structures. Depending on the number of households in the site, this candidate planned to visit every 10th household/dwelling. This was not done because as was pointed earlier, some of the structures would either be changed, locked or access denied. Additionally lack of enumeration of structures in Nkanini, for example, posed a challenge as the team easily lost track of where they were and where to go next. They decided to simply take the next available plot or structure, posing the danger of distorting random sampling as initially envisaged.

Owing to an impending election campaign for 2016 Local Government Elections, team members were at times mistaken to be either from the City of Cape Town (which meant they were immediately greeted by complaints of the failures of the systems), and in most cases some residents thought they were writing names for some of employment. In Nkanini for example, they were stopped by a group of women who mistakenly believed that they were from 'government' and recording names for employment. Again, they had to produce student cards and consent letters. On other visits they had to make sure they made use of local gate keepers such as street committee leaders and church leaders. In Langa Old Hostels, a research assistant experienced more or the same challenges because he failed to get hold of the local gatekeepers.

3.5.2 Semi-structured Interviews

Lofland (1971, p. 76) summarised the main intention of non-standardised (semi-structured) interview format as being; "to elicit rich, detailed materials that can be used in qualitative analysis. Its object is to find out what kinds of things are happening rather than to determine the frequency of predetermined kinds of things that the researcher already believes can happen". It was key to this research to find out if quantitative figures often portrayed in official proclamations were actually true on the ground through qualitatively verifying them. This was done through interviewing those who were on the ground, among other strategies.

Purposive sampling strategy was used in the selection of participants for semi-structure interviews. Miles and Huberman (1994) provide a typology of Sampling Strategies in Qualitative Inquiry where they emphasise the need for the research to be clear of purpose of the study for them to choose a relevant strategy. Semi-structured

interviews were conducted with experts and key informants in their specific occupation. Bogner, et al. (2009) identify the main reasons for conducting expert interviews:

- Technical Knowledge: contains information about operations and events governed by rules, application routines that are specific for a field, bureaucratic competence and so on;

- Process Knowledge: relates to inspection of and acquisition of information about sequences of actions and interaction routines, organisational constellations, and past or current events, and where the expert because of his or her practical activity, is directly involved or about which he or she at least has more precise knowledge because these things are close to his or her filed of action; and

- Interpretive Knowledge: includes the expert's subjective orientations, rules, points of view and interpretations.

As already pointed out in the sections earlier urban land tenure and tenancy is a field which requires practitioners such as urban planners with technical knowledge and other professionals with knowledge of current policies in the area. This helped to unlock different tenure systems and the domain of spatial planning and land use. Additionally, views from civil society organisations such as Ndifuna Ukwazi, Social Justice Coalition and Ses'khona People's Movement provided different views which were also relevant.

In order to achieve triangulation, flexibility and also meet multiple interests and needs, the study adopted a combination purposive sampling strategy. Another purpose of choosing this strategy was to achieve a multi-stakeholder input on their understanding of urban land tenure, tenancy and water services provision. Give that the study is complex and transcends a single department, this candidate had to identify relevant departments and stakeholders, conduct in depth interviews in order to create an understanding within their specific contexts. In addition, the rational for this heterogeneous sample was to confirm or disconfirm the phenomenon (Creswell, 1998). Table 3 below provides the list of interviewees and their departments.

Semi-structured interviews are valuable in instances where the population itself is difficult to access due to several reasons. They work well with those in powerful positions in organisation since their perspectives are likely to be unique within an

organisation as well as in cases where the phenomena is deemed complex. In the study, the issue of urban land tenure and tenancy is itself very complex and contested. When interviewing provincial and city officials on a heavily contested issue such as land tenure (and tenancy) as well as equally divisive services delivery, discourse required careful approach. Tapping into the experience of the previous research project titled 'Social Protest and Water Services Delivery', this candidate was very aware of the allegations of the existence of the so-called 'third-force' in urban social movements and social protests. The 'third-force' came out strongly during the Social Protest and Water Services Delivery Project research because some of the violent protests were allegedly caused and fuelled by certain political organisations, such as 'making Cape Town ungovernable' (Tapela, et al. 2015).

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Table 3: Key Informants

Key Informant Number	Department/Organisation	Designation	Area of expertise Relevance/purpose for choosing them	Date
1	Informal Settlements Management (CoCT)	Manager	City of Cape Town	09/04/2016
2	Housing (CoCT)	Policy Researcher	City of Cape Town	05/08/2016
3	Department of Environmental Affairs and Development Planning - Western Cape Provincial Government	Directorate *Development Planning Intelligence Management and Research*	Provincial Government	13/04/2016
4	Social Justice Coalition	Researcher	Civil Society	26/04/2016
5	Housing	Manager	City of Cape Town Communications Department	24/06/2016
7	Ndifuna Ukwazi	Researcher	Civil Society (Ndifuna Ukwazi Campaign)	04/08/2016
8	Ses'khona People's Movement	Founder and leader	Civil Society	04/10/2016
9	Community Leader	Ward Councillor	Ward 95 Councillor (Nkanini)	04/10/2016
10	Water and Sanitation Directorate (CoCT): Water Demand Strategy	Engineer	City of Cape Town	18/10/2016
11	Spatial Planning (CoCT)	Urban Planner/Architect	City of Cape Town	05/08/2016

3.5.3 Focus Group Discussions

Cronin (2008) argues that a focus group consists of a small group of individuals, usually numbering between six and ten people, who meet together to express their views about a particular topic defined by the researcher. In most cases a moderator or facilitator leads the group and guides the discussion between participants. This study got assistance of the City of Cape Town Water and Conversation officials who trained unemployed community members to raise awareness on water conservation. This candidate got access to these teams after their official meetings. Bias was a real danger as some of the participants did not feel comfortable making negative comments in the presence of officials who actually provided them with a livelihood. This candidate managed to deal with this by encouraging the officials to leave, or if they were present, not to participate in the discussions. Another issue was to select a small group out of

meetings which were normally attended by between 20-25 people. In Kensington and Langa-Philippi groups, this candidate ended up conducting the discussions with the rest of the group. There was always a danger of the discussions getting out of hand because some of the members were from different locations. In Nkanini, this candidate used the advantage of being an educator in the area to request a group of parents to stay behind after an annual meeting which was held at Chris Hani High School in October 2014.

Morgan (1997) states that interaction is the 'hallmark' of the focus group. It is what differentiates focus group discussions from interviews, the exploration of ideas and interpretation of what people say. In focus group discussions, it is the interaction among interviewees that will likely yield the best information especially when interviewees are similar and cooperative with each other (Creswell, 1998).This study followed a basic five-stage model which was developed to guide focus group discussions as proposed by Cronin (Cronin, 2008). Figure 6 below shows the stages followed during the focus group discussions.
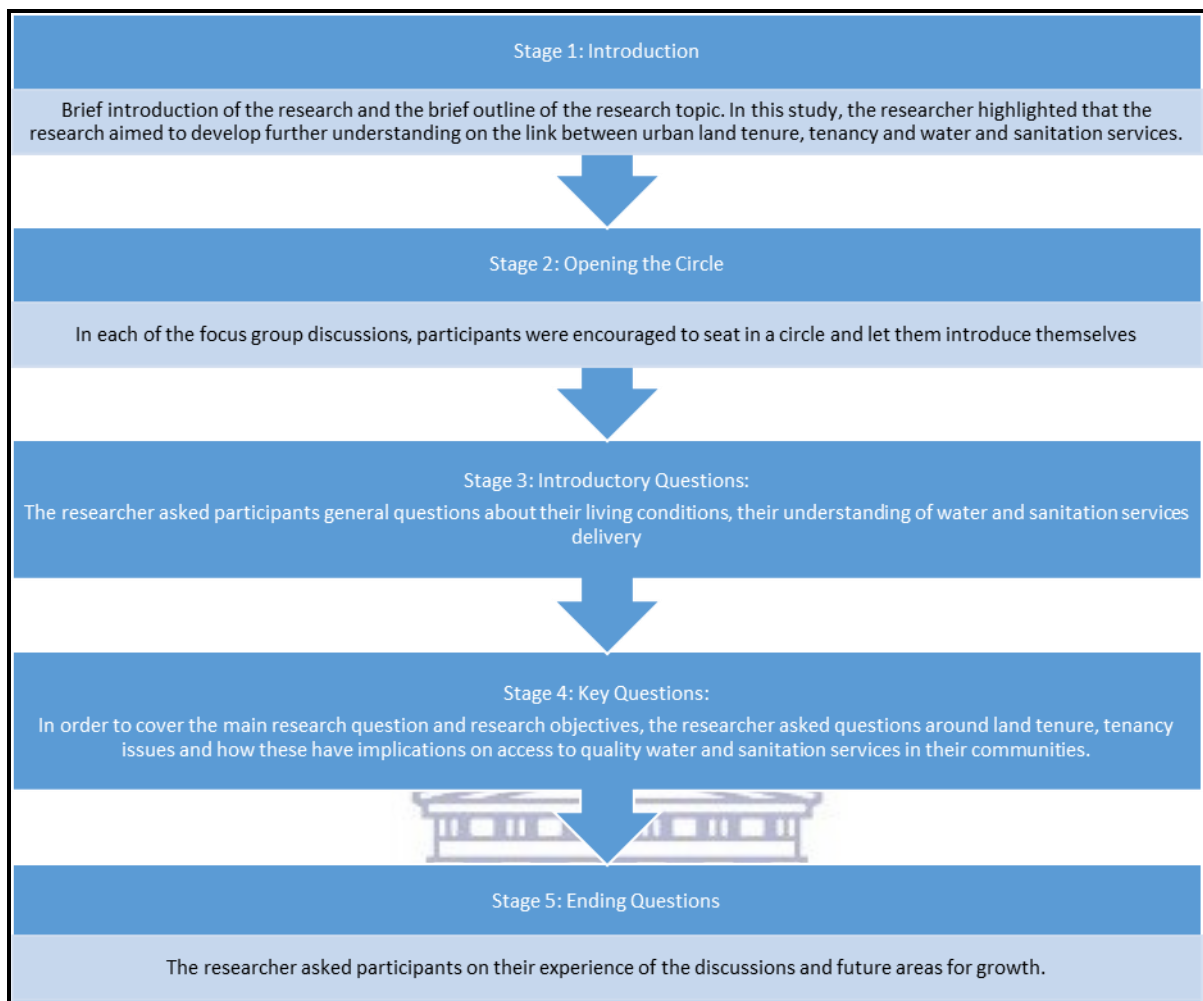
Figure 6: Stages in Focus Group Discussions

Inasmuch as this candidate had planned to conduct a focus group discussion in each site, availability (resources/respondents) and convenience to this candidate were eventually considered. The following Focus Group discussions (FGD) were conducted: Langa FGD, in Langa Lovelife venue (12/11/2015), Nkanini FGD, Chris Hani High School, Khayelitsha (10/10/2015), Philippi Councillor Boardroom (10/12/2015) and Landsdowne Civic Centre (10/12/2015). Both Philippi and Landsdowne FDGs has participants from Joe Slovo Park and Kensington who were attending training on water awareness. Each group was made up of between 10-20 participants, in some cases, way above the normal size recommended for focus group discussion. In the first step at each FDG, this candidate, together with the assistants, asked participants to sit in a circle and after introduction of each participant, a brief introduction of the research topic was given. Guided by the checklist provided in the appendices of this study, this candidate guided the discussion. Only Langa FGD could not complete all the questions because it

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was conducted late in the evening and some of the participants were already complaining that they were tired.

Residents from the research sites were mostly in these meetings though it was difficult to verify this. As pointed out earlier, three of the focus groups were made up of volunteers employed by the City of Cape Town Water and Sanitation and discussions were held after trainings and official meetings. This candidate also felt very intimidated in at least three of these discussions. This might have been because of large numbers and also fear of crime rife in most of these venues. Additionally, inasmuch as this candidate could converse in moderate isiXhosa, during discussions with majority Xhosa-speaking members, some of the crucial information was most likely lost. To deal with this setback, this candidate arranged with at least one of the assistants whose home language was either isiXhosa or Afrikaans to take notes and clarify some of the points raised. In mostly Afrikaans-speaking groups, participants mostly spoke English, but this did not stop some of the group members expressing some of their points in the language they felt more comfortable with. With the assistance of local leaders and some City of Cape Town officials, some of the points were explained. Most of the discussions took at least an hour to two to conduct. Notes were taken throughout discussions and sound recording only happened at Chris Hani High School (Nkanini residents) where this candidate felt more comfortable carrying electronic devices.

3.5.4 Observation

According to Babbie and Mouton (2001), observation can be in the form of simple observation, where this candidate remains an outside observer, or participant observation, where the participant becomes a member of the group being observed. This involved transect walks, plot and household visits, and field observations of water and sanitation services infrastructure and delivery. During focus group discussions, this candidate also observed relationships in-order to identify power dynamics and gender issues in tenure, tenancy and water services. In addition, the presence of both land-lords and tenants, their interactions in some of the discussions was valuable for the study. Where possible, evidence was captured in digital photography and other audio-visual formats. Some of the photographs captured are used in other chapters of the study. This candidate managed to capture photographs in all study sites except Langa where lost belongings including cameras during one of our field trips.

3.5.6 Critique of Methodology

On a broader scale, studies in both land and water are carried out separately, and attempting to bring these broad areas together proved to be methodologically challenging. Establishing linkages between urban land tenure and water services is far complex and dynamic than what the researcher had anticipated.

Data collection took a long time and related delays contributed to inconsistencies. Firstly, since the study was part of a larger project as pointed out earlier, there were delays in securing ethics clearance for the project. Secondly, there was failure by the project leaders to secure gate-keepers permission. This candidate ended up conducting only household surveys in 2014, then focus group discussions in 2015 and interviews with key informants in 2016. Unexplained delays and changes in the project team resulted in disruption not only on the part of the study, but of the project in general. A decision to carry out the field work without the project team was taken after realising that the delays were delaying the studies and there was general lack of direction.

The selection of sites in City of Cape Town was done purposively, which might lead to bias and unintended subjectivity. As explained earlier in the criteria for site selection section, some of the sites were chosen after issues were raised during an earlier study (Social Protests and Water Services Delivery Project). Additionally, the sample size from the sites in this study could not be feasibly representative and therefore, this study does not intend to draw conclusions concerning the wider City of Cape Town metropolitan population and South Africa at larger. However, despite these limitations, the study achieved a good response rate and the sample does cover working class sections of the City of Cape Town living in different land typologies including planned and informal settlements and those undergoing upgrading or re- blocking. This candidate and assistants adhered to good practice and worked hard to reduce errors.

Literature has widely shown that a researcher (interviewer) may influence the outcome of the research. In all sites visited, researchers were viewed as government, City of Cape Town officials or other state representatives. This resulted in suspicion and in some cases, being asked for employment, some of form of payment or outright refusal to grant interviews or conduct questionnaire surveys.

Other research issues:

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- Field-work was conducted towards local government elections, which had a potential to be hotly contested. This presented many challenges and opportunities. On the level of officials and other government representatives, it was really difficult to get hold of them, with some citing sensitivity of elections at hand. On the other hand, some respondents and interviewees were more readily willing to give information and grievances in the view that this will be addressed as elections were looming. Inasmuch as the plan was to hold the field work not to coincide with this time, the delays with the over project made it difficult to carry out the study.

- It was also difficult to conduct fieldwork as this candidate is a foreigner and found it sometimes difficult to be allowed to conduct surveys. Inasmuch as this candidate is an average speaker of isiXhosa, the moment respondents sensed that this candidate was struggling with pronouncing some words, they would become suspicious. This was dealt with by working with two research assistants were both isiXhosa speakers and were born in Khayelitsha. The Nkanini FGD which was conducted at Chris Hani was more successful because most of the participants knew this candidate so they were willing to mix both English and isiXhosa during the discussions. In Kensington, a research assistant who is bilingual (Afrikaans and English) worked with this candidate during surveys and focus group discussions.

- Ethnicity and language was also challenging. The principal researcher was not a proficient speaker of isiXhosa and Afrikaans, and although there were research assistants who could speak both languages, this presented limitations during translation. This candidate had to rely on notes and recordings with the help of research assistants.

- Crime was a major issue faced by researchers in all sites. In Langa's old hostels, one research assistant was robbed of valuables including camera. The team decided to conduct the study during weekends and a local gate keeper was identified to accompany this candidate during the household surveys.

3.6 Analysis

The conceptual framework was reworked to reflect the emerging findings. Themes and concepts, such as social tenures were used in cases were the blanket references such as 'informal' and 'formal' were used initially. The findings pointed to the existence of more complex tenure and tenancy arrangements in Kensington, for example, where unrecorded

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informal settlements actually exist. In addition, due to challenges in obtaining gate-keepers' letters and other approvals for the main project, changes to the approach was used. Analysis was carried to the data immediately available, instead of sticking to the convergent parallel mixed methods as initially planned. Data from the household surveys from Nkanini, Mshini Wam, Langa and Kensington were loaded on SPSS. Once data entry and cleaning was complete, the first step in the data analysis stage was descriptive analysis, mainly using frequency statistics and cross-tabulation. Microsoft Excel was also used in data presentation. Descriptive statistics were presented in both Chapters Six and Seven of the study. Data from qualitative methods (semi-structured interviews, focus group discussions and observations) was presented in themes and ideas. Quantitative findings are presented using graphs, tables and other figures while qualitative data is presented in form of paraphrased narratives, interpretations and direct quotations. Chapter Six mainly presents descriptive statistics on demographic characteristics of the study sites while on the other hand, Chapter Seven presents findings on the relationship between urban land tenure (and tenancy) and water services. To establish this relationship, correlations, cross tabulations and chi-square were used using SPSS.

3.7 Conclusion

The aim of this study was to develop a clear understanding of the relationship between land tenure systems, tenancy arrangements and water service development planning and delivery in the rapidly changing urban milieu in South Africa. This chapter started by providing the methodological underpinnings of the approach used in the case study sites. Arguments for selecting convergent parallel mixed methods design were carefully presented. Household surveys, semi-structured interviews, focus group discussions and observation were the main methods used under the mixed methods approach. Detailed narratives of the specific methods were presented and one of the main challenges was the failure of the project to take off, affecting fieldwork for this particular study.

CHAPTER FOUR: POLITICAL HISTORY AND LEGISLATION OF URBAN LAND TENURE IN SOUTH AFRICA

4.1 Introduction

In this chapter it is argued that power works in and through the production of differences inscribed in space and built up through time, as new layers form upon the old (Li, 2001). When regimes exercise power to let die and let live, the concomitant effects are not likely to disappear with a simple change in regime. This is largely a descriptive chapter which provides a historical development of legislation and policies which continue to either directly or indirectly influence current understanding of urban land, water and sanitation services. A brief overview and timeline of South African urban historical and legislative context is provided. Through this, Marx's arguments that 'bloody legislation' was used to dispossess, separate and exclude the majority of the citizens are highlighted. In addition, it shows how the South African case fits properly into the pattern of capitalist labour exploitation (Letsoalo, 1987). Using Mamdani's (1996) analysis, it is argued that there is reproduction of the colonial state through use of the same exclusionary laws and policies, use of the 'police state' and creation of a bifurcated state. The 'apartheid city' is continuously reproduced as spatial planning and land use which condemns other forms of settlement such as 'informal' settlements and hence the need to eradicate or evict. The surplus population which finds itself in the informal settlements are let die by denying them services such as water and sanitation. Through the outline of colonial and apartheid legislation, the study also demonstrates that access to water for various uses was deeply embedded in land legislation. The transitional period appears to have separated land and water legislation, bringing about a largely sectorial approach.

4.2 Historical Context

This section provides a historical overview of land dispossession and its implications in urban planning. Central to this is the aim to indicate how this has been reproduced in the current democratic state, where laws and in some cases brutal force are used to 'discipline' poor masses. For Federic (2004) this enables us to read the past as something which survives into the present. While providing his analysis on the characterisation of urbanisation in Delhi, Bhan (2016) historicises the history of inhabitation in Delhi in order to situate and locate the *basti* amidst a broader history of housing in the city. The intention is not to provide a complete detailed historical account, but primarily to provide the context of current debates on urban land question and more specifically the racially skewed ownership as well the

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glaring and evident racial spatial planning persistent in democratic South Africa. Additionally, current urban tenure and tenancy arrangements are a product of the historical and political economy of state.

As this section traces the land question from colonial South Africa to current attempts to redress past injustices, situating contemporary circumstances and contestations in the broader historical context helps to interpret the current situations (Hendricks and Pithouse, 201 3, p. 107). In other words, 'historicising inequality is a key way to avoid ontologising it' (Hendricks and Pithouse, 2013, p. 107). Equally important, urban planning takes centre stage as every law passed in relation to land affected planning thereof. For Gordon, et al. (2007, p. 19), the history of the apartheid city is one of active dispossession and prevention of ownership of land for black people, sustained through a variety of systems over years. At this stage, though much emphasis will be on urban land, rural land issues will also be considered. This is in line with Moyo's postulation, that 'rural and urban are inextricably linked in both the past and the present, in which rural underdevelopment and poverty are structurally unified with the problem of urbanisation processes which are incapable of providing gainful employment'(Moyo, 2004, p. 82).

Parnnel and Mabin (1995) warn that South African urban historical studies tend to be narrow and racially selective. For them critical questions 'that would inform not only the narrow chronology of legalised race discrimination, but would illustrate the very process by which racial categories were fashioned and entrenched, remain unaddressed' (Parnell and Mabin, 1995, p. 43). They argue that little work was done to actually analyse different systems that were applied in different urban settings. However, in line with earlier arguments presented in this chapter from a broad but analytic approach, the argument that the process of dispossession, separation and exclusion was advanced while it was largely racially based pre-apartheid, the implications on urban land tenure (and tenancy) and water services post-apartheid remain largely significant. In support of this view, Li (2001) states that when governing regimes and other powerful groups classify populations, impute boundaries and emphasise cultural differences they create long lasting legacies of separation. However, Parnell and Mabin (1995) cautions us that not all state policies were put into practice, and as in the case of colonial and apartheid states, a role as played by the local state in mediating conflicting ideological and material imperative.

Marx's PA has shown how the peasant was forcibly separated from their means of production (land) in order to subsequently sell their labour. Colonialism and apartheid in South Africa represent this PA, with a few variations from what Marx wrote about however. According to Mamdani (1996), the Natives Land Act of 1913 was central to a set of subsidiary institutions and injunctions to regulate migrant labour. For him, it legalised earlier land theft and created a huge marginal peasantry, and left it with little option but to turn it into a captive labour force. Mamdani further states that... "(t)he native was tracked and kept on course like a beast by one set of laws; not simply and direct with a whip as would be a beast, but through legally defined injunctions and prohibitions that left him - and eventually her - "free" to work as a migrant in one of the many laborious and dirty jobs most easily found in mines, plantations, or farms" (ibid, p. 227). Rather succinctly, Rich (1976, p. 3) states that:

> The new law [the 1913 Act] strikes a death blow at "Kaffir-farming"[1], which it has been the earnest wish of every progressive landowner to see abolished … It is safe to say that this Act will considerably affect labour conditions in many parts of the Union. It will mean the clearing off of a large number of natives from European farms, the natives simply being allowed to work in return for a wage. The result will be good, clear, straightforward farming, whilst land in non-native areas that is not being farmed by Europeans will simply remain idle.

In what Marx referred to as 'bloody legislation', law became a tool for the control and brutalising of the blacks (Neocleous, 2012; Marx, 1867). Land dispossession was necessary to disempower blacks and force them to sell their labour cheaply. In other words, this was a repeat of what Marx's PA is premised on: enclosures, dispossession, separation and exclusion resulting in the peasant being forced to offer their labour cheaply.

In what is sometimes referred to as the 'minerals-energy complex' (Fine 2008, Hendler, 2015, p. 3), the State, agricultural and mining industries collaborated closely to racially segregate urban living spaces. The black African remained a migrant in the urban centre, available to sell his or her labour but still maintain strong rural presence. In the centre of this collaboration was the partnership between State and private capital, with core activities around mining and energy (Hendler, 2015). Several laws were subsequently introduced to

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[1] The term "Kaffir" is considered very offensive and racist. Its use in this direct quote also seeks to demonstrate how mainly black Africans were dehumanised and undermined. In addition, it highlights how scholarly work was racialised and inadvertently contributed to exclusion of the black majority from land discourse.

entrench racially segregated living spaces. Following the Transvaal Local Government Commission's introduction of the Stallard principle, which stated that 'natives' could only enter urban areas to serve white needs and then return to their reserves after that (Terreblanche,2005). Hendler (2015, p. 3) outlines key legislation passed in order to enforce segregated living spaces in urban spaces.

The table below shows some of the repressive laws:

Table 4: Summary of Apartheid Bloody legislation

LEGISLATION	DESCRIPTION
The Housing Act (No.35 of 1920)	According to Calderwood (1953), the Housing Act also established the Central Housing Board to control housing developments by local authorities, provide administration and supervise the lending of government funds for building houses. It institutionalised segregation for blacks.
The1923 Urban Areas Act (No21 of 1923)	Withdrew the right of land tenure, and therefore permanent urban residence, from Africans, as a way of justifying their disenfranchisement (Wilkinson, 1998, p. 217)
The 1931 Transvaal Ordinance	Enabled municipalities to prepare schemes controlling land use, density, building size and position
The 1934 Slums Act	Enabled the State 'to destroy existing areas, and to re-plan them'
The Native Laws Amendment Act (No.46 of 1937)	Prohibited Africans from acquiring land in urban areas.
The Native Urban Areas Consolidation Act (No. 25 of 1945)	Gave varying degrees of tenure security to four different categories of urban residents … linking the right to the city to employment and accommodation permits

(**Source: author's own interpretation**)

One should note that the list of legislation listed on the table is not exhaustive, for the purposes of this study, key legislation (which somehow overlap with others not mentioned above) were selected. Worth further discussion here is the 1918 Natives in Urban Areas Bill which was intended to force blacks into outlying townships or reserved 'locations' (Turok, 2012). Furthermore, the 1923 Urban Areas Act aimed to racially separate and contain an 'undesirable tide' of blacks in urban areas (Maylam, 1990).The Urban Areas Act aimed to diminish pressure on agricultural wages, while at the same time forestalling the political threat of a large black urban proletariat and protecting white workers from competition in the labour market (Dewar, et al. 1982, p. 24). Parnell and Mabin (1995) feel that these laws were not simply about race, but to also had to address other planning and other pertinent issues such as improving public health, supplying clean water, reducing fire risks, redeveloping overcrowded slums, modernising the physical layout of urban areas, and generally managing

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settlement growth efficiently in a context of unprecedented industrialisation and urbanisation. They also argue that in some cases poorer whites in the inner cities were forcibly moved out in the process and were negatively affected as the authorities undertook to enforce proper urban management and spatial planning. Inasmuch as this argument might be correct to a certain extent, one cannot ignore the explicitly racially-based laws and subsequent enthusiasm to affect them in some cases. Simply put, the underlying agenda of land reform and related laws was labour management (Letsoalo, 1987).

Challenges remained especially where there was a need to have a stable urban labour force. The 'Minerals Revolution' had stimulated rapid industrialisation and migration (both locally and internationally) (Yudelman, 1984). The boom in mining demanded the creation of an extremely large workforce, however, mining output was held back by shortage of labour (Wilson, 1972).The cost of influx control to reliable cheap labour resulted in a call by the Fagan Commission to relax these laws and also improve the lives of urban residents (Hendler, 2015). However, as shall be noted in the following section, when the National Party came into power, the recommendations of the Fagan Commission were ignored. In its (Fagan Commission's) findings, the then minister of Native Affairs had stated that:

> Can we develop our industries when we have the position that the native only works for a few months and then returns to the reserves for a couple of years? No the, the native must be trained for his work in industry, and to become an efficient industrial worker he must be a permanent industrial worker. On that account he must live near his place of employment. (Welshe, 1971, p. 190).

The Commission's recommendations were to allow blacks to stay closer to their places of employment, and in this case cities. Its rejection shows the apartheid state's obsession with influx control at the expense of living conditions of mostly blacks. Emphasis on labour benefits by the Commission is in stark contrast with an earlier argument by Parnell and Mabin (1995) that simply reducing urban debates to race actually ignores other well-meaning efforts by authorities to improve living conditions by establishing townships and compound accommodation. This argument is feeble and cannot simply dismiss the exploitative connotations and the overall impact the intricate laws and policies of both colonial and apartheid states had on the specifically other races.

According to Mamdani, unlike migrants in other industrialising contexts, those in South Africa came from tribal reserves in which they had a customary right of access to land and to

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which they were forced to return periodically (Mamdani, 1996, p. 219). The right created a somewhat false sense of ownership. In this sense, even when this right was significantly emptied of content, as when migrants clung to no more than a customary but nominal patch, the notion of customary rights - as of customary patriarchal privilege - was key to understanding the 'ideological baggage a migrant brought from the rural to the urban context' (ibid, p. 219). While physically separated from the Bantustan, the migrant worker remained largely attached. This brought a sense of temporality for migrant workers in urban spaces as well as what Marx (1867) identified as separation between peasant and means of production. In this case, sites of labour became visible beacons of oppression which needed to be endured until one eventually went 'back' to his or her ancestral home.

The initial voluntary system which underpinned the migrant labour system was not reliable enough to provide a labour force required by the mining companies (Turok, 2012). Besides the worker productivity affected by long journeys, those who disliked harsh working conditions drifted away (Turok, 2012). To boost mining productivity, mining companies introduced large residential compounds or hostels to keep migrant workers on site. Parnell and Mabin (1995) argue that these were initiatives to improve the lives of workers. Furthermore, Yuldelman (1984) states that by 1900 there were 100, 000 black workers living in mining compounds and by 1910 their number had exceeded that of the entire white population of the Witwatersrand. It is no wonder that by the 1930s gold mines accounted to about 50% of state tax revenues and about the same percentage of the country's population livelihoods depended directly or indirectly from the mines (Yudelman, 1984). This approach is in line with Marx's overall argument on how the capitalist system depends on labour extraction for its profits (Marx, 1867; Harvey 2003).

The introduction of restrictions to urban areas during this time was also related to the need to have constant labour in white farms. Dewar et al. (1982, p. 24) states that problem of labour on white farms was recurring, hence laws which attempted to control the movement of Africans to 'white' urban areas were attempts, on one hand to make labour available to white farmers and on the other, to channel labour in such a way that farms were ensured of a regular supply of cheap labour. It is no wonder that in 1942 the South African Agricultural Union demanded that blacks be compelled to accept farm-work and that their mobility from the farms be restricted (Dewar, et al. 1982, p. 24).

Towards the 1940s, there was an unprecedented rise of the far right, which inevitably resulted in the election of the National Party into power in 1948. Prior to that saw the introduction of the 1945 Native Consolidation Act which provided for 'efflux' of surplus population to the Reserves and introduced the 72-hour restriction on black migrants newly arrived in urban areas (Dewar, et al. 1982). Furthermore, the control of urban squatting and the use of housing provision were used as a tool to control black urbanisation (Dewar, et al. 1982, p. 24).

Once the National Party government came into power the robust approach to racial segregation was relentless and brutal. The 'Grand Apartheid' was centred on separating races and entrenching segregation by compelling people to live in different places defined by race (Turok, 2012). Parnell and Mabin (1995, p. 95) viewed apartheid as a new and powerful, though oppressive way of approaching the problems in the cities. It was a reaction to the 'failure of the inter-war laws to control urbanisation and a fear that white settlements would be overwhelmed by blacks' (Turok, 2012, p. 8). It is no wonder that by 1950 racial restriction on access to land and housing was non-negotiable (Sihlongonyane, 2005). Dewar, et al. (1982, p. 20) argue that apartheid policy and influx control underlie 'the politics of white survival in South Africa'. In other words, this meant that influx control is seen as purely political in contradiction to economic dictates. Twentieth century immigration policies under the white minority rule in South Africa rested on four pillars: 'racist policy and legislation; the exploitation of migrant labour from neighbouring countries; tough enforcement of legislation; and the repudiation of international refugee conventions' (Crush and McDonald, 2001, p. 2).

The first step was the introduction of the 1950 Population Registration Act which formalised racial classification and became the basis of subsequent laws. During this period, the movement of black labour was tightened through planning urban space and managing land use in segregated townships, driven initially by a strategy to build the economy only on labour with permanent residential rights (Hindson, 1983, 1985) and then a switch to an entirely migrant labour force (Posel, 1984, p. 6). Anti-squatting policies prevented initiatives by black communities to secure their own shelter in urban areas (Wilkinson, 1981). Following the rejection of the Fagan Commission by the National Party government, the state reaffirmed the 1922 Stallard Commission which stated that: "the Native should be allowed to enter urban areas, which are essentially the white man's creation, when he is willing to enter and minister … the needs of the white man, and should depart therefrom when he ceases so to

minister" (Magubane, 1979, p. 82). This principle was later extended and consolidated by the Group Areas Act of 1950 to ensure separate residential areas in urban areas (Thwala, 2003). The Group Areas Act prescribed racial composition of every residential area, was later used to justify demolition, and forced removals or people deemed to be living in 'wrong areas' (Turok, 2012).

Turok (2012) emphasises that contrary to an economic imperative to increase supply of cheap labour in mines and industries, the National Party had the political desire to control mobility of the black population and restrict rural-urban migration. The pass-law system, for example, was a form of registration that required blacks to carry a permit when moving around the country (Turok, 2012). According to Pugh (2014, p. 164) the apartheid regime's social engineering of the movement of people through, for example, its system of pass laws and its creation and administration of the nominally independent 'homelands' or 'Bantustans', was part and parcel of a complex system designed, at least in part, to facilitate and control the movement of black labour in the country. This became a profound tool of influx control as the process to acquire such a permit was a bureaucratic nightmare and cumbersome. The 1926 Colour Bar Act prevented blacks from practising skilled trades, 'thereby protecting skilled white workers from wage competition'. The 1953 Reservation of Separate Amenities Act resulted in designation of separate municipal facilities, beaches, buses, hospitals and education institutions (Turok, 2012).

Mamdani (1996) described the scenario in colonial and apartheid state as bifurcated. Control was through direct and indirect rule as discussed in Chapter Two under section 2.2. Outside the urban spaces, the tentacles of the repressive Grand Apartheid project extended to rural areas. The Bantu Authorities Act of 1951 created separate government structures for black and white citizens and subsequently Bantustans (Homelands) which were inherited from native reserves of the colonial era. The intention was to make sure that only a few black people were given rights to stay in cities, and the rest were linked to a 'homeland' area, which was meant to be a permanent rural home (Gordon, et al. 2007, p. 19). This was further entrenched by The 1958 Promotion of Black Self-Government Act which gave some devolved administrative powers and funding to encourage inward investment and limit migration pressures on cities (Turok, 2012). Furthermore, the Black Homeland Citizenship Act removed citizenship rights for blacks living in South Africa so that they became citizens of one of the ten Bantustans, according to their ethnic group (Gordon, et al. 2007; Turok, 2012).

Spatial planning and urban land use became instruments used to successfully achieve racially divided urban spaces. Inasmuch as the official rhetoric identified urban blacks as 'temporary sojourners' serving the needs of a white population, the State's policies were not always smoothly translated into practice (Parnell and Mabin, 1995) because some local municipalities were moderate while some were extreme in their implementation (Baines, 1995). Mabin and Smit (1997) argued that entities such as the Social and Economic Planning Council and Natal Town and Regional Planning Commission (1951) sought to segregate and racially restructure cities. Furthermore, the Department of Native Affairs through the Mentz Committee of 1953 provided spatial guidelines to segregated African townships and remove mixed living spaces (Hendler, 2015). The 1947 Natural resources Development Council's main mandate was to implement racial zoning of urban major urban centres such as Durban, Pietermaritzburg and East Rand. Additionally, besides recognising the planning profession, the National Physical Development Plan (NPDP) (1975) promoted decentralisation through development of 'development axes', 'growth poles', 'growth points' and 'deconcentration points' (Hendler, 2015, p. 4). Segregated townships for blacks were also part of the NPDP's framework for decentralised nodes to decongest metropolitan areas

4.3 Urban Land Tenure and Tenancy Pre-democratic South Africa

Spatial planning and urban land tenure was based on race, further enforced by policies which favour markets. While other race groups enjoyed individual title deeds for their houses and land, Kingwill et al. (2017) argues that the legacy of the past land tenure policies has been to trap the black South Africans in a state of pervasive tenure insecurity. Coupled with weak rural forms of land tenure (Mamdani, 1996) such as quitrent and Permissions to Occupy (Kingwill, et al. 2017), blacks were in constant state of insecurity. Land tenure conditions specifically in urban areas were aimed at limiting permanent residence by black South Africans (Royston, 2002). Royston (2002) further states that urban land tenure was in the form of weak permits to a few qualifying blacks while the rest were on highly temporary residence. Access to these rights was therefore linked to provision of labour. In this way, tenure became entrenched as an instrument of urban exclusion (Kingwill, et al. 2017, p. 46; Li 2009).

Mamdani states that migrant labour was never just a source of cheap labour; it was at the same time semi-servile and controlled. In order to achieve this, effort was made to turn 'urban hostels in which migrants lived into enclaves shut off socially and physically from surrounding townships, just as an effort was made to subordinate migrants inside hostels to a

regime of indirect rule; but the more migrant links with the reserve were kept alive, the more effectively they functioned as conveyor belts between urban activism and rural discontent' (Mamdani, 1996, p. 220). Besides temporary stay in mostly hostels around mining towns being set aside for black labourers, there was an inevitable rise of black population in urban areas. Owing to the inconsistent application of some of the stringent laws, more and more migrants had become *de facto* permanent residents of the urban areas and weakened their ties with the rural reserves (Turok, 2012). On one hand the Prevention of Illegal Squatting Act of 1951 (later amended to Amendment Act 92 of 1976) used housing as a powerful instrument of influx control (Dewar, et al. 1982). They allowed local authorities in the form of Department of Community Development or Bantu Administration Boards to demolish unauthorised structures without a court order or the consent of the owner and at the owner's expense. The state or authorities were under no obligation to provide alternative accommodation to victims who were mainly black South Africans.

Although home ownership for Africans living in or near cities had been introduced through a 30-year lease on township stands in the 1950s (Morris, 1981, p. 49), in 1968 the government withdrew the leasehold provisions and required occupants to rent their houses. This State-enforced tenancy was targeting blacks and aimed to reinforce a sense of temporality. The policies developed by the apartheid state attempted to enforce complete physical separation between and among people of different racial groups. Pockets of 'freedhold' in urban areas such as District Six, Sophiatown, Lady Selborne, Marabastad and Cato Manor, which black people had acquired through purchase were forcibly removed (Kingwill, et al. 2017, p. 46). In 1975 the Vorster administration re-introduced the 30-year leasehold but only to homeland citizens, and barely one year after its inception the homeland citizenship proviso had been dropped (SAIRR, 1977, p. 187) creating the possibility of greater security of tenure for those Africans with permanent urban residential qualifications. This seemingly softer approach was partially due to pressure for accommodation, which the then government faced in urban areas.

Hendler (2015) identifies five forms of tenancy in public rented stock:

- Site permits - for households to manage the erection of (and then rent) dwelling units

- Certificates of occupation

- Residential permits

- Lodger's permits (for individuals/households to rent space from households with rental tenure)

- Hostel permits (for individuals to rent beds in hostels).

Renting beds in hostels became a symbol of rare achievement for migrant workers. The bed ticket a migrant obtained from the superintendent's office for a bed in single-sex hostel was far cheaper than a backyard shack and given the meagre wages; the migrant worker had little choices (Mamdani, 1996). There is evidence that bed holders sublet their beds and spaces to several other tenants. Mamdani (1996) cites Minaar, et al. (1992) who states that the bed occupancy rate in the Cape Town hostels has been estimated at 2.6 per bed and in Dalton Hostel in Durban the rate was said to be as high as 6. Furthermore, Mamdani (1996) interviewed the chairperson of the Hostel Residents' Association at Wolhutter, who claimed that there was an estimated 5000 others living in the hostel besides the 3,218 bed holders. Fearing influx, in the early 1970s, the central government-controlled administration boards took control of township administration to effect influx control. The 1976 Soweto uprisings, Cross Roads uprising and other similar movements signalled the beginning of the end of the stringent apartheid controls over land usage. Faced with intensified resistance from black South Africans and economic problems, government leaders and officials and top private sector stakeholders attempted to reform apartheid society by introducing a private housing market, reforming the labour market, removing restrictions on the urban residential rights of a minority of residents, selectively upgrading township infrastructure and promoting the second wave of industrial decentralisation (Hendler, 2015).

Faced with socio-political pressure, the apartheid state set up two commissions that had a significant impact on the future tenure and tenancy for blacks in urban South Africa. The Wiehahn Commission was more inclined to black labourers and it recommended that the Labour Relations Act be amended to grant black labour unions legal recognition and also encourage them to register (Hendler, 2015). This gave the opportunity to unions to make further industrial and political demands, which included improved housing for their members and improved facilities. Secondly, The Riekert Commission made recommendations on the

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relaxing of influx control, and gave urban residents permanent residential rights preferential treatment when seeking employment (Dewar, et al. 1982).

The 1982 Regional Industrial Decentralisation Programme incentivised labour-intensive industries in homeland areas and resulted in some 55 industrial development points (Dewar, et al. 1982). These developments had a negative impact in the sense that there was increased fragmentation and urban industrial sprawl and isolation of people in the city, resulting in separation of work and living opportunities. This situation has continued to be problematic for current urban dwellers, who have to spend a sizeable portion of their wages to travel to places of work (Turok, 2012). In the mid-1980s, resistance had succeeded in undermining the functioning of the local government councils and of local municipal services, resulting in the army being deployed in townships. At the centre of such resistance were civic organisations. In 1978, the reintroduced 30-year leasehold was upgraded to 99-year leasehold, and the Financial Institutions Act was amended to allow building societies to give loans directly to African leaseholders. In 1984 the Black Communities Development Act 4 was promulgated and it facilitated registerable individual ownership (Kingwill, et al. 2017).The government also started selling off some 350000 units (Hendler, 1986) in a bid to speed up privatisation of housing and in response to the shortage of private and public funds for housing. Upgrading of services in townships took place from the 1970s, and besides winning the hearts of residents, it was also a security strategy to bring stability to the townships. Subsequent dropping of the pass laws led to an increase in informal settlements.

In order for separation to succeed according to Marx's PA, 'bloody legislation' accompanied by brutal force were used (Marx, 1867). Informal tenancy was kept in check by stringent laws that made up the intricate pass law system and enforced by late night raids by the police. The sense of temporality of the migrant was reinforced by the limited number of months the migrant was given, hence making him a temporary sojourner in the white towns and cities. It is important to also note that tenure uncertainty for the blacks in the urban areas created deep fears of insecurity. There was 'physical insecurity' where 'illegals' lived in constant fear of pass-law raids and arrest, insecurity of tenure resulting from housing shortage on one hand and inadequate tenure conditions even for those who gained access (Dewar.,, et al. 1982, p. 40). The spectre of Illegal Squatting Amendment Act and evictions due to failure to pay rent hung over urban blacks. This law gave landowners and authorities wide-ranging powers to evict and destroy homes of unlawful occupiers (Kingwill, et al. 2017).This deep resentment of authorities led to rent boycotts in the 1980s, but stills persists in post-

democratic South Africa according to research on Langa Hostels buy Butcher and Oldfield (2009).

Key points emerging from the section above include: firstly, a new form of primitive accumulation (PA) where the majority of blacks are dispossessed paving way for their proletarisation. Maintaining control went beyond what Smuts saw as 'institutional segregation' to also involve what Mamdani characterises as 'bifurcated state'. Oppressive laws were used to brutalise and 'legalise' dispossession and exclusion. The former peasant, the racially defined black, was denied land tenure, both in his Bantustan through a supposed customary tenure, and in the urban area where he was simply a sojourner, offered temporary existence. In the process, his exclusion and separation was further exacerbated by denying him adequate access to services such as water and sanitation.

4.4. Water Legislative and Policy Framework

4.4.1 Pre-Union of South Africa

Access to water in South Africa and other parts of Africa is marred by years of colonial dispossession and segregation. Prior to colonialism, land and resources where shared communally. The combination of land dispossession and repressive legal systems of private land ownership brought massive changes to the way of life enjoyed by indigenous people. According to Tewari (2009), as the country changed hands from the Dutch to the British and then to the Afrikaners, and very recently to a democratic government representing all ethnic groups in the country, so did the water laws and emanating water rights. Access to land and water in South Africa are deeply intractable. Since the arrival of white settlers in 1652 and the subsequent application of the Roman-Dutch law in South Africa, water in springs as well as non-navigable streams was owned by land owners while the government retained the right to regulate use of water in navigable streams and rivers (Pienaar and Van der Schyff, 2007). The Dutch settlers initially applied the water law of Holland, where control of water was the *dominus fluminis*, which means 'owner of the river' (Milton 1995). At that stage, water rights were not based on the ownership of riparian land, so water regulation was done through an administrative system where rights were administered by local authorities (Milton, 1995).

When the English took over the Cape in 1806 they did not immediately change the law, until the Supreme Court judgement in 1856, which effectively brought to an

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end the principle of *dominus fluminis* as the court adopted '*res nova*' which held that landowners "have each a common right in the use of water which use, at every stage of its exercise by any one of the proprietors, is limited by a consideration of the rights of other proprietors" (Milton, 1995, p. 4). This became what is known as the riparian principle. The principle was inherited from English Law and it applied water rights to land rights where a person who owned land over which water flowed had a right to share of the 'normal low' (MacKay, 2003, p. 50). The year 1873 and subsequent years, saw application of English law: where in addition to spring water and non-navigable streams on their land, land owners also had ownership of water in rivers and streams flowing through their land. Under English law, cases where rivers or streams formed boundaries of properties, land owners shared ownership. Individual rights to water were granted and courts dealt with water disputes in exactly the same manner as they handled disputes regarding land rights (Tewari, 2009).

The riparian principle meant that land ownership by white settlers also gave them permanent supply of water through streams flowing through this land (Funke, et al. 2007). This means that not only did landowners have solid water rights attached to their land but they also given preferential use of public water alongside boundaries of their properties. According to Earl, et al. (2005) the right of access and use of water resources was intimately linked to the ownership of land.

4.4.2 Irrigation and Conservation of Waters Act

In the aftermath of the formation of the Union of South Africa in 1910, Parliament enacted the Irrigation and Conservation of Waters Act 8 of 1912 to promote irrigation as well as allow riparian owners to use water from public streams (Thompson, 2006). It was the first codification of water law in the Union of South Africa (Earle, et al. 2005) For Pienaar and van der Schyff (2007), the Irrigation and Water Conservation Act made a distinction between public and private, where public water was on all land not privately owned, while the opposite is true. According to Nunes (1975), the Act also recognised riparian rights as dominant, although it authorised rights to non-riparian owners to use water not utilised by riparian owners. According to Earle et al. (2005), the Act's main emphasis on irrigation development resulted in rapid agricultural and industrial development. This however benefitted white, mostly male landowners at the expense of the majority of the people in the

country. This elevation of the riparian principle meant that those who had been dispossessed of their land were largely prohibited from accessing water sources.

4.4.3 The 1956 Water Act

Owing to the fact that the main emphasis of the Irrigation and Conservation Act was irrigation, by the 1950s, the Act had 'outlived its usefulness' (Barnard, 1999). This emphasis on irrigation failed to address the new water requirements of the expanding industrial base (DWAF, 1994). However, as has already been argued, blood legislation such as the 1913 Land Act had already legitimised theft of land and curved the country along racial lines. For Schreiner, et al. (2004), territorial segregation along racial lines allowed the white male minority rulers to grab land, water and mineral resources for profitable exploitation in the first world, while concentrating the poor and uneducated black population in increasingly overcrowded homelands. The 1956 Water Act intended to ensure an equitable distribution of water for industrial and other competing users, as well as authorise strict control over the abstraction, use, supply, distribution and pollution of water, artificial atmospheric precipitation and the treatment and discharge of effluent (DWAF, 1994, p. 04). The 1956 Water Act saw a slight change where springs and streams on privately owned land could be used for private use by the landowner, but they needed to take into consideration land owners downstream.

An intertwined relationship between land and water was central to the 1956 Water Act. According to 1956 Water Act:

> The owner of any sub-division of land referred to in the definition of "riparian land" in section one is entitled to such share of the water of a public stream to which the owner of the original piece of land of which such sub-division formed a part was entitled immediately prior to the subdivision of such land, as may be agreed upon by the owners concerned or apportioned by the water court, even if that public stream docs not flow on or along the boundary of such sub-division, except where the right to such share has been excluded by agreement, order of a competent court or other lawful means. [Sub-so (2) amended by S. 3 of Act No. 56 of 1961.)

The Water Act defined private water as all water that rises or falls naturally on any land or naturally drains or is led onto one or more pieces of land, but is not capable

of common use for irrigation purposes (Kidd, 2009). On the other hand, public water was any water flowing or found in or derived from the bed of a public stream, whether visible or not. Use of public water was divided into three categories, namely: agricultural, urban and industrial, of which the first two categories rested on the riparian owner (Kidd, 2009). According to MacKay (2003), this meant that owners of riparian land could take as much surplus water as they could use beneficially and if they could afford it, they could impound all the surface water. Furthermore, use of public water for industrial purposes was subject to the permission of a water court or the Minister (Kidd, 2009). Another key aspect of the Act was that a person could use public water for defined purposes only to the extent that the use thereof was beneficial (Kidd, 2009). What remains clear is that since the majority of blacks had been dispossessed of their land and pushed to largely infertile homelands, 'beneficial' use of water was unlikely.

The close link between land tenure and access to water is evident. This means that the landowner enjoyed more water rights even if it was regarded as public water. With the advent of apartheid, the situation of blacks who had been squeezed into homelands became worse. The 1956 Water Act entrenched partial riparian rights which led to inequality in access affecting the black population (Keightley, 1995). Msibi and Dlamini (2011) maintain that while the apartheid regime did not pass direct legislation to discriminate on access to water based on race, the racial imbalances in ownership of land promoted by the colonial apartheid laws combined with riparian laws resulted in denial of black people the right water. This is supported by Tewari (2009) who argues that the colonial water rights policy excluded the Africans who could not compete in the land markets freely and also did not have the resources to do so where such access was possible.

The Water Law Review Panel (1996) found out that the 1956 Act was heavily based on riparian rights, privileging white riparian farmers and excluding the majority of South Africans from access to water rights. The riparian principle therefore afforded unfair privileges to a small category of the population, mostly white, to control the country's water resources (Earle, et al. 2005). Furthermore, the 1956 Water Act was pro big-business as the country experienced economic growth. For Tewari (2009), the 1956 Water Act managed to harmonise water regulation in the interests of the economic heavyweights, agriculture, mining and industry. Generally black people experienced

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restricted and poor access to water in both rural and urban areas. Little attention was given to services delivery by both the colonial and apartheid authorities.

4.4.4 Water Services Provision

According MacKay (2003) water services provision to black populated areas was inferior in comparison to white communities. In addition, there were separate revenue accounts for black townships and white areas (Goldin, 2004) which meant that resources were hugely skewed. While basic services were offered to townships by local authorities, it is important to note that in most cases, water was typically provided through a community standpipe (Earle, et al. 2005). Those houses which had in-yard water supply or inside dwellings usually paid a monthly flat rate for the service (Earle, et al. 2005). As civil disobedience intensified in the 1980s, townships withheld payment of services including rents. This meant that local authorities under black control could not raise enough revenues to provide services such as water and sanitation. Inasmuch as the government turned a blind eye to avoid further plunging the situation beyond return, some regard this as the beginning of a 'culture of non-payment' (McDonald, 2002). Arguments by Mamdani (1996) that water and sanitation services in hostels were dire due to the fact that overcrowding had negative impact on shared facilities has already been discussed in earlier sections. Likewise, townships were also experiencing rapid urbanisation once apartheid laws were relaxed (Hornby, et al. 2017), resulting in overcrowding and inadequate access to water and sanitation services.

4.5.1 Urban Land Tenure in Transitional Years

Despite strict influx control, the black African urban population grew which led to overcrowding. As a result, unplanned urbanisation had begun to overtake population management and influx control long before policy change began (Kingwill, et al. 2017:48). Prior to the removal of apartheid, pressure had been mounting on the minority government. Spatial and regulatory panning, together with forced removals, were no longer an option, hence the need to agree for a road to democracy (Sihlongonyane, 2005). Other critics like Mabin and Harrison (1997) argue that this period was crisis ridden and filled with uncertainty rendering planning efforts ineffective.

A slew of amendments and changes took place from the late 1980s as pressure mounted on the apartheid government from both domestic and international circles. The Conversion of Certain Rights into Leasehold or Ownership Act 81 of 1988 was among the first acts which ensured that residential tenure rights for black South Africans could no longer be limited to those of temporary sojourners in the cities (Kingwill, et al. 2017). While this Act enabled the privatisation of township rental stock it was also a direct result of pressure from rents and services boycotts (ibid, p, 50). Another significant Act passed was the 1991 Abolition of Racially Based Land Measures Act 108, which abolished and repealed notorious Natives Land Act, the Native Trust and Land Act as well as the Group Areas Act.

Planning law started to change with the introduction of The Less Formal Township Establishment Act (LFTEA) 113 of 1991, which aimed to formalise existing settlements or create new townships in the low-cost housing sector (Kingwill, et al. 2017). This meant procedures and requirements were relaxed to cater for rapid urbanisation and the need to provide urban land for settlement. The Upgrading of Land Tenure Rights Act 112 of 1991 attempted to upgrade so called old-order rights to full ownership as defined by the Deeds Registries Act 47 of 1937 (ibid, p, 51). This was met with serious challenges however, as some of the lower order rights were planned on top of cadastrally surveyed properties, which had not been consolidated and registered in the new township boundaries and usages (ibid, p. 51). In order to allow short cuts to conveying title to the present owners without requiring them to undertake expensive and time-consuming conveyancing, the Land Titles Adjustment Act 111 of 1993 was passed. It gave legal powers to magistrates and other legal practitioners' powers to register ownership to those alive and to adjudicate conflicts.

Despite these changes to the legislative framework, the size of the apartheid regime's housing backlog posed one of the most significant challenges to the RDP (Sihlongonyane, 2005). Rapid urbanisation resulted in more informal settlements and overcrowding. Efforts to provide titles also began to fall apart as the 'owners' could not sustain the process of transferring titles, reverting back to situations where titles were not transferred (Kingwill, et al. 2017).

4.5.2 Early Approaches to Land Policy in Democratic South Africa

Following the historical analysis give in the sections above, it is clear that the land question cannot be separated from its past, hence the current land issues are deeply embedded in the rather complex history of dispossession, oppression and exclusion. It has sometimes been argued that the current approaches to the land question exhibit a rural bias (Mkhize, 2015), hence there is very little or inadequate attention to the urban land question. During his first budget speech in parliament, the then Minister of Land Affairs, Mr Derek Hanekom stated that: "(t)he resolution of the land question … lies at the heart of our quest from liberation from political oppression, rural poverty and under-development" (Walker, 2005, p. 805).

There is an increase of voices nation-wide lamenting the slow pace of land reform and general lack of implementation of policies by the State. With less than 3.5% of the country's farm-land being transferred to black ownership by 2005 it has generally been seen as failure to transform society (Walker, 2005, Mkhize, 2015). In Walker's view, this failure subsequently implied the failure to address black claims to full citizenship through land ownership and to 'make amends for the insults to human dignity that black people have suffered as a collective through dispossession in past' (Walker, 2005).

In the urban context, the situation is more complex that ever imagined. In any approach to redress, reform or restitution one has to take into consideration vested interests, current legislation on property rights and a complex myriad of political and economic web issues. In her opinion piece entitled Land Claims a Sisyphean task for the state (The Mail & Guardian, 2015, p. 23) Cheryl Walker outlines some of the challenges. She states that urban land claims are problematic because in many areas historical property boundaries have undergone enormous changes since the Group Areas Act was enforced; properties have been subdivided or consolidated and land uses changed. In addition, many urban claims involve informal rights, including sub-tenancy arrangements and historically illegal forms of occupation that may be difficult to dismiss but also to prove (Walker, 2015). The racial dimensions to landholding mean that urban land has been a largely white intergenerational asset for much of the country's history (Mkhize, 2015). Furthermore, this landholding pattern forms a gridlock of vested interests around urban land (Mkhize, 2015).

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The urban land question is frequently reduced to one of housing, the housing question is frequently reduced to a quantitative question of the number of houses built, and popular dissent is routinely reduced to a demand for service delivery. This, according Hendricks and Pithouse (2013), avoids the political questions on city governance and urban land allocation. In addition, the deeply complicit nature of private capital and municipalities perpetuate the 'exclusionary approach' to urban distribution.

There is a consensus that the complexity of the urban land question straddles many fields of study. Most urban centres have been struggling to integrate townships, a legacy of apartheid, into the formal city (Scruggs, 2016). Tomlinson (1990) bemoans what he terms a 'bastardised' city structure which arose under apartheid. It is a "deliberate artefact of apartheid policy, whose primary purpose has been the attempt to keep blacks at a 'safe' distance from the centres of production and the white residential suburbs, except, of course, for labour purposes" (Tomlinson, 1990, p. 5; Gordon, et al. 2007).This discontinuous urban structure with pockets of isolated black residential development located far from the city is in direct contrast to both the needs of the poor and an efficiently functioning city (Tomlinson, 1990, p. 5). Furthermore, there has been higher investment in infrastructure in predominantly white areas as compared to black, coloured and Indian areas, which has subsequently negatively affected property prices in those areas (Gordon, et al. 2007). The majority of the townships and other low-income urban residential areas represent isolation of the poor from the relatively wealthy (Tomlinson, 1990, p. 5). The result is a paucity of social and commercial services and an expensive transportation system.

4.6 Human Rights-based Approach: Urban Land and Water Services Delivery

4.6.1 Human Rights Based Approach: Conceptual Debates

Perhaps the most important concept to dominate legislative and policy framework in post-apartheid South Africa is the concept of human rights. The Human Rights-based Approach (HRBA) is perhaps the greatest invention of post-World War 2 which attempts to internationalise the concept of human rights. Following an overview of the legislative and policy framework of pre-democratic South Africa, it is appropriate to present some of the debates around the HRBA and its role played in key principles of Constitution of the Republic of South Africa. Locating the rights-based approaches will

also help us to understand why, in the midst of seemingly pro-poor policies, the 'surplus population' is continuously 'let die' (Li, 2009). This section provides some key debates around the philosophical as well as practical aspects of the HRBA.

A human right is generally considered to be an abstract concept which is taken for granted. Much of the work done on human rights has been dominated by technical legal discourse (Freeman, 2011). Human rights are commonly understood as a set of universal claims to safeguard human dignity from illegitimate coercion, typically enacted by state agents (Brysk, 2002). The Lockean classical theory of natural rights in the 17th century postulated that every human being had certain rights that derived from their nature, and not from their governments or its laws, and the legitimacy of governments rested on the respect that it accorded to these rights (Freeman, 2011, p. 9). For Locke, men therefore possessed certain liberties that could never be alienated by church or state, and they had a natural right to the necessities of life, and to consent voluntarily to create a system of laws (Freeman, 2011, p. 12). There is recognition of the role of the state in human rights. Government had the right to exercise power over its members so that each member could live well, but that public right extended to the individual only as a member of the community rather than as a separate individual. "Beyond that, man must not only have his rights as an individual; he must also have their exercise within his own control; that is, he must be sui juris" (Brett, 2003). On the other hand, Thomas Hobbes makes a clear distinction between right *jus* and law *lex*. These are regarded as opposites since right was liberty and law was restraint. Kant however viewed natural rights as a metaphysical concept of the person as a moral agent. Another later interpretation of natural rights comes from Thomas Paine's theory of the Rights of Man, which argues that a system of rights was necessarily about a system of duties, for if we all have rights, we all have duties to respect the rights of others. Grounded in reason, his theory proposed that a system of public welfare be established through progressive taxation. One commonality in all different interpretations of human rights is that the idea of human rights must be legislated, legally recognised, and codified before it can be taken seriously as part of the law of nations (Goodale, 2006). This, according to Freeman (2011, p. 8), is because law appears to provide 'objective' standards that 'protect' the concept of human rights from moral and political controversy.

One key implication of the human rights-based approach is its roots in global legal discourse given that current legal understanding is largely based on Western legal systems, which takes us back to the neo-liberal agenda. From another angle, this means that interpretation of political and social process processes are simply reduced to 'legality' or 'illegality'. The binary representations as presented earlier by North (1990) and Ostrom (2013) is challenging as this ignores the rules in practice and overlapping realities which exist in all social and political processes. An example of HRBA is the Universal Declaration of Human Rights which was adopted by the UN General Assembly on 10 December 1948. The Preamble of the UDHR states that; "Recognising that these rights derive from the inherent dignity of the human person …" (Hertel and Minkler, 2007, p. 7). The assumption here is that human dignity and subsequently, human rights, has universal application. Scholars like Goodale (2006) have questioned this assumption by arguing that human rights remain contextual and relative. Tying the concept human rights to global legal discourse is likely to miss the point as local understanding and conceptions might be fully considered.

Secondly, human rights discourse is largely championed by transnational agencies which in some cases contradict each other. According to Goodale (2006), some of them have competing normative agendas, or at least agendas that coexist uneasily, so that an institution might work for human rights, social justice, environmental protection, and economic development (or justice), at the same time. The UN, mentioned above, is made up of several agencies, which at face value might appear contradictory, yet in my view, constitute a larger collective of advancing neo-liberal agenda and 'letting die' others (Li, 2009). Besides the very contradictory agendas in their programmes, the source of funding for the majority of these agencies is largely either financial institutions which drive an open neo-liberal agenda or particular states with vested interests.

While Neocleous (2012) has argued that international law, which forms the basis of current human rights, was itself a result of colonialism hence its objective is not for the total population. Inasmuch as organisations such as the UN advocate for secure tenure and improving tenure security for billions in slums across the world, it cannot be dismissed that they continue to champion the neo-liberal agenda. Their support for land titling and private ownership is unquestionable. Yet, as Li (2007) has demonstrated, the laws and policies which support private property, enforce exclusion and produce 'free'

labour are violence by other means. Other key advocates for property rights such as UN Habitat, among others, advocate for pro-poor interventions, while largely driving an exclusionary agenda in practice. As shown earlier, formal rules upon which international agencies draw their mandate are largely exclusionary and do little to include local rules or 'rules-in-use.

The social sites upon which debates on human rights take place are not merely epistemological. For Ong and Collie (2005) international debates on human rights are like 'global assemblages' of power, culture, and politics where competing knowledge practices take place. In other words, transnational gatherings of powerful actors across sectors with different world views attempt to interpret human rights on behalf of everyone else. On the other hand, Goodale (2006) argues that the sites where human rights unfold in practice do matter, and these sites are not simply nodes in a virtual network, but actual places in a social space, places which can become law-like and coercive. In the urban context Parnell and Pieterse (2010) question the 'absence of an articulated rights-based agenda for cities of the South' with the exception of Brazil. Using the rights-based approaches amidst an urbanisation of poverty underscores the need for a different political practice: that of an engagement with the state and the downscaling of the developmental state to the city scale, especially in large cities (Parnell and Pieterse, 2010, p. 146). Furthermore, socio-economic rights require 'bringing the state back into development debates' (ibid, p. 153). As the custodian of institutions in democratic states, the state should take responsibility rather than take a back-seat and leave debates to the markets or other social players. In the context of this study, understanding the link between urban land tenure and water services development planning requires the state to play a bigger role, together with local authorities.

Another important implication is that it assumes vertical spatial metaphor. For Goodale (2006, p. 22), this 'verticality is present in every analysis that describes particular processes "from below" or "from above". A top-down approach in the process of developing rules which make up the current conceptions of the HRBA is worrying given the fact that rules are developed from elsewhere and, imposed on local contexts, usually fail to work. In addition, trans-boundary social processes like human rights discourse in part by 'articulating the global and the local' (Cvetkovich and Kellner 1997, pp. 1-2) not only adds to the confusion but results in missing critical

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discourse at the pursuit of the global. Failure of internationally developed blue-prints is largely documented, with the recent failure of the Millenium Development Goals (MDGs) to meet all the targets (Huchzermeyer, 2013/14). This shows that when social and political processes emerge or unfold they cannot be simply explained by vertical spatial metaphor. Efforts to make meaningful changes to people do not have to be developed outside people's contexts.

What is clear from the debates is that there is no consensus on the HBRA, and while it appears to represent conflicting agendas, it remains likely to permeate to legislative frameworks in circumstances where it is adopted. The debates presented on the HBRA provide a platform for how they became the founding principles of the Constitution of the Republic of South Africa.

4.6.2 Progressive Realisation of Socio-Economic Rights and the South African Constitution

After briefly raising debates around Human-Rights based approaches, for the purposes of this study it is important to address progressive realisation of socio-economic rights separately and what it means in the context of South Africa. In the context of this study, one can agree with Habib's (2014, p. 132) interpretation of the HRBA in that the ensemble of strategies and tactics that are directed towards citizens and others progressively realise the rights to which they are entitled by virtue of either their belonging to or having a presence in a State. The purpose is not to provide a detailed overview by raising critical debates around progressive realization of socio-economic rights as ground-breaking judgments on cases brought before the Constitutional Court of South Africa. Li (2009) is quick to warn that The Declaration on Economic and Social Rights and the HRBA sits awkwardly alongside the IFIs, convinced that sacrifice is necessary to promote growth, from which the poor will eventually benefit.

While hailed as bringing international leaders into the development agenda, failure to reach consensus across all the indicators which can measure a rights-based approach has been well articulated by Landman's observation:

(T)here remains a lack of clarity concerning the precise scope of state obligation and the core content of individual economic, social, and

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cultural rights, which in turn   makes it difficult to identify events and practices that clearly amount to violations … there continues to be a debate over how economic, social, and cultural rights are to be realised progressively through the use of the maximum available resources. Such a view of progressive realisation implies that the protection of such rights is still relative … . It has been impossible so far to provide meaningful and comparative measures of these rights for global comparative analysis (Landman, 2005, p. 49).

There is a general recognition that socio-economic rights cannot be realised immediately across the world. The ICESCR states that "(e)ach State Party to the present Covenant undertakes to take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realisation of the rights recognised in the present Covenant by all appropriate means, including particularly the adoption of legislative measures (Hertel and Minkler, 2007, p. 17). According to Chapman, (2007, cited in Hertel and Minkler, 2007) the Committee on Economic, Social, and Cultural Rights sought to balance the flexibility, gradualness, and variability inherent in the formulation of article 2 (1) with meaningful goal setting and accountability measures.

The South African Constitution displays the horizontality of the Bill of Rights; where in terms of Section 7(2) the State is required to "respect, protect, promote and fulfil in the Bill of Rights (South Africa, 1996; Liebenberg, 2014). Inasmuch as there has been no consensus of "how much is enough" or "what is appropriate" for fulfilment (Hertel and Minkler, 2007), South African context was thrown into fresh legal and socio-economic debates following the epic ruling given by the Constitutional Court on the widely reported Grootboom Case. Williams (2001) argues that the Grootboom Case compelled the state to take responsibility on delivery of services. Other subsequent cases have also ruled in favour of landless and homeless urban poor (SERI, 2013; Royston, 2013, 2017). The cases set a new precedence, especially with regard to the justifiability of socio-economic rights related cases. The entry of the courts into socio-economic rights debates while celebrated, should also raise serious concerns. The paradox of this intervention in my view lies in the fact that the law itself, which is a

formal institution, largely relies on records and a technicist approach, while on the other hand informal rules, processes and institutions are unrecorded and locally-based.

Internationally, there is debate concerning how to measure the effort made by wealthier states to fulfil their part in enabling poorer ones to realise economic efforts (Hertel and Minkler, 2007). The unequal nature of economies means that for indicators to be set, it leads to further contradictions. Likewise, at national level, as in the case of South Africa, there has never been consensus over how to measure the effort of the State's effective use of its resources for the progressive realisation of socio-economic rights.

The South African Human Rights Commission has the following mandate on progressive realisation of rights in South Africa:

> Each year the Human Rights Commission must require relevant organs of state to provide the Commission with information on the measures that they have taken towards the realisation of the rights in the Bill of Rights, concerning housing, health care, food, water, social security, education and the environment. (The South African Human Rights Commission, 1996, p. 184).

The Constitution of the Republic of South Africa recognises land as a right. This decision was taken in recognition of the right to land is seen as part of a national poverty strategy (Charlton, 2006). Clause 25 (5) of the Constitution states that: "(T)he 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" (Constitution of the Republic of South Africa, 1996). Gordon, et al. (2007, p. 31) states that urban land as a right has three characteristics or dimensions and these are:

- Access; whereby land provides access to amenities and opportunities in the urban area by virtue of its location within the urban form;

- Tenure; whereby access is provided to ownership of the land; and

- Quality; referring to the quality of the improvements on the land.

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Gordon, et al.'s further assertion on urban land is in line with FAO land tenure governance Framework and Guidelines on Land Policy in Africa as pointed in the earlier sections (FAO, 2012; African Union, 2010). The rights based approach illuminates the building foundation block to the Constitution of the Republic of South Africa. Like all other socio-economic rights, access to land can also be progressively realised. Gordon, et al. (2007) also states that one of the important facets of the right to land includes tenure, which this research views as crucial in urban land.

On the other hand, when we consider the water services, the United Nations Committee on Economic, Social and Cultural Rights (UNCESCR, 2003, cited in Georgia, 2013) explicitly provided a framework outlining the right to water (Table 5 below).

Table 5: The right to Water

INDICATOR	DEFINITION
AVAILABILITY	The water supply for each person must be sufficient and continuous for personal and domestic uses. These uses ordinarily include drinking, personal sanitation, washing of clothes, food preparation, personal and household hygiene. According to the World Health Organization (WHO), between 50 and 100l of water per person per day are needed to ensure basic needs are met and few health concerns arise.
QUALITY	The water required for personal or domestic use must be safe, therefore free from micro-organisms, chemical substances and radiological hazards that constitute a threat to a person's health. Measures of drinking-water safety are usually defined by national and/or local standards for drinking-water quality. The WHO Guidelines for Drinking-water Quality provide a basis for the development of national standards
ACCESSIBILITY	Water facilities must be accessible to everyone without discrimination. Accessibility has overlapping dimensions: physical, economic, and information. Sufficient and safe water must be accessible within the vicinity of the household and affordable. According to WHO, the water source has to be within 1,000 m of the home and collection time should not exceed 30 min. The United Nations Development Programme (UNDP) suggests that water costs should not exceed 3 per cent of household income. Accessibility includes the right to seek, receive and impart information concerning water issues.
NON-DISCRIMINATION AND EQUALITY	It is the obligation of States to guarantee that the right to water is enjoyed without discrimination and equally between men and women and proscribes any discrimination which has the effect of nullifying or impairing the equal enjoyment or exercise of the right to water

Source: UNCESCR (2003)

The attempt to internationalise the concept of human rights and enforce them on nation states might appear to have good intentions, however, questions still arise as to

who they serve and for what purpose. Duffield (2007, p. 19) provides a contrast between 'insured life' in the global North and 'non-insured surplus life' in the global South. For him, the goal of transnational development intervention was not to extend Northern-style social protections to the global South but to keep the latter ensconced in their nations, communities and families, where they must be self-sufficient and make no demands. One can argue that these transnational development agencies are participating in 'letting die' and 'letting live' (Li, 2009). In South Africa, the introduction of Free Basic Services is seen by critics as merely 'tweaked' neo-liberalism and continues to prioritise repressive forms of cost recovery (Bond, 2002; McDonald and Pape, 2002). This is further debated in other sections, but it is the following section which seeks to outline key legislative and policy frameworks in democratic South Africa.

In summary, Langford (2014, p. 1) raises a crucial question: How would the quasi-socialist agenda of the African National Congress (ANC) contend with the demands of white capital? The result therefore was Constitutional design which is largely a classical liberal product which strongly reflects the International Covenant on Civil and Political Rights but is balanced by an emphasis on dignity and equality, the bounding right to property by principles of historical and distributive justice, and the of a number of justiciable socio-economic rights (Langford, 2014, p. 5). The HBRA is therefore littered with contradictions which further complicate the plight of the poor, who are subsequently 'let die'.

4.7 Key Legislative and Land Policies in Democratic South Africa

Political economy of land in South Africa is irretrievably tied up in the history of dispossession and oppression (Marx, 1867). There is no doubt that more than 20 years after attaining democracy, South Africa still struggles with the most complex of all challenges: the land question. It cannot be denied that the issue of land is always placed at the centre of transformation and social justice, however it is generally accepted that little success has been made in this regard. The State's response has been largely on land restitution, redistribution and redress through the lands claim process mainly in rural areas (South African Cities Network, SACN, 2015). This process seems not to adequately address the issue of rapid urbanisation and urban land issues associated with it. One activist, Sbu Zikode, laments that despite two decades of being 'free', freedom remains a dream for those in cities without access to land and its benefits (SACN, 2015). He adds that this has led to frustration as

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people felt exclusion in their quest for access to shelter, services and the benefits of the city. As more and more people seek for opportunities in cities and towns, challenges arise as the majority of them remain excluded because of the high cost of urban land and the skewed land ownership. Various viewpoints and expectations complicate equitable access and redress of land (SACN, 2015). In most cases, land governance falls in the ambits of the local government though they do not own all land parcels within their jurisdiction.

The table below provides some key land legislative frameworks/key land policies in democratic South Africa.

Table 6: Legislative Frameworks

Legislation/Policy	Description
Restitution of Land Rights Act Number 22 of 1994	To provide for the restitution of rights in land to persons or communities dispossessed of such rights after 19 June 1913 as a result of past racially discriminatory laws or practices; to establish a Commission on Restitution of Land Rights and a Land Claims Court (Republic of South Africa, 1994, Claassens and Cousins, 2008)
Traditional Leaders Governance Framework Act Number 41 of 2003 (TLGFA)	Drafted to incorporated and recognise customary tenure arrangements. Under this Act, land administration was placed in the hands of Traditional Councils (Ntsebeza, 2013). This was later declared unconstitutional by the Constitutional Court in 2010 due to lack of proper consultation (Claassens, 2013).
Extension of Security of Tenure Act Number 62 of 1997	Protects against eviction of people living on farms, rural areas, undeveloped land, land in the township or encircled by townships, a secure legal right to live on the land with permission of the owner on or after 4 February 1997 (South Africa, 1997
Communal Land Rights Act 11 of 2004 (CLARA)	The law intended to transfer registrable land rights to individuals, families and communities. CLARA allows for 'traditional communities' to appoint their traditional councils as land administration committees, in a move many critics have argued removes democratic choice of communities. The Act provides for a process in which 'old order' or de facto rights can be identified and confirmed, converted or transferred into 'new order' rights of registration (LEAP, 2005, Claassens and Cousins, 2008)
Land Reform/Labour Tenants Act NO. 3 of 1996	The Act provided for security of tenure of labour tenants and those persons occupying or using land as a result of their association with labour tenants; to provide for the acquisition of land and rights in land by labour tenants and associated matters (South Africa, 1996)
Protection of Illegal Eviction Act (Act No. 19 of 1998)	The main intention is to protect land owners and occupiers. PIE provides procedures for eviction of unlawful occupants and prohibits unlawful evictions. It required the eviction of an unlawful occupier to be "just and equitable", when with regard to a range of factors, including whether alternative accommodation could be made available by the state (SERI, 2013)
Interim Protection of Informal Rights Act, Act 31 of 1996	The Act provides for the temporary protection of certain rights to and interests in land which are not otherwise adequately protected by law; and to provide for matters connected therewith (South Africa, 1996).

Source: Author's own Interpretation

The legislative framework presented on the table above is not exhaustive but it presents an overview of the direction the post-apartheid South Africa took at the dawn of democracy. However, some of the laws have been amended or replaced, and there was a general recognition that land reform and restitution was imperative. In the process of changing land ownership there was also need to protect those who had insecure tenure arrangements, for example, the Extension of Security of Tenure Act Number 62 of 1997, Land Reform/Labour Tenants Act NO. 3 of 1996 and Protection of Illegal Eviction Act (Act No. 19 of 1998). In addition, land tenure of communal land met with serious debate in the past decade,

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particularly after the Communal Land Rights Act 11 of 2004 (CLARA) was promulgated (LEAP, 2005, Claassens and Cousins, 2008). Current legislative framework remain controversial and so far, the State has failed to successfully use the provisions in the Constitution to improve land tenure in both rural and urban settings in South Africa. A few landmark judgements such as the Grootboom Case indicated that the State has a huge responsibility towards progressive realisation of socio-economic rights in South Africa (Wilson and Dugard, 2014).

4.8 Tenure Categories in Post-Apartheid South Africa

As pointed earlier, South Africa's land tenure systems tend to be classified into two broad branches: customary and statutory systems. In Chapter Two it was shown that the tenure continuum is sometimes considered to be the best way to describe South Africa's tenure categories. However, this study goes beyond these two categories to also include off-register tenure arrangements. Studies carried out by LEAP (2005), Payne and Durand-Lasserve (2012), and Royston and Narsoo (2006) agree on the multiplicity of tenure systems in most developing countries. LEAP (2005) recognises the fluidity of the tenure continuum and choose to use tenure 'arrangements' rather than tenure 'systems'.

4.8.1 Customary tenure arrangements

Customary tenure is often depicted as the 'chaotic Other', eluding bureaucratic control and regulation, while individual tenure is described as formal, with registered titles and susceptible to minute regulation and future planning (LEAP, 2005, p. 27). It is however important to contextualise this since a significant percentage of South Africans in rural communities fall into this tenure arrangement. Largely, communal land is managed and administered in accordance with the tenets of customary law (Gemey Abrahams Consultants, 2013). Soon after the advent of democracy, the majority of South Africans lived on land under customary tenure system. The 1996 census data indicates that around 15 million people lived in customary areas, approximately 83% of the rural population (LEAP, 2005). Characterising South African tenure as a dual system tends to put customary tenure derived from African customary law on one side, and individual tenure derived from Western law on the other, inasmuch as laws involving arbitrary racial distinctions have been repealed, but land in the former homelands continues to be registered in the name of the State (Adams, Cousins and Manona, 1999). Since the advent of democracy, the State has made efforts to find ways

of 'formalising' and recognising land tenure systems in communal areas of South Africa. Despite efforts to change this, critics continue to express reservations on different issues - especially the function of traditional authorities (Claassens and Cousins, 2008; Ntsebeza, 2002) and gender issues (Bentley, 2005). Ntsebeza (2013, p. 54) has gone on to further argue that most land in the rural areas of the former Bantustans is legally owned by the State and the land rights of rural residents are restricted to rights of occupation which are not comparable with the freehold land rights held by their white counterparts in the commercial farming areas. Furthermore, Cross (1997) argues that customary tenure systems are themselves deteriorating as corrupt administrators and developers on one hand, and widening differentiation within communities on the other, fail to enforce accountable land rights.

There have been attempts to reform customary tenure arrangements. The recent Communal Land Tenure Policy (CLTP) proposes a 'wagon wheel' model to represent communal land tenure arrangements (Department of Rural Development and Land Reform, 2013). Adopted from the traditional communal structures pre-colonialism (Peters, 2008), the model attempts to bring all stakeholders in land governance and administration into play. According to the Department of Rural Development and Land Reform (2013, p. 20), "this system completes the circle of land rights, authority and responsibility on the one end, production discipline, household food security and a basis for investment on the other and collectively, the overall rural economic transformation these engender". The diagram below shows the 'wagon wheel':
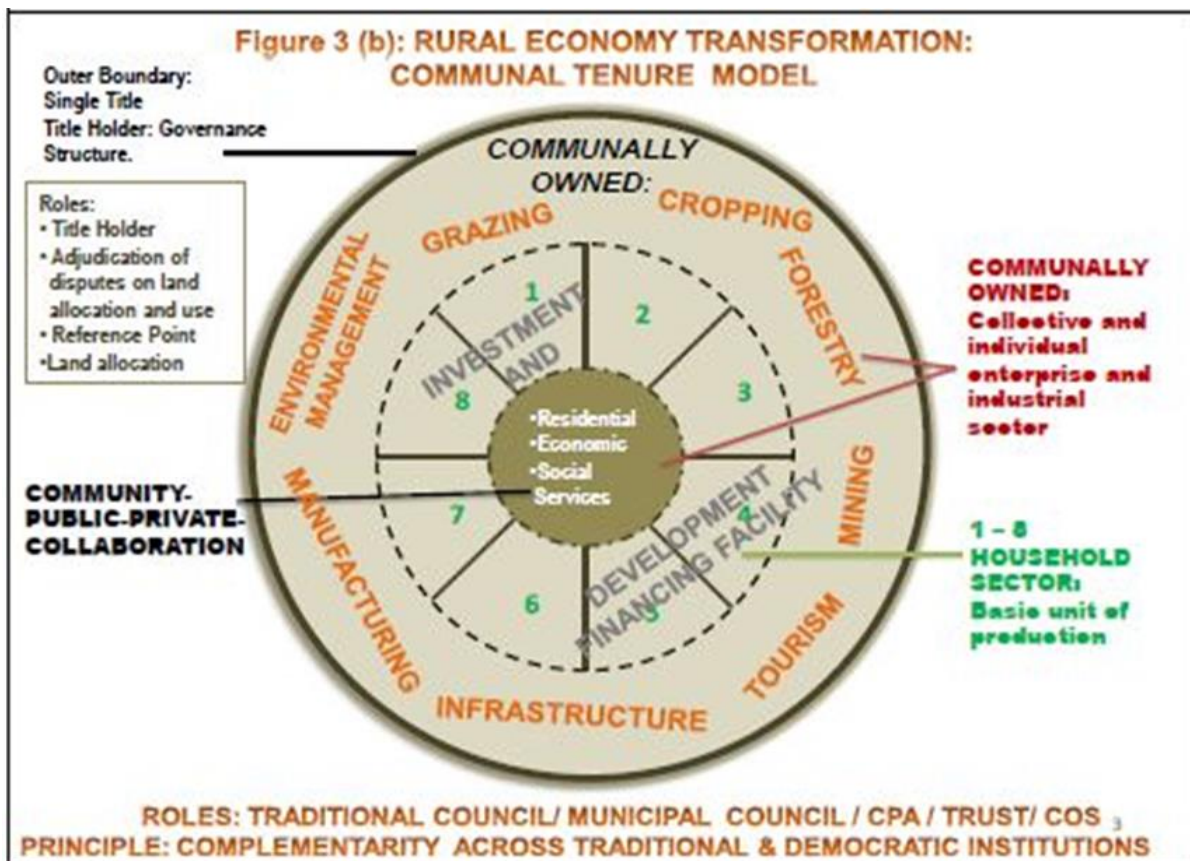
Figure 7: The Wagon Wheel
Source: Department of Rural Development and Land Reform (2013)

The 'wagon wheel' (Figure 7) shows an attempt by the government to mediate to contradictions which exist under customary tenure arrangements. It attempts to involve all stakeholders, namely the municipality, traditional councils and the community, in administering land tenure. While a municipality provides direction on spatial planning and land use management, they are also responsible for the provision of basic services such as water and sanitation. The traditional councils are given the most functions under the proposed wagon wheel, which include land administration and governance, facilitation and communication about community involvement and other tasks as assigned by government. The community on the other hand is expected to be 'active citizens' who participate in local affairs and municipal structures, champion rural development and manage succession among other functions. While the municipality is governed by the Municipal Systems Act which is regarded as formal, and traditional councils are largely guided by customs and tradition which are at times at odds with the Constitution, debates around the mismatches are far from over (Cousins, et al. 2005, Ntsebeza, 2013). While the community is referred to as the rightful owners of land and decision makers on land rights, its allocation, use and disposal, a recent study by

Hornby, et al. (2017) show that this is not the case on the ground. Placing social tenures (Hornby, et al. 2017) along the so-called formal tenure system is likely to result in an 'edifice', which is discussed in detail in the next section.

Formality could be better defined as organised regularity, which would thus include those customary systems that have known and used procedures for land allocation, boundary demarcation, adjudication and dispute resolution, although the system does not deliver registered tenure (LEAP, 2005). Formality suggests that the systems are known, accessible and used, and provide a social legitimacy that can underpin functional tenure security. Thus many South Africans have a relatively high functional tenure security that is outside of the legally secure tenure.

4.8.2 Registration of Deeds System

The Registration of Deeds System, normally referred to as 'freehold' in some countries, is based on Western approaches and more specifically the common law of ownership as developed thorough the Roman-Dutch law on property. Payne and Durand-Lasserve (2012) classify this system as statutory land tenure and it entered Africa through its colonial cities. It is based on formal laws and regulations; on government agencies; on judicial decisions and documented cases and other records (ibid). Land rights are allocated and confirmed through titles or other forms of ownership registration. Furthermore under this system, the land and property rights are under the 'ownership' paradigm (the ROD system) and have the strongest rights (LEAP, 2005; Hornby, et al. 2017)

Viewed from the perspective of the broader land management framework, this hierarchy of rights which privileges ownership or real rights in land is reflected in the technical processes that define and register the rights and capture the information (Hornby, et al. 2017, p. 29). A juridical cadastre underpins secure land rights in South Africa, meaning that land has to be 'cadastred' if it is to be recognised by the system (Hornby, et al. 2017).

The South African formal property system is organised around a conventional cadastral model, namely, a land information system that has two key components or subsystems: a spatial component, the geometric description of the land parcels, linked to the textual component, the records or registers describing the nature of interests and

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ownership of the land parcels (LEAP, 2005, Royston and Narsoo, 2006, Hornby, et al. 2017). In this context, the Surveyor General's Office (SGO) houses the spatial component and the Deeds Registry is the custodian of the Deeds information. It is generally accepted that the South African cadastre system demands stringent technical sophistication such as high-accuracy surveying based on a geodetic network of coordinates and legal conveyancing (LEAP, 2005).

LEAP further notes that 'evidence from titling experiments in South Africa over the past century suggest that registration and titling of land in former black rural and informal urban areas has had mixed results. Formal registers have not been maintained. Informal sales or intra-family transmission, without registration, are the more usual methods of transferring land in this sector'. As pointed out earlier, current formal land management system in South Africa does not have mechanisms to 'recognise' land tenure rights of individuals or groups who live in contexts that function outside the formal system, that is, outside the cadastre.

A major bone of contention of this system is clearly articulated by LEAP, (2005,p. 30); 'If the cadastre system is not working for the poor or for those whose land tenure is dependent on customary principles that are 'off-cadastre' or 'off-register', what does this mean for this system in developing countries?'. It can be accepted that at this stage, registered documents (deeds, linked to survey information) still have higher legal priority than unregistered documents. Rights that are protected in terms of laws such as the Interim Protection of Informal Rights Act (IPILRA) are 'prescription-like devices … which protect the status quo of possession on an interim basis' (Miller and Pope, 2000, p. 207) pending formalisation into permanent real rights.

The drive to have registered tenure has been punted as the 'best' option by many organisations, as demonstrated by UN-Habitat which states that '(l)egal access to land is a strategic prerequisite for the provision of adequate shelter for all and for the development of sustainable human settlement affecting both urban and rural areas. The failure to adopt, at all levels, appropriate rural and urban land policies and land management practices remains a primary cause of inequity and poverty. It is also the cause of increased vulnerability of urban and rural habitats, affecting all people, especially disadvantaged and vulnerable groups, people living in poverty and low income people (UN-Habitat, 1997) Since then many international donors and national

governments have over the last decades extensively promoted land titling programmes as a means of increasing tenure security, improving access to formal credit and reducing poverty (Payne, et al. 2007).

4.8.3 Informal rental housing

Rental is the most common form of tenure in formal as well as informal settlements. Tenants and subtenants form a heterogeneous group (LEAP 2005) They can be found in unauthorised land developments, in squatter settlements or in dilapidated buildings in city centres (Institute for Race Relations, 2014). In the case of 'bad buildings' as they are referred to in Johannesburg's inner cities, Royston (2017) provides an in-depth analysis. She refers to the tenure arrangements in the inner cities as 'entangled', painting a picture of complexity as on one hand inner cities offer accommodation close to economic opportunities while on the other hand authorities lack affordable housing to cater for these needs. When ordinary people occupy these buildings, their tenure arrangements involve a complex interaction between aspects that are socially, formally, locally, customarily and commercially driven (Royston, 2017). Statistics have shown a huge increase of households residing in backyard dwellings as well as abandoned inner city buildings or factories. This will be covered in detail in the next chapter. Furthermore, it is common that in some instances in South Africa, as Royston and Narsoo (2006, p. 10) note, in some plots, the tenure form is characterised as a sub-letting arrangement from a shack owner who is living elsewhere (who in turn is either informally renting from the original owner or someone else). This represents an informal market within an informal market. On a study carried out by Royston and Narsoo (2006), they indicate that when respondents refer to landlords, they most likely are referring to a plot owner from whom they are renting their site, a shack owner who might be letting a shack that is owned by someone else, or an 'informal' or perceived owner from whom they may be renting their site.

According to LEAP (2005), backyard shacks, prevalent in some South Africa's cities, are an example of informal rental housing. Tenure security varies greatly. The official emphasis tends to be on place not system, thus informal settlement rather than systems of tenure, land rights, land administration or land management. As a result, local rules and procedures are seldom recognised, much less understood (ibid). At local level, informal settlement residents often carry the stigma of 'queue jumpers' who

should be waiting patiently for their names to come up the waiting list rather than jumping the housing subsidy queue by invading land or squatting (ibid). Zandspruit and Zevenfontein in Johannesburg provide evidence that there are rules and regulations for the purchase and resale of land, for allocation and demarcation, and for recording another source (Royston and Narsoo, 2005).

4.8.4 Local and off-register tenure arrangements in rural and urban areas

This category of tenure arrangements is vividly represented by 'informal' settlements which have 'mushroomed' in the periphery of most South African cities. Local land registration practices according to Rubin and Royston (2017), derive their authority from the municipality, or local sources or a mix of both. Municipalities can generate housing lists at settlement level and these may be used to allocate formal state-subsidised housing in future (Rubin and Royston, 2017). Furthermore, municipal lists may involve claims of tenure rights in future while a locally managed settlement level register is for immediate use and gains its authority from social recognition. Though this phenomenon is not unique to South Africa, the researchers of the LEAP project lament that we do not know enough of these tenure arrangements and they are rapidly increasing. In later chapters, it is demonstrated how most urban areas experienced very high increases in informal settlements due to migration and natural growth. However like most migration related statistics in South Africa, such numbers are slippery and unreliable (Pugh, 2014, p. 171).

According to Durand-Lasserve and Royston (2002) (Royston and Narsoo, 2006), informal settlements can be classified into three subdivisions, namely, informal division, squatter settlements and informal rental housing.

Unauthorised land development/Informal subdivision

These unauthorised land developments are widespread phenomena on the fringes of most developing cities. In some cases, a process known as 'shack farming' happens in South Africa, where a farmer or smallholder rents out sections of the farm or plot as settlement sites (Royston and Narsoo, 2006). Such settlements have developed on private agricultural land, frequently outside municipal boundaries (LEAP, 2005).

Squatter settlements

These are found on the urban fringes or in centrally located areas, mostly on public land and also on disputed private land. This is a result of organised 'invasion' or gradual occupation (LEAP, 2005). A fee and sometimes rent must generally be paid to an intermediary, or to the person or group who exerts control over the settlement. Tenure security ranges widely, from settlements on public land which have a degree of formal recognition to settlements on private land faced with the threat of eviction.

4.8.5 Transitional Tenure Arrangements

Transitional tenure arrangements refers to land settlement contexts where past interventions have had a marked effect on current land tenure arrangements. In this context, rights holders express a desire to move along the continuum to more formalised record of land rights and regulation of land use, whilst also maintaining some elements of (adapted) customary land tenure(LEAP, 2005).

Some land tenure systems have moved incontrovertibly away from customary principles but they resist full incorporation into the centralised Registry and spatial cadastre (ibid). They tend to revert to more localise, affordable and practically workable arrangements. These settlements range from dense rural settlements to informal or semi-formal urban settlements. The land tenure rights might include pre-CLARA 'old order' rights such as Permission to Occupy (PTO) rights, quitrent tenure, and lapsed or semi-lapsed 'freehold' titles (LEAP, 2005). As indicated earlier, CLARA allows for 'traditional communities' to appoint their traditional councils as land administration committees, in a move many critics have argued removes democratic choice of communities. On the other hand, 'old order' rights are *de facto* rights and can be identified and confirmed, converted or transferred into 'new order' rights of registration (LEAP, 2005, Claassens and Cousins, 2008). Transitional tenure systems have a potential to reveal alternative tenure systems and forms and may reveal what adaptations may be possible or appropriate at points in between the two extreme ends of the more conventional continuum (LEAP, 2005).

Communal Property Institutions (CPIs) have attempted to capture both aspects and thus can be considered transitional tenure systems. However, their interpretation varies from place to place and time to time. Transitional tenure contexts are the most

susceptible to the 'planning paradigms' municipalities have inherited from the municipal planning approaches of the previous urban municipal systems (LEAP, 2005). On the other hand the White Paper on Spatial Planning and Land Use Management (2001) has introduced a normative and more flexible approach planning, where the emphasis is on forward planning and multiple land use approaches, rather than land use control and single use land units. However, in reality, municipalities have not been equipped with new systems to apply the new approaches and still tend to revert to 'land use planning schemes' and 'zoning' as the only means to 'pick up' land information into their land information systems. As LEAP (2005) found out, planning still tends to be applied in a rigid fashion, resulting in the tendency to apply 'township establishment' to rural settlements that are 'cadastreless'.

4.8.6 Religious Tenure Arrangements

This system, which LEAP does not include in its categories of tenure arrangements, is important given that religious organisations own significant chunks of land in South Africa. Inasmuch as the tenure systems might still be classified under any other category as discussed above, its significance is crucial and worth noting. This system is very significant within most Islamic societies; where '*Waqf*' land is land held by God, whilst '*mulk*' or private lands are protected by law, '*musha*' or communal lands as well as '*tassruf*' or land held by the state. (Payne and Durand-Lasserve, 2012). In South Africa, churches and other religious organisations own land under different tenure systems. Bolnick and van Rensburg (2005) point to the Methodist Church's Initiative to use its vacant land to support homeless people's housing and livelihoods in South Africa. They acknowledge that colonial rule and apartheid resulted in unequal and racially skewed land distribution, extensive land dispossession, and extreme land shortages and insecurity of tenure for much of the black population (ibid).

4.8.7 Formalisation of Urban Tenure: A policy Option?

Tenure security is both a human right and key to economic opportunities. There are many debates punted on the need, merits and demerits of tenure formalisation in the urban context. Durand-Lasserve and Selod (2007) describe tenure formalisation as a process by which informal tenure is integrated into a system recognised by public authorities. This ensures tenure security and be achieved through administrative or legal

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means. For Royston (2013), the principle of recognition is key for tenure security and this can be divided into three broad categories.

The first category crucial in the debate according to Royston (2013) is local recognition. This is based on settlement level practices that have developed into norms over time. Similar to rules-in-use (Ostrom, 2013; North, 1990, 1995) local informal institutions are recognised and form local legitimacy in tenure security. Examples of such practices include local land transfer being witnessed by a local leader or committee members. In some cases neighbours authenticate in cases of a dispute, and affidavits or receipts can be used as proof. Local registration practices have a potential to become more official forms of evidence of occupation rights if municipal consent is negotiated between community organisations and the city or town council (Royston, 2013). The main challenge with this is that it promotes local elites and gives rise to politically connected gatekeepers.

The second category is that of administrative recognition which involves administrative recognition of occupancy rights by the State or by local authorities' results in the delivery of personal rights to heads of households living in informal settlements (Durand-Lasserve and Selod, 2007). Security is derived from administrative authority and commitment in the form of council resolutions, extending infrastructure, occupation letters, occupation letters, occupancy registers, shack enumerations, block layouts, and utility bills among others (Royston, 2013). Since administrative recognition can be renewed or revoked, it is an important step towards delivery of real property rights (Durand-Lasserve and Selod, 2007).

Legal (*de jure*) recognition refers to declaring an area in terms of law (Royston, 2013) and has been at the centre of neo-liberal policies and de Soto's argument as discussed in Chapter Two. For Durand-Lasserve and Selod (2007), this involves delivery of real property rights in the form of freeholds titles, surface rights, and registered long-term leaseholds. These rights 'can be opposed to a third party, transferred through sale and inheritance, and mortgaged' (ibid, p. 8). Royston (2013) states that planning law and local management arrangements are useful starting points for legal recognition. As discussed later in the chapter, South Africa's formal property system is organised around the cadastral model which has two key components: a spatial component which contains geometric description of the land parcels, linked to

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the second component, which is textual and contains the records or registers describing the nature of interests and ownership of the land parcels (Royston, 2013). Durand-Lasserve and Selod (2007, p. 9) provide a synoptic diagram on the effects of tenure formalisation.
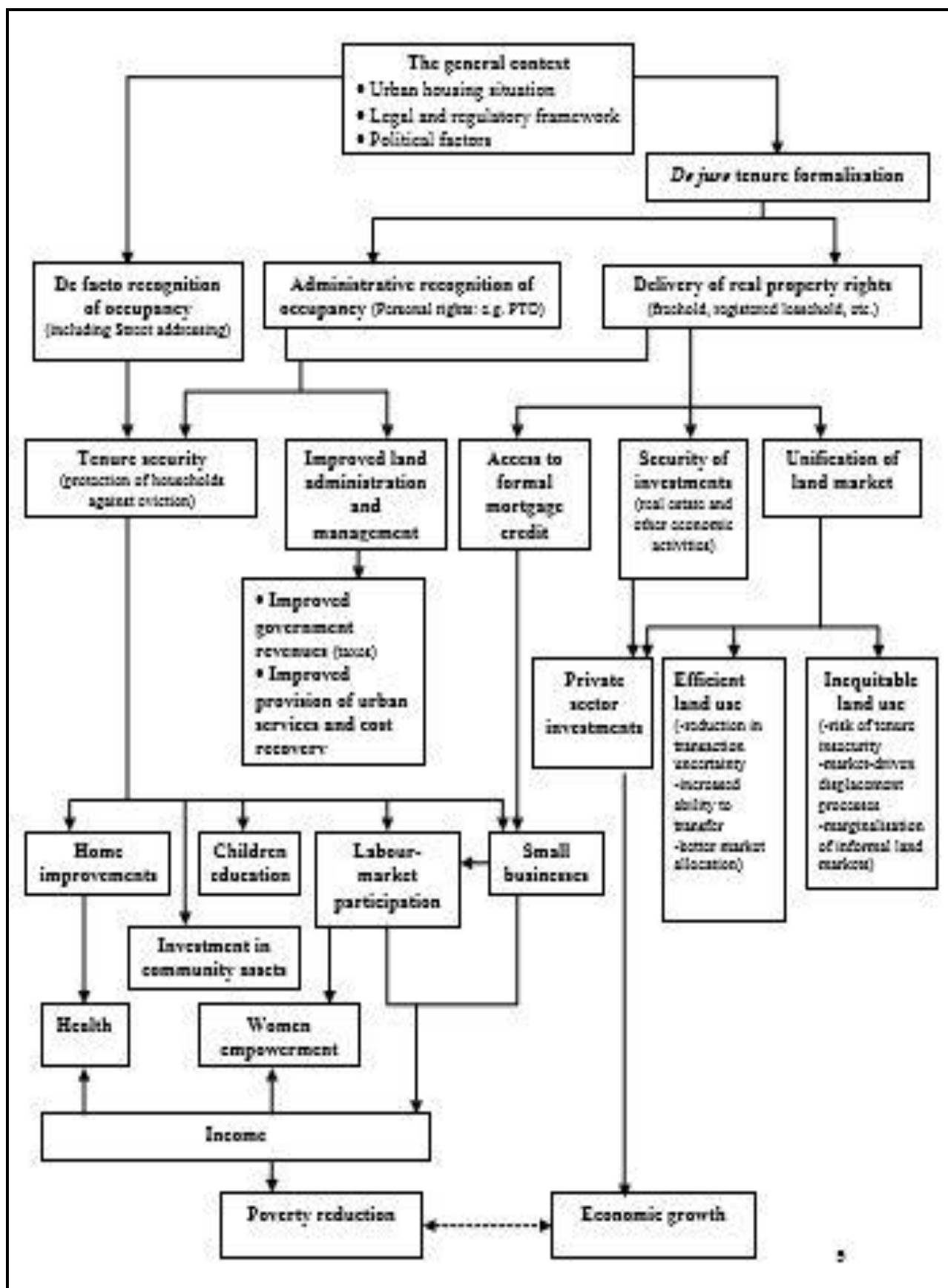
Figure 8: Effects of tenure formalisation
Source: Durand-Lasserve and Selod (2007, p. 9)

As shown above, economic benefits of tenure formalisation have been at the centre of de Soto (1989, 2000) as discussed in Chapter Two. Durand-Lasserve and Selod (2007) provide a key distinction between *de jure* and *de facto* recognition. According to Durand-Lasserve and Selod (2007, p. 11) tenure formalisation is not always in the best interests especially of the poor - it actually decreases tenure security in a number of ways. Firstly, the formalisation process itself can be a source of conflicts regarding land use and may lead to the eviction of some households by other stakeholders who manage to secure property rights for themselves, to the detriment of other occupants who are in a weaker economic situation (Cross, 2002), or cannot provide all the required documents to be entitled to tenure formalisation. The poorest households may just not be entitled or eligible for tenure formalisation (e.g. if only owners are targeted by the programme, or if the poor do not have sufficient 'proofs' of occupation). Even when they are eligible, they may not have the means to pay their share of the formalisation costs (Lasserve and Selod, 2007, p. 11). In addition, according to Lasserve and Selod (2007, p. 11), tenants, usually the poorest among the urban poor, may be evicted by the rise in rents following formalisation and bid away to other informal locations. Tenants could be all the more harmed by this phenomenon that they cannot apply for compensation and are usually not eligible for resettlement. Owners of formalised land may have renewed incentives to evict tenants in order to value their land in a more profitable way. On the other hand, newly formalised households may agree to sell their property to developers under adverse conditions and terms. Indeed, the bargaining power between regularised plot owners and developers is unbalanced. It is much easier for an investor to bargain with individuals with transferable rights rather than with communities with de facto tenure security. Lastly, formalisation may be problematic if it is implemented regardless of existing tenure arrangements (Lasserve and Selod, 2007, p. 11). For instance, granting freehold titles may not be suitable for customary areas since freeholds cannot easily accommodate extended family or group rights. Titling may then divide the population into two groups: households with and households without land rights. In the presence of customary rights, titling can increase insecurity 'if it becomes unclear which of systems of right will prevail' (Lanjouw and Levy, 2002).

4.9.1 Water Services Policy Imperatives in Post-Apartheid South Africa

From the onset of democracy, the government undertook to eradicate huge backlogs in water services through embarking on major policy frameworks. The state of the situation at the dawn of democracy is made clear by Professor Kader Asmal, the former minister of Water Affairs and Forestry. He stated that;

> For so many South Africans, under apartheid, it was not that 'the well had run dry'. Rather the wells had been commandeered. Through a doctrine based on the crudity of the skin colour, these South Africans had an outrageous assault on their health, their development, their dignity, by the government for whom they were invincible, for whom there was no consequence (DWAF, 2004, p. 3).

Several significant legislative and policy frameworks were adopted to redress the status quo. The first was the interim Constitution of the Republic of South Africa (1994). Subsequent frameworks included the Reconstruction and Development Programme (RDP) Project Cycles (1995-1998), the Water Services Act (1997), the Consolidated Municipal Infrastructure Programme (1997), the Build, Operate, Train and Transfer (Bott, 1997-2001) and various legislative frameworks, which were introduced in successive years. Huge capital projects run by the government targeted a complete eradication of water and sanitation backlogs (DWAF, 2004). However targets set in 1994 to eradicate these backlogs at least to basic level water supply and sanitation within seven years could not be achieved (Department of Human Settlements (DHS), 2012).

The Free Basic Services Policy (2000) was adopted from 2001 after realising that many of the households provided with water and sanitation services could not afford to pay for them (DWAF, 2004). The policy was based on a national transfer to subsidise the costs of provision to poorer sections of the community. It is reported that by 2003 almost 27,7 million people were benefitting from the Free Basic Services Policy (DWAF, 2004). In 2003, the cabinet approved the Strategic Framework for Water Services, which aspired to ensuring that 'all South Africans have access to a functional basic water supply facility by 2008' and 'all South Africans have access to functional basic sanitation facility by 2010'. Structural changes were put in place, with Water Service Authorities (WSAs) now directly responsible for delivering water and

sanitation services through the use of their own revenue, the Municipal Infrastructure Grant (MIG) for capital costs and the Equitable Share Allocation (ESA) for operation and maintenance costs (DHS, 2012; DWA, 2013). Despite these new targets, new challenges were faced, among them, the shift of functions, inadequate resources, lack of bulk and internal water infrastructure and sewerage reticulation infrastructure (DHS, 2012). In addition, there were shortcomings in the design and construction of infrastructure, lack of capacity as well as unsuitable terrain, where most informal settlements were located (DHS, 2012).

Failure to meet water and sanitation targets for 2008 and 2010 respectively did not stop the DWA and its partners to set a second target. According DWA (2013), while the department was satisfied with the achievement of MDGs, many South Africans still did not have access to basic water and sanitation services. Therefore the department wished to achieve the target of full access to all by 2014 (ibid.). It was generally accepted that this target was unlikely to be met because many of the root causes of water insecurity had not been addressed. It is in this context that the study intends to unpack the ways in which urban land tenure and tenancy affect water (and sanitation) services delivery mainly in lower income informal areas and to some extent formal residential areas.

The first implication of the approaches in service delivery is that water and sanitation were presented as distinct sectors. Unlike the colonial and apartheid approaches, land policies were directly linked to water policies (both for productive and domestic use). For Woodhouse (2012), this separation is reinforced by the fact that domestic water supply is governed by a separate reform process under the Water Services Act. There is little or no mention of a differentiated approach when it comes to different tenure settings. In addition, despite the necessarily intimate relationship between the outcomes of land reform and water reform (particularly in rural areas), these have followed parallel paths governed by separate State agencies (Woodhouse, 2012). The blanket approach to water and sanitation services delivery, that is, right to water or sanitation, ignored serious pertinent issues for people in different tenure arrangements. In this case, how does the right to adequate housing, water, sanitation and others coalesce or contradict each other? Given that tenure arrangements are fluid and complex in urban and rural settings, how do they impact other rights such as basic services? Even the recent pronouncement by the National Planning Commission that

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there is need for alignment of water resource allocation with land reform (National Planning Commission, 2012), while in the context of general land reform, there is a realisation that a holistic approach in these sectors is needed to ensure access for all.

Asymmetry in access of basic services is clearly inherited from the colonial and apartheid past, but inasmuch as the 1998 National Water Act (NWA) is explicit in its goal to redress past inequality, almost twenty years since its passing, the gap seems to be widening. Woodhouse (2012) postulates that this is result of lack of integration between land and water reform. In addition, land reform was framed by the concept of land as private property, while on the other hand, water reform has involved the abolition of many pre-existing forms of private property in water, for instance riparian rights (Woodhouse, 2012). Under the NWA, private water use is subordinate to basic water services (Woodhouse, 2012). This does not mean that water is not commodified despite its social needs, the section below further indicates that supply of basic water and sanitation has largely been crafted within a neo-liberal framework (Dugard, 2014), not as basic right.

Inconsistencies in approaches in the sectors, for example, also emerge as another challenge. For instance, the sanitation department was moved to Department of Human Settlements (DHS, 2012), again merged with water as the new Department of Water Sanitation (DWA), resulting in further complications in alignment and implementation of policies to the urban poor. The section below discusses another inconsistency in the current water and sanitation sectors.

4.9.2 Water and Sanitation as Human Right and Cost Recovery in South Africa: A Policy Mismatch?
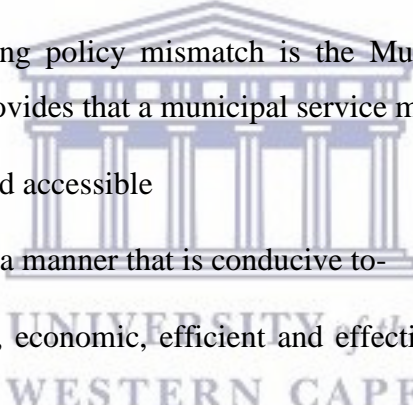
It has been pointed above that there was a need to redress the past injustices which existed across all sectors in South Africa. One crucial aspect was a realisation that water is a human right. This is explicitly mentioned in the Constitution of the Republic of South Africa (1996), which states that:

1) Everyone has a right of access to basic water supply and basic sanitation.

2) Every water services institution must take reasonable measures to realise these rights.

3) Every water services authority must, in its water services development plan, provide for measures to realise these rights.

This approach is identified in the drive to 'deliver' water services in the post-apartheid South Africa. Despite the well-meaning Free Basic Services Policy (2000) which aimed to subsidise the costs of provision to poorer sections of the community, questions are raised, such as, given that there is still a huge backlog in some municipalities across the country, has this been effective; is this another poor solution for poor people; has this led to the actual access to free quality water; and, is this enough? International standards already show that at least fifty litres per person per day are required, excluding waterborne sanitation to guarantee health and dignity (Gleick, 1996), yet the Free Basic Water policy advocates for twenty-five litres per person per day in a household of eight persons. This clearly falls below the internationally recognised minimum required for a healthy and dignified existence (Dugard, 2014).

Key to this seeming policy mismatch is the Municipal Systems Act (Act 32, 2000, p.69-70) which provides that a municipal service must:

(a) Be equitable and accessible

(b) Be provided in a manner that is conducive to-

   (i) The prudent, economic, efficient and effective use of available resources; and

   (i) the improvement of standards of quality over time

(c) Be financially stable;

(d) Be environmentally sustainable; and

(e) Be regularly reviewed with a view to upgrading, extension and improvement (South Africa, 2000).

The Municipal Systems Act's main mandate is clear in that it "provides for the core principles, mechanisms and processes that are necessary to enable municipalities to move progressively towards the social and economic uplifting of local communities, and ensure universal access to essential services that are affordable to all" (South Africa, 2000).

The user-pay principle is further to section 74 which states that:

Poor households must have access to at least basic services through -

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1) Tariffs that cover only operating and maintenance costs;

2) Special tariffs or life line tariffs for low levels of use or consumption of services or for basic levels of service; or

3) Any other direct or indirect method of subsidization of tariffs for poor households (South Africa, 2000, p. 70).

The National Treasury (2011b, p. 5) also states that municipalities are supposed to ensure that:

- Water services tariffs are fully cost-reflective, including the cost of maintenance and renewal of purification plants and water networks, and the cost of new infrastructure;

- Water services tariffs are structured to protect basic levels of services; as well as

- Water services tariffs are designed to encourage efficient and sustainable consumption.

The central government devolved the responsibility for basic services to the local government sphere but at the same emphasised a cost-recovery driven approach to basic services (McKinley, 2005). Municipalities are often left with no choice but to ensure cost-recovery in their operations. Attempting to make provision of water services self-sustaining has had a negative impact on lower income households. Additionally, the National Treasury's argument that tariffs should 'encourage efficient and sustainable consumption' has led to a widespread drive to install water demand management devices in lower income areas which has resulted in restricted access.

There is a strong emphasis on cost recovery and as such, research has shown there is a drive to have the sectors fund themselves. This inevitably puts municipalities under pressure, especially if they have to deliver subsidised services. According to Makgetla (2006), this model has led to tremendous financial pressure on municipalities to limit services to households that can pay for services, due to the fact that these services provide the most needed revenue. This means that basic services are viewed as a commercial revenue source instead of being a pillar of public health, development or poverty eradication (Hemson, 2008). Multiple studies have been done on cost recovery

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in water and sanitation services, but mismatches still remain if the benchmark is water as a human right (Hosking and Jacoby, 2013). Inasmuch as there is a conscious effort to include poorer households in provision of water and sanitation services by municipalities, more needs to be done to address backlogs and move up the ladder. Below is a model for a Progressive Equity Model in Cape Town (Table 7).

Table 7: Key Elements of the Progressive Equity Model in Cape Town

Service Type	Quantity per service
Water	First 6000 litres free
Sanitation	First 4800 litres free
Electricity	First 50Kwh free
Solid Waste	Free service on properties value <R88,000 and heavily subsidised services on properties of R88,000-R160,000
Rates	Properties<R88,000: no rates charged Properties R88,000><R199,000: 20% discount Household earning<R 1740/month receive 100% rebate and R20 subsidy on services account
Tariff increase	Since 2003/4, average increase at above inflation, but with much lower increases for poor households (and in some cases even decreases), compensated for by higher increases for richer households.

Source: adapted and modified from Swilling (2010, p. 11)

The Progressive Equity Model used by the City of Cape Town does show a conscious effort by the City to provide 'free' basic services, but as pointed out in the arguments presented above, falls short in adequately providing basic services to the poor. Another notable aspect of the model above is its link to property value. In addition there is the use of cross-subsidies, where richer households compensate for poorer households. However, it was pointed earlier, despite cross-subsidisation, services are viewed more as a commercial revenue stream (Hemson, 2008). For Dugard (2014, p. 276), this consequential preoccupation with maximising profits from basic services has resulted in inadequate extension of basic services and insufficient maintenance of infrastructure, along with an overly technocratic approach to services delivery.

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4.9.3 Complexities Around Tenure and Water Services in South Africa

Prior to 1994, access to water was dependant on access to land and the allocation and management of resources was highly securitised (Earle, et al. 2005). As pointed in earlier sections, legislative and policy reforms for both land and water parallel (Woodhouse, 2012) with little or no linkages. Titling debates in South Africa are far from over as State approaches are largely driven by market-oriented policies. Hornby, et al. (2017) argue that the relationships through which South Africans gain access to land are complex, diverse and multi-layered. They argue that there is need to recognise social tenures. They argue that key factors which determine access to land include, among others social values that underpin claims of access; diversity of norms which limit what people are allowed to do with their land and houses; local institutional arrangements that mediate access to use and disposal of land and houses and lastly how access and control are socially, politically and legally constructed.

Social tenure relies on local oversight, social recognition, the importance of process over rules while at the same time remaining flexible (Hornby, et al. 2017; Royston, 2013). On the other hand, social tenure's limitations, according to Hornby, et al. (2017), include gender discrimination, lack of recourse and fails to deal with underlying triggers to claims and contestations. While it is plausible to argue for the recognition of social tenure arrangements, the current approach on land tenure is to move towards formal titling. However, Kingwill (2017, 2014) calls this an 'edifice' in describing a scenario where, because the current formal property structure, is held together by the cadastral system which is, in a way, impenetrable. As pointed earlier by LEAP (2005), the cadastre system is a complex system comprising of two key components: the Surveyor General's Office (SGO) houses the spatial component and the Deeds Registry is the custodian of the Deeds information (LEAP 2005). This complex system comprises of a range of laws and regulations with specific regard to:

- Mortgage;
- Inheritance and succession;
- Property taxation;
- Planning; and
- Municipal rates and services (Hornby et al.2017).

This means, therefore, that for property to be registered it should be linked to the cadastre as a package where alienable property owned by the identifiable owner(s) are inextricably linked to the market economy (Hornby, et al. 2017). In Chapter Two, it was pointed out that Marx's PA shows that exclusion in the capitalist system, serves a few. As a form of exclusion, stringent criteria must be met for a property to be registered. Hornby, et al. (2017) summarise some of the laws and regulations that must be adhered to:

- Spatial measurement by land surveyors;

- Discrete parcels;

- Layout planning in urban contexts ;

- Identification of owners on title deeds and

- Title deeds prepared and transferred by property conveyancers.

The edifice, according to Kingwill (2017), plays out in the sense that off-register tenure arrangements such as customary and informal, cannot be registered if one considers the stringent criteria. The author refers to these tenure arrangements as social tenures (Hornby, et al. 2017). The study carried out by both Hornby and Kingwill indicated that social tenures do not fit in the current formal system. Even in cases where formal tenure had been initially provided, such as in Rabula and Fingo villages, they found out that conversion to title occurred but most owners do not conform to registration in the sense that customary norms persist, titles lapse with every generation and are not updated with the deeds registry and most transfers occur but are never registered and they are locally witnessed (Hornby, et al. 2017). Furthermore, access to land is locally regulated, with succession being by family or lineage and rights are locally validated in contrast to private conveyances in the formal system (Hornby, et al. (2017). This makes it extremely difficult for social tenures to penetrate the cadastre system, hence the edifice.

Municipal rates and services are clearly linked to the cadastre system. This is line with what Dugard pointed in the earlier, where she bemoans the privatisation and commercialisation of services such as water and sanitation (Dugard, 2014; Reuters, 2007).This means access to water and sanitation, for example, is largely linked to the tenure type. In pursuit of market based and cost recovery policies, municipalities most likely regard social tenures as something which must be done away with, informal

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settlements eradicated and made way for formalised suburbs which must pay for the rates. While access to water and sanitation are regarded as a 'right', municipalities, which largely operate within formal legislation, are likely to struggle to provide such services in informal tenure arrangements such as informal settlements, abandoned buildings and informal backyard dwellings. They are forced to accommodate contradicting agendas with a complexity of policies which operate within the strictures of neo-liberalism (Langford, 2014). Earlier sections have shown that the Constitution itself is a classical liberal design which attempts to balance property principles with redistributive justice (Langford, 2014). City authorities are faced with a disjuncture of attempting to balance this, in the context where majority of the officials lack clarity of how to adequately serve their communities. The context in which municipalities are hamstrung by such scenarios is at the core of this study. Pressure to please civil society and political opponents on one hand, and the need to 'contain' growth of informal settlements on another reveals the need to gain insights on tenure (tenancy) and water and sanitation services delivery.

4.10 Conclusion

The current tenure systems in both urban and rural areas are tied to colonial and apartheid periods. These periods were characterised by dispossession, separation and exclusion (Marx, 1867). A combination of 'bloody legislation' and repressive policies were used to enforce and maintain separation and exclusion, mainly based on race. In most cases, urban residence and tenure was tied to labour provision. Black South Africans lived in a state of constant temporality as they were treated as sojourners to 'white cities'. While water legislation in the colonial and apartheid eras did not explicitly identify race, its direct link to land ownership meant that the majority of black South Africans could not access it for productive and domestic use. The water laws largely favoured big business and industries that enjoyed wholesome rights at the expense of ordinary people. Additionally, riparian water rights meant that those without legal access to land were automatically excluded from adequate access to quality water for domestic and productive uses. Post-apartheid policy and legislative framework did not make the situation any better as the State still pursues the largely neo-liberal agenda. There is still bias towards individual titling under the cadastre system, resulting in the exclusion of 'illegal' or 'informal' tenure system. There is also an overall bias towards rural land tenure, unlike urban tenure systems which are under-researched. In addition, municipal services are largely based on the 'package' which comes

with the cadastre system, leading to mismatches of 'preaching left while walking right'. Competing agendas of both neo-liberal policies and human rights-based approaches result in conflicting approaches in both urban tenure systems and water services.

CHAPTER FIVE: URBANISATION, INFORMAL SETTLEMENTS AND INFORMAL TENANCY IN CAPETOWN

I am faced with a historical, social and economic situation that cannot be ignored. The question that needs to be answered is whether we have moved on today, in any way, since 1994. Judge Chantal Fortuin (Western Cape High Court, 2017).

5.1 Introduction

The statement by Judge Fortuin above situates the historical legacy of the current challenges in urban South Africa and also highlights the lack of progress. The phenomenon of urbanisation is highly debated and in most cases the contestations are shaped by largely neo-liberal agenda. This chapter argues that urbanisation takes place across the world and in the context of South Africa, its unique colonial and apartheid history makes it very complex. Urbanisation is largely portrayed as negative and has resulted in billions across the world accessing land 'informally' and constructing their own dwellings in an attempt to secure a foot-hold in the cities (Davis, 2006; UN-Habitat, 2006). Through providing both an international perspective and South African experience it is argued that tenure status has a huge impact in accessing other basic services such as water and sanitation. Using literature and most recent reports, this chapter paints a picture of systems failing or outright refusing to let the 'surplus' population access decent lives in the cities. An overview of current urbanisation debates from an international and local perspective, slums (informal settlements), and how urban poor are pushed to the periphery where their lives are defined by lack of adequate housing, secure tenure and services such as water and sanitation. Using laws, policies and brute force, illegal masses are either completely ejected out of the city or driven to the periphery where access to economic opportunities and services are scarce. By deliberately letting die surplus population, planning law recreates exclusion, separation and accumulation in the global South. While courts are slowly entering the scene in an effort to defend the poor, they are also used by the privileged and rich to evict and acquire urban land at the expense of the poor and defenceless. This chapter also demonstrates that while South Africa tries to be at par with international standards through setting 'water and sanitation ladders', it fails to deal with its own complex issues on the ground.

5.2.1 Unpacking Urbanisation in the South African Context

There are various contestations of what a 'city' or an 'urban' area connotes. There is however a general consensus that a city was considered a spatially bounded entity,

embodying a particular way of life, with a distinct internal spatial and social division of labour in relation to the countryside, nation and the 'outside' world and an evolutionary linearity (Amin and Thrift, 2002). Inasmuch as this description of the 'city' persists, contemporary urban theorists have shown that cities are far more complex and dynamic. It is not surprising that some of the most respected social scientists regard a city as a 'lived complexity' (Chambers, 1994). For Koop and van Leeuwen (2017) current cities experience rapid urbanisation, water, waste, climate change, water governance and transitions. Besides being centres of economic growth, cities are also sites of class contestations and poverty. What further complicates urbanisation in the African context is the lack of appropriate approaches to actually theorise African urbanisation. According to Sihlongonyane (2015) this is because of a lack of literature from 1500 to 1700; lack of history in the 1800s; lack of development in the 1900s; and lack of democracy from 1900-2000. In other words, there is paucity of research work, due to many factors, particularly during the earliest urban settlements in the turn of the 16th century. In addition, much of what was written about the experiences of cities in the global South has been largely using the lens of the global North.

Globalisation (Castells, 1998) and growth of civic movements across the world have contributed to distinct features of so-called cities becoming blurred. Amin and Thrift (2002, p. 8) recognised this reality and they went on to state that the city has no completeness, no centre, no fixed parts, but instead, 'it is an amalgam of often disjointed processes and social heterogeneity, a place of near and far connections, a concatenation of rhythms; always edging in new directions'.

Urbanisation generally refers to the physical movement of people from rural to urban areas and within this, to the pattern of migrants within the settlement hierarchy (Dewar, et al. 1982, p. 3). It creates conditions for greater production through economic efficiency, which result from economies of scale, lower production costs due to proximity to markets and better forward and backward linkages (McGaffin and Kihato, 2013). Furthermore, concentration of populations in cities allows city governments to provide bulk services such as water (and sanitation), electricity and other services (McGaffin and Kihato, 2013). For Quigley et al (2009), as a result of economies of scale, cities become engines of growth, providing economic opportunities, higher levels of production with benefits of lower costs as well as shared public investments. Inasmuch as neo-classical theorists might have attempted to explain rural to

urbanisation through theories such as modernisation (Graaf, 2003) where each society has to follow certain stages from traditional to modern, the South African phenomenon cannot be simplified in this way. In addition, the precise form and causes of migration cannot be seen independently of its spatial and historical context or of the specific form of capital accumulation and the broader class struggle occurring between social classes and between different factions within social classes (Dewar, et al. 1982, p. 4).

Urbanism is also used to describe the current experiences in cities found in the global South. For Roy (2011), urbanism can be viewed in three intertwined ways: firstly, the production of space in the territorial circuits of late capitalism: secondly, a set of social struggles over space, value and meaning; and lastly, the object of the public apparatus designed as planning. Urbanism seeks to holistically paint cities as centres of production, contestation and sites of exclusion. It is distinctive shift from viewing urbanisation in a technicist, neo-liberal understanding. For the purposes of this study, although urbanisation will be used in its 'neo-liberal' sense as the movement of people from rural to urban areas, this candidate will also present cities as centres of production, contestation and sites of exclusion.

5.2.2 Urbanisation and Informal Settlements: An International Experience

Urban centres have long been sites of accumulation, where the landless peasant, recently ejected from his or her means of production, left with no choice but to sell their labour (Marx, 1867). While this has changed over centuries, there is no doubt that the 20th and 21st centuries experienced the highest levels of urbanisation. While much has been written about the global North, it is the global South which requires more enquiry in this area.

Rapid urbanisation is not a unique phenomenon for South Africa. Looking back at 1950, there were only 86 cities in the world with a population of more than one million and at least 550 were predicted for 2015 (Davis, 2006). At the beginning of the 20th century, below 7% of the world population could reasonably be classified as urban. For Harvey (1997, p. 19), "twentieth century has been the century of urbanisation". It is generally accepted that majority of the world's population now live in cities, and the tide of urbanisation shows no sign of ebbing (Pieterse, 2014). Additionally, cities have absorbed nearly two thirds of the global population since 1950

and are currently estimated to be growing by a 'million babies and migrants each week' (Davis, 2006, p. 2).

Despite this rapid urbanisation, research has shown that most cities in developing countries are actually deindustrialising (Lall, et al. 2017). For Davis (2006), rather than the classical stereotype of the labour-intensive countryside and the capital-intensive industrial metropolis, developing nations now contain deindustrialised cities. This is a notable shift from classical theorists like Marx and Weber, which believed that great cities of the future would follow industrialising trajectories, to this which is the opposite. Neoclassical theorists have also based their arguments on Rostow's model: that societies go through stages of development, from traditional (rural) to modern (urban) (Dewar, et al. 1982, Graaf, 2003). Tracking from the Middle Ages Western cities to current, they believe that cities have to go through the same evolution. The nature of the world system has meant that during the process of urbanisation, a significant remnant was never accommodated into the socio-economic fold of the world cities. As GDPs rise, social and economic exclusion become more prevalent and governments, while accommodating the expanding middle and upper classes, must also meet the needs of a burgeoning lower class. In the African context, as the urban population is projected at one billion by 2030, land resources in cities are becoming critical points of competition and conflict (MacGaffin and Kihato, 2013). Cities have become physical sites of inequality, of unequal distribution of income, services and the privileges of citizenship (Swilling, 2008).The result of this exclusion has led to the burgeoning of rudimentary settlements, normally outside the ambits of the 'formal' or 'legal', popularly known as slums or informal settlements.

Caldeira (2015) argues that the current production of the city by residents and communities is called auto-construction. For her, auto-construction is marked by 'transversal engagements with official logics of legal property, formal labour, colonial dominance, state regulation and market capitalism' (ibid.). While Sassen (2010) views this as an example of counter-geographies of survival, it can be explained as the excluded population attempting to find a foothold in an urban environment which refuses to accommodate them. However, auto-construction rather than planning is the dominant mode of the production of urban space (Bhan, 2016).

The term 'slum' is still commonly used to refer to 'informal settlement'. 'Slum' was synonymous to what James Hardy Vaux termed 'racket' or 'criminal trade' (Davis, 2006, p. 21). Since then, the term was used to refer to 'room in which low going-on occurred' (Yelling, 1986, p. 5). Later, Charles Booth described the slums of London as being characterised by an amalgam of dilapidated housing, overcrowding, disease, poverty and vice (Davis, 2006). Slums - the generic term used to classify informal, illegal or unplanned settlements-are invisible 'zones of silence' on tenure security (UN-Habitat, 2006, pp. 92-93). A slum is defined in a UN Habitat report as 'a settlement made up of households that lack one or more of the following features: access to improved water, access to improved sanitation facilities….sufficient living area,…structural quality and durability of dwellings, and security of tenure' (Swilling, 2010, p. 11). For Davis (2006) the authors of the Challenge of Slums argue that slums are characterised by overcrowding, poor or informal housing, inadequate access to safe water and sanitation, and insecurity of tenure. Recent estimates by the United Nations indicate that between 2015 and 2050 the world population will grow from 7.32 to 9.55 billion, and during the same period the population in cities will increase from 3.96 to 6.34 billion (UN, 2015a). As population grows, population growth and migration from rural areas to cities increases, approximately 190,000 people per day will need to find a new place to live (Koop and van Leeuwen, 2016). Developing nations which account for 93% of urbanisation globally, of which 40% is expansion of slums, will double its population by 2030 (UNESCO, 2015a).

Furthermore, projections indicate that by 2050, 70% of the world population will live in cities, with the most rapid growth occurring in the developing world (Ehlenz, 2014). Fuelled by globalisation, high population growth rates, and migration patterns, urbanisation is having a profound impact on the physical, social, and economic conditions of cities. As part of its action plan, Cities Alliance challenged "donors, governments and slum communities to improve the lives of 5-10 million slum dwellers by 2005 and 100 million by 2020. In 2001, the figure 100 million represented more than 10% of the estimated global population living in slums - 924 million people. It was projected that the number would double in the first three decades of the new millennium (UN-Habitat, 2003, p. 2), with the African continent expected the face the highest rates of urbanisation; it was also expected that the African slum population in Africa will double every 15 years . Further study by the OECD in Africapolis shows

that West Africa's urban agglomerations had jumped by around 41% between 1950 and 2010.

According to Scruggs (2016), the Sustainable Development Goals (SDGs) set a rather ambitious target; that "… by 2030, ensure access for all to adequate, safe and affordable housing and basic services and upgrade slums". According to Arfvidsson, et al. (2017, p. 101)), "the current draft targets and indicators within Goal 11 do not cater adequately for substantial informality and its implications for the availability and reliability of official data". Sensing the need to acknowledge the inevitable presence and value of informal settlements; UN Habitat (2015/16, p. 5) argues that "... (t)here is renewed need to acknowledge slums, to understand and realise the challenges and potential of the people who live in slums". It is in this line that it also calls for institutionalising non-eviction polices and laws.

UNCHS (1996, p. 239) states that "... illegal or informal land markets have provided the land sites for most additions to the housing stock in most cities of the South over the last 30 or 40 years" (Davis, 2006, p. 17). In countries of the South such as Mexico (and sub-Saharan Africa), growth of informal settlements has been outpacing overall growth in cities. One of the planners observed that 'as much as 60 percent of the city's growth is the result of people, especially women, heroically building their own dwellings on unserviced peripheral land, while informal subsistence work has always accounted for a large proportion of total employment' (Davis, 2006, p. 17). By 2015 black Africa (sub-Saharan Africa) will have 332 million slum-dwellers, a number that will continue to double every fifteen years. Thus, the cities of the future, rather than being made out of glass and steel as envisioned by earlier generations of urbanists, are instead largely constructed out of crude brick, straw, recycled plastic, cement blocks, and scrap wood (Davis, 2006, p. 19).

New voices seek for new approaches and recognition of informal settlements. For Scruggs, 2016) "… (t)he New Urban Agenda should recognise the assets of consolidated informal settlements as assets of the city and should strive to strengthen, consolidate and integrate them into the formal city, and not simply the informal city with the formal" . The New Urban Agenda is a guideline document which was developed at the United Nations-backed negotiations in Quito at the global Cities Conference. The Habitat 111 as it is commonly known, follows the post-2015

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Development Agenda and for several months leading up to February 2016, a group of 200 experts came up with recommendations for the drafting of the New Urban Agenda.

Scruggs (2016) further alludes that, "the so-called 'formal city' has a lot to learn with the informal city as well, and established communities housing residents who value their community must be respected". Furthermore, in an attempt to treat informal settlements as 'business as usual', all "development must begin with asset-mapping and -listing exercises involving residents of all ages, and those assets deemed most valuable by residents must be maintained during whatever development process is ultimately decided on for that community … (S)o a community whose affordability is valued must be maintained as affordable" (Williamson, 2016, cited in Scruggs, 2016). The change of tact as signalled by Habitat III indicates a need to proactively address rapid urbanisation and its results, in this case informal settlements. The intervention should start at local level, recognising the important local structures and systems, whether formal or informal.

5.4.1 'Surplus Population': Informal Settlements and the Back-yard Housing Sub-sector in South Africa

The South African scenario is not far removed from the current international trends and burgeoning of informal settlements as discussed in the previous sections. It is, however, crucial to note the South African experience is somewhat unique given its colonial and apartheid past. The history of South Africa and subsequent inadequacy of state policy failed to deal with the apparent rapid urbanisation following the relaxation of influx control. This picture is painted vividly by Rian Malan (Davis, 2006, pp. 60-61):

> After … the hated pass laws were scrapped, it was as if a distant dam had broken, allowing a mass of desperate and hopeful humanity to come flooding over the mountains and spread out across the Cape Flats. They came at the rate of eighty, ninety families a day, and built homes with their bare hands, using wooden poles, tin sheeting, bits and pieces of trash rescues from landfills and plastic garbage bags to keep out the rain. Within two years, the sand dunes had vanished under an enormous sea of shacks and shanties, as densely packed as a mediaeval city, and populated

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by fantastic characters -bootleggers, gangsters, prophets, Rastafarians, gun

dealers and marijuana czars, plus almost a million ordinary people.

After influx control was abolished in 1986, the rural poor who were kept at bay by force, "headed for points where they could find family members, relatives, village mates, or anyone who was familiar to shelter them while they learned ways of the city and found a niche in it" (Mamdani, 1996, p. 259). It is important to quickly point out that although the terms 'informal', 'illegal', 'squatter' or 'slum' carry negative connotations, they have been commonly used to describe a phenomenon where the poor attempt to provide their own alternatives to housing and other services. In Chapter Two, Marx's PA shows how exclusion is an intricate part of proletarianisation of the peasant, and how the law was subsequently used to complete the process of separation. Informality as Bhan (2016) puts it, is a product of planning law itself. The term is widely used in South Africa - any 'illegal' occupation of land and construction of settlements have been referred to as 'informal' settlements. On the other hand, Roy (2005, p. 149) provides a rather provoking sense of informality when she states that it is the state's ability to suspend order and to decide what is formal or not, 'to determine which forms of informality will thrive and which will disappear'. This is in line with Li's (2009) assertion that the state and other authorities decide who is to 'let live' and to 'let die'.

StatsSA defines an informal dwelling as a makeshift structure not approved by local authority and not intended as a permanent dwelling (South African Institute of Race Relations, 2013). Furthermore, squatter settlements are also referred to as informal settlements and these are areas which have been established without the approval of local governments (SAIRR, 2013). According to Huchzermeyer (2003), 'informal settlement' describes an informal, unauthorised or unplanned urban settlement in South Africa, visually characterised by temporary structures. In South Africa there is ambiguity around the term 'informal settlement' as it is also primarily associated with the housing structure (Huchzermeyer, 2003). It is applied interchangeably to settlements resulting from land invasions, settlements with temporary legal rights (transit areas) and formally planned and laid out sites-and-services schemes. This view is not different from that of the South African Institute of Race Relations (2014), which states that informal housing refers to makeshift structures not approved by a local municipality and not intended as a permanent dwelling. They

are typically constructed with materials such as corrugated iron, cardboard and plastic. Payne and Durand-Lasserve (2012) state that there are two types of informal settlements. Firstly, these can be unauthorised commercial land developments - usually on private land -where legally owned land is subdivided by the owners and sold as plots for urban development, usually for housing. The buyer of the property has a title but the subdivision for housing development is illegal either because it violates zoning and planning regulations, or because the required permission for land subdivision has not been obtained, or because development on the plots does not comply with construction norms. Secondly, informal settlements can be made up of squatter settlements on public or private land. As the land has been illegally occupied and the building activity has taken place regardless of, or in violation of development, planning and construction norms, occupants in squatter settlements basically have no legal rights (Payne and Durand-Lasserve, 2012). There is an over reliance on the legality of either the occupied piece of land, or the structure erected after the land is again, 'legally' occupied. Even in the South African context, the term is used broadly and loosely to refer to anything from 'illegally' acquired land to the structure erected on the land.

Roy (2011) warns that we should not view urban informality in terms of simple binary clear cut boundaries but it uncovers the ever-shifting urban relationship between the legal and illegal, legitimate and illegitimate, authorised and unauthorised. For him, "(u)rban informality then is not restricted to the bounded space of the slum or deproletarianised/entrepreneurial labour; instead, it is a mode of the production of space that connects the seemingly separated geographies of slum and suburb" (Roy, 2011, p. 11) In line with Roy's ideas, Bhan (2016) argues that these are no longer just slums, but a type of an auto-constructed urban form. This is because it no 'longer refers to just the materiality of its housing, a spatial form or a planning category. It must be read instead as the territorialisation of a political engagement within which subaltern urban residents negotiate - incrementally, over time, and continuously - their presence in as well as right to the city (Bhan, 2016, p. 11). Inasmuch as Bhan's assertion is deeply rooted in the Lefebrevian (1974) 'rights to the city' mantra, it is the realisation that subaltern incrementally negotiate their rights. Roy (2011) however raises the fluidity of binary representations, such as 'formal' and 'informal'. This is in line with Hornby, et al.'s (2017) argument that the tenure continuum itself cannot explain the tenure complexities

in South Africa. They observe that so-called formal tenures themselves have drifted towards informality, while informality has similarly shifted depending on the context.

5.4.2 Current Population Trends in Urban South Africa

Table 8 below shows recent urban and rural populations as a proportion of total population of selected African countries between 2000 and 2015. While statistics have shown that there is still a significant number of people still living in the rural areas in South Africa, there is no doubt the country is rapidly urbanising. The following table shows current trends and changes which have occurred in the post-apartheid South Africa.

Table 8: Comparison of Urban and Rural Populations in Selected African Countries

	Urban			Rural		
URBAN AND RURAL POPULATIONS AS A PROPORTION OF TOTAL POPULATION,						
Selected African countries, 2000 and 2015						
Country	**2000**	**2015**	**Change**	**2000**	**2015**	**Change**
Algeria	59,9%	70,7%	18,0%	40,1%	29,3%	-26,9%
Angola	32,4%	44,1%	36,1%	67,6%	55,9%	-17,3%
Botswana	53,2%	57,4%	7,9%	46,8%	42,6%	-9,0%
Burundi	8,2%	12,1%	47,6%	91,8%	87,9%	-4,2%
Cameroon	45,5%	54,4%	19,6%	54,5%	45,6%	-16,3%
Central African Republic	37,6%	40,0%	6,4%	62,4%	60,0%	-3,8%
Congo (DRC)	35,1%	42,5%	21,1%	64,9%	57,5%	-11,4%
Congo (Republic)	58,7%	65,4%	11,4%	41,3%	34,6%	-16,2%
Egypt	42,8%	43,1%	0,7%	57,2%	56,9%	-0,5%
Eritrea	17,6%	N/A	-	82,4%	N/A	-
Ethiopia	14,7%	19,5%	32,7%	85,3%	80,5%	-5,6%
Ghana	43,9%	54,0%	23,0%	56,1%	46,0%	-18,0%
Ivory Coast	43,5%	54,2%	24,6%	56,5%	45,8%	-18,9%
Kenya	19,9%	25,6%	28,6%	80,1%	74,4%	-7,1%
Lesotho	19,5%	27,3%	40,0%	80,5%	72,7%	-9,7%
Liberia	44,3%	49,7%	12,2%	55,7%	50,3%	-9,7%
Libya	76,3%	78,6%	3,0%	23,7%	21,4%	-9,7%
Madagascar	27,1%	35,1%	29,5%	72,9%	64,9%	-11,0%
Malawi	14,6%	16,3%	11,6%	85,4%	83,7%	-2,0%
Mauritius	42,7%	39,7%	-7,0%	57,3%	60,3%	5,2%
Morocco	53,3%	60,2%	12,9%	46,7%	39,8%	-14,8%
Mozambique	29,1%	32,2%	10,7%	70,9%	67,8%	-4,4%
Namibia	32,4%	46,7%	44,1%	67,6%	53,3%	-21,2%
Nigeria	34,8%	47,8%	37,4%	65,2%	52,2%	-19,9%
Rwanda	14,9%	28,8%	93,3%	85,1%	71,2%	-16,3%
Senegal	40,3%	43,7%	8,4%	59,7%	56,3%	-5,7%
Somalia	33,2%	39,6%	19,3%	66,8%	60,4%	-9,6%
South Africa	*56,9%*	*64,8%*	*13,9%*	*43,1%*	*35,2%*	*-18,3%*
Sudan	32,5%	33,8%	4,0%	67,5%	66,2%	-1,9%
Swaziland	22,7%	21,3%	-6,2%	77,3%	78,7%	1,8%
Tanzania	22,3%	31,6%	41,7%	77,7%	68,4%	-12,0%
Tunisia	63,4%	66,8%	5,4%	36,6%	33,2%	-9,3%
Uganda	12,1%	16,1%	33,1%	87,9%	83,9%	-4,6%
Zambia	34,8%	40,9%	17,5%	65,2%	59,1%	-9,4%
Zimbabwe	33,8%	32,4%	-4,1%	66,2%	67,6%	2,1%
N/A - Not available						

(Source: South African Institute of Race Relations, 2017)

It is important to note that South Africa is not the only country experiencing rapid urbanisation. The table above shows that Rwanda had the highest change (93.3%), while Burundi (47,6%) and Namibia (44,1%) also experienced significant changes to their urban areas. On the other hand, only 56,9% of South Africa's population were considered as urban, and the proportion rose to 64,8%. In support of Satterthwaite's

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(1997) assertion that urbanisation in the global South can be described as 'urbanisation of poverty', this can be interpreted in the context of increase in informal housing in cities. The table below shows typology of urban housing in South Africa:

Table 9: Housing Types

Changes in housing types, 1996–2016		
Type of housing	**Number**	**Average daily change**
Formal[a]	7 609 800	1 042
Informal[b]	740 950	102
Traditional	-463 649	-64
Other[c]	-25 524	-3
Total	**7 861 577**	**1 077**

Source: South African Institute of Race Relations (2017)

a. Formal refers to house/brick structure on separate stand or yard, flat in a block of flats, town/cluster/semi-detached house, a room/house/dwelling in backyard, dwelling on a shared property, or a room/flat let on a property or a larger dwelling/servants' quarters/granny flat.

b. Includes informal dwelling/shack in and not in backyard.

c. This includes caravan/tent, hostels and compounds, and other unspecified dwellings.

Table 9 above shows that almost 8 million homes are considered as formal in urban South Africa, while 740 950 households are informal. While there can arguably be further breakdown of what it means to be formal and informal, there is sufficient evidence to indicate that informal housing contributes immensely to urban housing development. This is significant when one considers the proportion to the total urban settlements. Bhan (2016) argues that poor residents occupy land in cities both out of need and right, which subsequently shows the state's inability to provide affordable low-income housing. This result in what Caldeira (2015) terms 'auto-construction', which refers to the spatial of temporal 'exception' to a city that falls within the ambits of land markets, master plans, governance codes, norms and laws.

A closer analysis by Hornby, et al. (2017) shows that there is a significant proportion of dwellings outside the formal property systems. Table 10 below suggests that almost 60% of all dwellings exist outside the formal property system:

Table 10: Dwellings outside the Formal System

Location	Number of People	%
Communal areas	17 million	32.8%
Farm workers and dwellers	2 million	3.9%
Informal settlements	3.3 million	6.3%
Backyard shacks	1.9million	3.8%
Inner City buildings	200, 000	0.38%
RDP Houses - no titles	5 million	9.6%
RDP houses - titles inaccurate or Outdated	1.5 million	3.0%
TOTAL	30.72 million	59.7%

Source: Hornby, et al. (2017, p. 8)

It is clear in Table 10 above, that communal areas are the largest contributor to untitled dwellings, and as discussed earlier, is classified under customary tenure arrangements. What is also very significant is the fact that despite subsidy housing driven by the State, 5 million people still live without titles. Even apart from those who might have acquired titles, almost one and half million have inaccurate or outdated titles. For such a huge number of people to live outside the formal tenure system requires re-thinking land policy direction and the edifice to be addressed. This implies that informal tenure arrangements accommodate the majority of South Africans, hence it is imperative not to dismiss these diverse tenure arrangements.

Existence of informal settlements is normally attributed to urbanisation, economic decline, market failure, and failure of public policy (Legal Entity Assessment Project, LEAP, 2005). In most developing countries and middle-income countries like South Africa, the lack of proactive planning and provision of land for low-income settlements often results in the poor occupying marginal, low-lying, poorly drained and environmentally fragile areas (such as floodplains, waste ground and dolomitic land vulnerable to subsidence), which endangers lives and local ecosystems (Turok, 2012, p. 14). In the developing countries, housing choice is a hard calculus of confusing trade-offs (Davis, 2006). The urban poor have to solve a complex equation as they try to optimise housing cost, tenure security, quality of shelter, journey to work, and sometimes, personal safety. For some people, including many pavement-dwellers, a location near a job is even more important than a roof (Davis, 2006, p. 27). Napier (2013, p. 13) supports this idea by arguing that informal settlements provide quicker, easier and more affordable access to places and spaces to live, trade and produce than either the State or the private sector can easily match. According to Davis (2006), most

urban newcomers' first decision is whether or not they can afford to locate near the principal job concentrations (core versus periphery). In the case of South Africa "(t)his rapid urbanisation has reinforced the spatial segregation instituted under apartheid" (OECD, 2011, p. 17, cited in Turok, 2012, p. 14).

For UN Habitat (2003, p. xxxii), generally, slums are the products of failed policies, bad governance, corruption, inappropriate regulation, dysfunctional land markets, unresponsive financial systems and a fundamental lack of political will. Huchzermeyer (2003) states that in the absence of a policy framework for the integration of urban informal settlements, current informal settlement intervention in South Africa is structured through the capital subsidy scheme of the national housing policy. Under this policy, low-income households are entitled to a uniform product, consisting of a standardised serviced plot with freehold tenure and a core housing structure in a formalised township layout (ibid.). For Huchzermeyer (2003), this form of intervention perpetuates the structure of the South African city as informally developed settlements are replaced by fully standardised townships on cheap tracts of land. This proposal considers that a major challenge with informal settlement interventions in South Africa, however, is that they intend to eventually replace informal settlements with fully standardised layouts and housing units, and the capital subsidy framework discourages gradual popular investment in permanent structures.

Within informal settlements themselves, complex relationships and transactions take place, which are outside the ambit of formal systems. Barry (2003) argues that low-cost housing estates often do not function according to planners' desires. Social pressure, shortages of accommodation and survival strategies involving generating income from numerous sources are contributing factors. In spite of official attempts to prohibit it, landlordism occurs as powerful individuals purchase houses informally and then rent them out. Informal money lenders are often involved. The house is "transferred" to the money lender in lieu of debt (Barry, 2003).

Furthermore, the advances in national housing policies over the last four decades have tended to focus on conferring ownership rights and largely omit rental housing although it is a viable livelihood strategy for both tenants and landlords (Scott, 2013). It is common for several tenants to rent from a landlord on a plot of land that has been bought, subdivided, inherited and sold several times under informal land arrangements.

Scott (2013) further states that ownership documents can quickly become outdated and often do not reflect the actual situation. Others scholars suggest that it is security of tenure and tenancy (i.e. not fearing eviction), not legal title, that provides sufficient impetus to invest.

Land constraints within these areas complicate the installation of storm-water systems, sewers, electricity and other infrastructure. Because of the pressure on well-located land more generally within the city, many shack areas are poorly sited in relation to flood hazards, waste ground and unstable dolomite. They are isolated from livelihood opportunities and amenities which compounds people's disadvantage. A national survey found that workers in the lowest income bracket have to spend no less than 35% of their earnings on average on transport expenses. (Turok, 2012).

Some scholars argue that in order to address the rapid growth of informal settlements huge trade-offs should be made. International experiences have shown that in most cases, informal settlements are painted with a negative brush, while on the other hand, there are generally good stories to tell. It is crucial to also realise that slums or informal settlements are spaces where individuals can create meaning and find themselves (both materially and economically). For Seabrook (1996), "(i)t would be foolish to pass from one distortion - that the slums are places of crime, disease and despair - to the opposite: that they can be safely left to look after themselves (Davis, 2006, p. 70). The ideological battle addressing informal settlements has gone on for years, pitting the so-called Bretton Woods 'mafia' (influencing government policy) against voices of ordinary and desperate poor.

The 'sites-and-services' approach credited to English architect John Turner is regarded as a way to help rationalise and upgrade self-help housing (Davis, 2006). The drive to propagate those slums was less the problem than the solution. Turner and his associates' idea was regarded as a pragmatic and cost-effective approach to the urban crisis because it promoted self-help, incremental construction, and legalisation of spontaneous urbanisation (Davis, 2006, p. 72). For Napier (2002, p. 8), Turner's work is largely seen as responsible for persuading donor agencies and government officials that the creative activities of the people when housing themselves (such as in informal settlements) should be seen as part of the 'solution' rather than a major urban problem that it was perceived to be by many city officials. The World Bank was at the centre of

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promoting this self-help programme, leading to less state responsibility in housing provision in the developing world. In this approach, the poor were to be left to provide themselves with houses incrementally. The challenge is that the approach removes the state from being liable to provide socio-economic rights to those who cannot afford them.

Recent research has revealed the correlation between informal housing and economic marginality epitomised by the rise of informal employment in most urban areas in the developing countries. Projections by the United Nations (UN) indicated that two-fifths of the economically active population in the developing world survives on informal employment (Davis, 2006, p. 176). Additionally, further negative projections by the UN show that informal employment will somehow have to absorb 90 percent of urban Africa's new workers over the next decade (Davis, 2006, p. 177). In a rather pessimistic juxtaposition, Thierry Mayamba Nlandu (1998) is quoted by Davis (2006, p. 198); "the informal sector is not a *dues ex machina*, but a 'soulless wasteland,' yet also 'an economy of resistance' that confers honour on the poor 'where otherwise the logic of the market leads to total despair' ".

In the case of South Africa ,we need to realise that urban informal settlements serve as reception areas or gateways for migrant populations, offering cheap entry points to gain a toehold in the urban labour market - a low cost accessible location from which to search for work (Cross, 2010). They provide easier and more affordable access to places and spaces to live, trade and produce when compared to formalised real estate processes (Napier, 2013). However, response to informal settlements by most municipalities has been hostile, with some taking tough anti-land invasion actions and also containing existing settlements. In addition, Huchzermeyer (2011) states that there are many instances when existing informal settlements have been demolished, residents evicted from land intended for other purposes to temporary relocation areas or transit camps pending eventual provision of formal housing. Reasons such as the recent hosting of the World Cup, pursuit of foreign direct investment and tourism are some of the reasons the State brings forward when opposing 'unsightly informal settlements (Turok, 2012).

Such restrictions, and heavy– handed responses in some cases, make it difficult for people to move to cities, and also result in poor people occupying 'hidden spaces'

such as backyard shacks in the existing townships and inner city abandoned buildings which lack water, sanitation, electricity and waste collection. In some cases, indifference for informal settlements and backyard shacks is sometimes justified in terms of not encouraging further rural-urban migration (Turok, 2012). Proactive policy-makers should recognise informal settlements as 'escalator areas' that enable migrants to acquire relevant skills and contacts, to increase their income and in due course to move on to better housing elsewhere. 'Cities that are in dynamic need of such areas to accommodate population growth and enable social mobility' (Turok, 2012, p. 21). Turok further calls for a policy shift in order to accommodate incremental upgrading. He argues that policies "should also recognise that such areas need incremental upgrading to improve their capacity to serve this role, to strengthen the social fabric of nascent communities and to provide cleaner and safer living conditions of incoming residents." (Turok, 2012, pp. 21-22). There are calls for proactive planning in terms of land allocation in anticipation of future population growth.

What is worrying is that most cities in developing countries "lack accurate, current data on land conversion patterns, number of housing units (informal and formal) built during the past year, infrastructural deployment patterns, subdivision patterns and so forth" (Brennan 1993, cited in Davis, 2006, p. 45). In some cases, the urban fringe becomes a hub for entrepreneurs who rake huge profits from mining cheap labour with minimum oversight by the state. The low-income labourers often find themselves caught in a vicious cycle, where, as "'labour nomads lack secure footing in either city or countryside, and often spend their lifetime in a kind of desperate Brownian motion between the two" (Davis, 2006, p. 47). In a more pessimistic view, Davis (2006, p. 47) argues that the principal function of the Third World urban edge remains as a human dump. This supports Marx's PA on exclusion and separation, while more accurately, Sassen (2010) speaks of how the current advanced capitalist system expels people and renders them invisible in the cities of the global South.

5.4.3 The Backyard Housing Sub-sector in South Africa

Another consequence of rapid urbanisation in South Africa is the burgeoning 'backyarding' housing sector. From the trends presented on the section above, it is crucial to note about this housing sub-sector that the backyarding can be found in both formal and informal setups. Much of urban literature had often paid little attention to

renters or backyard dwellers. The backyard subsector is important in this study because it unlocks the other tenancy arrangements in South African urban areas. It is generally accepted that there is no single definition of the term 'back-yard' dwelling. In its Draft Policy on Backyarding, South African Local Government Association (SALGA) identifies certain interpretations of what we can refer to as 'back-yard' housing subsector. Firstly, it is generally a small-scale activity, seldom exceeding few units per property. Secondly, it is produced on privately owned and privately held or controlled land (this includes privately owned land and land that is state owned, yet owned by individuals, for example, there are areas such as Municipal Hostels, owned by the local government, but the backyards are privately owned). Thirdly, it is procured and managed by private individuals while accommodation is generally occupied by separate households, as well as extended family members and kin networks through private rental treaty. Lastly, the units are predominantly utilised for residential habitation, although some are used for commercial purposes (SALGA, 2013).

Table 11 below shows that by 2015, 61,1% (849 000) of backyard structures were considered to be informal. If one adds this to 38,9% (541 000) during the same period of formal dwellings in backyards, it becomes apparent that the backyard subsector provides a significant chunk of the total population in South Africa. In addition, a 110.5% change in the increase of informal dwellings in the backyard supports the fact that there is an exponential increase in population in cities. The proportion of informal backyard structures indicates much larger structural contradictions, where on one hand, unplanned settlements seem to be exponentially increasing, while on the other, authorities' response has not been able to adequately deal with the emerging complexities.

Table 11: Backyard Structures

BACKYARD STRUCTURES					
All backyard structures, 1996 and 2015					
	Actual numbers			**Proportions**	
Types of backyard structure	**1996**	**2015**	**Change**	**1996**	**2015**
Formal[a] dwellings in backyard	483 465	541 000	11,9%	54,5%	38,9%
Informal[b] dwellings in backyard	403 334	849 000	110,5%	45,5%	61,1%
Total backyard dwellings	**886 799**	**1 390 000**	**56,7%**	**100,0%**	**100,0%**

Key:

a. Dwellings constructed according to approved plans.
b. Makeshift structures not approved by a local municipality and not intended as a permanent dwelling. They are typically constructed with materials such as corrugated iron, cardboard, and plastic and are commonly referred to as shacks.

Source: South African Institute of Race Relations (2017)

According to SALGA (2013), supply of backyard accommodation is driven by 2 factors: landlords may build rental accommodation for monetary gain (more formally constructed) or provide space on their properties (for construction by tenants of shacks) for which regular rental is paid. Secondly, this may be for social reasons, that is, to provide accommodation to family members or friends. Despite benefits of the backyard housing subsector, it also brings some challenges. The number of people utilising toilets, taps, drains and cooking facilities on a specific site across neighbourhoods can stretch the carrying capacity of the existing infrastructure.

For Davis (2006, p. 42), landlordism is in fact a fundamental and divisive social relation in slum life world- wide. "It is the principal way in which urban poor people can monetise their equity (formal or informal), but often in an exploitative relationship to even poorer people." It is often the poorest of the poor who rent, while the more advantaged poor may invade on municipal or state land. "Renters, indeed, are usually the most invisible and powerless of slum-dwellers. In the face of redevelopment and eviction, they are typically ineligible for compensation or resettlement" (Davis, 2006, p. 44). "Tenants are scattered throughout irregular settlements with a wide range of informal rental arrangements, and they are often unable to organise as a pressure group to protect themselves".

Scott, et al. (2013) earlier mentioned that it is common for several tenants to rent from a landlord on a plot of land that has been bought, subdivided, inherited and sold

several times under informal land arrangements. Besides sheer greediness, this further complicates the housing waiting lists as some of these landlords fraudulently insert their family members on the lists. This is likely to be easier where registers are locally managed, and in circumstances where they wield considerable political and economic power. Scott, et al. (2013) further states that ownership documents can quickly become out-dated and often do not reflect the actual situation. The same situation is raised by Kingwill (2017), where even when residents are provided with title deeds, they fail to sustain and update them, therefore returning to the old set-up.

5.4.4 Informal Land Markets in Informal Settlements

Despite the fact that the debate around formal land titling has been extensively covered earlier, it is worth noting that many proponents of formal titling (de Soto, 2000, Tomlinson, 2005) argue that one main advantage is that a title enables the use of land or property to be used as collateral to access finance from formal institutions. On the other hand, other scholars have bemoaned the onerous and expensive process which actually curtails mobility of households in the housing market. As shown in the earlier sections, land ownership patterns and the complex dynamics of the real estate market result in well-located, serviced land expensive and inaccessible for the poor (Napier, 2013).

Regardless of the debate around land titling, Chapter Two of this study has already shown the existence of so-called 'informal markets' in most South African cities and towns. These markets may be recognised or unrecognised, extra-legal or unregistered and as result require a unique and distinct set of actions to address their sustainability and inclusiveness in the formal land market space (Royston, 2013). Understanding of such markets, especially in informal settlements, can assist in unravelling the systems, networks and institutions which underpin services delivery (for instance water sanitation). Promotion of such markets may also encourage investment in household or individual investment in water and sanitation infrastructure in order to 'add value', hence enhance possibilities of mobility up the 'housing market' ladder.

In other parts of the world, specifically South America, the land market in slums or even formal settlements is sometimes referred to as pirate urbanisation. Mohan (1994, pp. 152-153) states that "…these *pirata* subdivision settlements did not result from land invasions: the land has actually changed hands through legal purchases. It is subdivision itself that is usually illegal. Low-, lower-middle- and middle-income

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families, having been shut out of the formal housing market, buy lots from entrepreneurs who acquire tracts of undeveloped land and subdivide them without conforming to zooming laws, subdivision regulations, or service provision standards. The lots sold usually provide only a bare minimum of services, often nothing more than some streets and water standpipes. Typically, this rudimentary infrastructure is incrementally upgraded after initial settlement has taken place". Gordon, et al. (2007, p. 35) suggest an overview of an informal land market as shown below:
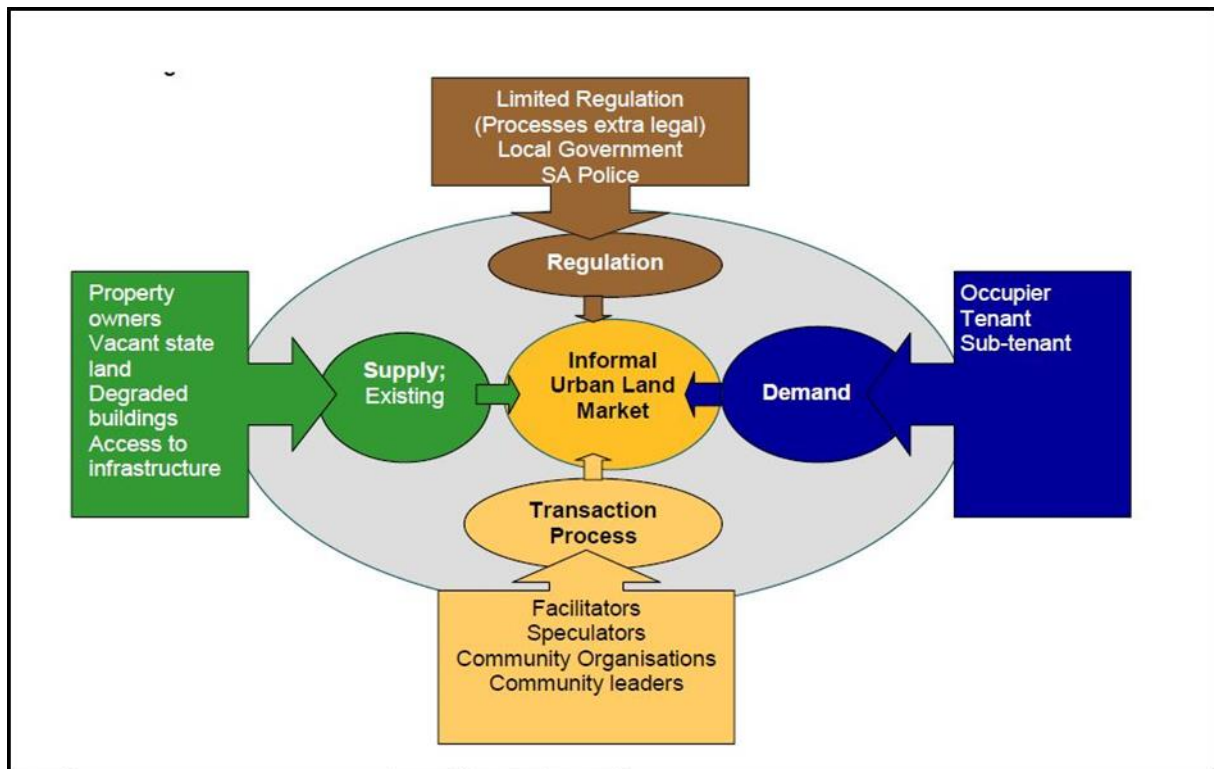
Figure 9: Informal Land markets in South Africa
Source: Gordon, et al. (2007)

Understanding urban land markets is key to developing insights into informal tenure arrangements and how this can be incorporated into policy. Bhan (2016) showed that 'auto-construction' and informal ways of laying claim and exchanging urban land was dominant in Delhi. The failure by the informal system to penetrate the formal system indicates how formal systems only work for the elite, and in the case of South Africa, the cadastre system represents this market-oriented approach. The existence of informal urban land markets outside the formal system may also indicate what Sassen (2010) terms counter- geographies of survival as the excluded masses fail to gain foothold due to the 'edifice' (Hornby,, et al. 2017). In the process of trading urban land and houses (formally/informally), municipalities are most likely unable to keep track of

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who occupies specific plots and dwellings, resulting in 'invisibility' of some urban residents. This will likely lead to inadequate supply of water and sanitation services.

5.5 'Evictions, Containment or Eradication?': State Response to Informal Settlements and Backyarding

Literature in this study has demonstrated that it can be interpreted using Marx's PA. Informality manifests itself through processes such as planning (Bhan, 2016), where the subaltern (the term subaltern, according to Bhan, refers to the 'surplus population' who mostly live in informal settlements) developed repertoires of 'counter geographies of survival' (Sassen, 2010, p. 31). After providing an overview and current debates on informal settlements and informality, for the purposes of this section it is important to also reflect on the response of the State and other 'formal structures' in the face of rapid urbanisation. The most common response has been evictions and demolition of structures deemed illegal. Most of the evictions have been accompanied by sheer force and brutality, reminding us of the force used during enclosures (PA). In addition, police and private security companies which are normally used during evictions indicate enforcement of 'bloody legislation' in a democratic state, hence the apartheid or colonial state being reproduced (Mamdani, 1996). Forced evictions is a world-wide phenomenon and is caused by various reasons. Du Plessis (2005, p. 123) identifies some of the key causes of evictions. For du Plessis, development and infrastructure projects, which are often funded by major international financial institutions, may result in evictions of the poor. Secondly, large international events such as the Olympic Games and Soccer World Cup may cause removal of those deemed to be occupying spaces required for such events. Similarly, another cause of evictions are urban redevelopment and 'beautification' initiatives, aimed at drawing investment into previously neglected areas and creating 'world-class' cities (du Plessis, 2005, p. 123, Huchzermeyer, 2013). In addition, there are property-market forces which are often supported by government intervention resulting in systematic 'gentrification' of areas, usually at the direct expense of the poorer residents (for example the widely reported Woodstock evictions in Cape Town). Lastly, the absence of state support to the poor under deteriorating economic conditions and political conflict resulting in 'ethnic cleansing' of ethnic communities and groups has also resulted in massive evictions of the poor and vulnerable in cities (du Plessis, 2005, pp. 123-124).

Through its different declarations the United Nations has indicated that forced evictions are illegal. The UN Sub-Commission on the Protection and Promotion of Human Rights states that:

... the practice of forced eviction constitutes a gross violation of a broad range of human rights, in particular the right to adequate housing, the right to remain, the right to freedom of movement, the right to privacy, the right to property, the right to an adequate standard of living, the right to security of the home, the right to security of the person, the right to security of tenure and the right to equality of treatment (du Plessis, 2005, p. 124).

Informal settlements (or slums) and some backyard dwellings have been at the centre of constitutional rulings in South Africa and other countries faced with similar challenges. The major bone of contention is how to balance 'legality' on one hand and human rights on the other. South Africa's Constitution is hailed as the best in the world as its basis is on the Bill of Rights. As pointed out earlier in the study, most 'informal' settlements take place in areas where the land belongs to the State or is privately owned. This leaves residents in the informal settlements under the risk of eviction. Huchzermeyer (2014) points out that another major aspect which results in informal settlements or 'slums' being targeted is the campaign by Cities Alliance and UN: 'Cities Without Slums'. The ANC created a new political focus on informal settlement eradication, or slum eradication. This is further articulated by the then Housing Minister:

As government, we have articulated our concerns over informal settlements. These are growing at an alarming rate and this government has indicated its intention to moving towards a shack-free society. The difference now is that we are not dealing with intent, we will be operational. There will be visible results within the timeframes we set ourselves, argued Sisulu (2005) cited in Huchzermeyer, 2013, p. 306)

Huchzermeyer further demonstrates that there are economic stakes associated with such approaches towards 'slum' eradication. Douglass (2002) adds that slums sometimes occupy or at least visibly affect the most 'coveted spaces for global capital investment'. In the Asia-Pacific region, Hasan (2010, p. 293) observes that 'world-class cities' shun the upgrading of informal settlements, preferring to relocate older informal settlements to the urban periphery. It is not surprising that some analysts are suspicious about the close relationship between the Cities Alliance and the Private Sector Development and Infrastructure arm of the World Bank (Jones, 2009).

In some cases courts grant evictions of people perceived to have invaded land or occupied buildings illegally, which according to Bhan (2016), alters the forms, claims and strategies of urban social movements in advocating for the rights and citizenship of those facing the threat of eviction. While the Grootboom case remains a landmark case in favour of the urban poor, lower courts continue to issue eviction orders (Socio-Economic Rights Institute of South Africa (SERI, 2013, 2017). Only a few cases are taken up by human rights organisations such as Socio-Economic Rights Institute in Johannesburg and Ndifun'Ukwazi in Cape Town.

A drive towards total eradication of informal settlements is in stark breach of Section 26 of the Constitution. The right of access to adequate housing enshrined in section 26 of the Constitution is undoubtedly the most fiercely contested and frequently litigated socioeconomic right in the South African context (SERI, 2013, p. 20). More specifically, Section 26(3) of the Constitution, along with the PIE Act, provides a number of essential procedural protections to unlawful occupiers who face evictions (ibid., p. 26). In addition, Section 26(3) provides that no one may be evicted from their home or have their home demolished without a court order authorising such eviction after having due regard to "all the relevant circumstances". Coupled with the Prevention of Illegal Eviction and Unlawful Occupation of Land Act 19 of 1998 (PIE Act, 1998); court may not grant an eviction order unless the eviction sought is "just and equitable" in the circumstances; it makes it very difficult to simply evict occupants under any circumstances. Thus far, several cases have been brought before the Constitutional Court regarding evictions of 'illegal' occupiers of land and in most instances the courts have ruled in favour of the poor and homeless. The South African State's drive towards eradication of informal settlements seems to be at odds with the current rapid urbanisation and furthermore sets it on a collision course with the Constitution. It is nearly impossible to set targets of eradication while the speed of housing and services delivery on one hand cannot match burgeoning informal settlements. The creation of formalised departments such as the feared Anti-Land Invasion Units in cities such as in Cape Town and Red Ants (in Tswane and Johannesburg) indicates a heavy-handed response to informality despite evidence indicating need to change approach.

Court decisions in support of the poor and evicted families have sometimes been blamed for encouraging 'queue-jumping' in terms of the municipal housing list. In addition, the cost of providing alternative housing and other services adds to the burden on municipalities and diverts resources from providing formal housing for others who meet the

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criteria (Turok, 2012). The fact that court cases are decided on an individual basis is symptomatic of the lack of planning ahead and managing the problem systematically, such as, for example, the provision of serviced land to accommodate household growth. Additionally, as Turok (2012) has noted, this has a negative consequence of not having an explicit, forward-looking urban policy.

5.6 Setting International Norms and Standards: Water and Sanitation 'ladders'

It is generally accepted that access to clean and reliable water and sanitation plays a key role in the public health system. Although this is well recognised across the world, little advances have been made in Africa and some parts of Asia to improve access to water and sanitation. The United Nations-sponsored Millenium Development Goals (MDGs), (Goal 7) specifically addresses two targets, one of which is to reduce by half the proportion of people without sustainable access to safe drinking water by 2015 (UN-Habitat, 2003). The Sustainable Development Goals, specifically Goal Six, states that '(w)ater scarcity affects more than 40 percent of people around the world, and that number is projected to go even higher as a result of climate change' and therefore aims to 'ensure availability and sustainable management of water and sanitation for all' (United Nation, 2015, p. 9). In Chapter Two it was also shown how the High Level Panel of Experts (HLPE) on Water for Food Security and Nutrition regarded that water of sufficient quantity and quality is essential for agricultural production and for the preparation and processing of food (HLPE, 2015). The same panel emphasised the need for adequate access of quality water for household use and sanitation. According to UN WATER 360 million Africans had access to improved sanitation facilities in 2006. Coverage increased from 33% in 1990 to 38% in 2006. The African population without access to sanitation increased by 153 million, from 430 million in 1990 to 583 million in 2006. Increases in coverage are not keeping pace with population growth. The rate at which Africans gained access to sanitation - 153 million people since 1990 - is insufficient to meet the MDG sanitation target. In 38 countries in Africa sanitation coverage is less than 50% (WHO/UNICEF, 2008 /2010).

The concept of water or sanitation ladders has often been used to determine the level of access to those specific services. Coined by the Joint Monitoring Program (comprising of the World Health Organisation, the United Nations Children's Fund and the Millennium Development Goals Progress Report) the 'water service ladder' describes the distribution of drinking water access across and between populations (Georgia, et al. 2013). As shown below (figure 5.2), it comprises of three rungs, with the lowest representing 'unimproved' water

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sources, 'improved' water services on the middle rung and piped water on premises, where it can either be in the dwelling, plot or yard being on the highest rung (WHO/UNICEF, 2010 cited in Georgia, et al. (2013). Widely used across the world, it gives a general picture of the effectiveness of interventions and also sets standards to which each service provider or beneficiary aims.
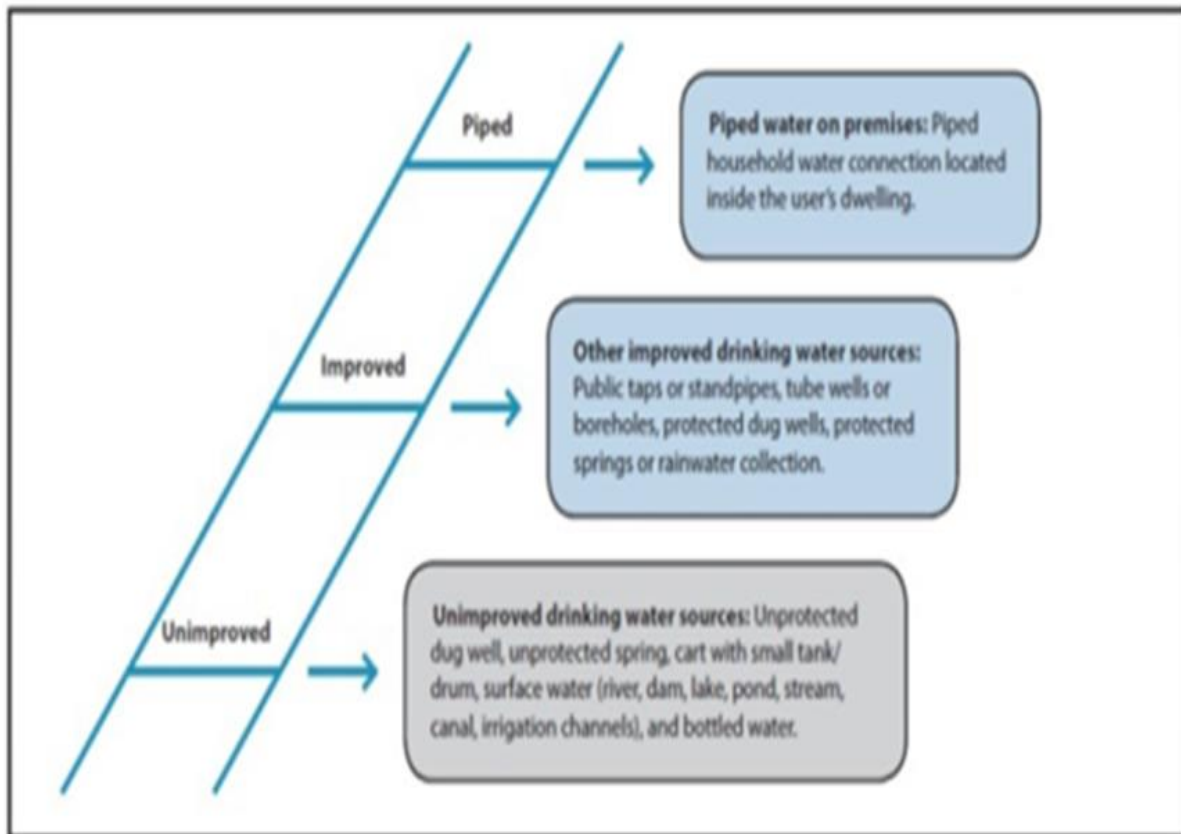
Figure 10: JMP Water ladder classification
Source: Kayser, Moriarty, Fonseca and Bartram (2013)

A more comprehensive water ladder was later developed with an intention to shift away from costing and counting water supply hardware and towards measuring the quality of the service delivered to the user over time (Georgia, et al. 2013). This ladder, developed by the International Water and Sanitation Centre (IRC) identified both high levels of non-functionality and poor service delivery as well as wide ranges of costs in achieving targeted levels of service (Georgia, et al. 2013). Owing to its flexibility and adaptability, this was adopted by various countries when deciding national norms and standard. Figure 11 below shows the IRC water ladder:

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Service level	Quantity (liters/capita/day)	Quality	Accessibility (minutes/round trip)	Reliability	Status (JMP)
High	Greater than 60	Meets or exceeds national norms, based on regular testing	Less than 10	Very reliable: works all of the time	Improved
Intermediate	40–59				
Basic	20–39	Acceptable user perception and meets/exceeds national norms, based on occasional testing	10–30	Reliable/Secure: works most of the time	
Sub-standard	5–19	Negative user perception and/or no testing	30–60	Problematic: suffers breakdowns and slow response time to repairs	Unimproved
No service Improvement	Less than 5	Fails to meet national norms	Greater than 60	Unreliable/Insecure: completely broken down	

Figure 11: IRC Water Service Delivery Ladder Framework
Source: Georgia, et al. (2013)

The IRC water services ladder presented above shows that a number of factors are considered for one to claim 'improved' water services. For instance, one has to consider quantity (more than 60 per day), quality (in the case of South Africa, blue drop status), accessibility (distance to point of access) and reliability (works all the time). On the other hand, unimproved covers are quite the opposite; and what is key is the accessibility, in terms of distance to the water point. What this ladder fails to address is cases where crime and overcrowding is very high such as in the informal settlements of South Africa.

In its National Water Policy Review, the Department of Water Affairs (2013) admits that, according to the current basic water supply service minimum volume of water required for direct consumption, for food preparation and personal hygiene, inadequate provision is being made for full, healthy and productive life. Additionally, the National Water Policy Review also acknowledges that there are policy gaps when it comes to equity and redress in water services. The basic water supply is the lowest on the sanitation ladder as shown below on figure 12. In urban areas, categorisation of water levels of water service became nationally accepted as:

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Piped Water Inside Dwelling
Piped Water Inside Yard
Piped Water Outside Yard
No access to piped

Figure 12: Categorisation of Water Service Levels
Source: Adapted from Categorisation by Statistics South Africa (2011)

The water ladder categorisation is widely used for official statistics by various State departments in South Africa. It is important to note that water access is also defined by 'access to piped water' which eliminates other technologies such as household-protected well or borehole. Additionally, absence of piped water inside a dwelling is normally attributed to informal settlements or other tenure arrangements. While keeping in line with the Free Basic Services Policy, the intention is that households progress up the water ladder (DWAF, 2002). Inasmuch as this might not have been stated explicitly, one of the key determinants to this progress evidently lies in the nature of tenure or tenancy arrangement of the specific household.

Just like the water services ladder, the sanitation ladder also shows a clear picture of levels of services of a particular area. The sanitation ladder below (Figure 13) indicates the physical availability of sanitation facilities, which in turn reflects progress in sanitation (Kwiringira, et al. 2014). The highest rung on the sanitation ladder is associated with access to a flush toilet, and the lowest is open defecation. Additionally, Unicef (2008) states that a household is considered to have adequate access to sanitation if an excreta disposal system, either in the form of a private toilet or a toilet shared with a reasonable number of people, is available to household members (cited in Kwiringira, et al. 2014, p. 2). On the other hand, according to Kwiringira, et al. (2014, p. 2), "recently there has been a realisation that shared facilities cannot be at the same level on the highest rung with single family or private facilities … the shared facilities were redesignated as 'unimproved sanitation' i.e. not hygienically separating human excreta from human contact in recognition of poor operation, many users, lack of maintenance and abuse".
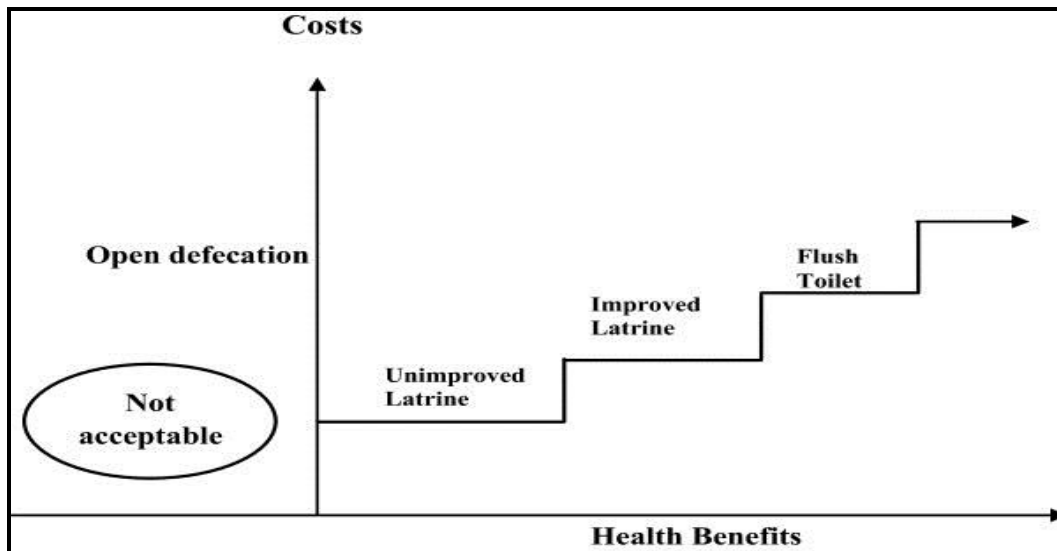
Figure 13: Sanitation Ladder
Source: Kwiringira, et al. (2014)

South African sanitation policies and other official sources (Statistics South Africa, 2011, 2016) still categorise access to sanitation services under the following categories:

- Flush toilet (connected to sewerage system)

- Flush toilet (with septic tank)

- Chemical toilet

- Pit latrine

- Bucket latrine

- None/other
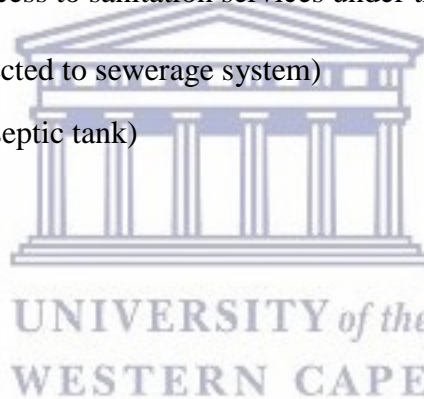
The City of Cape Town indicate that they go beyond the basic 6000 kilolitres set at national level to provide lower income households with extra free water and sanitation services. Compared to the rest of the country, the City surpasses national norms and standards (City of Cape Town IDP, 2012-2017), but its water and sanitation services shown in Table 12 below, indicates that informal settlements have a different approach. Depending on the status of land tenure, defined under the categories and land type, some end up with service standard 2, which is inadequate. Inasmuch as all service points are acclaimed to be within 100 metres, sanitation service is at the lowest on the sanitation ladder. The table also shows that these services are shared amongst several households. However, there is contention as to whether the ratio stated on table below (1.25) is a true reflection of the situation on the ground. This study has shown that there are various estimates of the actual number of households in

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informal settlements and coupled with rapid urbanisation, this brings doubt on whether this ratio is applicable.

Table 12: Servicing Strategy Categories within the City of Cape Town

Cat	Land type	Bulk Infrastructure	Distributed space available within settlement	Service Standard
A1	Govt owned land, occupation permitted	Available within economical distance	Adequate	1
			Inadequate	2
		Not available within economical distance	Adequate	3
			Inadequate	4
A2	Private land, occupation permitted	NA (No investment on private land allowed)	Adequate	3
			Inadequate	4
B	Adverse physical conditions, temporary occupation	NA	Adequate	3
			Inadequate	4
C	Occupation prohibited	NA	Adequate	3
			Inadequate	4

No	Service standard target
1	Waterborne sanitation 1:5, taps to 1:25
2	Managed all-in-one waterborne ablution facility with janitorial service, supplemented by porta-pottis on demand. Incorporates taps and basins to 1:25
3	Container or dry sanitation to technology-specific household ratio. Taps to 1:25
4	Managed all-in-one conservancy tank ablution facility with janitorial service, supplemented by porta-pottis on demand. Incorporates taps and basins to 1:25
Note	All service points to be within 100m walking distance of households served

Source: City of Cape Town IDP (2012-2017, p. 98)

5.7 Towards a Multiple-use Water Services Model

The water and sanitation ladders presented above fail to recognise various other uses of water. There is need to unlock the potential of water to provide livelihoods opportunities for the poor and vulnerable in urban communities and the Multiple-use Water Services Model (MUS) recognises that water plays a crucial role beyond domestic uses.

According to van Koppen, et al. (2009) describe the Multi-use Water Services Model (MUS) as an approach to water services better suited to meeting people's multiple needs in peri-urban and rural areas of low- and middle-income countries. The model goes on to compliment the recent High Level Panel of Experts (HLPE) on Water for Food Security and Nutrition report which also recognises that water goes beyond domestic use (HLPE, 2015). Besides just providing water for drinking, hygiene, cooking and other domestic uses, the model realises that it is needed in many small-scale or domestic enterprises (van Koppen, et al. 2009). Research in various countries had also demonstrated that 'de facto use of single-use planned systems for multiple purposes has often caused problems' (van Koppen, et al. 2006, p. 6). In its Strategic Framework for Water Services, the then Department of Water Affairs of South Africa (2003, p. 16) states that: "… (l)ack of access to water supply and sanitation

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constrains opportunities to escape poverty and exacerbates the problems of vulnerable groups, especially those affected by HIV/Aids and other diseases". This was through its realisation that water services play a key role beyond just domestic use. Additionally, the country's National Water Resource Strategy Two has three objectives it seeks to achieve. These objectives include firstly, water supports development and the elimination of poverty and inequality; secondly, water contributes to the economy and job creation, and lastly, water is protected, used, developed, conserved, managed and controlled sustainably and equitably (Department of Water Affairs, 2013).

According to van Koppen, et al. (2009, p. 29), MUS starts with people and their uses and needs for water and aims for greater wellbeing and socio-economic development. Although MUS initially focussed on rural and peri-urban communities, there has been a shift towards realisation that urban areas (informal settlements in particular) actually use water for other livelihood activities. While it is mainly divided into two scales: a community-level and a homestead-scale MUS, it is a genuinely participatory, community-based, natural resource management (van Koppen, et al. 2009, p. 30). MUS taps into community level understanding of water uses and ways to deal with scarcity. According to van Koppen, et al. (2007) such community level arrangements are dynamic and responsive to the many changes, such as population growth, new groundwater technologies, output market opportunities, or booming water markets for small vendors in the rapidly urbanising areas. With current high unemployment challenges in South Africa's low income households, it will be useful to explore ways in which water services go beyond regular domestic use normally provided by municipalities. Figure 14 below show the MUS model, which also accommodates the water services ladder.
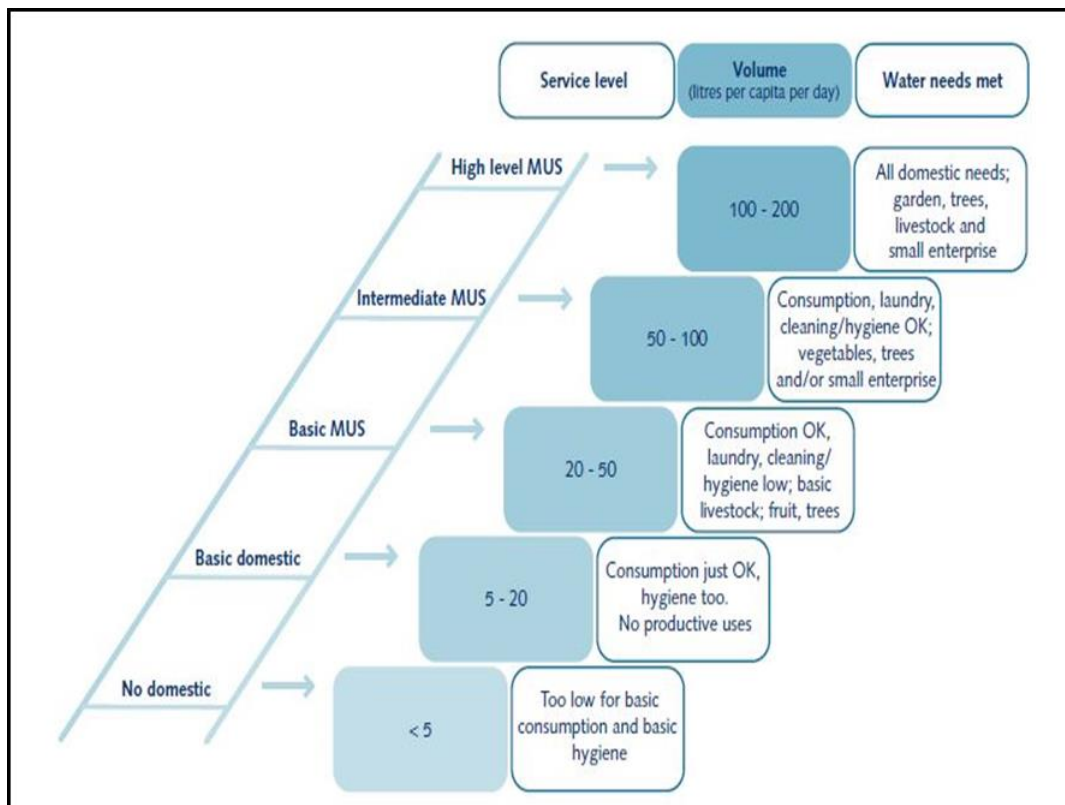
Figure 14: Multiple-use services framework
Source: van Koppen, et al. (2009)
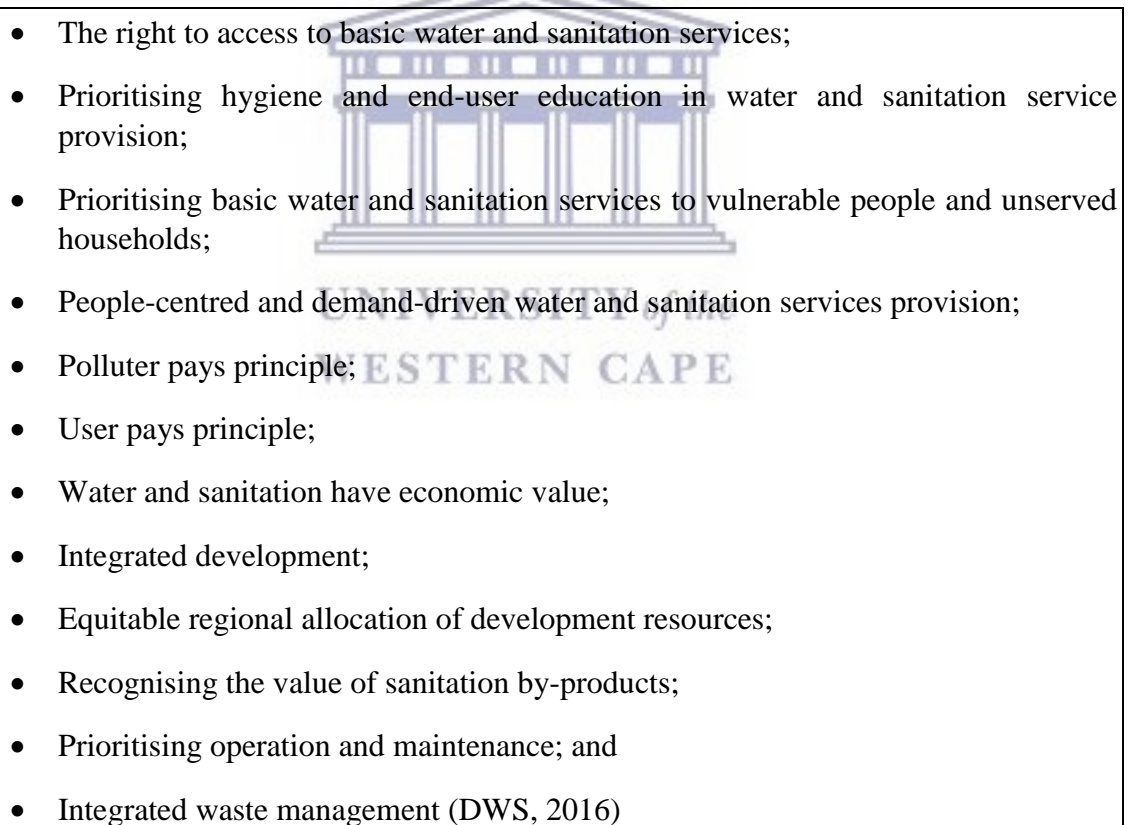
A multiple-use services framework can assist in the understanding of current survival strategies and how this can be used to enhance access to water beyond the basic supply. The role water can play to enhance livelihoods in somehow excluded populations such as those in informal settlements and backyard dwellings in cities of the global South has not been adequately promoted.

5.8 Water and Sanitation Services in Different Urban Tenure Settings

The sections above have shown that serving different tenure arrangements is likely to be complex and a one-size-fits all approach is not suitable. Tapela (2016) argues that a land-and-water perspective is therefore crucial to developing sufficiently-nuanced insights, requisite options and strategies to unlock the prevailing log-jams when eradicating backlogs and front-logs in water services delivery. Parnell and Pieterse (2010) argue that land is crucial for reducing poverty in South Africa. This is because it is not just for housing, but for transport, commercial and industrial development and public services. As seen in this chapter, growth of backyards in South African cities is a result of restrictions by apartheid-era land allocation systems (Turok, 2001) and a set of conditions that exacerbate the ongoing spatial legacies of apartheid, such as environmental conditions (Parnell and Pieterse, 2010). Access to land is therefore hamstrung in terms of the ability of authorities to not only acquire

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it for the poor, but also to provide services such as water and sanitation (Mcfarlane and Silver, 2016). For Parnell and Pieterse (2010) there is need for discourse to shift towards a form of sustained distribution of land and resources rather than of divide and rule predicated on occupation, temporality and migrant figure.

Taing's (2017) research in Cape Town showed that officials preferred providing informal settlements with un-sewered or waterborne sanitation because ground conditions on which the settlement is located was ideal due to various reasons, among them high capital costs for construction of new sewer and treatment plants and that informal settlements' occupants might interpret it as unofficial tenure rights. The fact that the current urban land tenure arrangement is further distorted by rapid urbanisation, means that current approaches might fail to address inequality in access of services. At the centre of this approach is the need to start by looking at the Department of Water and Sanitation's services principles below:

- The right to access to basic water and sanitation services;
- Prioritising hygiene and end-user education in water and sanitation service provision;
- Prioritising basic water and sanitation services to vulnerable people and unserved households;
- People-centred and demand-driven water and sanitation services provision;
- Polluter pays principle;
- User pays principle;
- Water and sanitation have economic value;
- Integrated development;
- Equitable regional allocation of development resources;
- Recognising the value of sanitation by-products;
- Prioritising operation and maintenance; and
- Integrated waste management (DWS, 2016)

Recognising that access to water and sanitation are basic rights is at the heart of the human rights based approach discussed in Chapter Two, and mentioned in the previous sections, this is often in direct contradiction of the principle of user pay approach. Furthermore, emphasising the economic value of water and sanitation plays into

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commodification of basic services (Dugard, 2014; McFarlane and Silver, 2016). Existing approaches to water and sanitation services is deeply linked to the cadastre system as argued above. This approach relies on the formal ownership of the property on which the household resides. It becomes a 'package' of the cadastre system, where supply of services depends on not only the ownership status, but also on the ability to pay for the services. This echoes Li's (2009) argument raised in Chapter Two whereby according to the policies and legislative framework, some are 'let live' while some are 'let die'. In this case because the owner enjoys the tenure rights associated with the property, chances of incremental upgrading of services are most likely to happen. In other words, investment on one's water and sanitation services is likely to happen because of the ownership status of the individual.

While the Strategic Framework of Water Services (DWAF, 2003, p. 13) highlights that "water service authorities have a responsibility to ensure that all people living within their jurisdiction (including those residents living on privately owned land) are progressively provided with at least basic water and sanitation services (first step up the ladder)", it does not provide clear guidelines on how this must be done however. Having different approaches to provision of services on different tenure settings makes it difficult to prescribe norms and standards at a national level. The table below shows an attempt by the City of Cape Town to take different land tenure settings into consideration when providing water and sanitation services. As shown on the table, different standards apply depending on who owns that particular land. For example, government land is under A1 category and basic services are provided, while no investment is permitted on private land. In situations where an informal settlement develops on private land, chances are that water and sanitation services might be not provided, and in cases where they are provided, they are inadequate and located far from where people actually stay.

5.9 The challenge of services delivery in Informal Urban Spaces

The recent Imizamoyethu fires in Hout Bay, Cape Town shook the nation to its core regarding the plight of informal settlements in South Africa (Gontsana, 2017). Not only was the loss of life shocking, loss of belongings and livelihoods has long-lasting impact. Lack of space for the fire engines to pass through because of overcrowding and lack of strategies to deal with such eventuality masked the real challenges in informal settlements as widely reported in the media (Gontsana, 2017). Lack of access to basic services has sometimes been blamed on the 'informality' of informal settlements, in the sense of legality (or illegality) of such dwellings. Another widely recorded incident in the media is Marikana Informal

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Settlement in Cape Town, where over a dozen people died violently. In all instances local government authorities used different reasons for the resultant situations; among them that they cannot provide services on private land or similar tactics to seemingly wish away the challenge.

Clearly, the problem of sanitation in slums is critical and complex because of high population density, poor urban infrastructure, lack of space, lack of secure tenure, and sustained poverty (World Health Organization / UNICEF, 2006, p. 20). For example, Royston and Narsoo (2006) state that invisibility and lack of recognition carry the risk of side-lining many vulnerable people, households and communities from development opportunities. The Policy Draft for the City of Cape Town (City of Cape Town, 2013, p. 1) acknowledges that "although the City has made good progress in decreasing the service delivery gap in informal settlements, the organic form of informal settlements, makes it difficult to provide municipal utility services such as water, sanitation, electricity access and waste removal at the required minimum basic national standards". In addition, the City claims that "informal settlements are characterised by lack of formal tenure, public space and public facilities, inadequate access to municipal services, a lack of convenient and safe access to services, and non-compliance with planning and building regulations" (City of Cape Town, 2013, p. 1). Furthermore, backyard dwellers and others in informal tenure arrangements have struggled to access services resulting in areas such as the City of Cape Town introducing draft policies targeting backyarders.

Against the backdrop of poor access to water services, a report on the State of Non-Revenue Water in South Africa (McKenzie, et al. 2012) reveals that a total of 1 580 million m³ of water per annum is unaccounted for in South Africa's municipalities. This is almost one third of the total water supplied. The estimated financial value of this loss per year is around R7 billion (ibid.). Besides reasons such as low levels of payment and water loss due to aged infrastructure, there is strong reason to believe that a significant proportion of water unaccounted for could actually be consumed in informal settlements or informal tenancy settings, such as formal settlements with backyard and/or in-house dwellers. This supposition is further supported by the South African Institute of Race Relations, which observes that a Post-Enumeration Survey (PES) carried in 2011 showed a population undercount of 14.6% (SAIRR, 2013). Cape Town Metro for example, still relies on out-dated estimates in areas like Khayelitsha and other informal settlements. The actual population in these areas is not

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known. Effectively, this means that there are bound to be shortfalls when it comes to water and sanitation services delivery.

5.10 Weapons of the Weak: Politics of Engagement in Cape Town

The increase of black African populations in major cities and a strong response from the State and local authorities gave rise to resistance and mobilisation in urban South Africa towards to the fall of apartheid regime. For Hendricks and Pithouse (2013, p. 110), leaders who emerged from squatters' struggles whose central contention was occupation and holding land in urban areas, led to these movements being drawn into the broader national struggle. This is also seen through politically-motivated rent boycotts against the apartheid regime in the 1980s (Swilling, et al. 1991).

It is generally accepted that the South African Constitution provides sufficient platforms for community participation. Democratic structures put in place ensure frequent elections and direct as well as indirect access to authorities. Subsequent policies and other frameworks purport to encourage participation by ordinary community members in public and private community intervention. In a doctoral thesis by Penderis (2013), one of the key findings is that legislation surrounding the establishment of participatory mechanisms to enable inclusive governance and people-centred development is contradictory with respect to the role and responsibilities assigned to ward committees. Whether these processes are effective or not, is not clear, especially with the burgeoning social protests in the past decade.

As demonstrated by Ndodana Nleya's doctoral research, protests are a form of expression by the poor to show frustration with services delivery (Nleya, 2011). It is generally accepted that there has been an unprecedented rise in social protests recently. According to the South African Institute of Race Relations (SAIRR), there has been a 96% increase in protests since 2010. Though some of the data relies on the south African Police Service's annual report, the SAIRR notes that during 2013/2014 there were 11 668 peaceful crowd-related incidents, 1 907 unrest-related incidents, and 1 691 incidents of public violence. The IRR also notes that Municipal IQ data showed that of the 176 major service delivery protests in 2014, 21% of these occurred in Gauteng and 18% each in the Eastern Cape and KwaZulu-Natal (SAIRR: 2015, p. 1). Mackay further argues that "these provinces, specifically the Eastern Cape and Gauteng, had high levels of fruitless and wasteful expenditure, with avoidable costs of R768m and R508m respectively, according to the Auditor General's 2012/2013 Public Finance Management Act report" (News 24, p. 2015).

He however alludes to how the Western Cape, which has the lowest fruitless expenditure, had a 14% increase in protests. This contradicts the hypothesis that social protests are directly linked to only poor service delivery, pointing to further arguments raised by Tapela (2012) of the possibility of the so-called 'third force' in some instances.
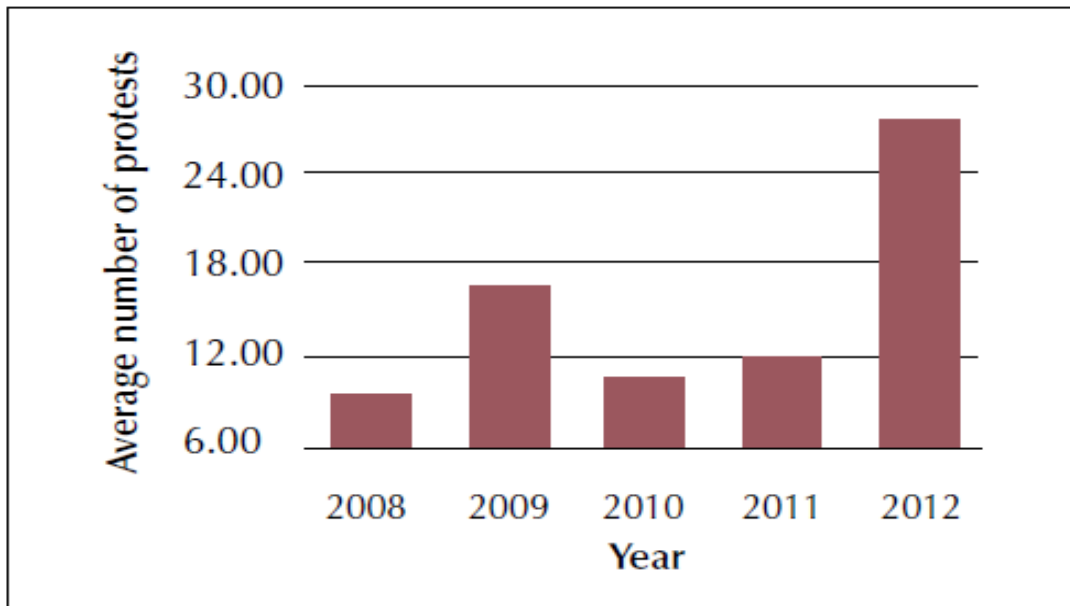
Figure 15: Average number of Protests
Source: Multi-Level Government Initiative (MLGI) (2012)

These trends have been linked to a number of factors, including the 'timing' of protest events (Tapela, 2012). Municipal IQ and MLGI observe that there are seasons associated with social protests. Municipal IQ warns that as winter approaches, with its electricity and other service hikes, social protests are likely to increase. In addition, the events that influence the timing of protests are periodic local and national government elections. In addition, changes in African National Congress' (ANC) leadership have been accompanied by a wave of protests as seen in 2009 (Alexander, 2012). Media reports have also shown that before and after the 2016 local government elections there have been different waves of protests, especially in Gauteng.

Expression of dissatisfaction has not been limited to protests - new forms of political economy are emerging. Mcfarlane and Silver (2016) outline some of what they term '*poolitics* tactics' as forms of resistance by the urban poor. For them, sanitation is already more than just sanitation in Cape Town, and 'seeing' sanitation is a relation of legibility and simplification, complexity and multiple tactics, shaped by contexts and histories (ibid, p. 6). This is because toilets and sanitation are intimately tied to basic rights (Parnell and Pieterse, 2010) and an estimated ½ a million residents of the city are experiencing inadequate services

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(Mels, et al. 2009). Four tactics currently being used in politics of sanitation in Cape Town include: spectacle, auditing, sabotage and blockage. Through these tactics, different players, such as Ses'khona, the Social Justice Coalition, janitors and other groupings attempt to not just question insufficient toilets and undignified provisions (*poolitics*), but also the problem of urban political, economic and racial inequality (politics). This points to the contradictions produced by the Marx's PA.

5.11 Conclusion

This chapter closes with a powerful statement by Judge Chantal Fortuin of the Western Cape High Court on the Marikana Informal Settlement. In her judgment, she reveals the impact history has on the current challenges in urban areas. In the same judgment which the City of Cape Town appealed, the City was instructed to enter into negotiations to purchase land from the 'legal' owners which over 60 000 residents 'illegally' occupied, so that residents could access housing and services. The secretary of the Marikana Residents' Association, Ms Mzotsho, was quoted as saying "(t)he City is unable to provide us services because we are living on private land" (Nombembe, 2017, p. 10). In light of this situation, it was also reported that the City was planning 'stop-gap services' while awaiting the outcome of the appeal. This scenario paints a rather gloomy picture for residents in informal settlements, where tenure is disputed.

This chapter has shown the complex situation facing cities in South Africa, coming from a past of segregation and separation where other sections were 'let die', to a point in time when the same laws and policies are designed to work for a few. Though redress is at the centre of housing policy, availability of land in urban areas, access to land by poor residents and increasing rural to urban migration adds to the complexity city authorities have to face. It has been shown that dealing with the unequal geographies of the apartheid city is complex. Mismatches that exist when urban land tenure systems are simply addressed as either 'formal' or 'informal' are enormous. The failure to provide the urban poor with housing opportunities not only results in so-called informal settlements, but the poor are generally denied other basic socio-economic rights. In addition, reliance on colonial planning law renders the whole process Sisyphean as proliferation of informal settlements continues rapidly.

CHAPTER SIX: CITY OF CAPE TOWN - AN OVERVIEW

6.1 Introduction

This section provides an overview of the socio-economic profile of the Cape Metropolitan area in general. The purpose of this chapter is to not only contextualise the study sites, but to situate the case study area within the country and the province. It is demonstrated that Cape Town is a highly unequal city, with the gap between the rich and poor ever increasing. This is against a backdrop of a city and a province running clean governance by the Auditor-General of South Africa (2017). However, the chapter also locates the complex challenges which were fully evident when different pre-democracy local authorities were merged. This chapter, particularly through the four case studies, reveal contradictions as poverty, protests and insecure tenure settings are completely opposite to the 'clean governance' mantra spearheaded in the opposition strongholds. For the broad and generalised socio-economic profile, this study relied on Census Data, Community Survey (Stats South Africa, 2016), South African Survey (South African Institute of Race Relations, 2017) as well as other secondary sources. Data from field work was mostly used to present socio-economic profiles of each of the case study areas, though in some cases the data was combined with other official data sources.

The intention is to provide a clear overview of the Cape Town Metropolitan Area, then zoom in into the study sites and show they relate to the overall demographic of the municipality. This way, the paradoxes of the City of Cape Town and the seemingly inability to address this complex scenario are presented. This chapter's main aim is to provide a context for the detailed analyses in subsequent chapters on urban land tenure (tenancy), water and sanitation services development.

6.2 Overview of Access to Services in South Africa

Table 13 below provides an overview of the main demographic information for the whole of South Africa (South African Institute for Race Relations, 2017). This overall country data assists in further understanding the actual situation on the ground before focusing further into the study sites.

Table 13: Household types and facilities, 1996 and 2016

HOUSEHOLD TYPES AND FACILITIES, 1996 AND 2016			
Key Variables	*1996*	*2016*	*Change*
Formal[a]	64.0%	79.2%	23.8%
Informal[b]	16.0%	13.0%	-18.8%
Traditional	18.2%	7.0%	-61.5%
Other[c]	1.9%	0.8%	-57.9%
Access to piped water[d]	79.8%	89.9%	12.7%
Access to piped water in dwelling	43.9%	44.4%	1.1%
Access to piped water on site/in yard	16.5%	30.0%	81.8%
Access to flush or chemical lavatories[e] only	50.3%	67.6%	34.4%
Use of electricity for lighting	57.6%	90.2%	56.6%
Use of electricity for cooking	47.1%	82.8%	75.8%
Use of electricity for heating	44.5%	37.6%	-15.5%
Refuse removal by local authority	53.4%	63.9%	19.7%
Communal refuse removal/dumps	3.2%	5.0%	56.3%
Own refuse dumps	32.1%	26.1%	-18.7%

KEY:

a. Refers to house/brick structure on separate stand or yard, flat in block of flats, town/cluster/semi-detached house, a room/house/dwelling in backyard, dwelling on a shared property, or a room/flatlet on a property or a larger dwelling/servants' quarters/granny flat.

b. Refers to dwelling/shack in backyard and not in backyard.

c. This includes caravan/tent, hostels and compounds, units in retirement village, and other unspecified dwellings.

d. This includes piped water in dwelling, on-site/yard, or on a communal tap/access point outside yard.

e. This includes in dwelling, on-site, and off-site access; also includes flush lavatories connected to a sewage system and those connected to septic tanks.

Source: Institute for Race Relations (2017)

The table above shows that there has been increase in the number of formal houses from 64% in 1996 to 79.2% in 2016. Interestingly, even if there was a drop of only 3% on the proportion of formal and informal between 1996 and 2016 there was a -18.8% change, which implies that besides the proportion between formal and informal, in real terms, the numbers increased drastically. There was also an increase in the access to piped water (this includes piped water in dwelling, on-site/yard, or on a communal tap/access point outside yard) between 1996 and 2016, from 79.8% to 89.9%. However, there was only a 1.1% increase of access to water in the dwellings from 43.9% in 1996 to 44% in 2016. This means that inasmuch as access to piped water has significantly improved, the same cannot be said about

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the distance to the water point. The majority of households accessed their water from either tap in the yard or outside the yard (81.8%). There was also a significant increase in access to sanitation facilities (only flush and chemical toilets) from 50.3% in 1996 to 67.6% in 2016. There is also need to look beyond the numbers presented on the table below because in the most cases the situation on the ground is different to that shown by the study sites later.

6.3 Western Cape Province

Cape Town is located in the Western Cape Province. The Western Cape Province is one of the nine provinces in South Africa, located on the southernmost part of the continent of Africa. The current Western Cape Province is now bordered by the Atlantic Ocean to the west and south west, the Indian Ocean to the south and south-east, the Eastern Cape to the East and the Northern Cape to the North (Groenewald, 2008). With a total land surface of 129 307km2, the province is divided into a single metropolitan area (the City of Cape Town) and five district municipalities consisting of: West Coast, Central Karoo, Overberg, Eden and Cape Winelands (Groenewald, 2008).

The table below shows the overall population of the Western Cape Province. Significantly, there has been a population increase from 5 822 734 (2011 Census) to 6 279 730 (Community Survey, 2016). All age groups (except age groups 20-24 and 25-29) have contributed to the increase in population, with natural growth and migration being the main contributions.

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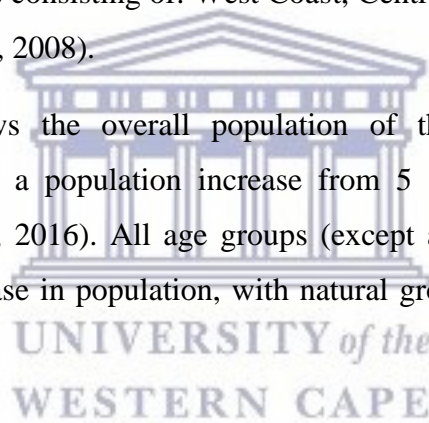
Table 14: Population by age group, Western Cape Province

AGE GROUP	2011	2016
0-4	564 800	570 371
5-9	460 161	546 410
10-14	438 843	517 934
15-19	480 122	495 982
20-24	583 551	566 934
25-29	592 548	556 794
30-34	481 600	511 330
35-39	436 638	484 911
40-44	385 037	455 016
45-49	347 866	385 833
50-54	292 685	324 282
55-59	228 089	269 666
60-64	178 558	205 197
65-69	125 210	155 009
70-74	93 193	105 273
75-79	59 940	73 023
80-84	36 435	34 391
85+	27 448	21 373
TOTAL	5 822 734	6 279 730

Source: Community Survey (2016)

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6.3.1 The City of Cape Town

The map below shows the location of the Cape Metropolitan area.

Figure 16: The City of Cape Town

Source: Western Cape Government Provincial Treasury (2012)

6.3.2 Urban land delivery and delivery in the City of Cape Town

The history of land in the City of Cape Town though not much different from the rest of the country, deserves special attention as the main case study area for the research, and also due its 'complex way in which people have been "raced" in this city, in terms of which various regimes that sought to exploit race as a tool for division' (Hendricks and Pithouse, 2013, p. 110; Turok, 2012). The City of Cape Town admits that one of the key challenges it currently faces is the 'availability of and access to, suitable and well-located land for integrated human settlements' (City of Cape Town, 2013/2014, p. 18).

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Like most urban areas in South Africa, after 1994 Cape Town was faced with two main challenges: to overcome spatial divisions created during the colonial and subsequently the apartheid era, while at the same time addressing endemic poverty these divisions had produced for over three centuries (Swilling and de Wit, 2010, p. 25). The fragmented nature in which the city found itself in 1993 cannot be underestimated. Governed by 61 municipalities and managed by 17 separate administrations, everything changed with the first democratic elections where local government elections took place in integrated municipal areas (Swilling, 2010). Guided by the Municipal Structures Act (No.117 of 1998 as amended Act No 33 of 2000), the new systems established a metropolitan government; a so-called 'Unicity' structure which secured a single metropolitan tax base in an attempt to address glaring development disparities (Swilling and de Wit, 2010, p. 25). The result of the Unicity restructuring was that the formerly segregated white local authorities and black local authorities were amalgamated in an attempt to ensure equity between rich and poor communities as well as standardisation of service delivery.

In the process of restructuring, Swilling and de Wit (2010) outline some of the restructuring complexities the new administration had to contend with:

- Process of transforming and deracialising city governance. Local government authorities struggled to implement complex administrative changes and to deliver promised services in an unpredictable political environment.
- Decentralisation of some national government functions to municipal level.
- Privatisation of state-owned enterprises.
- Formulation of public-private partnerships.
- Greater emphasis on service delivery on a cost recovery basis (neo-liberal approaches to service delivery.
- Implementation of performance management systems as part of institutional reform (Swilling and de Wit, 2010, p. 25).

While these complexities were evident from the very beginning, little seems to have changed. One of the main challenges at the dawn of democracy was the biggest housing backlog in the new Metro. Addressing the backlog was never going to an easy journey as shown by the figures in Table 15 below.

Table 15: Access to Housing in the City of Cape Town, 2001 and 2011

Dwelling Type	Census 2001	%Share 2001 Census	Census 2011	%Share 2011 Census	Change In No. of Households 2001, 2011	% Difference Between 2001, 2011
Formal	599 773	77,2%	837 533	78,4%	237 760	1,2
Informal	143 109	18,4%	218 780	20,5%	75 671	2,5%
Traditional	14 723	1,9%	3 767	0,4%	-10 956	-1,5%
Other	19 791	2,5%	8 493	0,8%	-11 298	-1,8%
Total	777 396	100%	1 068 753	100%	291 357	

Source: City of Cape Town 2011/12 IDP Review: 25

The table above shows that the total number of dwellings in the City of Cape Town increased by an estimated 291 357 while the number of formal dwellings increased by 237 760 between 2001 and 2011 (City of Cape Town 2011/12 IDP Review: 25). The IDP Review goes on to state that there was an increase of 75 671 during the same period. Another key change is that the proportion of people living in informal dwellings increased from 18.4% to 20.5%, implying that there is no meaningful progress on eradicating informal settlements (Huchzermeyer, 2013). The proportion of people living in traditional households declined from 1.9 to 0.4 per cent. There is no doubt that there was an increase in formal housing, but questions can be raised as to who benefits? Alternatively, what proportion of that housing goes to the poorer households? According to the City's Housing Directorate's database, 386 590 households are waiting for a housing opportunity while an estimated additional 187, 392 have not registered their names on the database (City of Cape Town 2011/12 IDP Review: 25, p. 8). A more recent report by Ground-up quotes SERI's Stuart Wilson says, the "City's current delivery rate for housing is 6,000 a year. There are currently just over 350,000 people on the housing list. This means that you will have to wait about 60 years for a house if no one else joins the list. I had a 70-year-old client with six children who couldn't wait that long" (Maregele, 2017). The City dismissed the claim, saying that it was oversimplified and does not take into consideration other housing delivery approaches such as rental housing.

6.3.3 Urbanisation and services delivery in the City of Cape Town

Swilling and de Wit (2010, p. 26) are quick to point out that despite several political changeovers in Cape Town's municipal government since 1994, the main theme of the successive government has been the need to address the service delivery

backlogs. Capital and operating expenditures in the Electricity, Water, Waste and Sanitation (EWWS) sectors has been extremely high over successive years, with all of them using over 50% of the budget. In addition, one of the major challenges the city officials had to deal with include finding fiscally viable ways to expand EWWS services into poorer areas while maintaining and operating EWWS services for the City as a whole. Research has shown that this is not sustainable. One of the arguments put forward by researchers is that service delivery will not be able to address the needs of the poor if these services depend on traditional technologies and systems that are highly inefficient and ecologically unsustainable. Recent literature has focussed on finding sustainable ways to service delivery, coming from an understanding that resources are finite. Progress towards a more sustainable city means working out ways to initially do more with less and eventually to find ways of making sure that more is done by reducing the absolute quantity of resource inputs (Swilling and de Wit, 2010, p. 27).

According to Swilling (2010), nearly of half of what Cape Town has, has been built in the last 25 years. This shows the unprecedented levels of urbanisation in South African metros and specifically Cape Town. In addition, the city consumes 900 hectares of undeveloped land per year (Swilling, 2010). However, it is important to quickly point out that 20% of the richest residential property owners occupy 41% of the residential land area (City of Cape Town, 2006 cited in Swilling, 2010). The majority of the blacks are restricted to increasingly densifying 'townships'.

The massive and rapid urban growth of Cape Town has not been coupled to investments in urban infrastructure (Swilling, 2010). In addition, the low-density urban sprawl has effectively required massive public investments and de-facto subsidies to continuously extend infrastructures required for contemporary life in urban areas (Swilling, 2010, p. 7).The vast majority of Cape Town's residents are connected to urban services, even though a third still live in shacks. This partial inclusion of the urban poor through connections to the urban infrastructure is what characterises Cape Town's urban development pattern (Swilling, 2010, p. 11).

6.3.4 Economic Profile

By national standards, Cape Town's economy is significant and very diverse. Cape Town's 2006 Gross Geographic Product (GGP) was estimated at 123 billion (Jara, 2010, in Swilling, 2010). The City's economy constitutes almost 80% of the

province's economy and 11.58% of the country's Gross Domestic Product (Ashley, 2008 cited by Jara, 2010). Notably, Cape Town's economy is regarded as diverse as its key sectors are varied and well developed (Jara, 2010). Figure 17 below shows different sectors and their contribution to the economy of Cape Town.
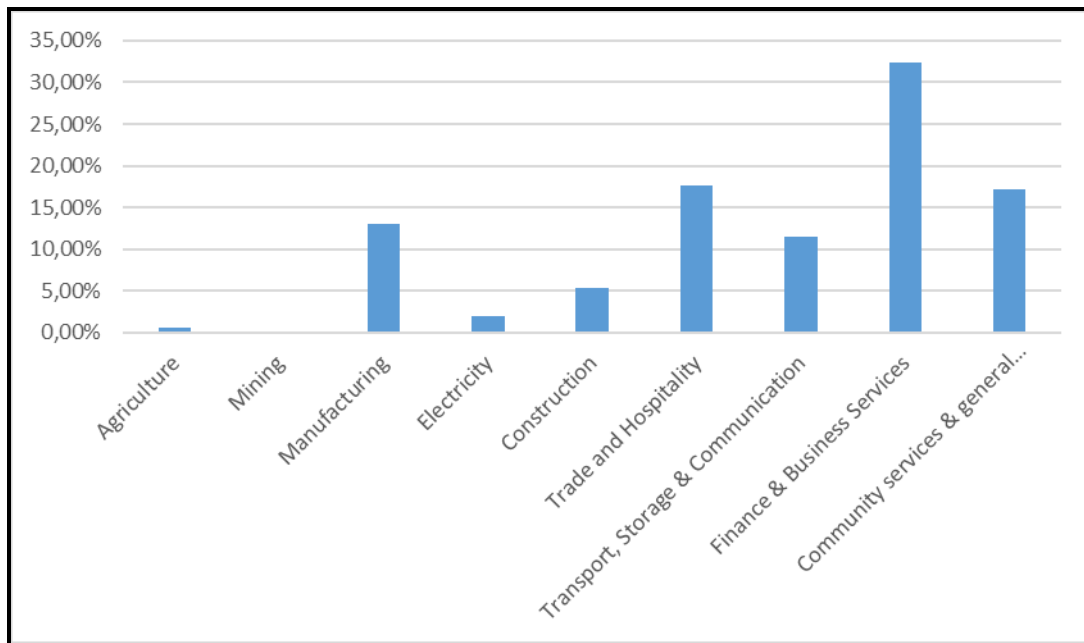
Figure 17: Cape Town sector contribution to gross value added (GVA)
Source: City of Cape Town The Integrated Human Settlements Five-Year Plan, July 2012 – June 2017 (2016/17 review)

One strength worth noting is that the absence of large mines and capital-intensive mineral complexes results in raising the significance of small and medium-sized enterprises in Cape Town's economy (Jara, 2010). Key sectors such as manufacturing, trade, financial, business and tourism industries have experienced growth supported by a well-established and world-class infrastructure (City of Cape Town, 2016/17). Though the economy grew 51% between 1996 and 2006 (Jara, 2010), there has been a sluggish growth recently in tandem with national economic slow - down and possible recession.

Inasmuch as more focus has been put on the formal sector of the economy, Jara (2010) argues that the 'second economy' or informal sector has largely been excluded. Research has shown that the informal economy is an important source of livelihood for many, creating job opportunities for nearly 22% of the labour force and contributing 12% of economic output (City of Cape Town, 2000a cited in Jara, 2010).

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6.3.5 Poverty Profile for the City of Cape Town

The table below shows data from the 2016 Community Survey on poverty profile in the Western Cape Province.

Table 16: Poverty Profile of the Western Cape Province

District/Local municipality	Municipal sub-category	2015 Grants and subsidies received as a % of Total income	2011 Poverty head count	2011 Intensity of poverty	2016 Poverty head count	2016 Intensity of poverty
101 DC1: West Coast	**C1**	**25,6%**	**2,0%**	**41,9%**	**2,9%**	**44,5%**
160 WC011: Matzikama	B3	28,0%	3,4%	42,4%	0,8%	42,5%
161 WC012 Cederberg	B3	35,2%	2,8%	42,9%	3,6%	45,7%
162 WC013: Bergrivier	B3	23,9%	1,0%	43,7%	1,6%	41,5%
163WC014: Saldanha Bay	B2	11,8%	2,2%	41,0%	6,7%	45,4%
164WC015: Swartland	B3	18,0%	1,0%	40,6%	0,9%	39,9%
102 DC2: Cape Winelands	**C1**	**62,6%**	**2,5%**	**42,0%**	**3,1%**	**41,3%**
165 WC022: Witzenberg	B3	26,9%	1,8%	40,6%	2,5%	40,8%
166 WC023: Drakenstein	B1	11,1%	2,1%	42,5%	2,5%	42,7%
167 WC024: Stellenbosch	B1	11,2%	3,8%	42,1%	6,1%	39,8%
168 WC025: Breede Valley	B2	24,0%	2,8%	41,8%	2,4%	44,3%
169 WC026: Langeberg	B3	18,9%	1,7%	42,4%	1,0%	39,8%
103 DC3: Overberg	**C1**	**80,2%**	**3,7%**	**42,2%**	**2,6%**	**40,3%**
170 WC034: Swellendam	B3	35,6%	2,5%	41,4%	1,9%	40,4%
171 WC031: Theewaterskloof	B3	37,9%	3,7%	41,9%	2,8%	40,7%
172 WC032: Overstrand	B2	12,9%	4,6%	42,8%	3,3%	40,1%
173 WC033: Cape Agulhas	B3	27,6%	2,1%	40,7%	0,9%	38,5%
104 DC4: Eden	**C1**	**51,4%**	**3,9%**	**42,2%**	**2,2%**	**40,5%**
174 WC041: Kannaland	B3	40,5%	2,5%	38,5%	1,2%	36,3%
175WC042: Hessequa	B3	19,9%	1,5%	39,4%	1,2%	39,6%

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176WC043: Mossel Bay	B2	15,6%	3,2%	43,5%	2,1%	43,0%
177WC044: George	B1	28,2%	3,3%	42,6%	1,5%	40,4%
178 WC045: Oudtshoorn	B2	23,3%	3,9%	41,2%	2,2%	43,2%
179 WC047: Bitou	B3	26,2%	6,3%	41,8%	4,2%	37,9%
180 WC048 Knysna	B2	16,9%	6,2%	42,9%	3,3%	40,2%
105 DC5: Central Karoo	**C1**	**37,9%**	**2,4%**	**40,6%**	**3,1%**	**41,1%**
181WC051: Laingsburg	B3	41,9%	1,5%	37,3%	4,2%	37,4%
182WC052: Prince Albert	B3	62,1%	2,5%	42,4%	2,9%	40,5%
183WC053: Beaufort West	B3	31,2%	2,5%	40,5%	3,0%	42,3%
199 CPT: City of Cape Town	**A**	**17,2%**	**3,9%**	**42,8%**	**2,6%**	**39,3 %**

As the table above shows, the City of Cape Town, being the only metropolitan in the province, shows some significant changes in the intensity of poverty if one compares 2011 and 2016 data. The drop may be attributed to either an undercount during the enumeration process or an increase in employment opportunities in the metro (Statistics South Africa Community Survey, 2016). The recent report by Statistics South Africa shows that more households across South Africa have become poorer with over 50% reported to be living under the poverty line (StatsSA, 2017).

6.3.6 Migration Patterns

Key to understanding urbanisation in the City of Cape Town is also understanding migration patterns as well as key pull and push factors as shown by tables below. The main reasons for moving to the current place are indicated by MIIF code (Municipal Infrastructure Investment Framework) (Statistics South Africa Community Survey, 2016).

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Table 17: Push and Pull factors for Migration

Main Reason For Moving To The Current Place	A	B1	B2	B3	B4	Total
Divorce/ Separation	37 226	8 487	3 939	5 508	4 828	59 988
Education	202 295	69 575	38 816	45 251	74 235	429 172
For better municipal services	53 793	9 734	6 170	8 938	5 604	84 240
Health	15 613	7 033	4 303	7 779	9 303	44 030
High levels of crime	26 057	5 554	2 874	3 709	1 760	39 955
Job loss/retrenchment/contract ended	23 113	9 091	5 529	12 349	16 551	66 632
Job transfer/take up new job opportunity	158 846	66 654	36 529	67 460	35 459	364 948
Look for paid work	215 317	73 283	36 530	58 461	40 551	424 141
Moving as a household with a household member	152 401	52 815	32 665	50 895	39 038	327 814
Moving to live with or closer to relatives/friends	299 876	102 857	56 608	98 351	108 845	666 537
New dwelling for household	546 540	159 341	81 039	102 732	62 377	952 029
Other business reasons	18 459	4 672	3 426	5 016	3 365	34 937
Political instability/religious conflict/persecution	5 091	1 490	1 069	1 390	1 944	10 983
Retirement	13 790	3 491	6 586	6 054	2 326	32 247
Start a business	8 382	3 572	1 758	3 846	3 144	20 702
Other	101 715	31 534	16 050	26 504	20 101	195 904
TOTAL	1 877 514	609 183	333 892	504 241	429 429	3 754 260

Table 17 above shows that one of the key reasons why people migrate across the country is to find a place to stay (952 029=n), followed by moving to stay with or closer to relatives or friends (666 537=n). Other key drivers of migration include seeking for employment and education which are at 424 141 and 429 172 respectively. There is a bias towards migrating to bigger metropolitan cities such as Johannesburg and Cape Town (code A on table 17 above).
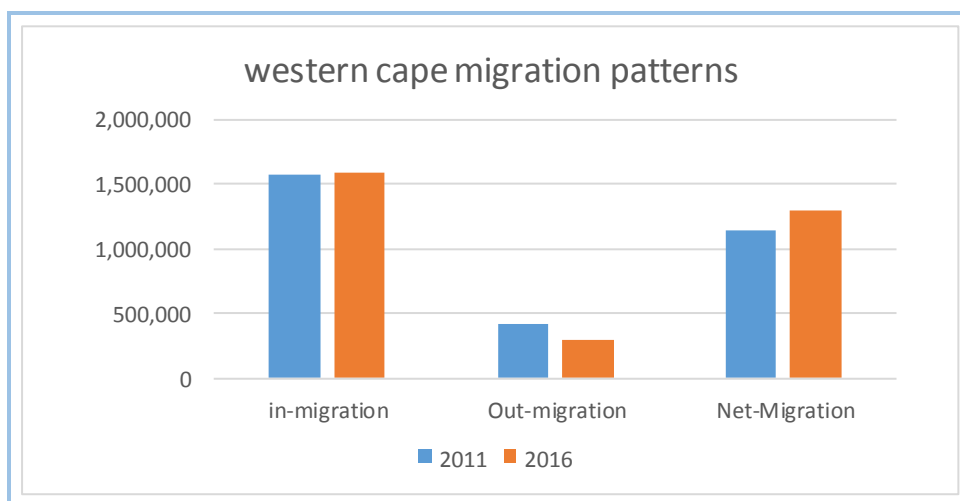
Figure 18: Western Cape Migration Patterns
Source: Adapted from Statistics South Africa Community Survey (2016)

Figure 18 shows that there was a slight increase in in-migration in the Western Cape Province between 2011 and 2016, to almost 1.6 million. On the other hand, out-migration in Western Cape is very low, resulting in net-migration of almost 1.3 million in 2016 as compared to 1,1million in 2011. These figures indicate a huge increase of population in the Western Cape Province, with the majority of the migrants choosing Cape Town for permanent stay. This has implications on services delivery planning, with specific attention to housing, water and sanitation.

Key to migration is an array of challenges, perceived or real, which become pull or push factors. Table 18 show the main challenges resulting in migration according to a Community Survey conducted by Statistics South Africa in 2016.

Table 18: Five leading challenges facing the municipality as perceived by the household

Top-5 Challenges	Main Challenge/ Difficulty In Municipality	Number
Challenge 1	Lack of Safe and Reliable Water Supply	2 683 048
Challenge 2	Lack of or Inadequate Employment Opportunities	1 963 104
Challenge 3	Cost of Electricity	1 706 313
Challenge 4	Inadequate Housing	1 199 692
Challenge 5	Violence and Crime	867 155

Source: Statistics South Africa Community Survey (2016)

This question was added by the 2016 Community Survey additional to collecting data on the actual services in the municipality. Lack of safe and reliable water supply was the top challenge according to respondents who participated in the Community

Survey. Noticeably, inadequate housing features only in fourth place. The table above also supports Figure 18 on migration patterns in the Western Cape Province. The survey shows that people are concerned with quality and reliable water supply. The question one should pose is: *if this huge number of people (2 683 048=n) will choose to migrate because of lack of safe and reliable water, will they access it in their areas of destination?*

6.3.7 City of Cape Town Demographics

In order to answer the overall research question: "In the context of rapid urbanisation in post-apartheid South Africa, what are the processes through which the poor access urban land, hold and pass it or transact? How does this affect access to basic services such as water and sanitation", the problem statement mentioned the challenge of relying on official data sources as they might not reflect what is actually happening on the ground. The reason of including this data is to paint the picture from the official perspective before presenting the study's findings in Chapter Seven. The table below indicates comparative figures across the country's major municipalities.

Table 19: Population numbers Across South Africa's Major Metropolitan Municipalities

Metro	Province	Stats5 2001	StatsSA 2011	Average Annual Growth Rate 2001-2011
City Of Johannesburg	Gauteng	3 308 562	4 434 827	3.0%
City Of Cape Town	Western Cape	2 799 496	3 740 026	2.9%
Ethekwini	Kwazulu-Natal	3 091 938	3 442 361	1.1%
Ekurhuleni	Gauteng	2 538 320	3 178 470	2.3%
City Of Tshwane	Gauteng	2 055 720	2 921 488	3.6%
Nelson Mandela Bay	Eastern Cape	1 036 774	1 152 115	1.1%

Source: StatsSa (2011)

Table 19 above shows that City of Tshwane experienced the highest average annual growth (3.6%) between 2001 and 2011. In the same period, the City of Cape Town experienced an annual growth rate of 2.9%. The table also shows that the population of the City of Cape Town according to the 2011 Census is 3 740 026, which is a significant growth from 2 893 240 in 2001. It supports earlier statistics on migration discussed earlier - that major metropolitan cities experience the highest in-migration as compared to other secondary cities and smaller towns.

Table 20: City of Cape Town, Census 2001 and 2011, Population by Age Group

Age Group	2001 Census	2011 Census	% Population 2001	% Population 2011	Annual Average Growth 2001-2011
0-4 (Children)	771 066	928 329	26.65	24.80	1.87
15-64 (Working Age)	1 977 994	2 604 210	68.37	69.60	2.79
65+ (Aged)	144 190	207 487	4.98	3.90	3.71
15-34 Youth	1 111 807	1 414 221	38.80	37.80	2.44

Source: Statistics South Africa (2011)

The table above shows that 69.60% of the total population were between the ages of 15-64 in 2011. This is the working age and very significant in terms of employment and economic productivity. On the other hand, the statistics show that over one third of the total population (37.80%) were youth of between 15-34 years. This youth bulge has great economic potential, while at the same time required strategic planning in terms of skills development and education.

Table 21: City of Cape Town Population by Population Group, 2001 and 2011

Population Group	2001	% of Population 2001	2011	% of Population 2011	Average Annual Growth Rate 2001-2011
African	916 695	31.7	1 444 939	38.6	4.7
Coloured	1 392 426	48.1	1 585 286	42.4	1.3
Indian/Asian	41 552	1.4	51 786	1.4	2.2
White	542 567	18.8	585 831	15.7	0.8
Other	-	-	72 184	1.9	-
Total	2 893 240	100	3 740 026	100	-

Source: Statistics South Africa (2011) Provincial Government Treasury Department (2012).

The table above (Table 21) shows that the Coloured population group comprised 42.4 % of the total population of the City of Cape Town according to 2011 Census, followed by African at 38.6% in the same period. Both Coloured and African (black) population groups have shown the highest growth rates. The study sites (Nkanini, Mshini Wam, Kensington and Langa) are all dominated by African (black) and Coloured population groups. This is significant, as literature in earlier chapters has shown that socio-economic inequality in South Africa is evident mainly along racial lines.

6.3.8 Indigent Households

Due to poverty levels in most communities across the country, municipalities are guided by the indigent policy to support households. Currently, households earning

below R1 500 per month qualify for subsidy (Bhorat, et al. 2012). According to the policy, municipalities provide free or discounted rates on municipal services such as water, electricity, sanitation, refuse removal as well as property rates (Provincial Government Treasury Department, 2012).

According to the Western Cape Department of Local Government information for September 2012, the number of indigent households in the City of Cape Town totalled 554 315. From the Department's information, of the proportion of indigent households that receive free basic service: water (100%), sanitation (100%), refuse removal (89%) and electricity (70%) (Provincial Treasury Department, 2012).

6.3.8: Bulk Water Services for the City of Cape Town

Before the 2016/2017 crippling drought, the City's key sources of bulk water are shown below. Changes might have taken place because during the write up of this thesis, further plans were in place to broaden sources of water such as aquifers, desalination and recycling as most dams were at a critical stage. At the time of write-up, the City of Cape Town had just presented Critical Water Shortages Disaster Plan (Cole, 2017) as the City entered the first phase of the disaster level.

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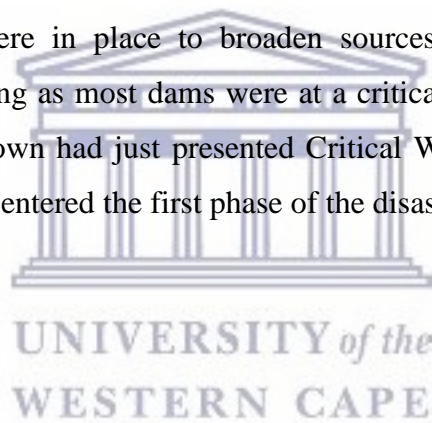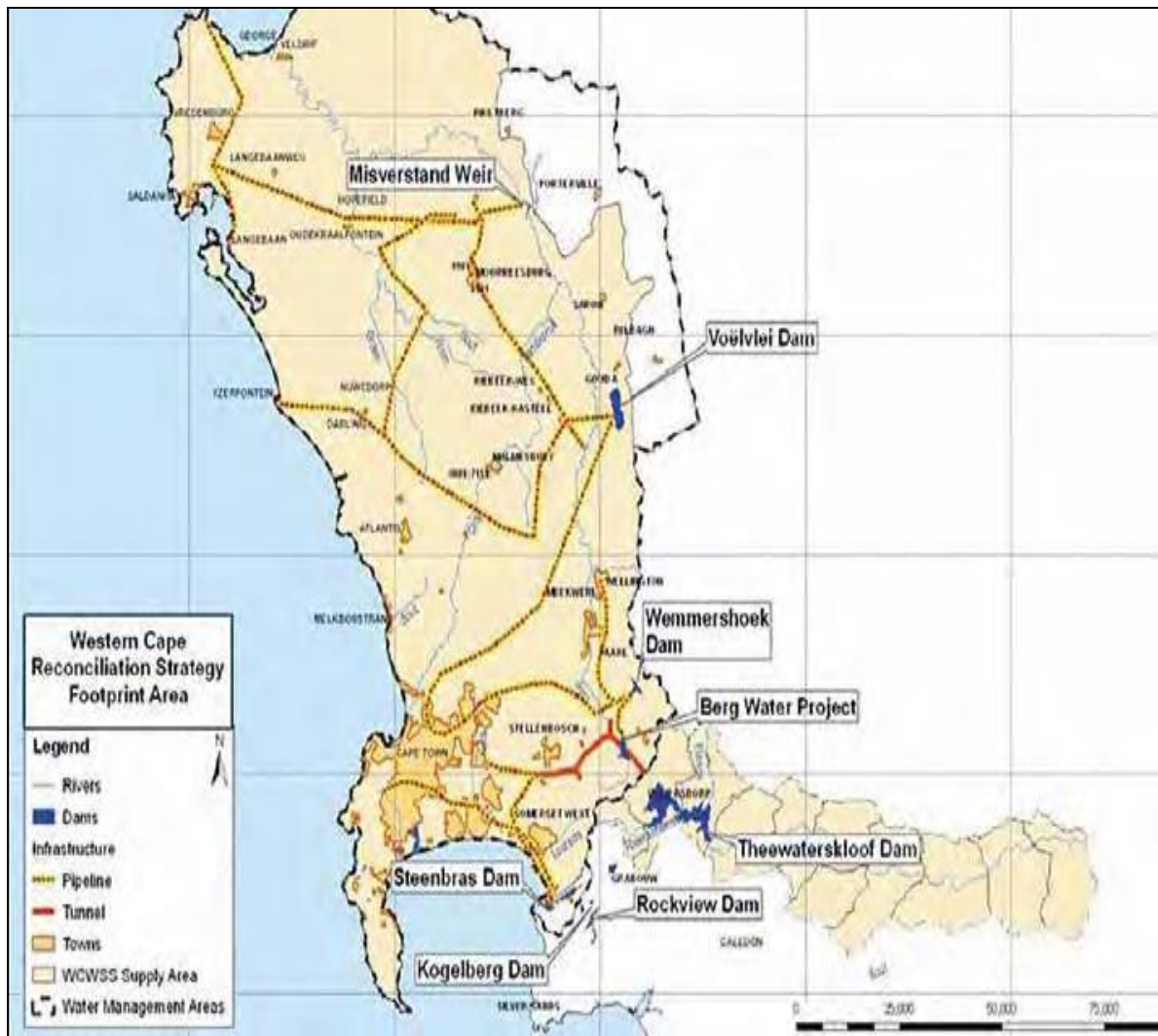
Figure 19: Bulk Water Supply of the City of Cape Town City of Cape Town
Source: City of Cape Town (2011/12 IDP Review: 25)

The map above represents the bulk water supply system for the City of Cape Town which comprises 13 dams and 12 water supply treatment works (City of Cape Town 2011/12 IDP Review, p. 25). The Western Cape Water Supply System (WCWSS) network supplies greater Cape Town and the province's West Coast (Department of Water and Sanitation, 2015). According to Green Cape (2017), irrigation uses the bulk of water across South Africa at 67%, while urban areas use 18% and rural areas only 4% of the total water yield.

Table 22: Western Cape Water Supply System (WCWSS) Allocation

WCWSS ALLOCATIONS BY TYPE	MILLION M3/YEAR
Agricultural	216
Urban: City of Cape Town	358
Urban: West Coast	23
Urban: Overberg Water	4
Urban: Stellenbosch	3
Urban: Drankenstein	2
Urban: Piketberg	2
Other	2

Source: Adapted from Green Cape (2017)

The table above shows the Western Cape Water Supply System (WCWSS). According to the Department of Water and Sanitation (2015a) two thirds (391 million m3) was for urban and industrial use, and the remainder was allocated for irrigation. Furthermore, the City of Cape Town is allocated 358 million cubic metres per year, which is the bulk of the total water supplied by WCWSS.

The City is in the process of improving its bulk water supplies through studies into desalination and various other sources such as ground water. Its catchment includes part of certain sub-basins of the Berg-Olifants and Breed-Gouritz WMAs (Green Cape, 2017). In addition, in order to ensure secure future water supplies, the City also plans to upgrade and replace 300km of water reticulation mains, and will construct the Contermanskloof, Parklands, Steenbras and Helderberg reservoirs (City of Cape Town 2011/12 IDP Review, p. 25).

Table 23: City of Cape Town Water Usage by Category

CATEGORY	2015/2016 %	2016/2017%
Houses (Formal)	55.6	55.0
Flats and Complexes	9.2	9.5
Domestic other	1.8	1.8
Informal Settlements	4.7	3.6
Retail and Offices	11.0	12.8
Industry	3.9	4.2
City-owned facilities and departments	5.2	4.9
Government	2.5	2.2
Other	6.2	6.0

Source: City of Cape Town (2017)

Table 23 above shows water usage by category for the City of Cape Town. Formal households use the lion's share of the total use. Retail businesses and offices were the second biggest consumer at 12.8% in 2016/2017 financial year. With 55% of

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total consumption of water, formal households use more water than any sector in Cape Town. Informal settlements used only about 3.6%. Viljoen (2015) also showed that on average, respondents from informal settlements used about 40liters a day, as they had to walk to the water standpoint. Furthermore, Viljoen (2015) found that on average, the majority of households used over almost 50% water on showers in high income areas as compared to informal settlements where laundry was the biggest user of water.

Table 24: Household access to water in the City of Cape Town, 2001 and 2011

Water Source	Census 2001	% Census 2001	Census 2011	% Census 2011	Change In Number of Households, 2001-2011	% Difference 2001-2011
Piped Water Inside Dwelling	538 860	69,3%	801 743	75,8%	262 883	5,7%
Piped Water Inside Yard	117 320	15,1%	130 953	12,3%	13 633	-2,8%
Piped Water Outside Yard	111 323	14,3%	128 658	12,0%	17 335	-2,3%
No Access To Piped Water	9 893	1,3%	7 219	0,7%	-2 674	0,6%
Total	777 396	100%	1 068 573	100%	291 177	0%

Source: Provincial Government Treasury Department (2012).

As shown in the table above, there has been increase in the number of households accessing piped water on site, either inside the dwelling or inside the yard, increasing from 84.4 per cent in 2001 to 87.3 per cent in 2011. It is noticeable that more households gained access to the most convenient form of piped water i.e. piped inside dwelling from 2001 to 2011. However, a total of 7 219 households did not have access to piped water in the City in 2011, down from 9, 893 in 2001.

6.3.9 Household Access to Sanitation

The City of Cape Town subscribes to the concept of the sanitation ladder as discussed earlier in Chapter Five. However, the City's priority is to first provide an emergency level of service to households in all settlements as per the 'water ladder' concept; it is also extending the coverage and density of services in each settlement beyond the basic level as funds allow (City of Cape Town, 2015, p. 24)

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Table 25: Access to Sanitation: City of Cape Town

Type Of Sanitation Facility	Census 2001	% Census 2001	Census 2011	% Census 2011	Change in no. of Households 2001-2011	% Difference 2001-2011
Flush Toilet (connected to sewerage system)	663 500	85,3%	942 589	88,2%	279 089	2,9%
Flush Toilet (with Septic Tank)	15 268	2,0%	21 247	2,0%	5 979	0%
Chemical Toilet	1 742	0,2%	12 341	1,2%	10 599	0,9%
Pit Latrine	6 655	0,9%	4 120	0,4%	-2 535	-0,5%
Bucket latrine	34 205	4,4%	48 509	4,5%	14 304	0,1%
None/other	56 026	7,2%	39 766	3,7%	-16 260	-3,5%
TOTAL	777 396	100%	1 068 572	100%		

Source: Provincial Government Treasury Department (2012)

The table above shows that in 2001, 85.3% (663 500=n) of households had access to flush toilets that were connected to the sewerage system and 15 268 having a flush toilet with a septic tank. The table also shows that between 2001 and 2011, the City of Cape Town provided 279 089 additional households with access to flush toilets connected to the sewerage system. Worryingly, by 2011, 4.5% of the total households (48 509=n) made use of bucket latrines, while 39 766 households (3.7%) had no/other access to sanitation facilities.

On the other hand, the table below indicates the type of toilets found in informal settlements as of June 2014 according to the City of Cape Town. Notably, there are various sanitation technologies used in the informal settlements as compared to formal areas. Portable flush toilets are widely used in the informal settlements, and key to this is the fact that the standard of service depends fully on the availability of land, the state of land ownership and land type. According to the City of Cape Town, some informal settlements refused portable flush toilets, and some of the residents were issued 25l black toilets (City of Cape Town, 2015).

Table 26: Sanitation Technologies in the City of Cape Town

TOILET TYPE	COUNT	HH SERVICED
INFORMAL SETTLEMENTS		
Chemical Toilets	5 816	29 080
Container Toilets	5 678	28 390
25l Black Buckets *	377	377
Portable Flush Toilets	19 828	19 828
Un-ventilated Pit Toilets	312	1 560
Urine Diversion (Mobisan)	187	935
Pour Flush Toilets	370	1 850
Dehydration (Enviroloo)	165	660
Modified Afrisan Afrisan	450	450
Anaerobic Toilets	48	96
Full Flush Toilets	12 139	60 695
TOTAL	**45 370**	**143 921**
FORMAL PROPERTIES (incl. Backyarders)	**924 725**	**924 725**

Source: City of Cape Town (2015, p. 24)

6.3.10 Household Refuse Collection
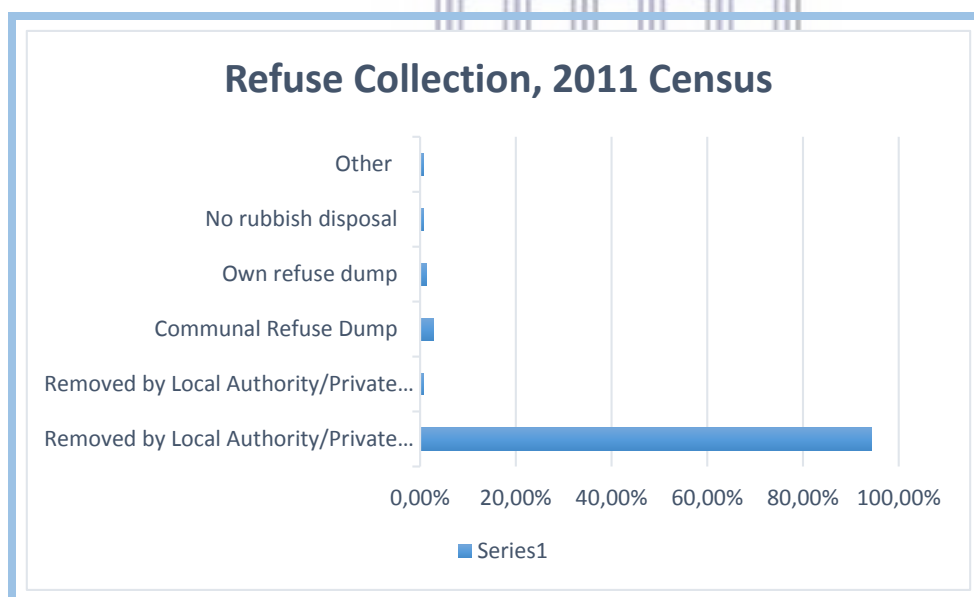
Figure 20: Household Refuse Collection
Source: Adapted from Statistics South Africa (2011)

The graph above shows refuse collection in the City of Cape Town as reflected in the 2011 Census. Overall, 94.3% has refuse collected by the local authority or a private company at least once a week. Only 0.7% reported that they had no refuse removal at

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all. Refuse and waste collection is important because like water and sanitation, there is a direct link to public health.

6.4 Brief Overview of Study Sites

In the methodology chapter, the rationale for selecting the following sites for the study, viz. Nkanini (Khayelitsha); Mshini Wam (Joe Slovo Park, Milnerton); Langa (Old Hostels) and Kensington, was provided. What follows is a brief background of each study site before presenting a combined overview of all the sites using primary data from the field work as well as latest statistics from Census and other sources. The map below shows the location of the study sites:

Figure 21: Study Sites

6.4.1 Langa

Langa is considered to be one of the oldest townships in South Africa and is located about 11 kilometres from the City of Cape Town. Established in 1927 in terms of the 1923 Urban Areas Act, the City's Overcrowding Sub-Committee of the Public Health and Building Regulations Committee's main intention was deal with

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overcrowding in the then native township, Ndabeni (Coetzer, 2009). Ndabeni itself was later bull-dozed to make way for an industrial zone which still stands today (Field, 2007). That Langa was to receive no subsidy from the government no doubt played a role in attempts to affect a cost saving in this manner. Thousands of so-called bachelor males were moved into Langa hostels and it remained the only black township until 1959 when Nyanga and Gugulethu came into existence (Field, 2007). These hostels were housing units designed during apartheid to accommodate single migrant workers who were mainly male. Currently, the hostels which were meant for male migrant workers are overcrowded, and often, up to three or four families can be found living in one room (Integrated Human Settlements Five-year Strategic Plan 2013/14 Review, 2014). Maintenance of facilities for water and sanitation in such cases is challenging because of overcrowding. According to the City of Cape Town, "this places enormous pressure on ablution facilities, which are in a constant state of disrepair" (Integrated Human Settlements Five-year strategic Plan 2013/14 Review, 2014) For the purposes of this study a sample of fifty households were drawn from the so-called old hostels. The figure below is an aerial photograph that shows the location of the old hostels.

6.4.2 Mshini Wam (Joe Slovo Park, Milnerton)

Mshini Wam is situated in a small township enclave called Joe Slovo Park within the high-income suburb of Milnerton. Joe Slovo Park was established as a new project site for the Worcester Polytechnic Institute (WPI, United States) Cape Town Project Centre (Hennings, et al. 2012, p. 2), whose students sought to contribute to the development of "sustainable housing". While reports state that Mshini Wam has a population of about 497 people (Hennings, et al. 2012, p. 2), a more recent field survey shows that there has been a remarkable population increase due to in-migration. The informal settlement recently went through a re-blocking process that aimed at de-densifying the area and creating spaces between most informal dwellings. The re-blocking exercise was undertaken by a civil society organization (CSO) called Community Organisation Resource Centre (CORC), in partnership with the Cape Metropolitan Council (i.e. Municipality of the City of Cape Town) and the Informal Settlement Network (ISN).

6.4.3: Nkanini

By contrast, Nkanini is situated on the margins of the low-income township of Khayelitsha, close to the N2 highway to the north and False Bay to the south. This informal settlement has had very little outside assistance from civil society organisations and development agencies. People started settling in the area in October 2003. For the first month following the initial settlement, there were only 30 shacks, and the City of Cape Town threatened to demolish them (Marx and Royston 2007, p. 12). When these shacks were not demolished, other people took this as a signal to move in, and a significant number of people moved into the site in December 2003. Since then almost 16% of households have sold their shacks for an average price of R1 350 (Marx and Royston 2007, p. 12). While population figures for Nkanini have yet to be ascertained, the Khayelitsha Population Register Update, which is a collaborative project involving community organisations and government departments, estimates that in 2005 the population was 406,779 (Maverick 2006, p. 49). By contrast, the Department of Water Affairs Water Services National Information System (DWA WSNIS) database indicates that in 2010 Khayelitsha had a total population of 325,897 people (Umthawelanga 2011, p. 2). Owing to views that official records grossly under-represent the actual population of the township, the population of Khayelitsha is presently estimated to be approximately 1.2 million (Umthawelanga 2011, p. 2). The data discrepancies point to difficulties with determining population size in local contexts characterised by rapid urbanisation and, in particular, the growth of informal settlements as well as formally established townships.

Nkanini falls under Ward 95, which also include other areas such as Kuyasa, Monwabisi and Umrhabulo Triangle. This is shown in figure 22 below. According to Census 2011, the total number of households is 20 351. Of these, 11 218 households are considered to be informal dwellings not in backyard. If one also considers Monwabisi and Umrhabulo Triangle which are dominated by informal dwellings not in backyards, one may estimate that Nkanini alone may consist of at least half of the informal settlements.
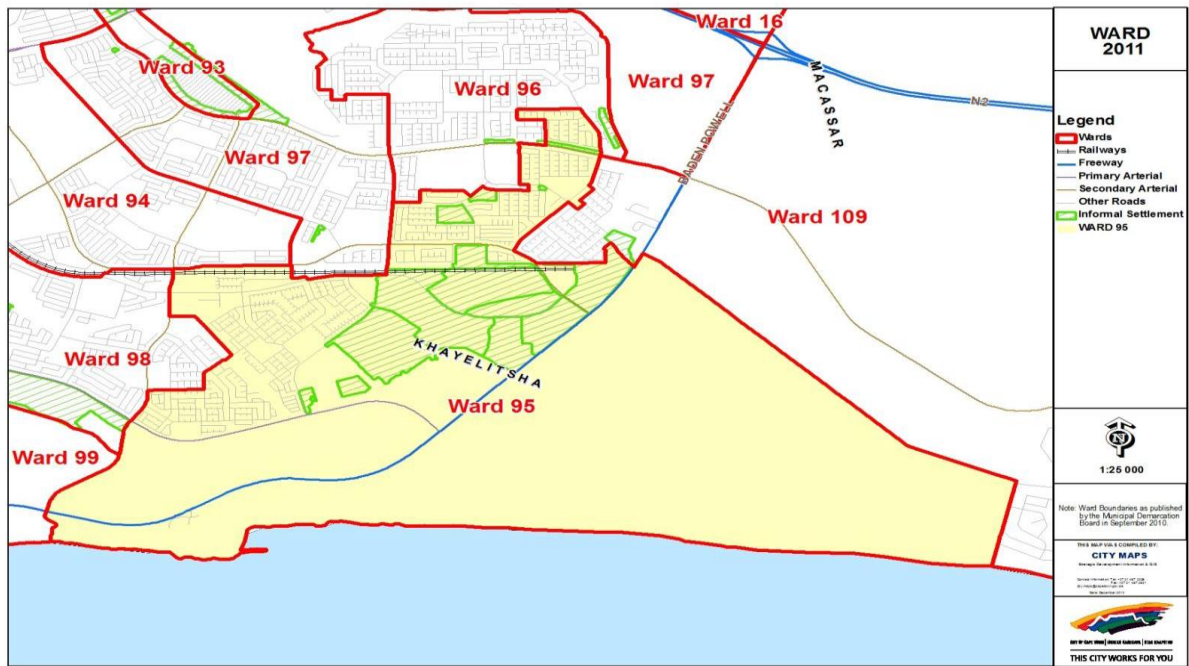
Figure 22: Location of Nkanini in Khayelitsha (Cape Town, 2012).

6.4.4 Kensington

Kensington is a medium density suburb located in the so-called Voortrekker Corridor (City of Cape Town, 2008). Dating back to the 1920s, Kensington was formally black as many of the black families had migrated into the Cape Peninsula during the 2nd World War, when regulations around preference for coloured labour had to be suspended as many coloured male labourers joined the war effort, leaving a gap that had to be filled by black male workers. It is estimated that the black male labour population during that time grew by 114%, and many of the men lived with their families (Legassick, 2012). By 1955, the population was estimated to be over 15000 African black people.

In 1959 the Windermere area, which included present-day Kensington-Factreton, was declared a coloured Group Area. Windermere's squatter camps were converted into subsidised housing for Coloureds. By 1965, Windermere was finally cleared of Africans. Many of the displaced African women and men had been mostly resettled in Langa, Nyanga, Nyanga West and Gugulethu, although many others were evicted out of the Cape Peninsula altogether. According to South African History Online (2011), the forced removal of black people resulted segregation in urban centres around the country and this persists to today.

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6.5 Demographic Characteristics of the Study sites

6.5.1 Population and Race

As pointed earlier, Langa is one of the oldest townships established during the apartheid era to accommodate mostly blacks in Cape Town. According to Statistics South Africa Census, the total population for Langa was 52 401. According to Census 2011, over 99% were classified as black African while the rest are other races. Field-work results show that of the 50 respondents, 94% were classified as black African, 4% Coloured and 2% unsure or refused to disclose. Mshini Wam is a small enclave in Joe Slovo Park. The total population for Joe Slovo Park is 12 629 with the number of households 5 073 (Statistics South Africa, Census, 2012). Of the 50 (n) respondents in Mshini Wam, 100% are classified as black African. The same 2011 Census showed that 95% of the population is black African.

According to Census 2011, of the 20 351 households in Ward 95 of which Nkanini is part, about 11 218 households are considered to be informal dwellings not in backyards. All the respondents in Nkanini are classified as black. On the other hand, Kensington (including Windermere) is largely a formal suburb with a population of around 24 161, with 5 757 households (Statistics South Africa, 2012). Unlike the other three sites where the population is predominantly black African, Kensington suburb's population is predominantly coloured (91%). For the purposes of this study, researchers only conducted household surveys in the Kensington section, not Windermere. All this has been explained in the methodology chapter. It is important to note that Mshini Wam and Nkanini only came into existence in the early 2000s and since then the population has risen exponentially (Hennings, et al. 2012, City of Cape Town, 2013). Additionally, Stats SA (2011) has shown a significant increase of population in other study sites like Langa and Kensington in comparison to 2001.

6.5.2 Education Levels

Household survey results reflect almost similar trends with StasSA Census 2011. Education is very important because it has a direct impact on the poverty levels, income level and employment opportunities.

The table below shows education levels of all sites according to 2011 Census results.

Table 27: Comparing Education Levels

Education Levels (For All Adults 20+)	Kensington (Includes Windermere)		Nkanini (Including Kuyasa, Monwabisi And Umrhabulo Triangle)		Joe Slovo Park (Mshini Wam)		Langa	
	Num	%	Num	%	Num	%	Num	%
No Schooling	195	1.2%	730	2.0%	168	2.0%	768	2.2%
Some Primary	1 278	7.8%	3 415	9.2%	780	9.2%	2 868	8.3%
Completed Primary	1 011	6.1%	1 597	4.3%	360	4.2%	1 359	3.9%
Some Secondary	6 942	42.2%	18 360	49.6%	4 395	51.6%	15 678	45.4%
Grade 12	5 298	32.2%	11 648	31.5%	2 436	28.6%	11 418	33.0%
Higher	1 662	10.1%	1 184	3.2%	363	4.3%	2 424	7.0%
Other	60	0.4%	71	0.2%	21	0.2%	51	0.1%
Total	16 446	100%	37 005	100%	8 523	100%	34 566	100%

Source: StatsSA (2011)

The table above shows that the highest number of adults with no formal schooling are found in Langa and Nkanini, with 768 (n) and 730 (n) respectively. In both study sites, 60% of adults have educational levels below Grade 12. Only an average of 35% have grade 12 and above. This has huge implications on employment and employability. This in turn also affects household income levels. On the other hand, Kensington (including Windermere) had over 42% of adults who completed at least a grade 12 level education. There is also a significant number of adults with tertiary qualifications (10.1%).

Table 28: The highest level of education respondents completed in Kensington

Education levels	Frequency	Percent	Valid Percent	Cumulative Percent
Primary school completed/Some high school	14	22.2	22.2	22.2
Secondary school completed	28	44.4	44.4	66.7
Post-secondary qualifications e.g. diploma from technikon or college	18	28.6	28.6	95.2
University degree completed	2	3.2	3.2	98.4
Not disclosed	1	1.6	1.6	100.0
Total	63	100.0	100.0	

Field work results also reveal a similar trend in all case studies. For instance, of the 63 respondents shown in the table above, all of them indicated that they had had

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some level of schooling, with 31.8% having tertiary qualifications. On the other hand, Nkanini paints a different picture - Table 29 shows that one respondent had no schooling, while over 66% had primary school education completed and some high school. Only 30% had completed grade 12 and 2% indicated that they had some tertiary education. Education level is mostly likely to determine work opportunities, nature of employment, and level of income among other variables.

Table 29: Nkanini: Highest Level of Education Completed

Education levels	Frequency	Percent	Valid Percent	Cumulative Percent
No formal schooling/informal schooling/some primary schooling	1	2.0	2.0	2.0
Primary schooling completed/Some high school	33	66.0	66.0	68.0
Secondary school completed	15	30.0	30.0	98.0
Tertiary Education	1	2.0	2.0	100.0
Total	50	100.0	100.0	

6.5.3 Employment Trends

In 2011, the unemployment rate for the whole of Langa was 40.21% while the labour absorption rate was just below 40% (StatsSA, 2011). The high unemployment rates indicate the level of desperation in mostly black neighbourhoods and the negative impact on poverty levels. The table below shows that only 63% of the respondents had a job that pays them income. This is far below the 2011 statistics levels. The main reason for this is that since the survey was conducted only in the old hostels, there could be a probability that most the respondents were employed.

Table 30: Labour Force Indicators

Labour Force Indicators	Langa Ward (Old Hostels and other areas)	Nkanini (Ward 95: Including (Including Kuyasa, Monwabisi and Umrhabulo Triangle)	Joe Slovo Park (Inclusive of Mshini Wam)	Kensington (Including Windermere)
Population aged 15-64 years	37 569	41 326	9 330	16 461
Labour Force	24 840	28 568	7 143	9 891
Employed	14 853	17 557	5 193	8 481
Unemployed	9 987	11 011	1 950	1 410
Not Economically Active	12 729	12 758	2 187	6 570
Discouraged Work-Seekers	1 458	1 405	435	300
Other not economically Active	11 271	11 353	1 752	6 270
Rates % Unemployment Rate	40.21%	38.54%	27.30%	14.26%
Labour Absorption rate	39.54%	42.48%	55.66%	51.52%
Labour Participation Rate	66.12%	69.13%	76.56%	60.09%

Source: StasSA (2011)

The table above shows that only Kensington has an unemployment rate that is below 20% (14.26%), the rest are all above 25% (Langa - 40.21%; Ward 95 including Nkanini -38.54%; Joe Slovo Park - 27.30%). Earlier sections showed that the majority of Kensington residents are classified Coloured, while the rest of the study sites have above 90% black African.

Fieldwork results also indicate a slightly worse situation. Of the 63 respondents in Kensington, 57.1% indicated that they were employed and 42.9 % did not have a job that provided an income. On the other hand, in Langa, of the 50 respondents, 64% indicated that they had a job that pays income; in Nkanini 66% did not have a job which pays income while 53% of the respondents in Mshini Wam had a job, which paid income. Higher unemployment levels in Nkanini generally influence the quality of life and income levels. This does not mean that everyone has to be employed in order for them to have some income, other sources of income were not considered in this section.

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6.5.4 Household Income Levels

The table below shows income levels according to the 2011 Census (Stats SA, 2011).

Table 31: Household Income Levels

Monthly Household Income	Kensington (Including Windermere)	Joe Slovo Park (Inclusive of Mshini Wam)	Nkanini (Ward 95; Including (Including Kuyasa, Monwabisi and Umrhabulo Triangle)	Langa Ward (Old Hostels and other areas)
No Income	6.2%	16.3%	21.0%	22.2%
R 1-R1 600	13.0%	26.7%	32.8%	27.0%
R 1 601- R 3 200	13.7%	29.9%	25.6%	22.4%
R 3 201- R 6 400	18.5%	18.9%	13.5%	15.5%
R 6 401- R 12 800	20.6%	6.5%	4.9%	8.0%
R 12 801- R25 600	17.8%	1.0%	1.5%	3.4%
R 25 601- R 51 200	7.9%	0.5%	0.5%	1.1%
R 51 201- R 102 400	1.9%	0%	0%	0.2%
R 102 401 or more	0.4%	0.1%	0.1%	0.2%
Unspecified	0%	0%	0%	0%
Total	100%	100%	100%	100%

Source: StatsSA (2011)

According to Bhorat, et al. (2012) argues that current evidence indicates that households with an income below R1500 per month are eligible for the Free Basic Services (FBS) package. Inasmuch as the poverty line is highly debatable and the South African government is not using it as poverty line (Bhorat, et al. 2012), municipalities have been using it to determine which households to provide with free services such as water and sanitation. The table above shows the monthly household income according to Statistics South Africa Census 2011. There is a significant percentage of households without income in both Nkanini and Langa - 21% and 22.2% respectively. Take into account the fact both contain huge numbers of informal settlements and overcrowded hostels. Joe Slovo Park where Mshini Wam informal settlement is located has a lower percentage of households without income. At 16.3%, Kensington (including Windermere) is the only suburb with the lowest number of households without income. Stats South Africa's Census results concur with what the study found during the household surveys and focus group discussions.

These results are not very different from the data collected during households surveys in all the four sites.

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Table 32: Kensington total household income

	Frequency	Percent	Valid Percent	Cumulative Percent
Less than R1000	7	11.1	11.1	11.1
R1001-R2000	3	4.8	4.8	15.9
R2001-R3000	1	1.6	1.6	17.5
R3001-R6000	7	11.1	11.1	28.6
R6001-R8000	14	22.2	22.2	50.8
R8001-R10000	11	17.5	17.5	68.3
R10000+	20	31.7	31.7	100.0
Total	63	100.0	100.0	

Table 32 above shows that only 11.1% of the total respondents in Kensington (63=n) had a monthly income of less than R1000, while 22.2% earned between R6001-R8000 per month. Significantly, 31.7% of the respondents earned over R10000 per month, implying that Kensington can be classified as a middle-income suburb as per the South African standards.

Of the 50 respondents in Langa's old hostels, 26% indicated that they had no regular income, and more significantly, 42% refused to respond to disclose their monthly household income. In Nkanini, 35.7% of the respondents had no regular monthly income and 59% of the respondents had a household monthly income of below 3000, 00. Lastly, Mshini Wam respondents has slightly higher income levels if compared to Nkanini - 54.8 of the respondents indicated that they had a household income of over R30001 per month.

There are other sources of income besides employment in all the research sites. In Nkanini for example, over 54% of the respondents received social grants (child, foster, old age among others), while the rest had some livelihood activities such as laundry, selling fruits, chicken business, meat, eggs and other informal survival strategies.

6.5.5: Main dwelling Unit

The table below shows a breakdown of dwellings units in Kensington:

Table 33: Main Dwelling Unit in Kensington households

	Frequency	Percent	Valid Percent	Cumulative Percent
House (Brick structure)	47	74.6	74.6	74.6
Flat in block of flats	7	11.1	11.1	85.7
Informal dwelling in backyard	1	1.6	1.6	87.3
Informal dwelling in informal settlement	8	12.7	12.7	100.0
Total	63	100.0	100.0	

As shown on the table above, 74.6% respondents lived in brick houses, 11.1% in a block of flats and 1.6% in an informal dwelling in the backyard. Informal dwellings in an informal settlement are becoming a common feature in Kensington, with land occupied in open spaces, especially closer to the railway lines as shown below (Figure 23).
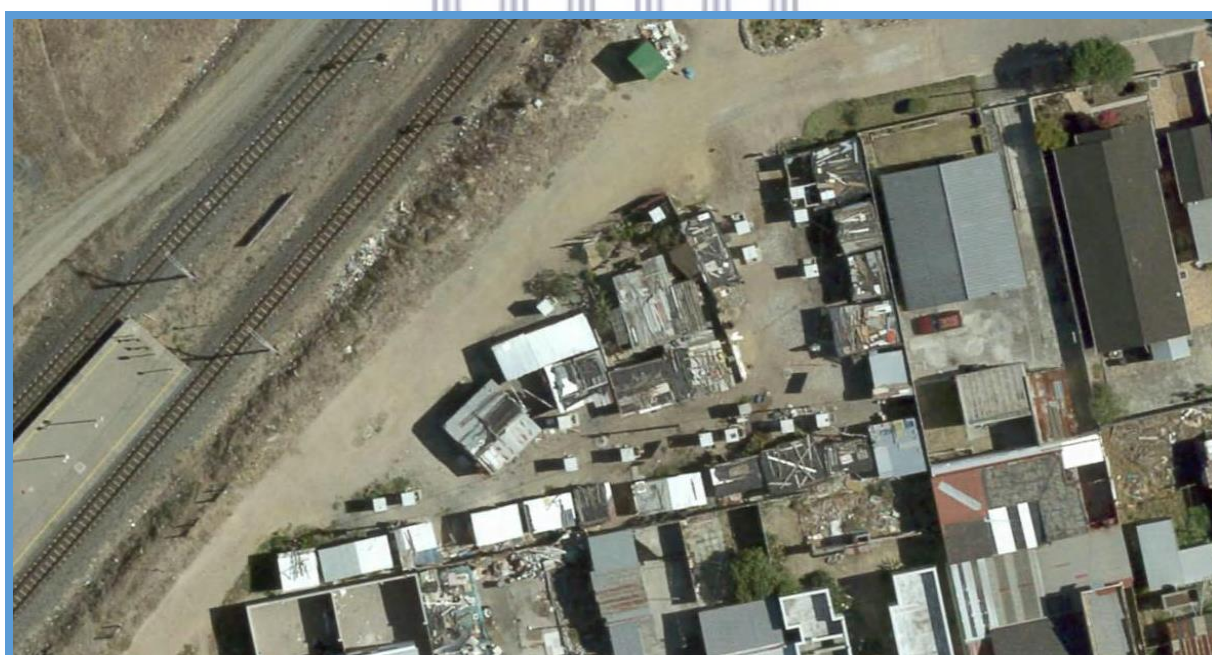
Figure 23: Informal dwellings developing on the edges of Kensington,
Source: City of Cape Town (2016)

In Langa, 72.7% of the respondents lived in apartments and 27.3% live in backyard dwellings. Living conditions in the old hostels is very difficult with the infrastructure slowly falling apart.

Figure 24: Langa Old Hostels
Source: Sibanda (2**015)**

On the other hand, Nkanini presents a different picture. One hundred percent (100%) of the respondents live in informal settlements that are mainly made of zinc and wood/cardboard/plastic. The photograph in figure 25 below indicates a section in Nkanini.
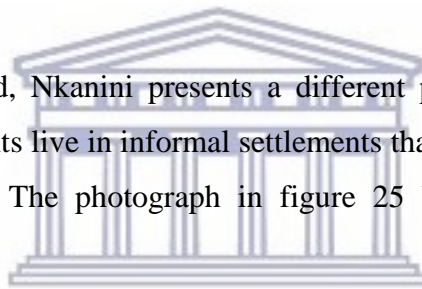
Figure 25: Nkanini
Source: Sibanda (2014)

Figure 26 below shows the housing situation in Mshini Wam. As pointed earlier, the area underwent re-blocking, where the initially overcrowded and unplanned

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settlement was reblocked in collaboration with community and non-governmental organisations. Over 90% of the dwellings are made of zinc and in some case, wood. Water and sanitation facilities are also located outside dwellings, but closer and in a planned manner compared to Nkanini.

Figure 26: Mshini Wam
Source: Sibanda (2015)

6.6 Conclusion

This chapter set out to present an overview of the case study area, the Cape Town Metropolitan. The overview shows that the City of Cape Town has various housing types and tenancy arrangements. The inequality gap is widening rapidly and is mainly defined along racial and spatial lines. Population growth has been exponential in the past decade, with in-migration among the highest in the country. Using primary data and other sources such as Statistics South Africa, the City of Cape Town and the Western Provincial Treasury, this chapter outlined key factors that affect access to services such as water and sanitation. While there is evidence that the City of Cape Town provides the indigent with free access to services such as water and sanitation, a host of issues including paucity of data reveal mismatches particularly in informal settlements. This section alsoreveals a lack of accurate information as most of these rely on estimates. In addition, it was revealed that there is an increase in informal settlements and the backlog to water and sanitation services persists in mainly low income households. They are however informally recognised at local level, with

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other formal institutions such as Eskom beginning to recognise these informal tenure arrangements. These alternative tenure arrangements are not officially recognised. Poverty rates and unemployment rates are also very high in Nkanini and Mshini Wam study sites. The chapter has also shown that there are significant variations in access to access to services such as water and sanitation.

CHAPTER SEVEN: URBAN LAND TENURE, TENANCY AND WATER AND SANITATION SERVICES IN CAPE TOWN

7.1 Introduction

Chapter Two provided the conceptual framework of this study. Key arguments presented are broadly informed by Marx's PA and Hardin's TOC. Neo-liberal understanding has thus dominated legislative and policy framework in the South African context. While locating the process of dispossession, exclusion and separation within the historical context as shown in literature chapters, this Chapter demonstrates that the political economy of urban land tenure on one hand and water and sanitation services on the other exhibit mismatches in both policy and practice. Key themes were identified from both quantitative and qualitative data which were combined in most cases, to support the themes as well as complement each other. These include technicist approaches to urban land tenure as well as water and sanitation, social tenures and human rights approaches. Subthemes supported the key findings and data from the four study sites is either combined or used for contrasting. In sections where relationships are tested using chi-square tests and correlations, the findings are combined into 'formal' (Langa-Kensington) and 'informal' (Nkanini-Mshini Wam). This does not mean that there is homogeneity, and blanket generalisations were avoided.

7.2 Urban Land Governance: The bifurcated State

Two broad approaches to urban governance in terms of land, water and sanitation services are evident. On one side is the strict application of the law and this is widely accepted along binary poles as 'formal' and on the other hand is the 'other', which might include but is not limited to social tenures and sharing of services. One key informant who works in the provincial government states that:

Mrs Jonathan[2]: *It's the way you apply the law, our laws come from Roman Dutch law, the systems are designed to protect the rights of individuals, so when you get rapid urbanisation its covered by law, which is very clear I think there is a requirement on two levels, there is a requirement to become more developmental, at the same time there is a requirement on becoming aware of responsibilities* (13/04/2016: Provincial Government, Cape Town)

Inasmuch as the respondent adds the importance of being developmental in the approach, the broad strict 'technicist' approach is clearly favoured by authorities and the

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[2] Not real name

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other must be done away with. The shows that formal institutions, which form part of urban governance, work for the wealthy and the elite. Borrowing from Mamdani's argument (1996), we now have a bifurcated state reproduced in the urban settings, where formal and informal settlements are governed differently and treated differently, similar to how the apartheid state had different ways of governing both largely urban (white) and former Bantustans. In analysing urban governance in African cities, Berrisford (2013) uses a virtuous cycle of urban land governance. Among the threats of the virtuous cycle, Berrisford argues that regulatory frameworks for urban land governance prescribe standards for legal procedures including tenure certainty that are unaffordable for most citizens. This results in parallel informal structures, specifically in informal settlements to govern urban land.

The arguments by the officials show a rigid approach to urban governance, where formal institutions and laws are used to govern. A key informant further stated that, "*we are using a European model in planning approaches; we need to shift towards a Human Settlements approach, we need to recreate our society, recreate space for human settlements as espounced in the Provincial Spatial Framework, We need to work on strategic planning, also adaptation…*(13/04/2016: Provincial Government, Cape Town). This view is shared across the majority of the key informants who work for either the city or provincial government. The insistence on the need for 'formal' rules, or rules-on-the-books (Menard and Shirley, 2005), as opposed to rules-in-use (Ostrom, 2013) is as shown in the later sections. In Turok's view (2016, p. 229), this further threatens the integrity of cities because residents lead parallel, insulated lives under separate governance arrangements. This separation has been exacerbated by the failure of city and provincial governments to use their powers to counteract the market-induced tendencies towards segregation and exclusion or to face the realities of the apartheid spatial legacy (National Planning Commission, 2012).

7.3 Tenure, Tenancy and Water Services: A 'technicist' approach

7.3.1 'Ownership' of Plot or Dwelling

In earlier Chapters (2, 3, 4 and 6), it was demonstrated that urban land tenure policy is largely driven by the market-based approaches. Using private ownership as a platform to gauge the status of the respondents, respondents were asked if they owned or rented. While this was a binary framing of the question, the intention was also to gauge related rights as shown in the next section.

Dwelling types in all the four study sites are broadly divided into 'formal' and 'informal' as shown in Chapter Six. Respondents were asked who owned the structure or plot they lived in and a variety of responses were given. In Kensington, 66.7% of the total respondents indicated that they owned their places they were staying in (Table 34). 'Other' were respondents who were either staying in informal dwellings in open spaces or refused to respond to the question.

Table 34: Ownership of dwelling/plot; Kensington

Ownership	Frequency	Percent	Valid Percent	Cumulative Percent
Own	42	66.7	66.7	66.7
Rent	17	27.0	27.0	93.7
Other	4	6.3	6.3	100.0
Total	63	100.0	100.0	

Table 35: Tenancy - Mshini Wam

Housing/Plot Ownership	Frequency	Percent	Valid Percent	Cumulative Percent
Own	35	76.1	76.1	76.1
Rent	11	23.9	23.9	100.0
Total	46	100.0	100.0	

The table above shows that out of the 46 respondents in Mshini Wam, 76.1% claimed that they owned the dwellings they lived in, while only 23.9% indicated that they rented. On the other hand, Table 35 shows that 66.7% of the respondents owned their dwellings. Twenty seven percent (27%) of the respondents indicated that they rented while 6.3% were in some kind of arrangement with the owner of the house or dwelling.

Table 36: Housing/Plot situation of the household

Housing Situation	Frequency	Percent	Valid Percent	Cumulative Percent
Own	42	66.7	66.7	66.7
Rent	17	27.0	27.0	93.7
Other	4	6.3	6.3	100.0
Total	63	100.0	100.0	

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In Langa, the majority of the respondents indicated that they owned the apartments (94%) they lived in. The figure is highly unlikely because the follow-up question indicated they actually rented from the City of Cape Town and the authorities were in a process of changing tenure conditions for their rental stock. Ninety six percent (96%) of respondents in Nkanini also indicated that they owned their dwellings, and only 4% were in other tenure arrangements.

Ownership of dwelling or plot informs the type of rights that the individual or collective can enjoy and under what conditions. For instance, which a tenant may have user rights, they not have for example, transfer rights. In Chapter Two of this study, de Soto (1989, 2000) and other advocates of titling believe that individual ownership not only transforms 'dead capital' into wealth, it leads to more functioning of states. With ownership, other rights follow suit. A further presentation of the nature of ownership is presented in the section that follows.

7.3.2: Formal Registration of Dwelling

Property registration is equally complex and confusing for the majority of respondents, especially in Nkanini, Langa and Mshini Wam. In Nkanini for example, 54% claimed that they were registered in a communal register, 18% said they were in a municipal register and 18% did not know. This implies that regarding settlements which are classified as informal, as is the case in Nkanini, there are forms of registering plots other than the title deeds (Table 37).

Table 37: Nkanini; property/dwelling registration

Registration Type	Frequency	Percent	Valid Percent	Cumulative Percent
Municipal Registration	9	18.0	18.0	18.0
Community register	27	54.0	54.0	72.0
Don't know	9	18.0	18.0	90.0
Other	5	10.0	10.0	100.0
Total	50	100.0	100.0	

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Table 38: Mshini Wam property/ dwelling registration

Type of registration	Frequency	Percent	Valid Percent	Cumulative Percent
Municipal Registration	29	63.0	63.0	63.0
Community register	16	34.8	34.8	97.8
Other	1	2.2	2.2	100.0
Total	46	100.0	100.0	

Table 38 shows that dwellings in Mshini Wam are either in a municipal register (63%) or in community register (34.8). However during in-depth interviews, this candidate found out that respondents who claimed that they were either registered in the municipal or community register were actually registered under CORC, a non-governmental organisation which partnered with the municipality to issue 'tenure certificates', which are not the 'legally' recognised title deeds.

Langa tenure is highly complex. Table 39 shows that only 53% indicated that they had title deed to the apartment, 37,5% did not know and only 2.1% indicated that they were leasing. However, in-depth interviews and focus group discussions indicated that respondents who claimed to possess freehold titled actually referred to the City of Cape's Occupancy Letter. For them this represented authority and tenure security.

Table 39: Langa: Tenure status of plot/house/apartment

Tenure Status	Frequency	Percent	Valid Percent	Cumulative Percent
Free hold	28	56.0	58.3	58.3
Lease hold	1	2.0	2.1	60.4
Sub-surface rights	1	2.0	2.1	62.5
Don't know	18	36.0	37.5	100.0
Total	48	96.0	100.0	
No response	2	4.0		
Total	50	100.0		

On follow-up interviews and semi-structured interviews, it was confirmed that there are residents in Mshini-Wam who had received a certificate of occupancy (or CORC identity document) after the re-blocking process. Additionally, residents in Nkanini had just received electricity meter-boxes and for them, this meant that the

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municipality had registered them. Furthermore, other community structures such as SANCO, and civic rights movements such as Ses'khona People's Rights movement had 'registers' or 'lists' which the respondents would have simply considered to be legal or formal, specifically in Nkanini.

7.3.3 Poverty, Tenure, Water and Sanitation Services

Poorer households reside in informal tenure settings while households who have higher household incomes tend to be in more secure settings, and are likely to have 'formal' titles or leasehold documentation. In Nkanini for example, where the majority of the respondents do not possess a title deed and live in tenure conditions which are largely regarded as informal, 38% of the respondents had no source of income and 54.8% of the respondents depended on social grants. Dependence on social grants is also common in Langa where the table below shows that 15.9% of the respondents received old age grants, 69.4% childcare grants and 18.2% foster care grants. Child car grants are the most common in Langa, indicating the possibility of a high fertility rate. Other refers to other unmentioned social security opportunities such as disability and unemployment benefits. Mshini Wam shows similar trends, with 56.5% receiving child grants and 15.2% old age grants, while foster care grants has the lowest recipients at 4.3%. In total, over 90% of respondents in both sites receive State assistance in the form of grants.

Table 40: Access to Social Grants

STUDY SITE	OLD AGE GRANT	CHILD CARE GRANT	FOSTER CARE	OTHER
LANGA	15.9%	69.4%	18.2	0
MSHINI WAM	15.2%	56.5%	4.3%	15.2%

On the other hand, Kensington's average household income is higher than all the study sites. Table 41 below indicates the household income in Kensington:

Table 41: Kensington: The total income of your household

Income Levels	Frequency	Percent	Valid Percent	Cumulative Percent
Less than R1000	7	11.1	11.1	11.1
R1001-R2000	3	4.8	4.8	15.9
R2001-R3000	1	1.6	1.6	17.5
R3001-R6000	7	11.1	11.1	28.6
R6001-R8000	14	22.2	22.2	50.8
R8001-R10000	11	17.5	17.5	68.3
R10000+	20	31.7	31.7	100.0
Total	63	100.0	100.0	

As shown in Table 41 above, 31.7% of the respondents had a household income of over R10 000,00. In addition, 50.8% earned between R 3001.00 and R10 000. This indicates that Kensington households have a comparatively higher income if one compares these with all the other sites. In the case study chapter, similar trends were also revealed, indicating that unemployment and education levels are similarly lower in the other three sites when compared to Kensington.

Sanitation facilities also tend to be located inside houses in Kensington as compared to Nkanini, Mshini Wam and Langa. The implication is that a combination of informality, poverty and poorer level services are connected. This is similar to work done in China by Walker (2008, p. 476), where large numbers of disposed peasants moved into urban areas and started referring to themselves as a new class of 'three nothings' - 'no land, no work, no social security'. While some may be able to access State social grants in South Africa, the impact this has in households generally could be considered a drop in the ocean.

The latest poverty trends published by Stats SA (2017) indicate that Poverty Trends in South Africa indicate that poverty levels have started to rise again. The report reveals that one in three South Africans lived on less than R797 a month in 2015 (Stats SA, 2017). Poverty itself tends to also have a negative impact on tenure, with the poor most likely to live in insecure tenure arrangements (UN - Habitat, 2006). This study has demonstrated that there is strong link between 'informality and levels of income'.

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Besides the fact that South Africa is regarded as a middle-income country, poverty levels are daunting (Mubangizi, 2008). Giving examples from a study by UNDP (2004), Mubangizi argues that the level of inequality is very high. The gini coefficient has risen from 0.596 in 1995 to 0.635 in 2001 and its Human Development Index has fallen from 0.73 in 1995 to 0.67 in 2003 and to 0.65 in 2005 (Mubangizi, 2008). However, Bhan argues that poverty and the poor are passive words that 'invisibilise' the processes by which poverty is produced and reproduced (Bhan, 2016, p. 27). Davis (2006, p. 16) contends that slums are the product of structural processes in cities whose growth is 'driven by the reproduction of poverty, not by the supply of jobs'.

What one reads in the narrative above is that household income determines access and quality of access services such as water and sanitation - n contrast with the current official state narrative on access to services (President Zuma, State of the Nation Address, 2014). South Africa's Service Deprivation Index, which measures the percentage of the population that do not have access to 'good' quality basic services, increased from 63 per cent in 1996 to 65 per cent in 2003 (UNDP, 2004). The urban poor continue to be marginalised as the study shows more than two decades after the advent of democracy. Neocosmos (2012) argues that all states, without exception, reproduce inequalities, differences in hierarchies and a social division of labour against which politics of equality is directed. Poverty produces inequality and as the study has shown, the poor remain trapped in the cycle of poverty. Li (2009) reminds us that winners and losers do not emerge naturally, but they are selected. Hence the process which produces an extremely rich social class is the same process which produces the poorer class.

Authorities also tend to further entrench the inequality through some of the policies imposed on the urban poor. This is also because there is a concerted effort to pursue cost recovery measures (Dugard, 2014) at the expense of providing enabling conditions to nurture livelihood strategies.

7.3.4 Continuum of Tenure Rights and Degree of Tenure Security

The technicist approach also presents that urban land tenure arrangements and associated rights are normally presented in the form of a continuum. Figure 27 below represents simplified tenure typology developed using data from all the four study sites.
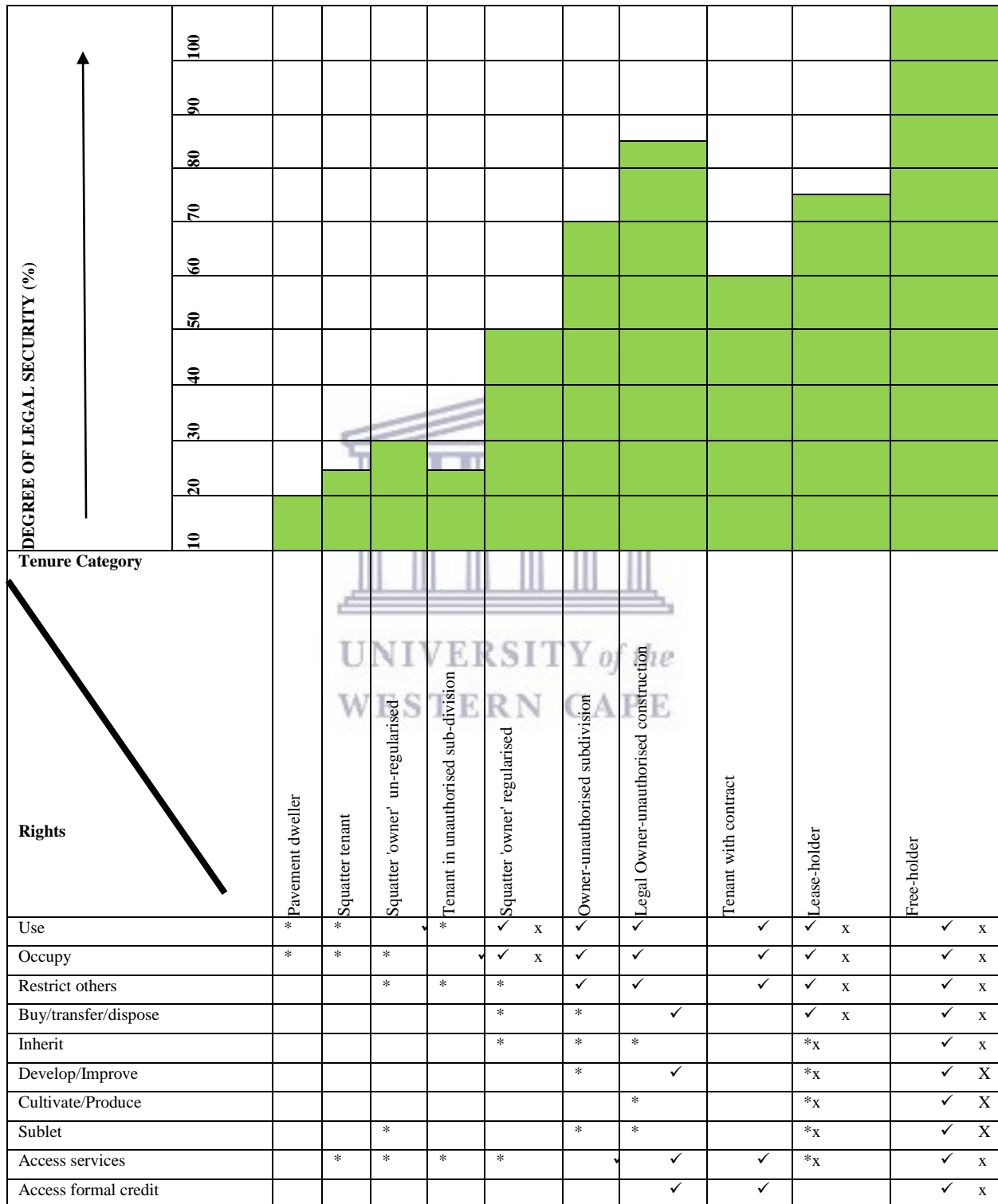
Rights	Pavement dweller	Squatter tenant	Squatter 'owner' un-regularised	Tenant in unauthorised sub-division	Squatter 'owner' regularised	Owner-unauthorised subdivision	Legal Owner-unauthorised construction	Tenant with contract	Lease-holder	Free-holder
Use	*	*	✓	*	✓ x	✓	✓	✓	✓ x	✓ x
Occupy	*	*	*	✓	✓ x	✓	✓	✓	✓ x	✓ x
Restrict others			*	*	*	✓	✓	✓	✓ x	✓ x
Buy/transfer/dispose					*	*	✓		✓ x	✓ x
Inherit					*	*	*		*x	✓ x
Develop/Improve						*	✓		*x	✓ X
Cultivate/Produce							*		*x	✓ X
Sublet			*			*	*		*x	✓ X
Access services		*	*	*	*	✓	✓	✓	*x	✓ x
Access formal credit						✓	✓			✓ x

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Figure 27: Continuum of tenure arrangements and tenure rights

Using this view, Figure 27 presents a simplistic continuum of tenure arrangements emerging from the four sites. Figure 27 shows that a variety of tenure arrangements can be classified into ten categories. Underneath each tenure category, a list of ten rights is identified. The upper section of the graph shows the degree of tenure security, and this was deduced from analysing different rights, adding them and calculating each right to represent 10%, using an assumption that the value is constant. The typology of tenure categories above, while not providing figures for each category, shows that for each tenure category, there are specific rights associated. If each full right is equal to 10%, conditional right 5%, the cadastre-based freehold title-holder enjoys almost 100% rights. On the other hand, the pavement dweller only enjoys only 10% of the rights and squatter tenant just around 25%. Informal settlements consist of an estimated 20% of the total households (StatsSA, 2011; Housing Development Agency, HDA, 2013) and between 25% and 50% of the rights. Policy consideration should be made in connection with both as well as the protection of vulnerable groups. As shown in Figure 27 there is a significant difference in the degree of security between informal settlement dwellers and freehold title holders, indicating difficulties for people moving from insecure to a more secure tenure category (Royston, 2015).

While this study could not clearly identify the nature of tenure rights based on gender, qualitative results did indicate a significant difference between men and women. One limitation of the household survey is that the instrument was administered to the most available member of the household, male or female, and while the question of ownership simply asked if the respondent or the owner of the property had a title for the property, it did not go further to find out if they were male or female. Earlier chapters showed that legally, there is no discrimination based on gender when it comes to property ownership. On the other hand, a huge percentage of informal tenure arrangements did reflect extra-legal tenure systems, sometimes governed by neo-customary arrangements. As shown later under the section of qualitative findings, neo-customary arrangements are most likely to exclude or limit based on gender.

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As shown in figure 27 above, freehold tenure enjoys the highest level of tenure security. In addition, the rights are available across gender differences. Pavement dwellers and squatter tenants have the least levels of tenure security. The implication of this simplified combination of tenure category, security and associated rights is that it gives an indication of how the officials view the need to 'eradicate' and move towards secure tenure by providing formal titles for all urban dwellers. In addition, literature has shown that this overly technocratic approach to service delivery together with a preoccupation with maximising profits from basic services, has resulted in an inadequate extension of basic services and insufficient maintenance of infrastructure (Dugard, 2014, p. 276). Informal settlements struggle the most accessing services as a result of this approach.

7.3.5 Tenure status and location of Sanitation Facility

An analysis of data in the context of tenure status using a chi-squared test confirms a significant difference between water and sanitation level and the tenure status of the household. The chi-square test is a non-parametric test used to determine if two test variables are independent or dependent (Pietersen and Maree, 2016). It is a test for an association, and whether that association is significant or not, although it does not indicate how strong it is. Results of Nkanini and Mshini were combined to test the significance of the association between dwelling type and location of sanitation facility. The results are presented in Table 42 below.

Table 42: Chi-Square Tests

	Value	Df	Asymp. Sig. (2-sided)
Pearson Chi-Square	10.016[a]	2	.007
Likelihood Ratio	6.944	2	.031
Linear-by-Linear Association	.371	1	.542
N of Valid Cases	78		
a. 3 cells (50.0%) have expected count less than 5. The minimum expected count is .10.			

The results above show that of the 8(n) respondents who knew their tenure status or who indicated that they had freehold tenure, only 1(n) had a sanitation facility in the house, and 7(n) had their sanitation facility located outside the yard. On the other hand, 70(n) of the respondents who did not know their tenure status in terms of registration

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had their sanitation facilities located outside their houses. This relationship is confirmed by a chi- squared independence test degree of difference is 2 [(p=0.007 N.78]. Qualitative findings further clarify that tenants without the owner present were most likely to have unimproved water and sanitation services. This seems to be common in Langa-Nkanini where there is a significant number of tenants and at times absentee landlords.

The implication of this in the study is that urban policies (including housing) water and sanitation policies should take into consideration tenure (both *de jure* and *de facto*). The City of Cape Town has, by default, already included the issue of land tenure in their delivery of water and sanitation as shown by Table 43 below. Inasmuch as this applies mainly to informal settlements, it shows that the implication of land tenure and water services needs rethinking. Tenure and tenancy should be mainstreamed in developing water and sanitation services.

Table 43: Servicing Strategy Categories within the City of Cape Town

Cat	Land type	Bulk Infrastructure	Distributed space available within settlement	Service Standard
A1	Govt owned land, occupation permitted	Available within economical distance	Adequate	1
			Inadequate	2
		Not available within economical distance	Adequate	3
			Inadequate	4
A2	Private land, occupation permitted	NA (No investment on private land allowed)	Adequate	3
			Inadequate	4
B	Adverse physical conditions, temporary occupation	NA	Adequate	3
			Inadequate	4
C	Occupation prohibited	NA	Adequate	3
			Inadequate	4

No	Service standard target
1	Waterborne sanitation 1:5, taps to 1:25
2	Managed all-in-one waterborne ablution facility with janitorial service, supplemented by porta-pottis on demand. Incorporates taps and basins to 1:25
3	Container or dry sanitation to technology-specific household ratio. Taps to 1:25
4	Managed all-in-one conservancy tank ablution facility with janitorial service, supplemented by porta-pottis on demand. Incorporates taps and basins to 1:25
Note	All service points to be within 100m walking distance of households served

Source: City of Cape Town IDP (2012-2017, p. 98)

Table 43 above shows the servicing strategy categories applied by the City when it comes to servicing informal settlements. A1 category as shown above, involves servicing government owned land. This land may be owned by the municipality, provincial government or national government and the 'illegal' settlement takes place there. In such a scenario, there are higher levels of water and sanitation services, as

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shown by water borne sanitation, with a ratio of 1:5, and taps at 1:25. The City however indicates that no investment is allowed on private land, which means that if a community settles on land which is privately owned, chances are that they might not get enough or be unserved at all. For category C, where settlement is prohibited, the City still supplies water at a 1:25 ratio while an all in-one-conservancy tank ablution facility is made available. There is evidence that this criterion was applied in both Nkanini and Mshini Wam informal settlements. Though the water ratio is way above the one set by the city, service points are not always within walking distance, accessible or in functional state. This supports the chi square tests above that the tenure status of land determines level and extent of access to water and sanitation services. The chi square test on the relationship between the tenure status and location of sanitation facility below also supports the argument that the tenure status of the land where the dwelling is built determines the location and type of sanitation facility.

As pointed out earlier, auto-construction is the production of the city by residents and communities (Caldeira, 2014). As the mainly poor city residents attempt to curve their own space in a largely exclusive system, their efforts are hampered by inadequate access to water. Earlier in Chapters Four and Five it was demonstrated that access to services greatly depends on the tenure category/arrangement one has. These tenure categories, as shown at the beginning of this Chapter have available rights, of which some are conditional and determine the ability of a household to make decisions when it comes to services. In order to gauge the impact of tenure arrangement on access to water services, the survey asked respondents the location of their source of water. Key questions asked in this section include: *"where is your main water source?"; "where is your sanitation facility?"*. To elicit information on the qualitative side they were also asked about the number of people who usually share these facilities (communal taps/sanitation facilities). The question on the perception of these facilities will be covered in the next section.

There are significant disparities in terms of access to water and sanitation services when one compares an informal settlement like Nkanini and Kensington. With 86.8% of the respondents in Kensington indicating that they accessed their water inside their houses, on the other hand none of the respondents in Nkanini had access water in homes or dwellings, 96.4% indicated they accessed water outside their yard or plot while on 3.6% had access within their plots/yard. What is significant about this is that

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besides having to walk a distance to access water for household use, residents in informal settlements often had to share a single stand-pipe among several households. These results confirm Royston's (2013) argument that municipalities and utilities are unlikely to invest in settlements without any legal status. In addition, a recent study by Viljoen (2015) also showed that on average, respondents from informal settlements used about 40 litres a day, as they had to walk to the water standpoint. Distance travelled to the water point or sanitation facility becomes a deterrent and constitutes a form of exclusion. This reality has been raised in other studies of the Harry Gwala informal settlement in Johannesburg, where none of the community taps are centrally located (Dugard, 2014).

In-depth interviews with officials from the City of Cape Town confirmed that if the land is unsuitable for whatever reason, they simply provided water and sanitation services on the edge of the informal settlements. This means that households living on the furthest end of the settlements have to travel long distances to community standpipes and community toilets. As a result of their 'organic form' (Davis, 2006) and perceived lack of approved planning, their 'temporary nature' as the State's approach is normally to eradicate rather than incrementally improve (Huchzemeryer, 2003, 2013). Furthermore, some settlements which are built on unsuitable land (wetlands or land set aside for other infrastructure programmes) and private land are reasons by authorities to provide adequate water and sanitation services. Re-blocking in Mshini Wam has resulted in water services closer and easier to access as shown in the picture below.

Figure 28: Mshini Wam
Source: Sibanda (2015)

There was a need to establish if there is a significant relationship between sources of water and dwelling unit the family resided, however. The tables below are results of a Pearson correlation test and conducting the test sites combined into 'formal' (Langa and Kensington) and 'informal' (Nkanini and Mshini Wam). To further test this claim, the study measures the relationship between two variables, viz. the dwelling unit the household occupies and location of the water source. The test was conducted by grouping the study sites using the criteria of 'formal' and 'informal'; where Kensington and Langa (hostels) are viewed as formal and on the other hand, Nkanini and Mshini Wam, are both officially recognised as informal settlements. This was done with full knowledge that each case study has its own nuances and overlapping tenure arrangements.

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Table 44: Langa-Kensington: Correlations

Dwelling type and main water source		Where is your main water source?	Which of the following best describes the main dwelling unit that this household occupies?
Where is your main water source?	Pearson Correlation	1	.773**
	Sig. (2-tailed)		.000
	N	87	79
Which of the following best describes the main dwelling unit that this household occupies?	Pearson Correlation	.773**	1
	Sig. (2-tailed)	.000	
	N	79	83
**. Correlation is significant at the 0.01 level (2-tailed).			

As shown above, the two sites Langa and Kensington revealed that there is a strong relationship between the type of dwelling and the location of water source. The same applies to both Nkanini and Mshini Wam, as represented below.

Table 45: Nkanini-Mshini Wam: Correlations

Dwelling type and main water source		Dwelling unit that the household occupies	Location of main water source
Dwelling unit that the household occupies	Pearson Correlation	1	.832**
	Sig. (2-tailed)		.000
	N	95	93
Location of main water source	Pearson Correlation	.832**	1
	Sig. (2-tailed)	.000	
	N	93	93
**. Correlation is significant at the 0.01 level (2-tailed).			

As shown in the Tables above, there is a significant correlation between main dwelling unit and water source. Pearson's correlation coefficient is a type of correlation computed that applies the raw score method to measure the relationship between two variables (Salkind 2009, p. 203). In other words, the correlations measure how variables or rank orders are related. The co-relation for both Langa-Kensington and Nkanini-Mshini Wam is significant at 0.01. This shows that the type of dwelling unit also determines the location of their water source. Establishing this relationship is key to this study. Qualitative data also confirms the relationship between dwelling unit and access.

7.3.6 Rapid Urbanisation and the Challenge of Services Delivery

All study sites revealed a far higher number of households than what is simply recorded or officially recognised. This study showed that in Nkanini and to some extent Mshini Wam, there are more dwellings per plot. In Nkanini, an average of between 4 and 5 dwellings in a single plot were occupied by more than one individual or a whole family. The research enquired about other households on the plot and respondents confirmed that either family members or additional tenants were added to the plot for income. Subdivisions in Langa hostels and sharing of rooms by more than one person were common. Langa had backyard structures accommodating more households and individuals (Figure 29 below). In Kensington the situation is similar, Inasmuch as the suburb is regarded as formal and middle class, subletting, backyard dwellers and other 'illegal' structures were observed.
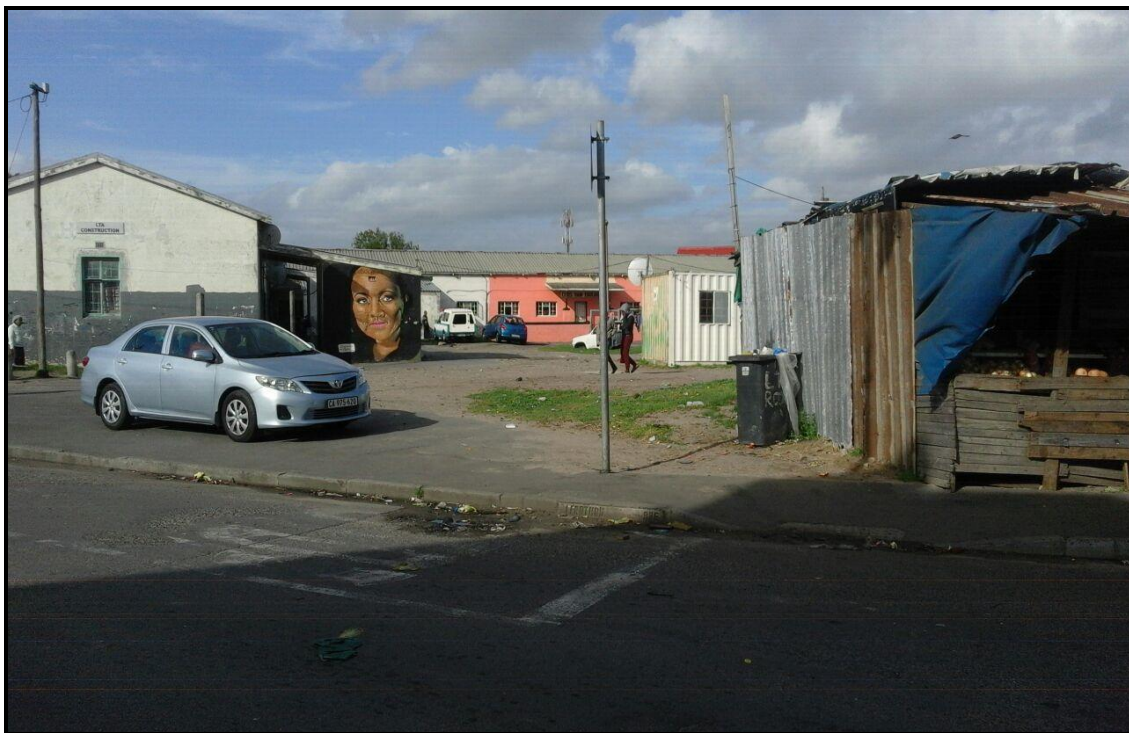
Figure 29: Langa Old Hostels
Source: Photo by Sibanda (2015)

Official figures as already pointed out in Chapter Six, indicate that the population for the Western Cape Province grew from 5 822 734 to 6 279 730 between 2011 and 2016 alone (Stats SA, 2016). The City of Cape Town grew from 2 799 496 in 2001 to 3 740 026 in 2011, indicating a 2.9% average annual growth rate for that period (Stats SA, 2011). Between 2011 and 2016 the population of the City of Cape Town grew by

7% to 4 004 793 (City of Cape Town, 2016). During the same period, households grew from 1 068 572 in 2011, to 1 264 646 in 2016, indicating an 18% increase (City of Cape Town, 2016). Official statistics still rely on estimates when it comes to informal settlements, due administrative and highly mobile households. Shortage of affordable and well-located land continues as market forces continue to push the poor to the city periphery (Davis, 2006, Napier, et al. 2013). The previous Chapters have shown that approximately 144 000 informal settlements benefit from free basic water and sanitation (City of Cape Town, 2016). This study showed that in Nkanini and to some extent Mshini Wam, there are more households per plot. Subdivisions in Langa hostels as well as other backyard structures erected behind formal houses observed in Kensington, indicate a far higher population than officially reported. The Western Cape Water Supply System Reconciliation Strategy Study (DWAF, 2007) had shown that if the water requirement grows as projected for the High Water Requirement Curve, the total water yield would be fully utilised by 2011. The reconciliation strategy also indicated that if drastic actions were not taken the province would experience serious water shortages.

Marx's PA highlighted that the capitalist system creates a surplus population that is often excluded from the whole system. While this study argues that urbanisation is not only positive, it has also showed that poor governance and other factors contributed to urbanisation being viewed as a burden rather than a benefit. The challenge of services provision in a highly urbanising environment is clearly articulated by the CSIR, who argue using the "provision of infrastructure for population growth and new household formation due to the gradual reduction in average household size, immigrants from beyond our borders, and migration within South Africa" (Council for Scientific and Industrial Research, CSIR 2010, p. 41). During an address on the devastating drought that have currently resulted in severe water shortages in the Western Cape Province, the mayor admitted that rapid population growth could have contributed to severe water shortages, which have led the City to declare level 6 water restrictions. According to the mayor, "… (t)he city itself has grown by 30% and therefore it is not that we did not have plans, the difference is that those plans were planned on the basis that we will get rain during the winter season. But as we saw in the last two years, no or very little of our normal winter rain," (Mawu, 2017).

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7.4 Social Tenures, Water and Sanitation Services

Tenure arrangements across the four study sites cannot simply be reduced to a technicist view as shown above. The Table 46 below shows that within each tenure arrangement, whether it's the so-called 'formal' (Kensington and Langa) or 'informal' (Nkanini and Mshini Wam), further layers of relationships, arrangements and rules operate depending on the context.

Table 46: Housing Type and Tenure arrangements

HOUSING/DWELLING TYPE AND TENURE	TENANCY
House, Privately owned (Free-hold Titleholder)	Owner occupies the entire main house with family members, no tenants.
House; Rented from Municipality or privately owner	Landlord and tenant (s) share in-house occupancy with or without backyard tenants
	Landlord occupies main house while tenants and/or adult relatives occupy backyard structures
	Individual tenant rents the entire house from absentee landlord (or in some cases landlord occupying outside building or adjacent property) for themselves/family occupancy and subletting of rooms and backyard structures
	Groups of tenants rent the entire house from absentee landlord (in some cases landlord might occupy adjacent property or outside building) for group occupancy or together with their families, with or without subletting of in-house rooms and other backyard structures
Publicly or privately owned apartment blocks (individual or section title). Municipal or state-owned 'hostels' included	Individual tenants rent apartment from landlord or municipality for family occupancy
	Individual tenants rent apartments from landlord, for themselves or family occupancy, and subletting of in-house rooms
	Groups of tenants rent apartment from absentee landlord, with or without sub-letting of in-house rooms or backyard shacks (for example, Langa).
Informal Settlement (Nkanini/Mshini Wam/some parts of Kensington	Shack 'owner' occupies the entire main shack as individual or with his/her family. No tenants
	Shack 'owner'(Landlord) occupies the entire main shack as an individual or with own family and shares occupancy with tenants
	Absentee shack 'owner', sometimes referred to as 'slum-lord', rents out the whole shack to tenants, he or she might 'own' many shacks in different locations
	Shack 'owner' with various other shacks on his/her plot occupied with a mixture of family members/friends/clan members/tenants
Old abandoned buildings or old factory buildings	Tenants occupy rooms within or backyards of old and abandoned buildings or factories

According to Kingwill, et al., (2017), social tenures are tenure arrangements outside the cadastre-based title deeds issued as proof of 'ownership' to property. Table 46 above reveals the complex web of different tenure arrangements and relationships, which exist in the four sites under study. Legal ownership of the house or apartment does not simply end with the individual or family occupying the house or apartment, there is an array of different arrangements, which accompany that. The owner can still rent out their main house and they live in the backyard or rent out rooms in the main house. In some cases, the landlord shared the main house with tenants. In cases where rental stock belonging to the City, the City has been proactive by introducing the Backyard policy (City of Cape Town, 2013) to provide extra tags to access water where water management devices are installed.

Another scenario is when a group of tenants rent an entire main house. One respondent in Kensington stated, "*For us foreigners it's hard, it's cheaper to come together and rent a house then we share with our family members*" Kensington, (22/09/2016). In the same neighbourhood another respondent quipped, *'l don't have to pay rent, l have the lease for the whole house and l only use one big room with my entire family, l then sublet other rooms!'* Kensington (02/05/2016). This scenario though not unique, unveiled a sub-letting network. Others were reported to actually rent several houses then sub-let them at a profit! This survival strategy is no longer for the landlord, tenants also use rental income as a livelihood in Kensington and Langa to a certain extent. There is sharing of services such as electricity, water and sanitation. In some cases, illegal connections by either landlords or tenants are common. By-passing electricity and water meters is widely done in all four sites to avoid payment of bills.

Informal settlements also have a complex system of 'ownership' and tenancy. While the slum-lord issues are discussed later (Scott, 2013) in this section, it is important to note that although community structures such as SANCO and street committees, attempt to maintain registers of 'owners' of plots and shacks, focus group discussions and interviews with some key informants revealed that there were people who owned several shacks in many locations. One plot had at least four or more shacks in Nkanini, while in Mshini Wam re-blocking helped to keep this to a minimum. Some of the plot owners had extended family members, friends or clan members either renting or staying for no monitory payment.

In the conceptual chapter, Benson's (1989) assertion that so-called informal institutions arise from the ground up, are based on norms, customs and traditions and at the same time

evolutionary in nature is shown by social tenures. So, land tenure should be regarded as an institution where rules invented by societies regulate behaviour (FAO, 2012). This shows that tenure is an embedded social practice where property (and governance regimes) institutions are fluid, ambiguous, contradictory and subject to multiple interpretations and redefinitions through local behaviour and practice (Hornby, et al. 2017: 30).

7.4.1 Local Tenure Practices

The section above showed that social tenures rely on local rules, norms and practices to access and hold land. In Chapter Five, Hornby et al. (2017) argued that 30.72 million people or 59.7% of dwellings are outside formal system. In the context of the study sites in the City of Cape Town, participants alluded that there are local practices which deal with tenure and tenancy issues. When asked how they ensure tenure security in informal settlements, different responses were obtained:

Mam Dlamini[3]: Here *in Nkanini we work with our local leaders. When your name is written in the book by the councillor and street committee you are safe* (10/10/2015, Nkanini FDG, Chris Hani High School, Khayelitsha)

Andile: *When you buy a house (dwelling) or plot you must make sure you do an affidavit at the police station* (10/10/2015, Nkanini FDG, Chris Hani High School, Khayelitsha).

The responses of participants indicate two important points. Firstly, local structures in form of street committees, local councillors and in some cases kin relationships, are used to ensure that the claim laid on the plot or structure is validated. In the Nkanini Focus Group discussion, participants used isiXhosa terms such '*mkaya'*, loosely translated as 'homeboy' meaning someone who comes close to your rural home (Eastern Cape) and *Iziduko* or clan names to forge and build relationships with community members they meet in cities. These played crucial roles in maintaining neo-customary relationship useful in tenure security (LEAP, 2005). Inasmuch as these practices are mainly common in communal areas, they become useful in land transactions as they become witness and become of the support structures in dispute resolution. As pointed out in Chapter Two, there is a need to recognise these informal

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[3] Not real names.

norms and practices (North, 1995) and allow then to exist together with formal and recognised systems.

Secondly, formal institutions such as the Police and Post Office become important in ensuring tenure security. Participants strongly felt that in most cases the affidavit would be sufficient as proof of tenure. One participant, however, cautioned by stating that even though there are different ways to ensure tenure security in informal settlements, challenges remain when it comes to slum-lords, or individuals controlling many plots. When asked the same question, none of the participants could give a direct answer. Nevertheless, there is some confidence in local structures, especially in Nkanini. Langa was different because there are unclear tenure arrangements and an unfinished titling project by the City of Cape Town (Butcher and Oilfield, 2009). During focus group discussions, participants indicated that they were owners by virtue of having either inherited from relatives or having purchased the apartment. One participant stated that: *"I was born in this hostel, it was left to my mother by Malume (Uncle) and even if l don't have a certificate, it belongs to me and my two children"* (Thandeka[4], Langa FGD: 12/11/2015, Langa Love Life. Cape Town). This finding supports Royston's (2013) assertion that in South Africa, the documentation for urban land management is local and sources of authority are local.

This study also supports the existence of social tenure arrangements according to Hornby et al., (2017). These neo-customary tenure arrangements or social tenures fail to fit in the current formal system, resulting in an 'edifice' (Hornby, et al. 2017).

7.4.2 Smokescreens of Public Participation in Urban Spaces

All the respondents in the four study sites were not satisfied with their involvement on matters that concern their lives. They felt that decisions were taken without their knowledge and imposed on them. In the household survey, the question; *is the local government making their programmes known to you*? was posed to respondents in all four sites.

Responses varied but there was a trend that emerged. For example, in Nkanini 40% felt that the government did a great job, 18% indicated fairly well, but only 34% had a negative response. On the other hand, the Table below shows the responses from

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[4] Not real name.

the household survey in Kensington. As shown on the table, 44.4% felt that this was done fairly well, 17.5% very well, 15.9% fairy badly and 11.1% very badly.

Table 47: Kensington; Public Consultation

	Frequency	Percent	Valid Percent	Cumulative Percent
Very Badly	7	11.1	11.1	11.1
Fairly Badly	10	15.9	15.9	27.0
Fairly Well	28	44.4	44.4	71.4
Very Well	11	17.5	17.5	88.9
DK / Haven't heard enough	7	11.1	11.1	100.0
Total	63	100.0	100.0	

Thus, Public Consultation is important to this study because depending on how the authorities communicate their programmes and how they are perceived in communities, one is able to conclude their governance effectiveness.

After conducting a study on water security in South Africa, Buckley et al., (2016) conclude that attaining water security for all South Africans does not reside solely in scientific and technological developments but also in the role of government at all levels in effectively developing and implementing policies and in communicating these policies to the public. According to (World Bank, 2003) services fail the poor people in access in quantity and in quality, too often. However, the fact that there are strong examples where services do work means governments and citizens can do better (ibid, 2003). Public perception, in this candidate's view, influences legitimacy of decisions and decision-making processes.

Table 48: Kensington; Name of your Ward Councillor

Response	Frequency	Percent	Valid Percent	Cumulative Percent
Know but can't remember	21	33.3	33.3	33.3
Correct name	17	27.0	27.0	60.3
Don't know	25	39.7	39.7	100.0
Total	63	100.0	100.0	

The Table above shows that some respondents in Kensington do not know their ward councillors (39.7%), 33.3% knew the councillor but did not remember the name. Only 27% of the respondents knew the correct name of their councillors and indicated

that they also consulted them on issues affecting them. This implies that residents in Kensington might have other channels of communication though which they communicate with City authorities such as direct phone calls to the call centre or other departments such as water and sanitation. In addition, the ability to use internet to raise issues in their communities and households were raised by Kensington focus group discussion.

Table 49: Langa; Name of your Ward Councillor

	Frequency	Percent	Valid Percent	Cumulative Percent
Know but can't remember	9	18.0	18.4	18.4
Incorrect guess	14	28.0	28.6	46.9
Correct name	22	44.0	44.9	91.8
Don't know	4	8.0	8.2	100.0
Total	49	98.0	100.0	
No Response	1	2.0		
Total	50	100.0		

Table 49 above shows that 44% of the respondents knew their councillor and mentioned a correct name, while 28% guessed incorrectly. Only 8% of the respondents indicated that they did not know their councillor. This is similar to trends in Nkanini where 79.2% of the respondents indicated that they knew the name of their ward councillors and gave correct names. In Mshini Wam, 67.9% of the respondents indicated that they knew the name of their councillors and they supplied correct names. This implies that households in informal settings tend to be actively involved in community-related issues that require councillors to intervene. Besides being political representatives in communities, councillors performed various other duties such as acting as commissioner of oaths (certifying documents), providing proof of residence and dispute resolutions among other duties.

However, one interviewee bemoans that participation for the sake of it is meaningless. He argued that, *"You need to encourage participation, we do not want consultations, we do not want people going to meetings and saying that they have participated, participation means that …"* (12/11/2015, Langa Love Life. Cape Town)

The negative perception of local government activities is of real concern as it was also repeatedly mentioned in the focus group discussions and semi-structured

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interviews. Participation is one of the key tenets of good governance. Participation describes active involvement by people in civic and developmental organisations, political parties and local government, with the purpose of influencing decisions that affect their lives (Roodt, 2001, p. 470). Rahman (1993, p. 150) puts forward the idea that participation is the exercise of people's power in thinking and acting, as well as in controlling their action in a collective framework. In some cases participation can be affected by the other social issues such as legal status, rules (formal or informal (Ostrom, 2010)) and the type of institution one is dealing with (North, 1990). A series of questions were posed to respondents to gauge the level and extent of participation of the respondents in all the sites. It should be mentioned here that although the study was conducted between 2014 and 2015, it was a period of fiercely contested local government elections. Inasmuch as election eventually took place in August 2016, campaigning for the highly contested elections started very early. Although voicing out their concerns and dissatisfaction, a significant number of respondents declined to answer questions linked to participation in local structures and political parties. This can be as a result of lack of trust in the research team and direct implication of supporting a specific political party.

7.4.3 Tenure Status and Household's Ability to Invest in Water and Sanitation

Respondents were asked if they were willing to invest in their water and sanitation within their plots. Although this question was addressed to both owner households and tenants, in hindsight, it would have been more appropriate to specify between owner/tenant, and to some extent gender. However, the inclusion of both owners and tenants was also done because there is a significant number of respondents, especially in Langa and Kensington, renting from the City of Cape Town's rental stock. The pie-chart below shows the responses from the respondents in the household survey.
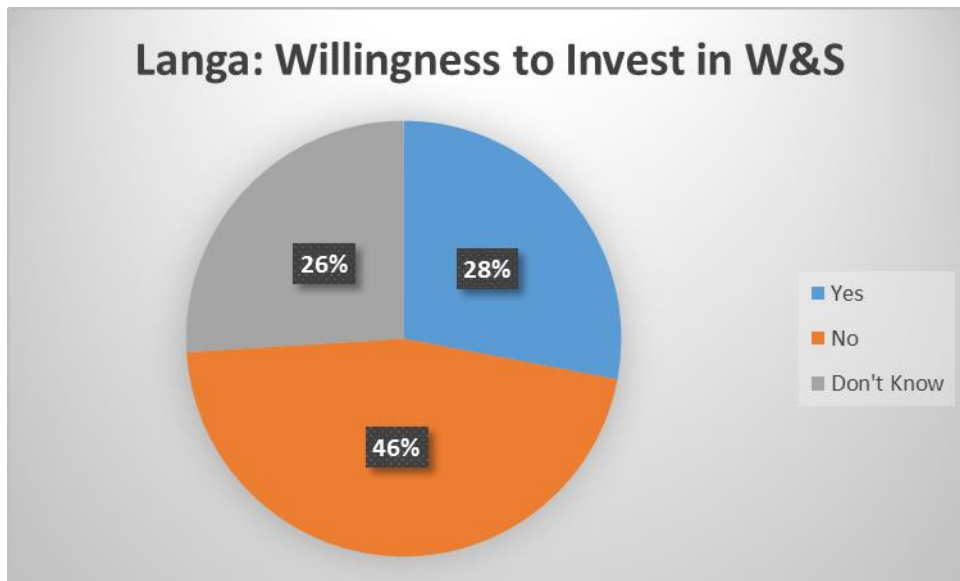
Figure 30: Langa: Willingness to Invest in W & S

As shown above, 46% of the respondents indicated that they were unwilling to invest in water and sanitation infrastructure they used, despite being in a bad state. Only 28% of the respondents indicated that they could invest, while 26% did not know or chose not to respond to the question.
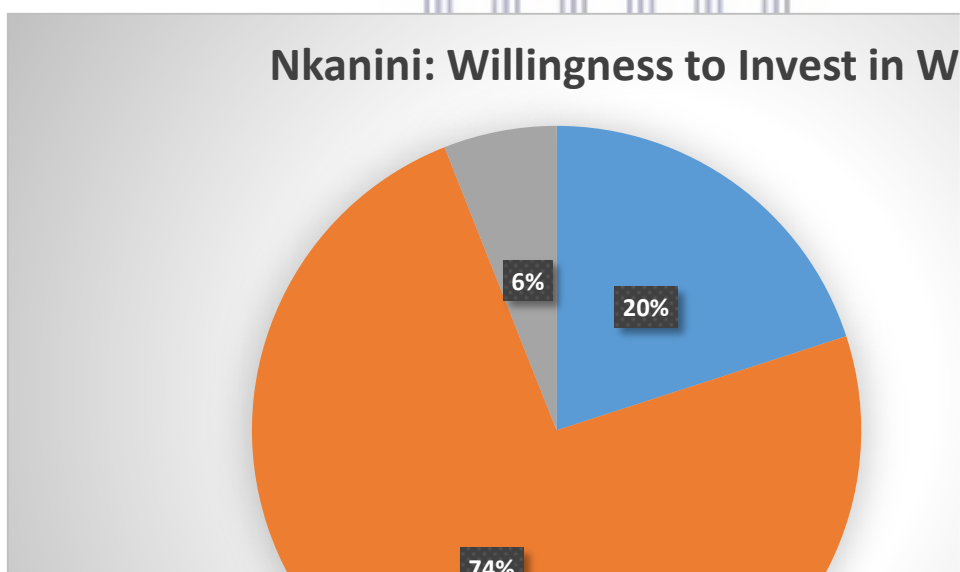
Figure 31: Nkanini: Willingness to Invest in Water & Sanitation

The majority of the respondents in Nkanini also indicated that they were not willing to invest in water and sanitation infrastructure (74%). Only 20% indicated that they supported the idea of investing in their own infrastructure. They however indicated that they were willing to invest if they were assured that they would get title deeds for their homes.

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Table 50: Kensington: Willingness to invest in water and sanitation infrastructure within plot/house

Responses	Frequency	Percent	Valid Percent	Cumulative Percent
Yes	39	61.9	61.9	61.9
No	17	27.0	27.0	88.9
Don't know	7	11.1	11.1	100.0
Total	63	100.0	100.0	

According to the Table above, 61.9% of the respondents indicated that they were willing to invest in water and sanitation infrastructure. Given that in earlier sections it was demonstrated that the majority of the respondents stayed in 'formal' houses, this implies that there households in formal tenure settings are likely to invest in their own water and sanitation services. Only 27% indicated that they were unwilling, and 11.1% were unsure or did not know.

The first implication of the responses is that respondents in formal tenure settings are willing to invest in their own infrastructure. On the other hand, those from informal settlements and respondents from Langa are unwilling to invest. Some of the reasons given were that it was the government's responsibility, lack of formal titles, poverty and that communal infrastructure was difficult to manage. Another implication is that those who rent are willing to only pay to contribute to paying bills incurred from their using the service. In addition, most tenants claimed that it was the responsibility of their landlords to invest in water and sanitation infrastructure. However, Oilfield and Butcher's study on tenure and tenancy in Cape Town hostels reveals a perception among majority of respondents regardless of race that they should not pay for any rentals as they have done so during apartheid (Butcher and Oilfield, 2009). This implies that hostel residents perceive paying rentals and other services as extension of discriminatory practice that was part of the apartheid state.

According to some key informants, provision of services by landlords (in some cases slum-lords) in informal settlements was deemed almost impossible by officials because of related technical requirements. Firstly, this depends highly on the nature of the occupied land - who owns it? If it's private land then there can be no provision of services. Secondly, there is a need to also rezone the piece of land as required by planning law. On a delivery level, there is a need to consider connection with specifications for certain pipes, pressure, gradients and other technical setups.

According to an interviewee: Martin[5]:.. *We can't expect the normal households to deliver the bulk services ... there are risks, it's either it's the right gradient, pressure valves are right, at the right point, we must do that ... although it has been done in Egypt, it has been done in India, l don't believe that our communities have that technical ability* (23/09/2016, Civic Centre, Cape Town)

Another point raised by officials is that the City prefers to deal with business partners when it comes to provision of services. In this case, if a 'slum-lord' or landlord intends to invest in water and sanitation services for their portions of land, they need to approach the authorities as business partners.

The last implication is that because the majority of landlords in formal areas such as Kensington incorporate bills for basic services such as water and electricity, there is an expectation for them to eventually invest in services infrastructure. However, there are cases where landlords do not pass payments for services to municipalities, resulting in cutting of services for tenants (Dugard, 2014). Insistence by the City of Cape Town for a letter of authorisation from the landlord if a tenant needs to address services issues at the property was cited by participants. One tenant raised this by stating that "... *my landlord is a crook, he never picks up my calls. He promised to fix the issue of water months ago ... the only time he contacts you is to remind you that your rent is due…*" (20/05/2015, Kensington). The tenant also revealed that the landlord did not want to settle a huge bill on rates and services with the municipality, leaving his family and other tenants he sublet to, to borrow water from neighbours.

7.4.4 Accessing Land and Bio-politics in the City of Cape Town

Land delivery mechanisms do not favour poorer communities, given the market-based competition and exclusion of those who cannot afford them. One official described a scenario how poorer communities accessed land. Thomas[6]: …*that's how another informal settlement started, there were only seven plots, and there was a massive open space, this is actually nature reserve land, it's a wetland ... and these owners had backyarders, and these people went over the borders of that plot, others saw the opportunity of the vacant wetland behind, and they came from Khayelitsha Meneer, crossed the N2, at night they build over here, at some stage we had 300, do*

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[5] Not a real name.
[6] Not a real name.

you know how many we have now ... you know those reeds which grow in wetlands, they cleared that (09/04/2016: Kuilsriver, Cape Town).

The emphasis on the need to protect the environment is clear from the official's description. Likewise other key informants in the communities also pointed out the City of Cape Town would not be able to provide permanent infrastructure for sanitation because the area is a wetland.

There is common trend by well-known conservation/ environment advocacy organisations, some of them international, to use environmental issues as a veneer for the displacement of the helpless off the land they occupy. Li (2009) contends that the bio-politics of planetary survival have been used to ensure deprivation of land and dispossess the poorer people. For her, conservation agencies and the donors that fund them make no commitment to resettle, compensate or identify alternative livelihoods (Li, 2009). In some cases, municipalities and government agencies chose to remove people for 'environmental reasons'. In the official's view, "*there is no way we can put services, we are not allowed to put services in environmental or nature reserve area, environmental laws don't allow that. The only thing we can do is that here (drawing) - in this space, there is services provided.*" (09/04/2016: Kuilsriver, Cape Town).

The City of Cape Town surrounds a Table Mountain National Park which is a UNESCO (Natural) World Heritage Site and in a 'Global Biodiversity Hotspot'; the City's urban expansion threatens the patterns and processes of this exceptional landscape and biodiversity (City of Cape Town, 2012, p. 1). This study found out that the City of Cape Town does not supply water and sanitation services in areas where land is occupied and is deemed environmentally sensitive such as wetlands or areas earmarked for ecotourism. In such cases, the authorities are reported to have also argued that they cannot supply water and sanitation infrastructure in areas which are wetlands and unsuitable for human settlement. The best the City can do in these cases is provide services on the edge of the informal settlement according to officials.

For Li (2009, p. 69), value is therefore placed in these places, but not on the people, so that 'dispossession is detached from the prospect of labour absorption'.

7.5.5 New Forms of Accumulation: Informal Landlords

In the earlier sections results showed that in Mshini Wam for example, 23.9% of the respondents rented their accommodation, over 27% in Langa and 4% in Nkanini. A follow-up question of who actually owned the places they rented or now owned, revealed a number of prominent community members who supposedly 'owned' several plots and rented them out for income. Respondents were not very willing to reveal specific names of such individuals, but this candidate was directed to one community leader who had taken part in the initial stages of occupying land in Nkanini. According to him, "*people are selling, and when you see a business opportunity you take it ...who knows, in a few years' time there will be brick houses, then I can leave something for my children ...*" (05/07/2016: Nkanini, Khayelitsha). This shows that access to land in informal settlements are subject to various interests, among them opportunities to gain financially and manipulate the system to suit one's needs. The housing department of the Municipal Housing Information section, stated however, that it will impossible for someone who is not on the waiting list and does not meet the criteria, to benefit. This candidate, however, raised the fact that there are some who use their children or family members to 'hold' the place, until upgrading of informal settlements begin then they evict tenants.

One of the issues raised about informal settlements is that of slum-lords, controlling several plots and structures. Some of the slum-lords would have actually benefitted from other subsidy programmes but because they are politically connected they tend to have a stake in various informal settlements. An interviewee also raised an ethical question about shack-lords, raising a possibility of them being 'petty-developer' driven entrepreneurial goals. One worrying issue raised was that slum-lords or shack-lords were only interested in getting income, so they never invest in services for their tenants. A key informant from the city of Cape Town explained how these 'slum-lords' operate. Martin[7]: *In informal settlements for example, there are shack-lords, they are 'petty developers', they are landlords, so do you we recognise them or not? It's a big ethical question, they are using land which is not theirs to earn an income, where does the state need to intervene, it's a big question ... we need to work on mechanisms to deal with this, because those people who live in informal settlements are governed by*

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[7] Not real a name.

shack lords, (so) how do you protect the rights of individuals? (23/09/2016, Civic Centre, Cape Town).

Royston and Narsoo (2006, p. 10) argue that in some plots, the tenure form is characterised as a sub-letting arrangement from a shack owner who is living elsewhere (who in turn is either informally renting form the original owner or someone else). From the comment above, there is an element of illegality; their very existence being viewed as a problem. As shown earlier, some control several plots and/or dwellings in various informal settlements. One particular point raised was that 'slum-lords' are generally politically connected and powerful individuals who influence the key decision making-process in communities

According to another official, this leaves the City with the burden to provide. The following are some of the different views raised on this issue: Thomas[8]: *These people are very clever man, they can use different names, or they can allow the tenant to have their name registered, but the moment we focus on that area, we put numbers in that area, that person is evicted! They will let the tenant rent even 3 years or more, now something is happening, they will come and chase that person away, or bring my children, or anyone I want to benefit, it's easier to deal with it when it's city land, we tell Eskom to put electricity, then the person who was staying there gets to benefit, but when it's private land it's challenging.* (09/04/2016: Kuilsriver, Cape Town).

This shows that because tenure relationships in social tenures are not clearly and poorly defined, this results in a web of intersecting interests (FAO, 2012). In the end conditions which exist for exploitation can be found even in social tenures. Corruption and allegations of corrupt behaviour manifests itself in multiple ways. Participants and most interviewees (who are mostly officials) indicated that the Human Settlements Directorate has some officials who are corrupt and manipulate the system for their own benefit. One of the main tenets of public governance is appropriate allocation of resources and transparency.

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[8] Not real name.

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7.5. Human Rights-based Approaches to Urban Land Tenure, Water and Sanitation Services

7.5.1 Towards Progressive Realisation of Rights: Water and Sanitation Services

Official figures already presented in the previous chapter shows that access to water and sanitation is not 100% and informal settlements continue to lag behind formal areas. Table 51 below shows official figures on the status of sanitation in the City of Cape Town. Please note that the population has since increased, but for now this might help to illustrate the argument.

Table 51: City of Cape Town; Access to Sanitation Facilities

Type of Facility	% (2011 Census)
Flush Toilet (Connected to sewerage system)	88,2%
Flush Toilet (with Septic Tank)	2,0%
Chemical Toilet	1,2%
Pit Latrine	0,4%
Bucket Latrine	4,5%
None	3,7%

As shown in the Table above, only 90.2% can be said to have flush toilets, while the rest have 'temporary' arrangements. Reference to temporary is made here because residents still believe that in order to be at par with other residents in the City, they should also have flush toilets. Official statistics still show that 3.7% still don't have any form of toilet facility. What this means is that these residents have to rely on open defecation. However, what official statistics don't reveal is the qualitative aspect of these facilities because it is one thing to provide numbers but after ground-truthing a different picture begins to play out. First of all, as shown in other sections, participants feel that certain facilities are only meant to be used by the poor, which impacts on their dignity and health. According to one respondent: *Sanitation facilities in informal settlements are poor and substandard. We are taking the City to court for this!*

According to 2011 statistics, 75.8% of the residents in the City of Cape Town had access to piped water in the dwelling or house, 12.3% inside yard and 12% outside yard, while only 0.7% had no access. In the earlier sections this candidate showed that residents in both Nkanini and Mshini Wam accessed their water in community stand pipes, usually located either outside the plot/yard or inside. The flipside of this is that there are many other challenges associated with both access and quality; to quote one

key informant, "*water and sanitation services have nothing to do with the size of the pipe*" (13/04/2016: Provincial Government, Cape Town).

Interviews with key informants and focus group discussions indicated that they were aware of the right to access of water services. Some of the comments by focus group discussion participants include: Mam Dzedze[9]: *We sometimes have to queue for many hours for the single functional communal tap ... we end up late for work, our kids sometimes go to school without bathing..* (10/10/2015, Nkanini FDG, Chris Hani High School, Khayelitsha)

Linda[10] *In the flats it's difficult, some landlords lock the water taps and hide the key for the (communal toilets)* (15/12/2015: Langa FDG, Love-Life Langa).

From the statements above, one can argue that Inasmuch as the Constitutional and other policies advocate for access to water services by all citizens, there are serious gaps not addressed. In order to progressively access water services, barriers to access such as the location of communal taps and 'hijacking' of other public services should be addressed. Additionally, the ratio per stand pipe of 1:25 as specified by the Department of Water Affairs under its Free Basic Water Policy does not really consider the situation on the ground. This study concurs with Boelens' (2008) assertion that water rights are generated, constituted and distributed according to the prevailing class, gender and ethnic relations and there are contradictions in both intra-community and wider socio-political arenas. The image below shows one of the broken infrastructures in Nkanini:

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[9] Not a real name.

[10] Not a real name.

Figure 32: Broken Water Infrastructure in Nkanini
Source: Sibanda (2014)

As the image above shows, not all water or sanitation infrastructures is functional, resulting in far lower numbers of residents accessing water and sanitation services. This is discussed further in the section on privatisation of public services,.

Some residents, as already pointed out, feel that they are provided with poorer levels of services, for example the provision of portable toilets in poorer communities not only expose them to health hazards but also impacts on their dignity. The picture below (Figure 33) shows one portable toilet used in Nkanini. These are currently the subject of a court challenge between the Social Justice Coalition and the City of Cape Town (Molander and Bejoy, 2016).

Figure 33: Portable flash toilet in Nkanini
Source: Sibanda (2014)

7.5.2 Claiming 'Rights to the City' in the City of Cape Town

As part of 'weapons of the weak' both Nkanini and Langa frequently embark on sometimes violent service delivery protests. In the earlier section, residents in Nkanini and Langa have been shown to have a high level of participation in local structures. Over 40% of respondents on both cases knew the correct name of their local ward councillor, as well as being members of street committees and SANCO. Nleya (2012) showed how social protests in Khayelitsha were frequent as residents demanded for services and perceived unfair treatment. The throwing of human waste at Cape Town International airport by activists mainly from Nkanini is well documented (McFarlane and Silver, 2016). This study has shown that there is willingness by local NGOs and other activist-driven movements to work with the local government to address issues of water and sanitation services delivery. There was a consensus that it is crucial for all stakeholders to fully participate in addressing issues facing informal settlements. This can be an incentive for the City of Cape Town authorities because getting organisations on the ground can adequately improve cooperation and timely services delivery.

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Success in local government also depends on the authorities' ability to work with local structures and civil society. However, the following response by a City official shows that working with civil society and other non-governmental organisations is largely viewed in a negative way: Thomas11:-You must remember those organisations are not government, they normally have their owner agendas, they engage with the city fairly well - but if they partner with the community, they do not necessarily represent the interests of the city, they will partner and engage with the city on the basis of their agenda- but there is always a need to bring a partner on board to work with, there are gaps the partners can fill … No help with community engagement, especially with the environments they stay in, being environments they work in. Their approach might also be beneficial, I might not understand the demands of the people, because I am looking from the outside… (09/04/2016: Kuilsriver, Cape Town)

The 'Third Force' and political interference is also blamed for the proliferation of informal settlements in the City of Cape Town. One Nkanini resident who is also a community leader also argued that the Metro does not want black people in the City. The following is a direct quote:

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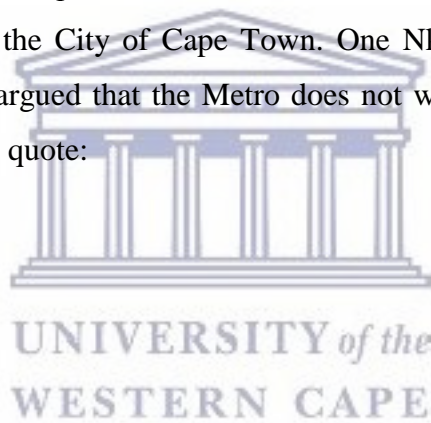
11 Not a real name.

Thomas[12]- *You know politics plays a huge role, during the second election when Nomaindia Mfeketo, who was an ANC mayor, was elected, the informal settlement in Nkanini was clean Meneer, there was a railway line to go through there - the city did not have the Anti- Land Invasion Unit, because the Anti-Land invasion was only established in 2009, just before the elections in 2002; there was a drive to bring people from the Eastern Cape to settle in Cape Town in order to maintain the Metropole as ANC dominated ... I was an official then, and you know that they were successful, and you know why they were successful, because they had the mayor's (backing). The mayor stopped officials from engaging with occupiers and she said she will deal with it herself, that is one informal settlement outside my jurisdiction which I know how it came about. The political drive was behind those informal settlements.* (09/04/2016: Kuilsriver, Cape Town).

This fact was however disputed by another key informant who is a community activist, who argued that after many years of denying black people land in Cape Town on the advent of democracy, the first ANC mayor in the city bought the land in Nkanini for the people. For him, this was how the first group of people settled in Nkanini and it had nothing to do with attempting to (politically) hold the city.

Marx's PA provided a basis on exclusion, and Sassen (2012) carries the point further by showing how the poor and unserved are separated and excluded in the current cities. Informal settlements are backyard examples of circuits of survival. Social movements have emerged in urban centres to demand for the right to survival, and rights to be saved. As Parnel and Pieterse (2010, p. 153), point out that "you need to be 'seen by the state' before benefitting from it". More like the 'smoke that calls' according to von Holdt, et al. (2011), in that you are only noticed if you take part in violent protests. On a study in Dakar (Senegal), Fredericks (2014, p. 544) highlights the associations of garbage as waste, dirt, impurity, and excess means that trash infra-structures are not neutral but "politics pursued by other means". In this context, beyond the dirt and garbage, socio-political power networks are unravelled, going beyond just garbage, trash, or sanitation.

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[12] Not a real name.

7.5.3 Policing the Excluded: Evictions in the Democratic State

Attempts by the poor to provide their own housing are normally met with brutal force by the police in the democratic state. In this way, the post-colonial state reproduces its colonial self. In the quest to follow the law to the book, millions who fall out of the formal system are either forcibly evicted or pressured to vacate. All key informants insisted that it is necessary to follow the law and even if they are aware they are using European Models as one of the officials indicated, failure to follow this is sometimes met with brutal force. (See quote on previous page.) Not only does the city official justify the existence of the Anti-Land Invasion Unit, but in the process shows that the poor, originally from Eastern Cape ha intention to dominate the City. McFarlane and Silver (2016) argue that there is a sense that the Democratic Alliance, a political party that currently controls the Western Cape, still harbours racial prejudices. The idea that migration from the relatively poor Eastern Cape (purposefully underdeveloped during apartheid), has become a 'problem' that contributes to poverty and prevents the City of Cape Town from keeping up with delivering of sanitation and other services (ibid, p. 15).

Chapter Five showed how the state enforces the law in evictions, which are sometimes ordered by the courts. In the Primitive Accumulation category, Marx showed how 'bloody legislation' was used to ensure the peasants become workers who have no choice but to sell their labour. In the democratic state, this is meant to create a 'closed city' (Kolstee, et al. 1994). For Kolstee, et al. (1994, p. 27), the "… urban authorities have tried to discourage new migrants in various ways. The harshest measures include levelling illegal settlements, expelling migrants without residents' permits, arresting illegal workers, campaigns against street trading, prohibiting certain occupations and mass deportation." This scenario is reproduced by the use of the Anti-Land Invasion Unit to keep poor people from seeking land at bay. Benson and Meyer (2015, p. 65) describe a 'reality' facing many people in urban areas; a reality of growing homelessness on what has been called a planet of slums, of sub-standard, overcrowded, sickness-inducing housing crisis, a criminalisation of people erecting shacks in open spaces in, resulting in survival necessitating confronting the law.

In Nkanini for example, a key informant argued that when they moved to Nkanini around 2005, to a piece of land which had been 'allocated' to them by former Mayor

Nomaindia Mfeketo, they fought battles with police to keep their plots (04/10/2016, Solomon Mahlangu Community Hall, Khayelitsha). The informant is among the organisers of the widely reported 'poo protesters' who threw human waste at the Cape Town International Airport to highlight their lack of access to adequate and quality sanitation. On the other hand, officials lauded the work carried out by the City's Anti-Land Invasion Unit and how it helped to control squatting and keeping the City clean. The work of the Anti-Land Invasion Unit and the infamous Red Ants in Johannesburg, were used by the City to forcefully remove households from 'illegally' occupied inner city buildings (Royston, 2017, see also SERI, 2017).

On the other hand, the Constitution of the Republic of South Africa is lauded as one of the most progressive in the world and it places the Bill of Human Rights at the core. While it is the responsibility of the State to " 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" (Constitution of the Republic of South Africa; 1996), in practise this does not happen. Section 26(3) of the Constitution, along with the PIE Act, provides a number of essential procedural protections to unlawful occupiers who face evictions (SERI, 2013, p. 26). According to SERI (2013), the rate of evictions and demolishing of dwellings does not reflect these Constitutional imperatives. Besides a few highly publicised cases (such as the Lwandle evictions in 2014, Marikana in Philippi in 2017 and inner city-buildings in Johannesburg) where non-governmental organisations have taken the State to court to challenge the evictions, it cannot be disputed that there have been numerous similar cases where the poor have been evicted with little or no media coverage.

Officials however allude to the fact that inasmuch as force is used, there is little chance the authorities will ever win the battle of land occupations. One official states that …*even if the government has the Anti-Land Invasion Unit, it will never stop meneer, it will not stop, because you stop this one on this side, and another one that side is busy building* (09/04/2016: Kuilsriver, Cape Town). This pessimistic view indicates the challenge of urbanisation and realisation that containing the tide of migration will not be achieved. Another key informant quipped that they are already other subtle ways of containing informal settlements, such as 'providing' the most basic services. In this he meant services such as water, residents should be forced to walk some distance to the nearest stand point and the same applies to sanitation facilities. A

recent court challenge by the Social Justice Coalition also outlines that portable toilets, for example, are 'deliberately' emptied and cleaned after days of delay, as a way to discourage people from settling in informal settlements (Molander and Bejoy, 2016).

The attitude by the City has resulted in informal settlements existing in constant temporariness. This could be also a strategy to contain the encroachment of unwanted migrants. One respondent bemoans that: Anele[13]: *this is sometimes where the issue of temporariness comes – that you are going to move at some point, just over 70% of toilets in informal settlements, only 26% are flush toilets. This focus on temporary services is not part of any programme, if you (are) fortunate you can be part of re-blocking or upgrading - over 90% of informal settlements are not part of any plan* (04/10/2016, Solomon Mahlangu Community Hall, Khayelitsha).

Thomas, who is a City official, might have inadvertently elaborated the City's 'silent' policy of containment of informal settlements through inadequate services. Temporary provision of services, which are normally inadequate, contribute to tenure insecurity. A sense of 'temporariness' permeates in all spheres of the life of the 'surplus' population who are outside the capitalist system. Temporary shelter, with insecure tenure, insecure employment as well as lack of access to services creates systemic exclusion.

7.5.4 Reproduction of the 'Migrant' Worker in the Democratic State

The temporary nature of the mainly black urban new entrants can be directly traced back to the migrant labour system dominant in pre-democratic South Africa. All the study sites are some distance away from the City of Cape Town CBD, with Langa 12.5km, Nkanini over 34km, Mshini Wam, 13.2km and Kensington being the closest at around 8km. The daily trek to the City to look for economic opportunities is not only expensive but time consuming and exhausting.

While the structures/dwellings are regarded as 'temporary' in nature, it is the daily activity of urban residents which manifests the sense of the migrant. Participants in both Nkanini and Mshini Wam indicated that they felt they spend substantial amounts of their income and time travelling to a place of work. It is undisputed that townships are located in the periphery (Turok, 2012) and far from economic

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[13] Not a real name.

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opportunities; it is the nature of disconnect between place of work and residence. According to Sinclair-Smith and Turok (2012), Cape Town has an unusually skewed form, with the bulk of the population – but very few jobs – concentrated in the south east, while the relatively sparsely populated central city and inner suburbs is where the most employment opportunities are found. While less time is actually spent in the supposed home of the worker, one can argue that more time is actually spent travelling as well as at the place of work. This point was particularly raised by a researcher at Ndifuna Ukwazi, whose organisation is currently pushing for low-cost housing in the inner cities.

"... That's what we (are) currently doing as an organisation, you tell them that we need to start thinking of living together, but someone quickly tells you are bringing a skoli in my backyard ... its complex, someone thinks you can't just put 500 criminals in my backyard ... they will just and rob everyone!!

What they don't realise is that ... especially given the Sea Point example, is that these people are there, they work there, they wake two hours earlier than everyone else, they go work there, add value to their suburb, then they go back again, spend another two hours going back...they spend most (of) the day out of the house, they don't get to see their children, they work an area, you can't use the park there, you can labour in that area, but you can't stay there ..." (05/08/2016, Cape Town).

One Provincial Government official argued that "*… we need to work on spatial efficiency ... We need to encourage people and draw them where you want them to be, not to have people travelling long distances to places of opportunities like work places etc. ...*" (13/04/2016, Cape Town).

Furthermore, quantitative data in earlier sections showed that the majority of respondents in Nkanini and Mshini Wam have sources of water and sanitation located outside their dwellings, some over 200 meters away. In this scenario, the resident still lives a migratory experience in order to access basic needs such as water and sanitation.

Besides having to travel significantly long distances to access economic opportunities, the majority of the residents in informal settlements (Nkanini and Mshini Wam) as well as Langa maintain a strong relationship with their rural homes. In Nkanini for instance, 100% of the respondents indicated that they were Xhosa and a follow-up question from where they were staying before they settled in Nkanini

revealed that a substantial number of respondents (over 73%) had moved from the Eastern Cape, while the rest had moved from Site C and Site B in Khayelitsha and other parts of the City. Strong ties with rural homes were exhibited through how respondents traced their clan names, and at times proudly state that they were *ndiligoduka* (meaning someone who has strong ties with their rural home, and frequently travels there).While this might be a democratic state, the way this plays out in the current urban landscape seems to be a strong combination of systems which forces residents in both formal and informal settlements to maintain strong relations with their rural home while there is little or significant change of the quality of the migrant labourer. Mamdani (1996) describes how during apartheid the squalid living conditions and constant fear of harassment by police and security of officials, in the democratic state, the poor were still spending significant amount of time and money travelling to look for economic opportunities.

7.5.5 Alternative Circuits of Survival: Multiple-use Water Services

The study showed that respondents in all study sites used water for more than one purpose. When asked, *what are the main uses of water in the household,* more than 75% of the respondents indicated that they used water for livelihood activities other than basic household uses. Some of the respondents mentioned activities such as small-scale laundry, home garden and food processing. The previous chapter showed that there are high levels of unemployment, higher in Langa (40.21%), Nkanini (38.54%) and Mshini Wam (27.30%) (including Joe Slovo Park), other livelihood activities are common in the sites. Water is key to livelihoods' activities in all study sites. For instance in Nkanini, in addition to social grants, responses indicated that they had other sources of household income which included laundry, selling roasted meat, a carwash, among others. Laundry businesses, for example, were conducted at the community water stand pipe in Nkanini, which shows the demand for water other than household uses.

The Free Basic Water Policy was based on the Constitutional "right to sufficient water" (Republic of South Africa, 1996) and it has been hailed as one of the key pro-poor policies in democratic South Africa (Muller, 2008). It stipulates s6000 litres of water per household per month, based on a household of eight people. According to the IRC Water Service Delivery Ladder Framework, this level of service is regarded as

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'basic' (Georgia, et al. 2013). Smith (2004) notes that the City of Cape Town provides 6000 litres of free water per household, based on an average household size of eight. However, this author further noted that this did not take into account the number of people per plot, which, according to his study, ranged from 15 to 30. This study also found out that most plots are occupied by more households who are sometimes 'hidden' (Scott, 2011). Using simple observation in Nkanini for example, one plot had an average of four or more structures. This candidate also observed that Langa hostels are sub-divided informally and shared by more than one family. The City of Cape Town has recently realised the need to streamline services for backyarders and other informal tenants as seen through the pilot projects in Hanover Park (City of Cape Town, 2017).

In Chapter Four, the Multiple-use Water Services Model indicates that besides just providing water for drinking, hygiene, cooking and other domestic uses, the model realises that it is needed in many small-scale or domestic enterprises (van Koppen, et al. 2009). The recognition that water plays a key role in poverty reduction is clearly articulated in National Water Resource Strategy Two's objectives (Department of Water Affairs, 2013).

7.5.6 Informal Settlement Upgrading: Potential for Public-private cooperation

Despite seemingly conflicting agendas between State authorities and human rights organisations, participants and key informants recognised incentives and opportunities brought by informal upgrading programmes. Using an example of Mshini Wam, City officials have realised that there is potential if there is collaboration between stakeholders to better the lives of the surplus population. Some interviewees stated that: Thomas14: … but now the priority in the informal settlements is to upgrade, if the situation allows it. They will do it incrementally man, you know when they say we have to move some 300 from in there, get a contractor to service the site, so they will move those people (09/04/2016: Kuilsriver, Cape Town)

Simphiwe15: You need to develop a long-term plan for upgrading of informal settlements - it needs to be public (26/04/2016, Site B, Khayelitsha).

Instead of resisting calls by non-governmental organisations or other civic organisations for a better life for all, there is evidence that there are successful projects

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where these organisations can work together with the authorities to improve the lives of poorer communities. McFarlane and Silver (2016) provide examples of audit processes carried out by the Social Justice Coalition to improve sanitation delivery in informal settlements. Since the introduction of the Breaking New Ground policy (2004), one of the much-celebrated interventions was informal settlements upgrading. In the case of Mshini Wam, residents benefitted from a re-blocking project where non-governmental organisations like Community Organisation Resource Centre (CORC) and Informal Settlements Network (ISN), together with the community, undertook to re-plan the informal settlement. The intention, among other reasons, was to create space for water and sanitation services, clear roads in between the informal structures, as well as improve the general life of the beneficiaries. The picture below shows results of an upgraded informal settlement (Figure 34).

Figure 34: Mshini Wam: Water and sanitation services after re-blocking
Source: Sibanda (2015)

Figure 35: Mshini Wam: Re-blocked structures
Source : Sibanda (2015)

Despite the benefits of upgrading, two informants had two contrasting views on the project. One urban planner argued: Martin[16]: We lost a real chance in Mshini Wam, we should have given those people some form of tenure certificates…they would have invested in improving their own structures, build even two or three story.. (23/09/2016, Civic Centre, Cape Town).

In this case the official shows that if the relationship to work with local organisations had been carefully cultivated and promoted, similar approaches would have been used elsewhere. However, commenting on Mshini Wam, one activist argued that: Songelwa[17]: *Giving them tenure certificates was going to be a waste of time ... what can someone do with a 10-square metre structure or plot?* (04/08/2016, CBD, Cape Town).

From the above statements, the implication is that title would have improved tenure security and subsequently encouraged investment. While on the other hand, the size of the structure/plot does impact on whether it is feasible to practically provide tenure certificates. The challenge of overcrowding and lack of land was also raised. The general feeling in the group discussions was that it is unsure what informal settlements' upgrading entails. Interviews with civic society leaders revealed that the local

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[16] Not a real name.

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authorities needed to be transparent on the long-term planning with informal settlements and backyard dwellers. Despite some of the negativity on the Mshini Wam site, the study shows that when authorities find common ground and work together, there will be an improvement of people's lives.

7.5.7 Privatising of Public Services

One of the key grievances on water services in Kensington was high water bills. 71.2% of the respondents felt that they were paying too much for water and some showed bills with over R2000 per month. While water is regarded as a right, municipalities argue that they have to implement cost recovery measures, which includes payment of water bills. Furthermore, a social audit conducted by the Social Justice Coalition and its partners shows that private contractors paid to provide sanitation and cleaning services were not meeting the required standard. For instance, Abaphumeleli which services Enkanini, Zwelitsha, and Zwelitsha Temporary, which according to the audit was servicing about 16,552 people, failed to provide adequate janitorial services (Social Justice Coalition, 2013). Both the household surveys and focus group discussions cited inadequate, unclean and unsafe toilet facilities among their grievances. According to one informant: Simpiwe[18]: ... there are problems associated with chemical toilets themselves – the majority of the problems arise from the fact that these services are outsourced where the municipality pays millions of rand s -Mshengu the blue-chemical toilet company, they currently have a contract for Green point and other parts of Khayelitsha; they also claim to have a certain number of such toilets and we actually went … and physically counted and we found that some of these toilets were actually missing …(26/04/2016, Site B, Khayelitsha).

According to Simphiwe, the fact that services are outsourced and there is inadequate monitoring by the City of Cape Town results in contractors maximising profits by not providing the right number of chemical toilets or there being particular chemical toilets missing. While on one hand the City pays for the service which was supposedly provided, little really changes on the ground for the residents in informal settlements.

The private sector plays a key role in providing services in all the study sites. Not all officials are happy with the fact that services are now privatised as seen from the

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following comment: l think … part of the problem is that of the agency appointed, they are only interested in ticking the boxes … Government must do their own work, not running with agencies, government must train people to do its own dirty work, instead of paying a consultant which is probably costing the city more ... (09/04/2016: Kuilsriver, Cape Town).

There is a sense that duplication of work is common if contractors are hired to do work which municipalities can do or should be able to do. Private contractors aim to maximise profit, hence they will do anything they can to save costs, including reducing the costs, cutting on toilet facilities and the number of times these are cleaned. Marx's view of PA, as pointed out in earlier chapters, is that after the separation of peasants and the means of production, everything eventually becomes part of the capitalist system. There is growing evidence of commoditisation of that which was not commodity. Private firms are only interested in profit making. The study shows how the City of Cape Town outsources services to private companies. McFarlane and Silver's (2016) study in Cape Town showed that there is use of private companies to provide services that would otherwise be done by the City, for example, the R140 million contract awarded to a private company, Mshengu Services (McFarlane and Silver, 2016, p. 12). Taing's (2017) study notes that municipal janitorial services launched by the City's Mayor under the Special Job Creation Project failed to successfully provide employment and services to informal settlements as envisaged. Outsourcing of services to consultants and agencies was also regarded as corrupt and as wasteful expenditure

7.7 Conclusion

This Chapter presented findings from both quantitative and qualitative methods. The findings support Li's (2009) assertion that the desire by the poorest people to live fuller lives is often frustrated through the very process which enables others to prosper. In this case, the neo-liberal and technicist approach to urban land tenure often result in those living in informal or social tenure arrangements not accessing adequate and safe water and sanitation services. The study also showed a strong co-relation between tenure type and the level of access to water and sanitation services. The cadastre system which is the basis for private ownership to property in South Africa provides a 'package', amongst which are water and sanitation services, hence the struggle by officials to deal with social tenures. Levels of income also play a key role in the access of water and sanitation services. The poorer surplus,

who in this situation are black, still live under social tenure conditions and largely outside the 'legal' or 'formal' system, resulting in reluctance by officials to recognise and provide proper services. Local institutions which are largely regarded as 'informal' are functional and there is evidence of their evolutionary nature to adapt to urban tenure settings. Investment in water and sanitation facilities by households in informal settlements was regarded as the duty of the state. There are opportunities presented by making existing informal tenure arrangements to improve tenure security and to find ways where formal institutions such as Eskom can operate in informal environments.

CHAPTER EIGHT: DISCUSSING URBAN LAND TENURE, TENANCY AND WATER AND SANITATION SERVICES

People in informal settlements run the risk of mass evictions…We have not found a satisfactory solution to spatial apartheid, equitable access to land, housing and basic services. (Judge Moseneke, 2014, pp. 12, 22)

8.1 Introduction

The assertion by Judge Moseneke echoes the general insecurity experienced by urban dwellers in social tenure arrangements. The general approach by authorities to regard so-called formal tenure systems as legitimate and the rest should move towards that formality reveals how far they are removed from reality. This inclination towards these formal and recognised tenure systems results in a lukewarm response to basic services such as water, and in some cases refusal to provide these services. This Chapter provides discussion of the findings and the implications. Drawing on the concepts, literature and methodology, key themes are discussed in-depth and insights drawn. The Chapter draws on key findings to explain the relationship between urban land tenure, tenancy, water and sanitation services.

8.2 Urban Land Tenure (and Tenancy), Water and Sanitation Services

8.2.1 Titling, Cadastre System and the 'Package' of Services

Technocratic approaches dominate city planning and services delivery. The result is often an over-simplified but reasonable representation of urban tenure, that of binary polarisation (formal and informal), with one section being part of legal system or *de jure* and the chaotic *other* operating on *de facto* rules. The policy and legislative framework in post-apartheid South Africa and particularly the City of Cape Town reflect this 'continuum' of tenure arrangements. Figure 27 in Chapter Seven showed rights accompanying each tenure arrangement and the level of tenure security. In this simplistic way, provision of water and sanitation is inadvertently structured to adopt the same trajectory. This is clearly represented on Figure 36 below:
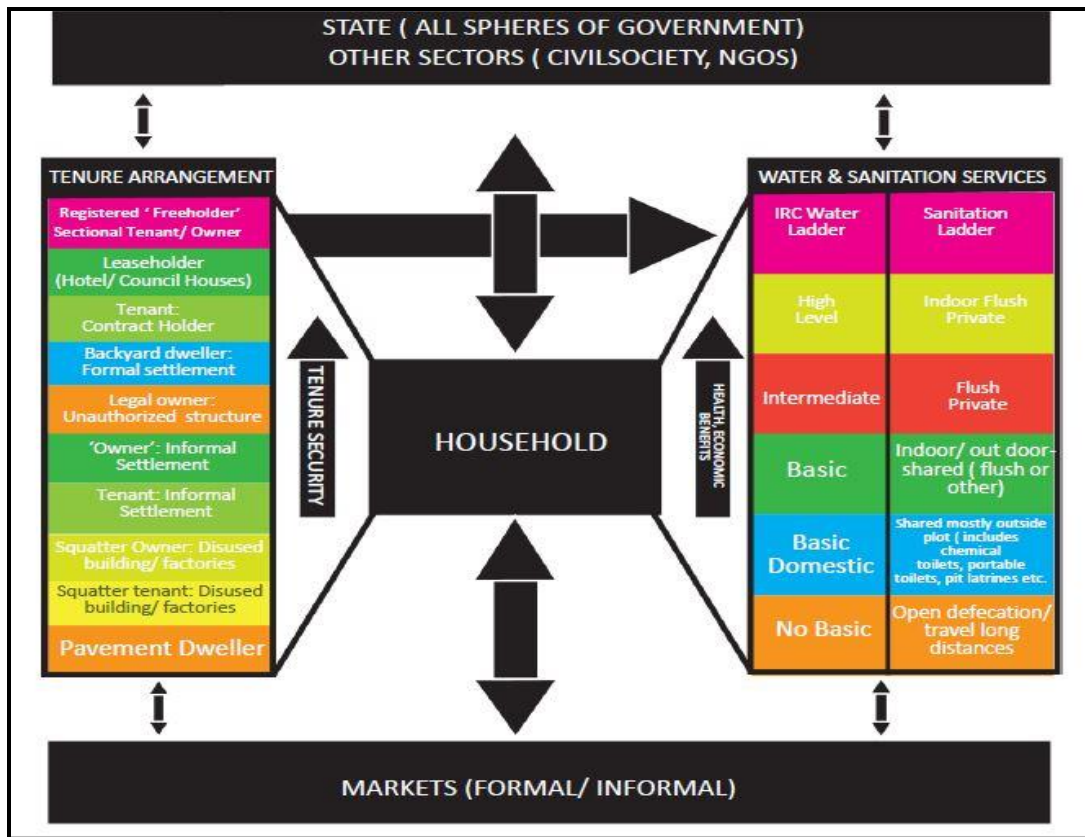
Figure 36: Various tenure profiles and water and sanitation services levels
Source: This Candidate's Interpretation
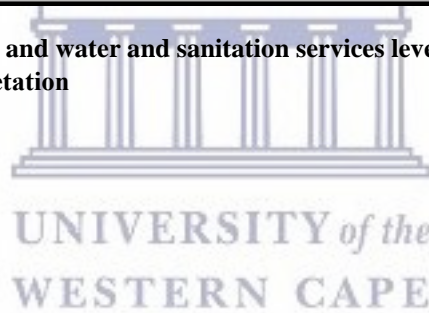
Table 52: Key actors in current tenure profiles and services delivery

Actor	Description	Benefits	Limitations
Household	Centre of decision-making process. This includes decisions such as location of water and sanitation facilities.	The simplest decision making unit.	Vulnerable to changes including tenure security and markets. In cases where the household possesses registered tenure security there is an agency to invest in other services such as water and sanitation.
Local structures and other stakeholders	This includes community structures such as ward communities, civil society organisation, NGOs.	Based on their common situations and concerns, they are able to collectively demand change for the benefit of the whole community.	Sometimes hijacked by gatekeepers and in the case of some informal settlements slum-lords. Can also be manipulated by local community players.
State	All spheres of government, police, may also be land owner.	Formulates laws and Policies. Guardian of water resources. Plays regulatory role. Provision of services such as water and sanitation.	Favours formal land markets, failure to strengthen and recognise other tenure arrangements, top-bottom approach in its interventions.
Markets (Formal/Informal)	Formal land markets include the following key players: land owners and developers; Deeds Registry and Surveyor General; Financial Institutions; transaction agents and consumers (mostly middle class and upper middle class). Informal land markets include: suppliers; consumers; transaction agents and regulators	Formal land markets are secure. Formal land markets are also regulated. Informal land markets are community led and provide a platform for easier access to poorer families. Local structures are key transaction agents, while regulators include councillors and police.	One challenge of the formal land markets is that low income households are not able to participate. Profit-making drives formal markets at the expense of social justice and equity. Informal land markets are unprotected, sometimes invisible. Open to abuse by some powerful and connected community members.

The scenario presented on Figure 36 shows that when using the tenure continuum on one hand, and water sanitation ladders on the other, the more 'formal' one's tenure arrangement, the more likely it is that they will get the best water and services. The largely punted water and sanitation ladders still portray a need to move from 'less formal' tenure arrangements and as one goes up the ladder, by placing the household at the centre of the decision-making processes, the model also recognises the role played by other key stakeholders. Table 52 identifies key actors as presented in Figure 36. Findings of this study showed that decision making is largely top-down, with the majority of respondents/participants indicating that they are not fully involved in decisions which affect them. More specifically, water and sanitation technologies are left to the local government to decide for the communities.

Chapters Three and Four showed that from the transitional period right into democratic South Africa, urban land tenure and housing has been largely driven by

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market-based approaches. For example, subsidy housing was mainly provision of a uniform product ('RDP' house) in the city's periphery (Huchzermeyer, 2003), then titles were incrementally provided. Titling, which hugely depend on the cadastre system, is used in South Africa. Hornby, et al. (2017) argued that this comes with a 'package' of services', which include water and sanitation. While the State promotes titling and eradication of informal settlements (Huchzermeyer, 2013) on one hand, on the other, the approach to provision of water and sanitation to informal settlements is thus temporary and basic. There is a clear relationship between tenure arrangements and the level and quality of water services. Figure 36 highlights the current approaches to water and sanitation services for households in different tenure arrangements. A correlation was done in order to measure how variables or rank orders are related. The co-relation for both Langa-Kensington and Nkanini-Mshini Wam is significant at 0.01. The type of settlement (formal or informal) and type of dwelling determined where a water point or sanitation facility is located. Figure 36 shows that formal dwellings with titles enjoyed the highest level of water and sanitation services.

Perhaps some innovative ways are required from the onset so as to move away from the technicist approach to urban households through including local communities in different tenure arrangements. Boonyabancha (2005) used the linkages using different stakeholders to explain how the poor can be incorporated in urban developments to ensure tenure security. This is presented in Figure 37 below.
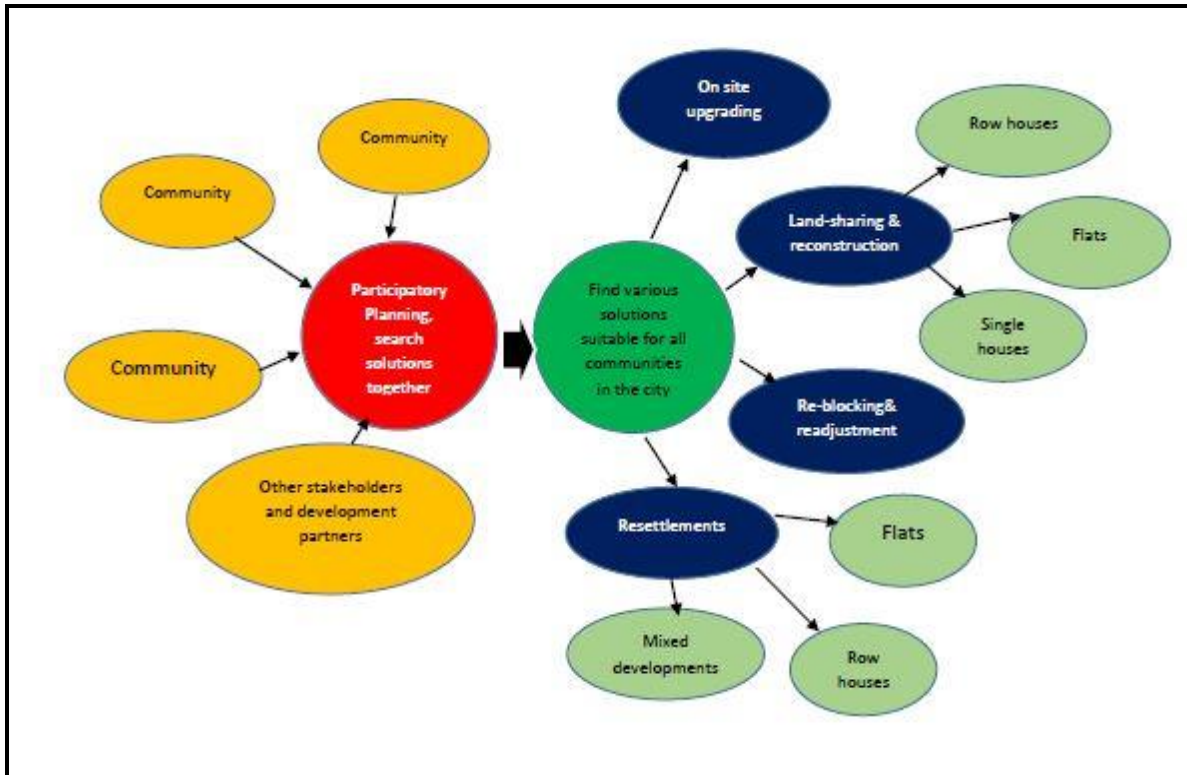
Figure 37: Linkages for local housing development partnership by city-wide networks with communities and local authorities.

Source: Adapted from Boonyabancha (2005, p. 26).

As the decision processes stem directly from the household, this becomes a further part of participatory planning processes. According to Boonyabancha (2005), this assists in unbundling tenure arrangements at community level, together with a developmental local government and other stakeholders to find solutions which suit different tenure profiles. Various approaches to housing development are also accommodated, depending on the situation of the land on which the community has settled. As Boonyabancha (2005) suggests, different land parcels and communities might require on-site upgrading, land-sharing and reconstruction; re-blocking and resettlement. This also influences the tenure choices and subsequently, which water and sanitation services are suitable.

In almost all study sites, it is evident from what the respondents indicated that there is an arguably higher participatory rate at community level. This fails to translate into successful integration of social tenures, mainly because the City of Cape Town is technicist and operates within competitive market-based approaches.

8.2.2 Rapid Urbanisation and Services Delivery

The study found that between 2001 and 2011, Cape Town's population went from 2 799 496 to 3 740 026 (StatsSA, 2011); additionally, between 2011 and 2016 the population of the City of Cape Town grew by 7% to 4 004 793 (City of Cape Town, 2016). While the population growth is attributed to both natural growth and migration, it is the nature of response by the authorities to address services delivery that is the concern. The challenge City officials have in addressing backlogs is not simply about being overwhelmed by tides of urbanisation, but the policy and legislative environment within which they operate. There is much ease in operating within formal planning systems, which are mostly influenced by the global North, but as more cities have to address unplanned settlements, challenges arise. Table 10 in Chapter Five showed that around 30.72 million (59.7%) households in South Africa exist outside the formal tenure system (Hornby, et al. 2017). There is more focus on addressing provision of services to the population with formal titling, while social tenures are either ignored or provided minimal levels of service. Li (2009) showed how surplus population is 'let die' through policies which tend to exclude them. Methodologically, while household surveys were held in all sites, focus group discussions and in-depth interviews, there were no follow-ups over a period of time to test the increase in population. The study relied on official data from StaSA, the Institute for Race Relations and the City of Cape Town, among other sources. Furthermore, ground-truthing provided insights as the samples for the study actually revealed that there were more households than actually reported and, in addition, mobility of households and tenants also made it difficult for official statistics to provide an accurate picture, hence the reliance on estimates. Officials could not give the actual number of informal settlements, with numbers ranging from 204 to over 600. One official remarked that: *'...you know it's difficult, there was a figure, but l forgot - it could be, look l don't want to give you a wrong figure, but it's over 400… the major challenge is, even in formal areas you might find 40 structures* (09/04/2016: Kuilsriver, Cape Town). Through in-depth interviews, informants also made it clear that there is a difference between officially 'recognised' informal settlements and other informal settlements the authorities might intentionally 'ignore', or which are still going through some ligation process. In the process, these informal settlements are most likely to be denied services or bare minimal provision on

the outskirts of the settlement. In this way, the surplus population who have insecure tenure are excluded in the provision of services.

Another implication to the study is water services development planning and budgeting, which have lacked the robustness required to deal with rapid urbanisation. The failure to recognise and pre-empt the impact of rapid urbanisation, as well as transforming planning law to suit this scenario, points to authorities being a conduit to exclusion and dispossession of the poor.

8.2.3 The 'Edifice', Mismatches of Tenure Arrangements and Services Delivery

Trying to improve the quality and quantity of services through tenure formalisation is also another general approach municipalities tend to adopt, using planning approaches to attempt to improve tenure security. In cases of upgrading, the process of using ordinances (BNG) to rezone previous informal settlements have mostly resulted in mismatches. The Mshini Wam study site underwent re-blocking with the intention to upgrade and provide legal ownership of plots and dwellings. The study showed that City authorities were still to approve issuing of formal titles or some form of administrative recognition. One City official bemoaned that they had missed huge opportunities in providing titles in Mshini Wam, and using examples from neighbouring Du Noon where many households had turned their homes into double storeys or more for rental housing, "*... it's an example of poor people providing housing, there are good stories happening there, why can't we see more of this? 2 or 3 storey stuff ... we haven't given anyone tenure security for this ...*" (23/09/2016, Civic Centre, Cape Town). According to Royston (2015), one of the key challenges has been where the best place is to locate the threshold of formalisation.
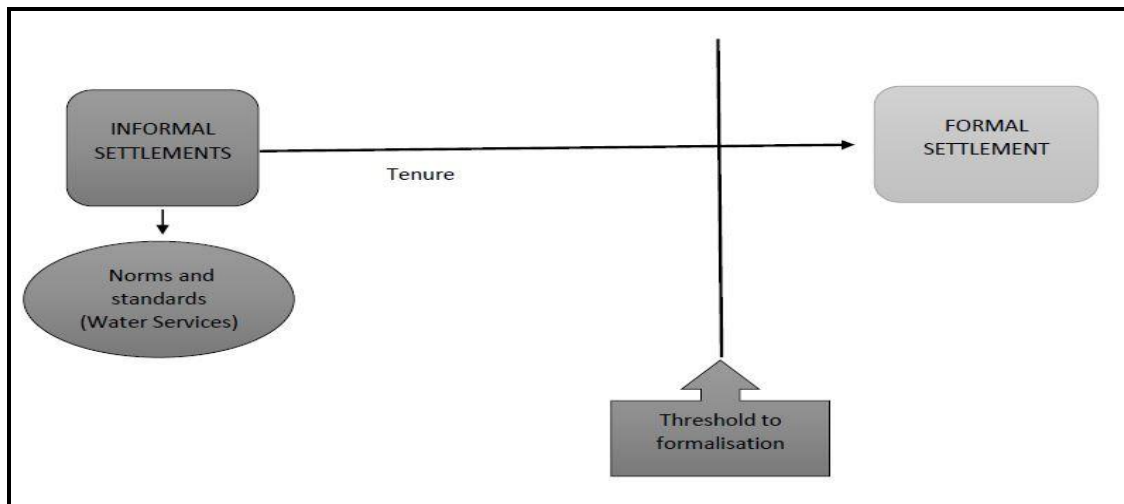
Figure 38: Threshold for Tenure Formalisation

The neo-liberal approach seems to be failing the rest of informal dwellers across the world. Even international agencies which champion titling to 'eradicate' slums are slowly coming around to the complications around formalisation of titles. According to Davis (2004, p. 11), "Washington Consensus" types (World Bank, IMF etc.) have always insisted on defining the problem of global slums not as a result of globalisation and inequality but rather as a result of "bad governance". The recent about-turn and blaming of mainly neo-liberal policies, specifically structural adjustments was unusual and significantly different to the 'usual' approaches (Davis, 2004; Sassen, 2010). ''The primary direction of both national and international interventions during the last twenty years has actually increased urban poverty and slums, increased exclusion and inequality, and weakened urban elites in their efforts to use cities as engines of growth''. (UN-Habitat, 2003, p. 6). This realisation by the these international organisations still does not articulate the nuances as well as address the contradictions emanating from the same agencies, and how they resent conflicting agendas, which leave the poor in perpetual marginalisation, characterised by insecure tenure arrangements and rudimentary access to basic services such as water and sanitation.

8.2.4 Social Tenures and Access to Basic Services

A hybrid form of tenure arrangements was evident in all study sites. In the earlier chapters, arguments were presented on how the tenure continuum cannot be used to fully explain existing tenure arrangements in South Africa (Hornby, et al. 2017). This is because of the fluidity of tenure arrangements, where movement from informal to formal, or in other instances, formal arrangements start moving towards informality.

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The situation in South African cities has seen the migration of households to cities continue with customary practices in urban areas (LEAP, 2005). This study found out that in almost all sites, there is reliance on kin and kith to access urban land, validate tenure status as well as contribute to conflict resolution. A key example emerged in the findings: the use of *iziduko* or clan names to forge relationships which are useful in accessing and holding plots or dwellings. In other instances, as in Langa old hostels, relatives pass on apartments to family members informally as they either return to the Eastern Cape after retirement or the City provides them with subsidy houses. In all scenarios, there is evident use of customary practices, though it might be done with some modification. In this instance modification might be in the form of affidavits or a council letter or the use of street committees as witnesses. Using 'formal' institutions such as police affidavits result in the arrangement becoming neo-customary. These social tenures are not recognised by the City and they are not legally binding, adding to the complexity of tenure arrangements in both formal and informal settlements.

8.3 Power and Space

8.3.1 Rights to the city

Dispossession, exclusion and separation were key to Marx's PA (Marx, 1867). However, power works in and through the production of differences inscribed in space and built up through time, as new layers form upon the old (Li, 2001, p. 63). This study showed that production of difference was a process which took place over more than century, reaching a climax during the apartheid era, but while attainment of democracy might have been a threshold of expectations for the excluded, market forces became the centre of power to exclude and enhance differences. This has played out through lack of access to land (including tenure and tenancy), water and sanitation services.

This does not mean that the poor are helpless and overtly unaware of their circumstances, hence the rise of social movements. For Scott (1985), there are 'weapons of the weak' which the poor do possess as some forms of resistance against the 'bloody legislation' which excludes them from urban land, water and sanitation services. This study found that respondents and participants are 'politically' aware and attempt to bring their grievances to the authorities' attention. Using the household survey, respondents were asked if the local government made their programmes known to the communities. In three study sites, of which two are informal (Nkanini and Mshini

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Wam) and Langa Old hostels, the responses were largely negative. There was a perception that the local government does not listen to communities. Furthermore, while testing the level of participation though elected local leadership an interesting pattern was observed. Table 52 shows some of the results from the findings presented in the earlier chapter.

Table 53: Langa: Name of Ward Councillor

	Frequency	Percent	Valid Percent	Cumulative Percent
Know but can't remember	9	18.0	18.4	18.4
Incorrect guess	14	28.0	28.6	46.9
Correct name	22	44.0	44.9	91.8
Don't know	4	8.0	8.2	100.0
Total	49	98.0	100.0	
No Response	1	2.0		
Total	50	100.0		

As shown above, 44.9% knew the correct name of the councillor, while over 28% guessed incorrectly but they knew the councillor. The same trend was also observed in Nkanini and Mshini Wam, both of which had higher percentages (79.2% and 67.9% respectively). This shows that the poorer and largely excluded masses were highly aware of political representation. This helped them to be organised and able to mobilise for better access to housing and services such as water sanitation. In Nkanini for instance, highly organised street committees work together with structures such as SANCO, the Ses'Khona People's Movement and the Social Justice Coalition to demand housing and other basic services such as water and sanitation. In this way, they exercise some form of power (weapons of the weak). According to Lefebvre (1991, p. 24)

> ... the space thus produced also serves as a tool of thought and of action … in addition to being a means of production is a means of control, and hence of domination, of power. Forces act within space as a result of actions of the state and within spaces the violence of power is answered by the violence of subversion and these seething forces … can never be totally quieted. Though defeated, they live on, and from time to time

begin fighting ferociously to reassert themselves and transform themselves through struggle.

As the poor continue, they might project new ways of 'seeing' urban land, water or sanitation. By rallying around the sanitation and responding to the lack through throwing human waste at public spaces such as Cape Town International airport, *poo* hence becomes *poolitics* of human waste (McFarlane and Silver, 2016). This means that services such as water and sanitation cease to be just tangible and physical elements, but they start representing other ways of 'seeing' (McFarlane and Silver, 2016), they become sites of contestation and symbols upon which the excluded rally to demand for their rights. Rights to the city can therefore be articulated using various 'weapons of the weak', as the surplus poor urban population struggle to find a foothold in a capitalist system which has otherwise shut them out.

Figure 39: Campaigns for affordable Housing in Cape Town
Source: Sibanda (2016)

Civil society organisations have emerged such as the Socio-Economic Rights
Institute (SERI) and Ndifuna Ukwazi (NU) to defend people's tenure rights,
particularly those threatened with evictions, which have been helpful. However,
according to Li (2009), they have stopped short of articulating a comprehensive social
justice. For Li (2009) the desire to live a fuller life that better food, housing, education
and healthcare can offer is frustrated for the poorest of people, who are routinely
dispossessed through the very process that enables other people to prosper. This means
that the surplus will continue to undergo what Marx (1867) referred to as Primitive
Accumulation, albeit with fewer perks such as 'rights' to gloss over the actual

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dispossession and accompanying violence. Unlocking the logic of development according to Habib (2014), requires enabling the poor people to discover and develop leverages, so that their power can be evident to prompt the political and economic elites into action.

8.3.2 Socio-economic Rights; Litigation Option

The section above show the growing opportunities for 'social pacts' as NGOs are opting to partner with communities in litigation of socio-economic rights such as water and sanitation. There is evidence that these organisations are slowly beginning to turn the 'heat' on the State through the courts as the last resort in situations where other actions such as protests and petitions have failed. Notwithstanding landmark cases widely written about such as the Grootboom Case and the Mazibuko Case among others (Dugard, 2014), Chapter Five of this thesis began by quoting Judge Chantal Fortuin of the Western Cape High Court bemoaning the failure by municipalities to play their role in ensuring realisation of socio-economic rights such as housing, water and sanitation. In a scathing ruling, she instructed the City of Cape Town to enter into an agreement with the land owner so that they could purchase the land for the Marikana residents in Phillipi, and subsequently urgently address the issue of water and sanitation service provision. In another case in direct relation to Nkanini, during the write-up of this thesis, the Social Justice Coalition took the City of Cape Town to court concerning poor sanitation services (SERI, 2017). This follows a series of social audits which raised issues of services, particularly sanitation in Khayelitsha. While this study did not directly raise litigation issues during the household survey, key informants in the NGOs indicated that ligation was becoming the best choice after exhausting other channels available for them.

The Constitutional Court's judgements around services delivery indicated that policy must be reasonably directed towards realising socio-economic rights, particularly for those in desperate need (Langford, 2014). On the other hand, such judgements have been blamed for 'apparent lack of enforcement or impact' (Langford, 2014). In addition, Bilchitz (2007) states that judgements such as the *Republic of South Africa v Grootboom 2001 (1) SA46 (CC)* failed to ensure a minimum level of socio-economic rights or institute a more robust form of review. It is commonly accepted that ligation is a time consuming and expensive process, hence exclusion of the poor unless

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NGOs and other interest groups are part of the process. Former Deputy Chief Justice Moseneke (2014, p.22) alludes to this by stating that; "*I am afraid I must add and confess that proper access to justice is often a function of one's bank balance*". What remains is that those who suffer sometimes end up passing-on without benefitting from their cause to have a decent life (Benson and Meyer, 2012).

8.3.3 Disciplining the Surplus: Police State and Power

Inasmuch as the poor attempt to fight for what they perceive as their rights, the democratic state, and in this case South Africa, makes use of the police or similar violent and forceful measures to discipline and enforce bloody legislation. This study found out that the City of Cape Town often used force to either evict, intimidate or deny rights. In Nkanini for example, a key informant argued that when they moved to Nkanini around 2005, to a piece of land which had been 'allocated' to them by former Mayor Nomaindia Mfeketo, they fought battles with police to keep their plots (04/10/2016, Solomon Mahlangu Community Hall, Khayelitsha). The informant is among the organisers of the widely reported 'poo protesters' who threw human waste at the Cape Town International Airport to highlight their lack of access to adequate and quality sanitation. On the other hand, officials lauded the work carried out by the City's Anti-Land Invasion Unit and how it helped to control squatting and keeping the City clean. The Anti-Land Invasion Unit (Cape Town) and the infamous Red Ants (in Johannesburg), are used in the cities to forcibly remove households from 'illegally' occupied inner city buildings and informal settlements (Royston, 2017, see also SERI, 2017).

On the other hand, the Constitution of the Republic of South Africa is lauded as one of the most progressive in the world and it places the Bill of Human Rights at the core. While it is the responsibility of the State to " 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" (Constitution of the Republic of South Africa; 1996), in practise this does not happen. Section 26(3) of the Constitution, along with the PIE Act, provides a number of essential procedural protections for unlawful occupiers who face evictions (SERI, 2013, p. 26). This does not however abate the rate of evictions in cities such as Cape Town. Besides a few highly publicised cases (such as the Lwandle evictions in 2014, Marikana in Philippi in 2017 and inner-city buildings in

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Johannesburg) where non-governmental organisations have taken the State to court to challenge the evictions, it cannot be disputed that there are numerous similar cases where the poor are evicted with little or no media coverage.

In the concepts Chapter, Mamdani (1996) uses 'bifurcated state' to explain a state that contains a duality: two forms of power under a single hegemonic authority. While this might be used to explain a post-colonial state where the democratic state still maintains the same approaches to governance, in this case, while the apartheid state resorted to brutal force to enforce the 'blood legislation', the same seems to play out, this time in a democratic state. State apparatus such as the police and the courts (Bhan, 2016) are used to further dispossess poor urban populations. The State collaborates with capital to keep the poor excluded and unable to leverage their power.

8.3.3 Landlordism as New Forms of 'Accumulation'

The use of power to control access to space, this time urban land and water services, was one of the key findings of this study. The findings Chapter revealed that 'petty developers' as one of the key informants called them (23/09/2016, Civic Centre, Cape Town) are common in Nkanini, Mshini Wam and Langa. These are mainly landlords or in some cases 'land barons' who own several plots and dwellings in informal settlements, which they 'lease' to tenants. They are also involved in cash transactions as dwellings or plots exchange hands for prices which are subject to market speculation as in the formal markets. According to one key informant who is a City official: *"... these people are very clever man, they can use different names, or they can allow the tenant to have their name registered, but the moment we focus on that area, we put numbers in that area, that person is evicted!* (09/04/2016: Kuilsriver, Cape Town). According to participants, these landlords who grab as many plots of dwellings as they can, wield some political power or financial influence and they use the loopholes in the system. This candidate only managed to speak to one such key informant, who claimed to be investing for the future of his children. Inasmuch as only one 'petty' developer was interviewed, this study made use of focus group discussions to triangulate the claim that informal landlords were accumulating pieces of land though the use of political and social influence.

Other secondary data examples show that they get the plot and then subdivide and construct as many informal dwellings as they can, where they charge rent - as in the

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case of Zandspruit in Johannesburg (LEAP, 2005) where it was found out that local *mashonisas* (loan sharks) were also involved in informal land markets. This can be interpreted as a new form of 'accumulation', this time by local 'entrepreneurs' who use public or private land to amass riches. In another widely reported case following the Lwandle evictions, the media reported that parcels of land which belonged to SANRAL had been sold to the poor, while the leaders claimed that it was simply 'handling fees'(Ndifuna Ukwazi, 2014). This is akin to slum-lords who sell parcels of land which belongs to either the State or is privately owned.

8.4 Exclusion, Urban Land Tenure, Water and Sanitation Services

8.4.1 Accessing Urban Land for the Poor

It is difficult for the poor to easily access urban land for human settlements in City Cape Town due to high demand and pro-market polices. Study sites revealed that informal settlements live in highly overcrowded peripheral areas which are located far from economic opportunities (Turok, 2012). Kensington suburb which is located closer to the central business district (CBD) of the City has, on average, households with higher income (Chapters Six and Seven) and sub-letting tenancy arrangements. On the other hand, Nkanini which is located over 35 kilometres from the CBD has a higher number of poorer households who rely on State assistance. Respondents in informal settlements indicated that accessing land was difficult and contestations surrounded availability of land.

In an attempt to access scarce land in urban areas like Cape Town, the poor end up accessing land in areas demarcated for eco-tourism, reserves or wetlands. The study found that in its pursuit for 'Global Biodiversity Hotspot', the City of Cape Town perceives urban expansion as a threat to the patterns and processes of this exceptional landscape and biodiversity (City of Cape Town, 2012, p. 1). This reveals debates around bio-politics (Li, 2009; Du Toit, 2017), where there is thrust towards 'planetary survival' which is used to ensure deprivation of land and dispossess the poorer people. Through an in-depth interview with one of key informants, an official argued that "*...look, there is no way we can put services, we are not allowed to put services in environmental or nature reserve area, environmental laws don't allow that. The only thing we can do is that here (drawing) - in this space, there is services provided*", (09/04/2016: Kuilsriver, Cape Town). The key implication of this argument is that

according the City's environmental policies, there is no way services can be provided in areas deemed environmentally sensitive, reserves or wetlands. While it is important to pursue international standards on the environment and eco-tourism, these policies fail to also cater for the poor and excluded, who are left to fend for themselves or 'let die'. For Li (2009), letting die does not become an oversight in this case, but a calculated move.

8.4.2 Complex Tenure Application Process

Social tenures are common in both formal (Kensington and Langa) and informal (Nkanini and Mshini Wam) settlements. This study has already demonstrated that there are no clear-cut and definitive tenure arrangements in all study sites. The study also showed that only in Kensington and a certain extent Langa, respondents indicated that they had registered title deeds. Hornby, et al. (2017) also pointed out that 59.7% (30.72 million people) of the South African population lived in dwellings with no formal title deeds. In addition, those who initially had them eventually slipped into informality due to informal transactions and un-updated transfers (Hornby, et al. 2017). Table 34 in Chapter Seven showed that 63.5% of the respondents in Kensington only claimed to possess valid title-deeds. Through focus group discussions some of the participants indicated that not all households could afford to get a title deed.

This could be due to several reasons, including the expensive and complicated use of conveyancers, or the house could be in arrears due to rates and services, hence the requirement to clear the arrears before transferring the property. However, those who intend to formalise or acquire a title deed still had to go through an expensive and onerous process. Figure 40 below is a typical process an applicant has to undertake to access a title in a greenfield development.

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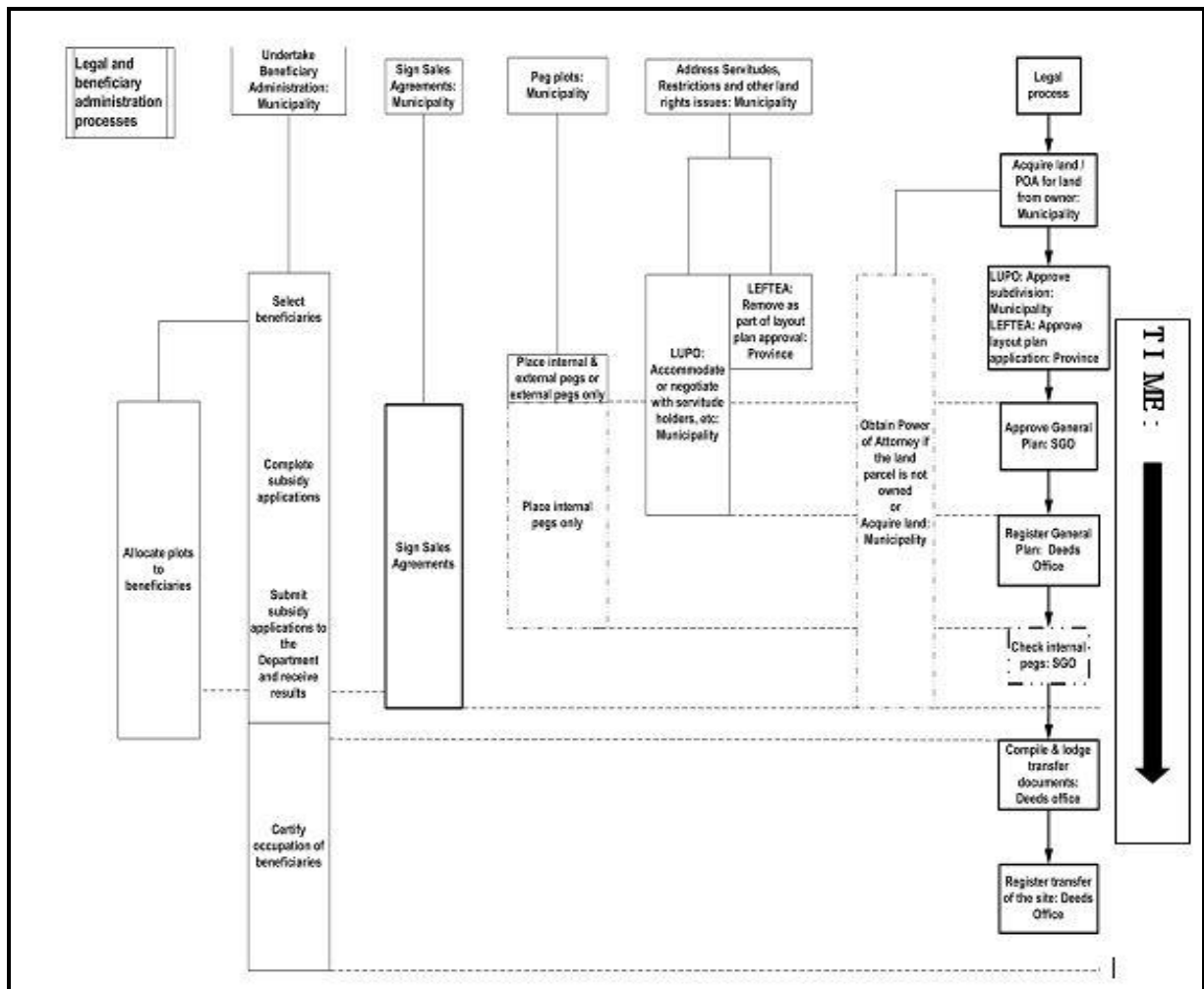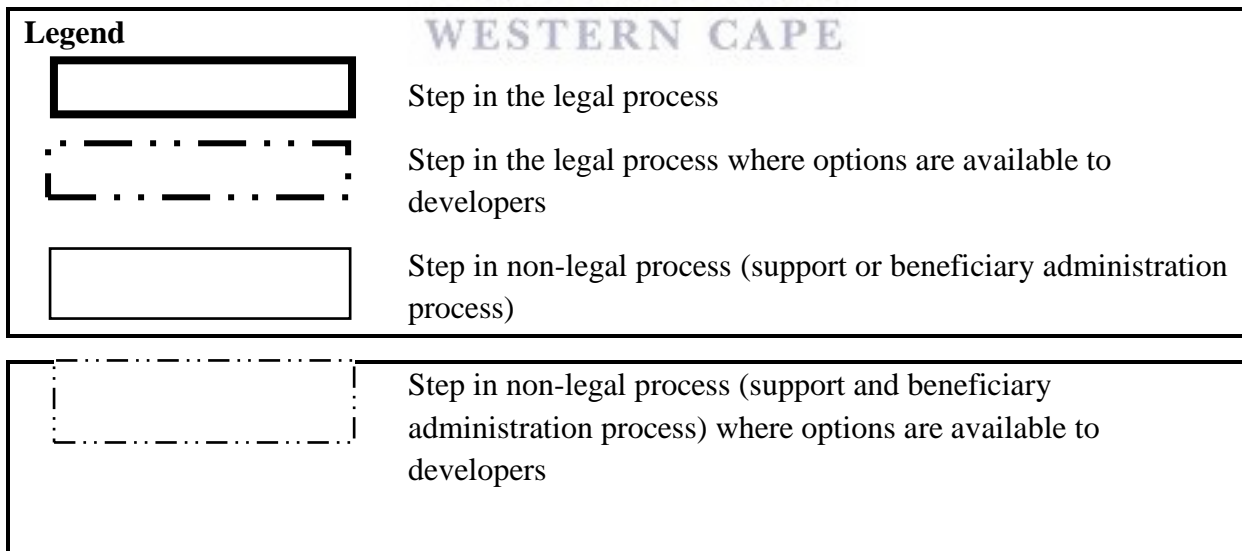
Figure 40: Tenure Transfer Process
Source: Western Cape Government (2014)

The Western Cape Provincial government also argues that municipalities have been hamstrung by tenure transfer processes (Western Cape Government, 2014).The

http://etd.uwc.ac.za/

major reasons for failure to transfer title in time are a breakdown in the legal process and in some cases insufficient time and/or effort dedicated to the legal process. The recent policy approved by the Western Cape provincial government sets 150 days as the benchmark between occupation and transfer of a subsidy unit (Western Cape Government, 2014). Huge backlogs and unresolved tenure issues continue to also trouble the City of Cape Town, especially in the Cape Flats (Butcher and Oldfield, 2009). A recent article in Business Live revealed that the Auditor General of South Africa reported that the Department of Human Settlements was failing to eradicate the backlog of title deeds, especially for subsidy houses (Magubane, 2017).

In the conceptual framework Chapter, arguments put forward by Ostrom (2010, 2014) reveal the neo-liberal insistence that only individual ownership of the commons fails to recognise other effective governance structures at play on the ground. For Ostrom (2010, 2013), Hardin's TOC and the Prisoner's Dilemma game (Kogut and Zander, 1996) portray humans as helpless, whose way out is to establish enclosures to ensure proper governance of commons. The study found that the process of applying and accessing title deed for a house or land is not only onerous and expensive, but designed in such a way that the poor are most likely not to access it. In Mshini Wam and Nkanini, none of the respondents had legal title deeds. While one can argue that these are already informal settlements, the situation also plays out in Kensington which is largely regarded as a formal suburb. Ostrom (2013) and North (1990) argue that local 'rules-in-use' rather 'rules-in-book' are more effective. In this case, the recognition of social tenures (Hornby, et al. 2017) in accessing urban land and related tenure rights could be effective in assisting poorer people. At the moment, the fact that there are conflicting agendas based on neo-liberalism and rights-based approaches, with the result that the poor, who cannot get formal titles, are shut off from accessing adequate water and sanitation services since these are provide as a 'package' in the cadastre approach.

8.4.3 Shared Water Point and Sanitation Facility Governance

The findings in all sites showed that there is sharing of water points by a significant number of households, with queues forming in the morning and late evening at standpipes in informal settlements such as Nkanini and Mshini Wam. During this write-up, the situation had become worse as the City of Cape Town had declared Level

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5 Water Restrictions, leading to pressure reduction as a measure to cut water use. The study found that water-uses go beyond basic household use to other forms of livelihood such as laundry and carwash services. With levels of unemployment higher in Langa (40.21%), Nkanini (38.54%) and Mshini Wam (27.30%) (including Joe Slovo Park), a significant number of respondents were involved in these various income-generating activities.

As part of progressive realisation of socio-economic rights, through its Free Basic Water Policy (which is based on the Constitution) the State provides 6000 litres of water per household per month, based on a household of 8 people. While this does not exclude households in informal settlements, there are mismatches on how this should be implemented at local government level. Planning ordinances and related prescripts may further complicate who gets serviced and on what grounds. With fewer functional water infrastructures, it is difficult to ascertain if households do indeed access the right amount of water. Additionally, if one considers low water pressure due to water restrictions and factor in the distance to the water point, the 6000 litres may not be achievable. Already a research conducted by Viljoen (2015) also showed that on average, respondents from informal settlements used about 40 litres a day and the key contribution was the distance households had to walk to the nearest water point. Methodologically, the survey did not ask the actual amount of water the household used, which would have helped to illicit this crucial data on the actual amount of water used by households. However, focus group discussions, secondary data and other supplementary questions on the level of satisfaction helped to show that households receive far less than the basic amount prescribed in the policy. In other words, it implies further restriction of already meagre supplies for residents in informal settlements and backyard dwellings. Despite its intention to ensure access to services, the human rights approaches such as the Free Basic Water Policy operate in a market-based system, which is designed for competition and exclusion.

Sharing of services between tenants and landlords is common in all sites. For instance, in Kensington landlords with backyard dwellers share their water and sanitation facilities, even when they are located in the house. However some tenants alluded to the fact that there are too many rules imposed by landlords as to when and how to access water or use of the toilets. Boundary rules according to Ostrom (2013) determines who can access a particular service and at which times. These rules might

be written down or not. In the case of the study, participants in Kensington agreed that there ought to be particular rules for when tenants can, for example, have a shower, wash laundry and conduct other activities.

Another aspect emerging from the study is that accessing water and sanitation facilities is largely dependent on various issues. To physically access water or sanitation, means that the facilities that provide water (or sanitation) must be within safe, physical reach for all sections of the population, especially the vulnerable and marginalised (Earle, et al. 2005). The study sites revealed that this is not always the case, besides the fact that the facilities are located far away from most households, they are designed in similar fashion, with no consideration for the disabled.

8.5 Conclusion

This Chapter presented key findings and analysed them in the context of the conceptual framework and literature. The key findings were also viewed in the context of the methodology used and conclusions were drawn. Central to the discussion of these findings is that post-apartheid approaches to urban tenure policy reinforce exclusion, not only to housing and secure tenure, but also to water and sanitation services. Adoption of market-friendly policies is not only in contrast to the human rights agenda punted by the State and other international agencies such as the United Nations, but further alienates the poor it purports to care for. Urbanisation of poverty has resulted in mismatches between policies and reality.

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CHAPTER NINE: CONCLUDING URBAN LAND TENURE, TENANCY, WATER AND SANITATION SERVICES IN SOUTH AFRICA

Waiting for 'delivery' will not liberate us from our life sentence. Sometimes 'delivery' does not come. When 'delivery' does come it often makes things worse by forcing us into government shacks that are worse than the shacks we have built ourselves and which are human dumping grounds far outside of cities. 'Delivery' can be a way of formalising our exclusion from society. (Zikode and Nsibande, 2010).

9.1 Introduction

This thesis sought to develop a clear understanding of the link between tenure, tenancy (landlord/tenant) and water and sanitation services. Choosing the title 'Urban land tenure, tenancy and water and sanitation services' was based on two key issues. Firstly, the land question in South Africa has been generally biased towards rural land and urban land which has been largely viewed as a 'housing issue'. Urbanisation discourse has raised pertinent questions on the racially skewed urban land question. With the majority of urban areas experiencing rapid growth, tenure issues arise coupled with what many analysts have considered to be 'apartheid cities'. Meanwhile, other scholars such as Satterthwaite (1997) have also observed that rapid urbanisation in developing countries is also viewed as 'urbanisation of poverty'. The research also brings into perspective three different aspects (tenure, water and sanitation services) which have previously been studied in isolation.

9.2 Limits of the Thesis

It is important to note that this thesis can, however, offer only a partial explanation of some of the insights and underlying processes that explain urban land tenure, tenancy, and water and sanitation services in South Africa. The main aim of trying to establish linkages between urban land tenure, tenancy and water services provided challenges methodologically as both areas are approached separately in both policy and practice.

Having started as part of a bigger Water Research Commission-funded project, research design and identification of the particular case study sites within the City of Cape Town limited the study to a particular geographical area which has its own dynamics, and additionally, the study was restricted to a single period of which urban land tenure and water services is far complex than this. Initially the project intended to cover tenure arrangements for both rural and urban areas, but due to difficulties which arose, this thesis decided to focus on only the City of Cape Town. The study sites chosen using the criteria outlined in Chapter

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Five were far more complex than what secondary data indicated, with populations far much bigger than the sample size initially chosen. The period between household surveys (2014) and semi-structured interviews was also long as this was supposed to be part of the project, resulting in changes as this candidate encountered new situations in the field. The City of Cape Town itself is also currently implementing SPLUMA, which was tipped to transform planning law, with social justice, redress and transforming the apartheid city being key. While media reports on inner land being allocated for income households, this does not impact policy direction that much.

Another key area this thesis did not address is the issue of gender in terms of tenure, tenancy and water and sanitation services. This is an important area given that this candidate's findings also revealed some neo-customary practices within social tenures, particularly in informal settlements.

9.3 Overview of findings

This section summarises the main findings in terms of the five research questions posed providing some evidence for the answers from the findings.

9.3.1 Research Question One

How do the urban households under social tenures access and hold urban land for housing and other purposes? What are the historical and current processes affecting such access?

Chapters One and Four provided insights into the policy context in which urban land tenure, tenancy, water and sanitation services is shaped in democratic South Africa. Chapter Four showed that at the core of the unfolding patterns of urban land tenure and tenancy is the use of exclusionary legislative frameworks and policies that result in exclusion and denial of access to land and related services. Years of colonial dispossession, leading into apartheid, through what one may term 'bloody legislation', led to mainly black South Africans being separated, excluded and denied access to land. After the advent of democracy the State attempted to redress and provide access to urban land, mainly through housing, as well access to services, mismatches at plot level continue to play.

9.3.2 Research Question Two

In what ways are the poor directly or indirectly excluded from access to adequate water and sanitation through tenure arrangements often not officially recognised? In what ways do the unfolding patterns of urban land tenure and tenancy affect water users' access to water and sanitation services at plot level, on the one hand, and institutional pre-emption and/or reaction in terms of water and sanitation services development planning and delivery in various types of tenure and tenancy in urban residential areas, on the other?

Chapter Seven showed that City authorities, who are largely driven by the neo-liberal agenda, continue to enforce exclusion of poorer people in urban spaces. This is done through insisting on formal titling, which the study showed comes as a 'package' of services (for example water and services). Informal settlements are largely regarded as 'illegal' therefore cannot get services, or if so, only the bare minimum. Failure to recognise and incorporate other social tenures results in the majority of the City residents operating outside the cadastre system, subsequently impacting on access to services. While there is an attempt to provide a differentiated approach to providing water and sanitation services to informal settlements (e.g. Servicing Strategy Categories within the City of Cape Town, Table 7.8), the approach is inadequate and continues to separate service provision depending on the tenure arrangement. There have been attempts to also provide backyard dwellers and other tenants with additional services, but all this remains at the pilot stage.

9.3.3 Research Question Three

What are the rules and institutions governing urban tenure arrangements and how does the effectiveness of water and sanitation services delivery differ in different tenure settings?

There is evidence of rules-in-use and rules-in-book (Ostrom, 2013; North, 1995). This plays out by transcending simple binary representations in the context of urban land (formal and informal) and water and sanitation services delivery. Firstly, this study confirmed that the nature and type of tenure arrangement had a direct relationship to access to water and sanitation. This relationship was confirmed by a chi-squared independence test (Table 42) according to which the degree of difference is 2 [(p=0.007

N.78]. Qualitative findings further clarify that tenants without the owner present were most likely to have unimproved water and sanitation services. The result is a bias towards formal tenure arrangements, supported by the technicist adherence by City authorities. This is at the expense of the majority of poor households who live under social tenures, hence rules-in-use, but not officially recognised. This results in an inadequate and poor quality supply of water and sanitation. While Scott (2011) made similar findings in her doctoral thesis in Dakar, Senegal, she focussed only on the relationship between urban land tenure, tenancy and sanitation. On the other hand, this study also includes water services.

Chapters Four and Seven showed that the City of Cape Town is not very effective in providing water and sanitation to households in informal settlements. The conceptual framework showed that current policies are largely based on neo-liberal policies. These policies contribute to 'letting die' of the surplus population (Li, 2009). The national land policies, housing, water and sanitation are largely formulated around the 'cadastre' tenure system, provision of water and sanitation to titled, legally recognised and user-pay customer. Subsequently, anyone outside the 'formal' system (which is wrongly considered along binary lines: 'formal', informal, 'legal' or 'illegal') is forced to attempt to legalise, or 'wait till we find a place for you' through provision of 'uniform products' (Huchzermeyer, 2003) in the form of subsidy houses. This takes many years to access, however having received a house, recipients still have to wait for the title deed, while in the interim, informal transactions happen, plunging the system further into 'chaotic other'.

Another key finding is that the City of Cape Town's policies include unwillingness to provide services (such as water and sanitation) on land set aside for servitude, wetlands or other areas deemed environmentally sensitive, now 'illegally' occupied. Bio-politics of planetal survival according to Li (2009) leave the poor landless and homeless, while those championing them immediately forget about them. In Nkanini and some parts of Khayelitsha, some households cannot be provided with flush-toilets because the 'ground is unstable', 'wetland' areas, private land or falls under servitude.

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9.3.4 Research Question Four

Given that constitutional imperatives advocate for access to water and sanitation as basic human rights, in what ways are these rights accessed or denied?

There is apparent ambiguity in the legislative and policy framework, as there is an attempt to accommodate divergent economic and political trajectories, while 'situated within a liberal frame' (Langford, 2014, p. 4). Municipal policies are largely market-based and reliance on revenue collection, through rates and taxes, selling of land to private developers and maintaining the structure of the apartheid city have been shown in Chapters Two, Three, Four, Six and Seven. The study suggests that as municipalities are highly focussed on revenue collection and 'financial health' of the city, informal settlements become a burden and therefore should be eradicated. Disparities in access to services between those living under formal tenure arrangements and social tenure are evident. Slightly higher income neighbourhoods such as Kensington in this study, with more households who possess title deeds, receive higher quality services which they pay for, unlike informal settlements, where services are supposedly 'free', yet access is hampered by distance, quality and other limitations.

There is acknowledgement that adoption and slight attempts to implement upgrading of informal settlements might be changing the situation. From the context of the study, Mshini Wam went through a process of re-blocking, which was a collaboration of the City of Cape Town and partner NGOs. The main challenge is that beneficiaries of such projects remain with social tenures, which is not fully recognised by City or the State. This hampers tenure security and leaves households more prone to evictions.

The findings of this study are similar to the ones carried out by Oldfield and Stokke (2006). Respondents occupying council rental stock in Langa did not fear evictions, even though the actual tenancy arrangements became murky as apartments are sold or informally exchanged. Evictions are rare in Langa despite huge rental arrears, mainly because of strong mobilisation and civil society activism (Oldfield and Stokke, 2006). Respondents in Langa old flats felt averagely secure in their tenure, even when they did not possess any lease, legal document or they were in arrears in relation to eviction by the City of Cape Town.

The study also found that administrative tenure registration, instead of simply insisting on being legal (formal), is being used in pilot projects around the City. In the re-blocked informal settlement of Mshini Wam, some respondents admitted that they felt secure because they had been issued CORC tenure letters. Although not under this specific study, Monwabisi Park residents were also issued with some letters of occupation after enumeration by local NGO VPUU in conjunction with the City of Cape Town. While these partnerships are noble, they do little to deal with the majority of the informal settlements. The fact that these organisations and the City of Cape Town have conflicting agendas, means that sustainability of such projects is not granted.

9.3.5 Research Question Five

In light of political dynamics around rapid urbanisation in post-1994 South Africa and the possible associations between land tenure, tenancy and water and sanitation services delivery issues, who are the major players and what are their key interests?

Chapters Four and Five have shown that rapid urbanisation has far outpaced service provision across the global South. The South African context is further complicated by more than three-hundred years of colonialism and apartheid which were marked by dispossession, separation and exclusion (Marx, 1867; Mamdani, 1996). Pre-democracy, institutions of the State were used to dispossess and exclude mainly black South Africans, but this has continued through the adoption of neo-liberal policies in democratic South Africa. With the State's wider policy direction towards individual titling acquired through markets, its Constitution provides for progressive realisation of socio-economic rights. Rapid urbanisation has been fraught with inconsistences, with the national government calling for eradication of informal settlements (Huchzemeyer, 2013) on one hand, while rights-based approaches are preached on the other. The study also showed that civil society mobilises the poor to claim their rights. Much of this fizzles down into what Scott (1985) calls 'weapons of the weak'. The poor fail to leverage power in order to get the attention of the political and economic elite inasmuch as some of the social pacts they forge with local stakeholders (Habib, 2014) fail due to lack of consistency and also the use of State power to enforce 'bloody legislation'. Few cases have gone through litigation, but the majority have mainly resulted in the poor

losing on the little they had acquired. Water and sanitation services continue to be 'packaged' as part of the cadastre system, which excludes social tenures such as in informal settlements.

Scott's doctoral study also discusses the challenges of providing sanitation services in the context of rapid urbanisation. Although her study can easily be applied in a situation like South Africa, it does not, however, cater for the complex urban landscape in South Africa. Racial spatial planning and land use have not effectively changed in post-apartheid South Africa.

9.4 Explaining Urban Land Tenure, Tenancy, Water and Sanitation Services

The urban land question needs to be located in the historical context. Colonial past, apartheid and current processes are intertwined, largely characterised by dispossession, separation and exclusion. Reducing the urban land tenure to a housing issue as previous studies have done runs a risk of missing the clear picture. Approaches to urban land tenure are largely viewed within formal titling, which depends on the cadastre system. The current policy and legislative framework does not fully embrace social tenures, resulting in an edifice (Hornby, et al. 2017). This scenario impacts water and sanitation services directly as the cadastre system provides these as a 'package'. This study has shown that residents in formal settlements experience better water and sanitation services; they also have the services located within their homes or yards, unlike informal settlements where services are located at the edge of the settlement. Tenants are also faced with limitations in accessing full services, due to inadequate services, particularly in areas with Water Management Devices, backyarders or even within main houses in formal settlements. Mismatches arise as the authorities seek eradication of informal settlements on one hand, while on the other they promote progressive access to socio-economic rights. The poor, who according to the study occupy informal settlements, are 'let die' as policies work for the financially affluent. Nevertheless, providing services within 200 metres of dwelling, while being a national standard, misses the point as services are meant to serve rather than endanger the lives of mostly women, children and the aged or disabled.

9.5 Implications for Urban Theory, Policy and Practice

This study has raised several issues in various chapters. Firstly, the fields of land tenure, water and sanitation have largely been studied on their own, with little or no relationship to one another. For Turok (2016) this sectoral decision-making has outweighed

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cross-cutting strategies and integrated spatial planning and little intervention in the land market to drive the pattern of urban growth. Through viewing these broad areas of study using Marx's PA (1867) and Hardin's Tragedy of Commons (1968) as broad conceptual bases allowed this thesis the ability to weave arguments within a Marxist and neo-liberal lens. What Marx's PA brought into the arguments is the process of dispossession, separation and exclusion. Further insights from Li's (2009) 'let die' and 'let live' concept developed the arguments into how certain policies allow prosperity for others while impoverish the 'surplus'. On the other hand, Hardin's TOC provided a counter argument on enclosures, private property and current neo-liberal agenda. While urban land tenure, water and sanitation services could not be simply explained in binary conceptions, understanding of 'informality' in governance allowed the thesis to bring in North (1990, 1995) and Ostrom (2010, 2013). Scott's (1985) 'weapons of the weak' was key to explain that the urban poor, who are mainly excluded in accessing land, water and sanitation are helpless, but through 'rights to the city' (Lefebvre, 1991) they are able to mobilise, and contest.

The literature section highlighted South Africa's historical urban land question and how 'blood legislation' was used to dispossess, separate and exclude. The apartheid city, reflected in the current spatial pattern of the City of Cape Town and other South African cities, reflect a legacy which has further been enhanced by neo-liberal policies. After the banning of oppressive apartheid laws and subsequent rural to urban migration, the planning law has remained largely rigid and Western. Chapter Five showed that urbanisation is not a South African phenomenon, but widespread as shown in Davis (2006), yet the South African experience has been more challenging because of social inequality, slow economic growth, history of segregation and systemic exclusion of the majority of people (Turok, 2016). Findings revealed that South African urban areas which operate largely within neo-liberal policy framework, exclude the poor in terms of access to land (and housing), water and sanitation. Other critics (Huchzermeyer, 2011; Turok and Borel-Saladin, (2015) argue that the absence of explicit policy addressing urbanisation at both local or national level has forced people to find their own solutions by crowding informal settlements and backyard shacks. This study has shown that the situation is far more complex than this, and that simply adding another complex policy which is not guaranteed to be implemented does not solve the challenges. Simply proposing policies oversimplifies urban land tenure issues and access to services, but there is need to recognise the existence of social tenures and how these can be incorporated and strengthened to improve the lives of the urban poor. In addition, a

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household's tenure status determines its level, of access to quality water and sanitation services.

9.6 Areas for Further Research

In the context of rapid urbanisation in some South African urban areas, it is crucial to understand how poor households access urban land. Given current demands due to in-migration and population growth, there is need to find out different pathways and alternatives through which municipalities release land for housings and income-generating activities.

This research revealed complex tenure (and tenancy) arrangements in urban areas. It will be important to find out the nature of the relationship between rural land tenure and water and sanitation services. Recent reports suggest that some higher income households are moving into peri-urban areas, where the land is under customary tenure systems to avoid paying for services such as water and sanitation. There is need to explore ways in which the State or cities fund ligation costs for the evictees, as has been piloted by surprisingly highly capital-driven cities such as New York.

9.7 Closing Statement

This thesis started this final Chapter with this statement: Waiting for 'delivery' will not liberate us from our life sentence. Sometimes 'delivery' does not come. When 'delivery' does come it often makes things worse by forcing us into government shacks that are worse than the shacks we have built ourselves and which are human dumping grounds far outside of cities. 'Delivery' can be a way of formalising our exclusion from society. (Zikode and Nsibande, 2010).

The thesis sheds light on the current complex tenure situations associated with rapid urbanisation in developing countries. The State's intervention, according to the media release by shack dwellers' social movement Abahlali baseMjondolo (Zikode and Nsibande, 2010) has been to further entrench and formalise exclusion of the poor from broader society. The policies guiding urban land tenure and water services are exclusionary and result in letting die of the poor majority (Li, 2009). By professing human rights-based approaches, while operating within largely neo-liberal framework, contrasting agendas result, leaving the poor in insecure and social tenures (branded informal) excluded from accessing adequate services. The need to ensure tenure rights and security for the urban poor and the promotion of a progressive realisation of quality water and sanitation services has been at the centre of this study. The recent agreements at the UN-Habitat organised New Urban Agenda (Habitat III)

continue to provide conflicting agendas in addressing exclusion of the poor, particularly in the informal settlements, favelas or bhastis. The ability to create sustainable urban areas can only be realised if there are holistic approaches, reached through highly participatory strategies.

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WESTERN CAPE

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ANNEXURE A: HOUSEHOLD SURVEY

RESEARCH TITLE: TOPIC: URBAN LAND TENURE, TENANCY AND WATER AND SANITATION SERVICES DELIVERY IN SOUTH AFRICA
HOUSEHOLD SURVEY
DARLINGTON SIBANDA: PHD STUDENT(2841632)
PLAAS: UNIVERSITY OF THE WESTERN CAPE

STUDY SITE (*Please write the study site*) :			
1. How old were you on your last birthday?			
2. Are you the head of the household?	No	Yes	Don't Know
	0	1	99
3. In your household, how many children are there under the age of 18? *[Interviewer: Enter two digit number. Don't Know = 99]*			

4. What is your home language?	
English	1
Afrikaans	2
Xhosa	3
Sesotho/Sotho/South Sotho	4
Setswana/Tswana	5
Pedi/Spedi/North Sotho	6
Zulu	7
Shangaan	8
Ndebele	9
Swazi	10
Venda	11
5. What is your religion, if any?	
None/Agnostic/Atheist	0
Muslim	21
Christian	2
Hindu	3
Traditional religion	4
Other	5

6. What is the highest level of education you have completed? _____*[Code from answer. Do not read options]*						
No formal schooling/informal schooling/some primary schooling	Primary school completed / Some high school	Secondary school completed	Post-secondary qualifications e.g. diploma from technikon or college	University degree completed	Post-graduate	Don't know *[Do not read]*
1	2	3	4	5	6	7

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		No	Yes
7. Do you have a job that pays cash income?		1	2
8. (IF YES) Is it full time or part time?		1	2
9. Are you presently looking for a job (even if you are presently working)?		1	2
10. What additional sources of income do your household have?			

	A First mentioned response	B Second mentioned response	C Third mentioned response
None	0		
Other household members also work	1	1	1
Old-age pension	2	2	2
Child care grant	3	3	3
Foster care grant	4	4	4
Disability grant	5	5	5
Board and lodging	6	6	6
Rental Income	7	7	7
Assistance from relatives not living in the house	8	8	8
OTHER: SPECIFY			
Don't know *[Do not read]*	99		

11. ASK IF EMPLOYED: What is your present occupation?

WRITE IN_____

12. What is the total income of your household? HAND RESPONDENT CARD

No regular income	Less than R1000	R1001-R2000	R2001-R3000	R3001-R6000	R6001-R8000	R8001-R10000	R10 000+	Refused	Don't know [DNR]
97	1	2	3	4	5	6	7	98	99

13. Respondent Gender	
Male	1
Female	2

14. Respondent's race	
Black	1
White	2
Coloured	3
Indian	4
Could not tell	99

15. Does the respondent have electricity in the house?	Yes	No	Don't Know [DNR]
	1	2	99
16. (IF YES). Is it through a meter or a wire?	Meter	Wire	Don't Know [DNR]
	1	2	99

17. Which of the following best describes the main dwelling unit that this household occupies?	
House (brick structure)	1
Flat in block of flats	2
House/flat back yard	3
Informal dwelling in backyard	4
Informal dwelling in informal settlement	5
Other [Specify]: _____	Post code

18. Was the roof made of: ONE CODE ONLY	
Metal, tin, zinc	1
Tiles	2
Thatch	3
Plastic sheets	4
Asbestos	5
Multiple materials	6
Could not see / could not tell	7

19. Which of the following best describes the housing situation of this household?	
Own	1
Rent	2
Other [Specify]: _____	
Post code	

20. IF RESPONDENT IS THE OWNER, how did you obtain your house?	
Purchased it.	1
From the government but had to pay a subsidy	2
From the government and was not required to pay a subsidy	3
Left for by family member or relative	4
The first to move in the current occupied land	5

21. How long have you lived in your house/rented house?	Less than 2 years	2 to 5 years	6 to 10 years	11 years and above
	1	2	3	4

22. Has your household ever been evicted from the land your dwelling is on?	No	Yes	Don't know
	0	1	99
23. What is the tenure status of your plot/house?			

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Free hold	1
Lease hold	2
Servitude	3
Sub-surface rights	4
Don't know	5

24. Is your property registered by any of the following?	
Deeds Office	1
Municipal Register	2
Community register	3
Other (VPUU/CORC etc.)	4
Don't know	5

25. Overall, how satisfied are you with your house?	Very satisfied	Fairly Satisfied	Not very satisfied	Not at all satisfied
	1	2	3	4

26. IF DISSATISFIED: What makes you feel dissatisfied? DO NOT PROMPT. MULTIPLE MENTIONS POSSIBLE. ACCEPT UP TO THREE RESPONSES.			
	A WRITE IN _____ (1st response)	B WRITE IN _____ (2nd response)	C WRITE IN _____ (3rd response)
Cold	1	1	1
Crime	2	2	2
Dirty area / it's next to a rubbish dump / sewerage	3	3	3
Fire hazard / it can burn down at any time	4	4	4
Flooding	5	5	5
Illegal electricity connection / dangerous electrical connections / no electricity	6	6	6
Incomplete/ not properly completed	7	7	7
Infrastructure	8	8	8
It doesn't have a proper toilet / No toilet	9	9	9
It is built from cheap material / it's made of asbestos	10	10	10
It needs to be renovated	11	11	11

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It sweats	12	12	12
It's not a brick house / it's not a proper house / it's a shack	13	13	13
It's not safe	14	14	14
Its rotten	15	15	15
Its small	16	16	16
Its temporary	17	17	17
Its unhealthy / we get sick easily	18	18	18
Its unstable	19	19	19
Its unsuitable	20	20	20
Leaking	21	21	21
Surrounding area / the environment / it's in an Informal settlement	22	22	22
The house is crumbling down / it is full of cracks/ It is poorly constructed/substandard	23	23	23
The house is not in good condition	24	24	24
The premises on which it is built	25	25	25
The rent is expensive / it's not my house	26	26	26
The roof is open	27	27	27
The taps are broken	28	28	28
There are no roads / poor roads	29	29	29
There's no privacy	30	30	30
Water / no water supply in the house	31	31	31
NA – Satisfied	97	97	97

27. Has your household benefitted from an upgrading programme	No	Yes	Don't know
	0	1	99
28. If your response is <u>YES </u>above please state responsible organisation……………………………………………………………………………………..			

29. How has your household benefitted from the upgrading programme?	
Improved tenure security	1

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Better dwelling	2
Better access to water and sanitation services	3
Less crime	4
Other (specify)	5
No real change	6

30. Where is your main water source?	Inside house	Inside yard	Outside yard	Don't Know [DNR]
	1	2	3	99

31. Where is your sanitation facility?	Inside house	Inside yard	Outside yard	Don't Know [DNR]
	1	2	3	99

32. What are the main uses of water in the household?
DO NOT PROMPT. MULTIPLE MENTIONS POSSIBLE. ACCEPT UP TO THREE RESPONSES

	A. Write in _____ First Response	B. Write in _____ Second Response	C. Write in _____ Third Response
Drinking	1	1	1
Cooking	2	2	2
Bathing	3	3	3
Washing clothes	4	4	4
Toilet flushing	5	5	5
Cattle	6	6	6
Sheep/ goat	7	7	7
Trees	8	8	8
Home garden	9	9	9
Field irrigation	10	10	10
Fields	11	11	11
Fishing or aquaculture	12	12	12
Brick making	13	13	13
Food processing sale	14	14	14
Other enterprise (specify)	15	15	15
Ceremonial	16	16	16
NA	99	99	99

For mainly formal households (and tenants in formal dwellings)

33. Do you pay for your water bills?	Yes	No	Don't know
	1	2	99

34. If you pay for water, please indicate on average, how much do you pay per month?

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Below R100	R101-200	R201-300	R301-500	R501 and above
1	2	3	4	5

35. Are there are water management devices?	Yes	No	Don't Know
	1	2	99

36. Have you made any investments in water and sanitation in the household?	No	Yes	Don't know
	0	1	99

37. Are you willing to invest in water and sanitation infrastructure within your plot?	Yes	No	Don't know
	1	2	99

38. If you unwilling to invest in water and sanitation infrastructure, in your view, whose responsibility is it?				
National government	Municipality	Owner of property	Shared Responsibility	Don't know
1	2	3	4	99

39. Approximately how much in rands, have you spent in water and sanitation infrastructure on your plot?					
Below R500	R501-R1000	R1001-R2000	R2001- R3000	R3001- R4000	R5000 plus
1	2	3	4	5	6

FOR BACK-YARD DWELLERS/TENANTS

40. What is the status of the backyard tenant?	
Rental	1
Does not pay rent	2
Does not pay rent – family members	3
Rent-paying family members	4
Other	5

41. How would you rate access to water and sanitation?				
Excellent	Good	Satisfactory	bad	very bad
1	2	3	4	5

42. What is the condition of your sanitation facility?				
Excellent	Good	Satisfactory	bad	very bad
1	2	3	4	5

43. Do you pay water separately from your rent?	Yes	No	Not sure
	1	2	99

44. Do you face any difficulties in paying your rates?	Yes	No	Not sure
	1	2	99

45. In your view, who is responsible for water and sanitation infrastructure in your household?				
Government/Municipality	Landlord only	Tenants only	Landlords and Tenants	Don't know
1	2	3	4	99

ALL RESPONDENTS

46. Are you a member of any organisation (political party/CBO/NGO)	
Political Party	1
The Community Policing Forum in your community/neighbourhood	2
The Street Committee in your community/neighbourhood.	3
The South African National Civic Organisation (SANCO)	4
Could not tell	99

47. How well or badly would you say local government in your area is handling the following matters, or haven't you heard enough to say? *[Interviewer: Probe for strength of opinion]*		Very Badly	Fairly Badly	Fairly Well	Very Well	DK / Haven't heard enough *[DNR]*
A.	Consultation in your community?	1	2	3	4	99
B	Making local government programmes known to you?	1	2	3	4	99
C	Providing effective ways to handle complaints about councillors or officials?	1	2	3	4	99
D	Performing their tasks?	1	2	3	4	99
E	Managing local government programmes	1	2	3	4	99
F	Showing that they care about the community?	1	2	3	4	99
G	Being honest in handling public funds?	1	2	3	4	99
H	Being fair in allocating services?	1	2	3	4	99
I	Being fair in allocating employment opportunities?	1	2	3	4	99

48. Do you ever get together with others to make your ward councillor listen to your concerns about matters of importance to the community?	Have Never	Have done this once	Have done this a few times	Have done this often	Don't know *[DNR]*
	1	2	3	4	

49. Political Representative		Almost all of the time	At least weekly	At least once a month	At least once a year	Never / It is not necessary	Don't know *[DNR]*
A.	How much time does your local councillor spend in this area?	1	2	3	4	5	99
B.	How much time does your Member of Parliament spend in this area?	1	2	3	4	5	99

50. Do you know the name of:

		Don't Know	Know But Can't Remember	Incorrect Guess	*Correct* Name
A. Your Ward Councillor		99	1	2	3
B. Your Member of Parliament		99	1	2	3

51. INTERVIEWER: Do you have any other comments on the interview? For example, did anything else significant happen during the interview?	
No	1
Yes: [Explain]	2

THANK YOU. ENKOSI. NGIYABONGA

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ANNEXURE B: KEY INFORMANTS

DARLINGTON SIBANDA (2841632) PHD STUDENT, PLAAS, UNIVERSITY OF THE WESTERN CAPE

RESEARCH TITLE: TOPIC: URBAN LAND TENURE, TENANCY AND WATER AND SANITATION SERVICES DELIVERY IN SOUTH AFRICA

This study will investigate and examine linkages between urban land tenure, tenancy and water services delivery in South Africa. The research will aim to develop a clear understanding of the relationship between land tenure systems, tenancy arrangements and water service development planning and delivery in the rapidly changing urban milieu in South Africa.

INTERVIEW GUIDE FOR MUNICIPAL AND GOVERNMENT EMPLOYEES

DATE:	
AREA:	
LOCAL MUNICIPALITY:	
WSA:	
RESPONDENT NUMBER:	
INTERVIEWER NAME:	
CAPTURED BY:	

POLICY BACKGROUND AND MANDATE OF THE CAPE TOWN METROPOLITAN MUNICIPALITY/PROVINCIAL GOVERNMENT

1. Outline the mandate of the municipality/department in terms of regulating land tenure and tenancy.

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2. What are the key policies the municipality/department utilises to execute its mandate relating to land tenure and tenancy?

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3. In your view, are there any policy shortcomings that affect the municipality's/department's ability to achieve its mandate relating to tenure and tenancy?

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4. Are there any upcoming policies which might affect or influence your mandate in relation to land tenure and tenancy?

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The status of housing and informal settlements

5. How many informal settlements are located in the Cape Town Metropolitan municipality?

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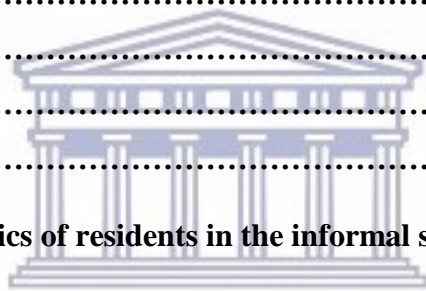
6. What is the current statistics of residents in the informal settlements?

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7. State the actual (or estimated) number of residents in the backyard housing sub-sector.

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8. What strategies are the Cape Town Municipality taking in order to upgrade or eradicate (or mix of approaches)?

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9. What opportunities and challenges do you meet when executing (8) above?

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WATER SERVICES IN LOW INCOME NEIGHBOURHOODS AND INFORMAL SETTLEMENTS

10. How would you characterise the overall state of water services planning and delivery in urban areas within the Metropolitan Municipality? (Any best and worst cases?)

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11. What is the status of water service delivery in your municipality?

    a. Would you say the achievements in water service provision are evenly spread across each town?

    …….…1 Yes ..……2 No

    b. IF NOT, which sections of the two towns are under-serviced and why?

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12. Are there any huge maintenance backlogs on water services infrastructure in the municipality?

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13. Does the municipality have problems of aging infrastructure, which results in a growing need for replacement, rehabilitation and/or restoration? …...1 Yes …...2 No

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14. Lack of funding has been cited as a major reason for the neglect of infrastructure in many municipal contexts.

    a. **Does the municipality have sufficient funding to meet the recapitalisation and/or rehabilitation costs?**

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    b. **Does the municipality have sufficient funding to meet the needs of a rapidly growing urban population?**

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15. Many municipalities/departments have lost valuable resources and skills during the post-apartheid transformation process. Does your Municipality have any Human Resource (HR) capacity constraints?

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16. Lack of reliable information on water services infrastructure hampers informed asset management and decision-making. Does the municipality have reliable data on water services infrastructure? …..1 Yes …..2 No

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17. If there is a burst pipe, for example:

  a. **How soon after the incident does the municipality receive this information?**

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  b. **How quick is the municipal response after receiving the incident report?**

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  c. **Who communicates with whom in such instances? (In other words, are there specially designated persons and communication channels within the residential areas and within the municipality?)**

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  d. **Are the incident reporting and response times the same for all residential areas (i.e. low, middle and high income; formal and informal)?**

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  e. **If not, what measures would ensure greater preparedness and responsiveness in the sub-optimal areas?**

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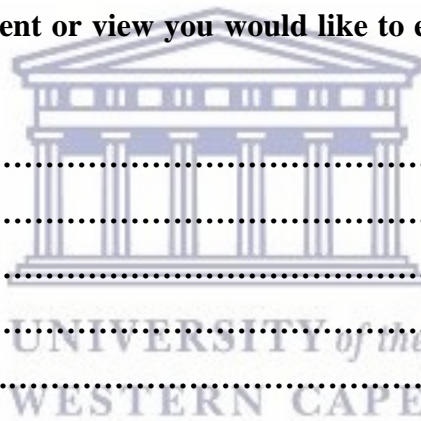
18. Observations have been made that some of the grievances expressed by consumers include inappropriate design of infrastructure, poor service levels and unsatisfactory solutions to prevailing water access problems. Have you picked up any such problems within this municipality? ….1 Yes ….2 No

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19. Have any concerns been expressed about the affordability of water services provided, particularly for the poor? ….1 Yes ….2 No. IF SO, the concerns have been voiced by whom?

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20. Is there any other comment or view you would like to express before the closure of this interview?

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ADDITIONAL QUESTIONS FOR SPATIAL PLANNING DEPARTMENT/DIRECTORATE

21. To what extent do historical spatial policies and planning (colonial and apartheid) impact the contemporary planning landscape?

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22. Are there any specific laws or policies which have a lasting impact on current urban land use and spatial planning? (Mention a few)
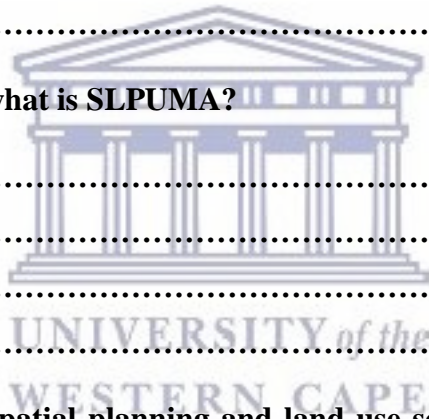
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23. In post-apartheid South Africa, has there been policy consistency in urban land use and planning?

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24. In your understanding, what is SLPUMA?

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25. Since SPLUMA places spatial planning and land use squarely on the shoulders of local government, are there any challenges you anticipate in its implementation?

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26. Do you have any suggestions to improve services (specifically water and sanitation) in informal settlements?

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ANNEXURE C: KEY INFORMANTS AND FOCUS GROUP DISCUSSION GUIDE

ADDITIONAL INTERVIEW GUIDES NGOS

1. Can you please briefly explain your work in the communities?

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2. Do you receive support from either the government or the municipality? Please explain?

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3. Do you work with other organisations?

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4. What is the state of water and sanitation services in the Cape Town Metropolitan Council?

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5. Is there any room for improvement? Specify…

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6. Have you led any community protest marches with regard to water and sanitation? Have they been effective?

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7. In your view, is there any link between having a title to your structure/dwelling or land and access to water and sanitation?

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8. What are some of the policies introduced by the State/local government which have direct impact on access to quality water and sanitation?

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9. What are some of your suggestions to improve access to water and sanitation for informal settlement residents and backyarders?

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10. Are there any ways to encourage to residents to invest in their own water and sanitation services?

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FOCUS GROUP DISCUSSION GUIDE

1. How do you access the land/structure you currently occupy?

2. Who was involved in the process?

3. What are ways in which a person can access land and/or structure in this neighbourhood?

4. What are constraints you face in access to land or structure?

5. What role does the City of Cape Town and other stakeholders play?

6. What is the tenure status of land or structure?

7. Where is water source located? How many households share it?

8. Describe the sanitation facility. Where is it located?

9. What constraints do you face in accessing either the water source or sanitation facility?

10. Whom do you think should address some of the constraints you raised?

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