

PART A: THE CONTEXT

CHAPTER 1 FRAME OF REFERENCE

- 1.1 An attractive province
- 1.2 Urbanisation in perspective
- 1.3 Trends in the Cape metropole
- 1.4 Responsibilities for housing
- 1.5 Legislation that may have an impact upon informal settlements
- 1.6 An Informal Settlements Programme

1.1 AN ATTRACTIVE PROVINCE

The Western Cape Province is an attractive settlement area for people from all walks of life, including those who do not have access to housing due to factors such as unemployment, poverty and housing shortages.

1.1.1 An Economically Attractive Area

1.1.1.1 The nature of the economy

The Western Cape Province covers about 10,6% of the land area of South Africa, it houses $\pm 10\%$ of the country's population and contributes more than 14% to its total economic output. The Province displays a diversified economy in which the service sector is playing an increasingly important role: 63,6% of the Gross Regional Product. The Province produces almost 20% of the total national agricultural product, some 14% of the manufacturing product and 18% of commercial products and services.

1.1.1.2 The main attraction

The main attraction of the Province's economy lies in the fact that during the 5 years prior to 2001 its average annual growth rate was 3,8% compared with the national figure of about 2,1%. This is the result of increased opportunities created by South Africa's improved international status which helped to stimulate exports and tourism in particular. People therefore believe that there are relatively good prospects for employment in the Province.

1.1.1.3 Employment characteristics

In 1999 the Province had a total labour force of 1,77 million - 66,4% of

which were formally employed, 14,9% informally and 18,7% unemployed. Although this is by no means a satisfactory employment situation, it compares favourably with the 36,2% unemployment rate of South Africa as whole. It is particularly significant that the Province's employment situation compares very favourably with that of the adjacent Northern and Eastern Cape Provinces.

1.1.2 An Area with Good Infrastructure

When the degree of access of households to water, sanitation, electricity, education, health etc. within the Province is compared with neighbouring provinces, it is also clear that the Western Cape Province is relatively better off.

1.1.3 Migration into the Province

Due to the factors referred to above, the Province attracts many migrants (*i.e.* people who move to find a better life). For example, it has been estimated that the net migration into the Province was about 48 000 during 1996. More than 60% of these migrants were estimated to have been African people, mostly originating from the Eastern Cape Province. More than 60% of the migrants settled in the Cape Town Metropolitan Area, but large numbers also went to secondary and smaller towns. It is probable that these trends are still applicable today.

1.1.4 The Province's Population

According to the latest available information (information from the 2001 census had not been released at the time of writing) the total population of the Province may presently be about 4,6 million. The composition of this population in terms of generalised population groups used by Statistics South Africa is as follows: 51,8% Coloured; 25,5% Black; 21,8% White and 0,9% Asian. The growth rate of the total population is estimated at about 1,8% per year. This rate is made up of varying rates for the different population groups: 2,3% for Blacks, 1,7% for Coloureds, 1,0% for Whites and 0,3% for Asians. Almost 90% of the people of the Province live in cities and towns. Apart from Gauteng, this is the highest level of urbanisation of all provinces in the country.

1.1.5 The Environment and Population Settlement

Environmentally the Province may be divided into three regions. The first of these regions, the Arid Areas, covers about 60% of the Province and houses less than 6% of its population. It is the other two regions, the Moist Grainlands and the Wet Mountain- and Valley-Lands, that are most attractive to human settlement, particularly the coastal portions of those regions. The Cape Town Metropolitan Area makes up only about 1% of the surface area of the Province, but accommodates 65% of its population. Apart from its scenic beauty, it is the availability of water that makes these parts of the Province so attractive to people. The broad

pattern of population settlement can therefore be described as an overwhelming concentration in and around Cape Town and secondary concentrations along the South Coast and the southern portion of the WestCoast.

1.2 URBANISATION IN PERSPECTIVE

Urbanisation refers to the proportion of a country's population that lives in urban places whilst urban growth refers to the increase in the urban population. Both are processes and both are relevant to us here. Globally, the process of urbanisation remains a critical challenge.

This is the way the challenge was stated at a recent international conference on the issue:

"Just after the millennium, another great human milestone will be passed: for the first time in history, a majority of the world's six billion people will live in cities. Between 2000 and 2025, the world's population will double from 1.4 billion (in 1995) to 5 billion; city dwellers will rise from 47 % to over 61 % of the world's population. Most of this explosive growth will occur in the cities of the developing world." (*UrbanFuture21* , Berlin 2000)

| URBAN POPULATION IN % | 1980 | 2000 | 2020 |
|------------------------------|-------------|-------------|-------------|
| WORLD | 39 | 47 | 57 |
| AFRICA | 27 | 38 | 49 |
| DEVELOPED COUNTRIES | 71 | 76 | |

81

Source: UrbanFuture21, Berlin 2000

Urbanisation in South Africa is a relatively recent development. The process is intimately related to economic, technological and political factors and to the growth of market-related economic development in particular. At the beginning of the 20th century, approximately 23% of the South African population was urbanized - today the proportion is close to 60%. On an annual basis, the South African urban population is currently increasing by 2,5 % which is faster than the estimated overall annual population growth rate of just over 2%. This is not unique to South Africa, but typical of the world-wide urbanisation process.

An important characteristic of urbanisation in South Africa is that it is ethnically uneven, with Africans displaying the largest increase in urban population since 1960. Urbanisation is also spatially unbalanced in its distribution and magnitude. The urban areas are mainly concentrated along coastal areas and in the northern and eastern parts of the country. On a provincial basis, the highest level of urbanisation currently occurs in Gauteng, followed by the Western Cape. The lowest rate of urbanisation is currently found in the Limpopo (Northern) Province.

1.2.1 Urbanisation in the Western Cape.

The population of the Western Cape makes up some ten percent of the

national population. Its level of urbanisation is high in comparison to other provinces. Nine out of ten residents of the province live in an urban place. Reasons for this high level of urbanization are related to:

Serious climatic and topographical constraints to settlement in much of the province whilst a few small well-endowed areas are capable of supporting dense populations and vigorous settlement, and

The discouragement historically, particularly during the *apartheid* years, of the settlement of Africans in the Western Cape, including by the application of a Coloured labour preference policy.

1.2.1.1 **The sources of in-migration**

The vast majority of Coloured and African residents of the Western Cape were born in one of the three provinces making up the Cape region: Eastern, Northern and Western Cape. The Northern Cape parent population is small and therefore the impact of migration flows (which are mainly Coloured) into the Western Cape is small. In contrast, the Eastern Cape is large and heavily populated. The great majority of the expanding African population comes from this source. About one half of White adults in the Western Cape were born in the province. The other half come from all other provinces of the country and from overseas. The tendency of Whites to migrate freely over large distances on an individual or family basis follows from their greater access to resources, and their lower reliance on family networks for support in new places. Moves in the Coloured and African communities tend to rely more on social resources, and travel is mainly over familiar routes to well-established destinations.

1.2.1.2 **The target of in-migration**

The Western Cape is currently a net receiving province in South Africa. It is estimated that there is a net inflow to the province of some 48 000 people each year. This represents an annual increase due to in-migration of more than one per cent of the total population. The main reasons are the perceived better job opportunities, more accessible and effective infrastructure, and superior quality of life available in the Western Cape. These differences are particularly striking with regard to the two adjoining provinces of the Eastern and Northern Cape from where much migration originates. Simultaneously, the Western Cape continues to offer work, infrastructure and a quality of life perceived to be good enough to attract better-off individuals and families arriving from a much larger national and international region. Most of these families are White and Indian. There is no good reason to believe that these trends will change in the near future.

Of the approximately 4,6 million people living in the province, some 3 million live in the Cape Town Unicity. Accordingly, Cape Town as a primary metropolitan area plays a dominant role in the province, in both an economic as well as demographic sense. However, Cape Town is not necessarily the preferred destination of migrants - many of whom seek smaller towns in which to seek a livelihood. The connection between Cape

Town and rural areas is also diminishing, with a reduction in the circular migration patterns that were a familiar part of our social history.

1.3 TRENDS IN THE CAPE METROPOLE

There is a lot of experience of informal settlements within greater Cape Town that can provide insights that might be applied elsewhere.

1.3.1 The need to understand growth trends

Cape Town, like all the major South African cities, is in the early phase of an exponential growth in rural-urban migration. The majority of those moving to the city will be without jobs, have a low skills profile and be financially poor. The only shelter option open to most of them will be a shack in an informal settlement. On the basis of international experience, this process will continue for at least the next two decades. Furthermore, recent studies for the City Council which have monitored this growth over the period 1993-2000 indicate that the growth in new shacks is taking place at a rate that exceeds the capacity of the Province to provide alternative formal accommodation.

Given this scenario, it becomes essential to have an understanding of what drives this growth, where it is happening, and what is the rate at which it is taking place. This provides an understanding of trends which can be used to plan both the informal settlement upgrading programme and alternative housing options, ensuring that housing resources are used optimally by being targeted appropriately.

1.3.2 Distribution of settlements

The distribution of settlements in Cape Town has several different roots. The vast majority (around 75%) of settlements were formed in what used to be, before 1990, the Black Local Authority (BLA) areas of Ikapa, Crossroads and Khayelitsha. A second set of settlements follow the emerging industrial growth areas in the north-east. The small remainder are associated with more affluent residential areas (e.g. Hout Bay). Generally speaking the major reason for the choice of an informal settlement is, in the first instance, a family linkage with an area, followed by access to economic opportunities.

1.3.3 The nature of settlement formation in the Metropolitan Area

There is a long history of informal settlements in Cape Town related to the under-supply of housing. Many settlements grew after influx control had been repealed (1986) and during the transition to democracy between 1992-95. Thereafter there was only limited new settlement formation

between 1995 and 1998. However, there are indications that new settlement formation may again be on the increase. As mentioned previously, the majority of settlements are to be found in the previous BLA areas. One reason for this is the greater degree of security (i.e. security against removal, not personal security) that is perceived to exist in these areas

Settlements are formed in one of two ways, which appear to be linked to (short-term) security of tenure. Where there was little pressure on the land, shacks would develop at a convenient position. As more families moved in the most convenient area would densify, while areas further away were settled at lower initial densities. This process would continue until a settlement was "full" (see section 1.3.5).

The second formation pattern occurred where a response (in the form of attempted removal) was likely in the short-term. Here an entire area would be occupied at low density and then gradually densified over time. This is a classic 'Latin American' invasion pattern. It makes sense in that it is more difficult to move families quickly or to cordon off a large area.

In the future the first option described above is not likely to be available in Cape Town because land is in such short supply. Future settlement formation will therefore take one of three forms. The first is the planned invasion of reasonably sized pieces of land by large numbers of families. The second, which started to become noticeable between 1995 and 1998, is 'creeping' occupation, i.e. slow encroachment on new land on the boundary of an existing settlement. The third is a settlement by a small number of families in areas that are not easily seen, such as in dense bush.

4 Shack densities

The table below gives an indication of settlement densities (as well as typical settlement sizes) in September 2000. It covers approximately 87% of the settlements identified in 1998.

From this table it can be seen that settlement densities vary across the different Administration areas. The highest densities are to be found in the previous BLA areas, with Khayelitsha being by far the highest.

Settlement density is extremely important in the planning of upgrading. If the density is too high, then the provision of services or the formalising of housing is extremely difficult. If it is too low, then the settlement is prone to further settlement, particularly once it is known that upgrading is likely to take place.

1.3.5 Stability of the population

The stability of the population is the least well understood aspect of informal settlements in Cape Town. As mentioned in the introduction, Cape Town is in the early stages of settlement formation and growth, which means that movement is high and the settlements are relatively unstable. As well located land is used up, and settlements in these areas densify, there is likely to be less movement taking place. This is because the value of sites in this area will increase. Therefore, one good indicator of stability is a high density. A second is good location. The risk here is that the nature of ownership may change. There are already indications that this may be happening already in Joe Slovo, which is arguably the most desirable location in Cape Town from the perspective of access to employment opportunities. Densities here are very high, at 143 dwellings per hectare. In this situation there is a likelihood that multiple ownership of shacks might start to take place, with owners then renting out the shacks (which are very small) like rented rooms.

1.3.6 Future trends

This section has already given some indication of future trends in the different sections. The starting point is that informal settlements will continue to grow at a faster rate than the City's ability to deliver new housing for a number of years yet. Furthermore those in preferred locations will continue to densify. At this stage the majority of shacks appear to be owned by individual families who live in them, but this may change, particularly in well located areas, as mentioned in the previous section.

By mapping the growth trends of individual settlements across the city, and coupling this with focussed social analysis, it should be possible to begin to identify preferred locations and predict future growth patterns.

This will allow for alternative housing options, such as managed land settlement (see 11.5), to be located strategically and thereby pre-empt new settlement formation. This will then allow upgrading efforts to be concentrated on older, more established settlements, where the chances of achieving successful in-situ upgrading are higher.

1.4 RESPONSIBILITY FOR HOUSING BY SPHERES OF GOVERNMENT

It is imperative to identify and clarify roles and responsibilities to avoid duplication and confusion which eventually lead to delays, wastage of money and conflict.

The upgrading of informal settlements is invariably a phased process, the ultimate objective of which is to provide everyone with acceptable housing. Therefore responsibility for the upgrading of informal settlements lies with whoever is responsible for the provision of housing and the functions related to it.

1.4.1. Legislative Framework

The legislative framework governing the upgrading of informal settlements is discussed in more detail in 1.5, and will only briefly be noted in this section for its relevance.

1.4.1.1 **The Constitution (Act 108 of 1996)** (see 1.5.3.1)

Section 26 The state (meaning the National, Provincial and Local Governments) has the responsibility to take reasonable legislative and other measures, within its available resources, to achieve the progressive realisation of the right to have access to adequate housing.

Schedule 4 Part A The National and Provincial Governments have concurrent legislative competence on housing.

Sections 152(1) lists the objects of local government to be, inter alia:

- (b) to ensure the provision of services to communities in a sustainable manner;
- (c) to promote social and economic development;
- (d) to promote a safe and healthy environment;

Section 153 states that a municipality must:

- (a) structure and manage its administration and budgeting and planning processes to give priority to the basic needs of the community, and to promote the social and economic development of the community; and
- (b) participate in national and provincial development programmes.

1.4.1.2 **The Housing Act** (Act 107 of 1997) (see 1.5.2.14)

Section 3 This section provides for the macro responsibilities of the National Government as far as housing is concerned, *inter alia*, the determination of policy, setting of housing delivery goals, monitoring of performance, strengthening of the provincial and municipal capacity, etc.

Section 7 This section instructs the Provincial Government to do everything in its power to promote and facilitate the provision of adequate housing in its province within the framework of national housing policy.

Section 9 This section instructs every municipality, as part of the municipality's process of integrated development planning, to take all reasonable and necessary steps within the framework of national and provincial legislation and policy, to ensure that its inhabitants have access to housing and related services.

1.4.1.3 **Local Government: Municipal Systems Act** (Act 32 of 2000)

Section 23(1) A Municipality must undertake developmentally-orientated planning (popularly referred to as the IDP's) so as to ensure that it-

- (a) strives to achieve the objects of local government set out in section 152 of the constitution;
- (b) gives effect to its developmental duties as required by section 153 of the constitution; and
- (c) together with other organs of state contribute to the progressive realisation of the fundamental rights in respect of, among others, housing.

1.4.2 Present Debate/Difference of Opinion

The question is often asked whether Municipalities have the responsibility to provide housing. One opinion has it that Municipalities have no such responsibility and that the ultimate responsibility for housing rests with the National Government. There are also other strongly opposing arguments to this.

This question should be addressed, but the three spheres of government will be irresponsible to argue about this while doing nothing about the people who are in need of housing.

In following the directive given by the Constitutional Court in the Grootboom case, it should be accepted that all three spheres of government have some role to play in the provision of housing in all its facets. This handbook is an attempt to clarify the roles to be played in this exercise in a spirit of co-operative governance.

1.4.3 A practical perspective on functions and roles

The following is a list of the broader steps involved in the upgrading of informal settlements, and, in an attempt to be practical, to identify the sphere of government responsible for each.

1.4.3.1 Prioritisation of needs

According to the Constitutional Court in the Grootboom-case, the state (meaning the national, provincial and local government spheres) will only fulfil its obligations in terms of section 26 of the Constitution when it has programmes in place that are aimed at providing for the needs of the poorest of the poor, and those with the greatest need. It is therefore important that prioritisation is done at the “frontier”, where direct interaction with the community is taking place. Municipalities are, because of their situation and the nature of their responsibilities, in the best position to do this. (See Chapters 6 & 7).

Primary responsibility: Municipalities

1.4.3.2 Mobilisation of community participation

In the spirit of our democratic dispensation no development can take place without the effective participation of the communities it affects.

Section 29(1)(b) of the Local Government: Municipal Systems Act 32 of 2000 requires municipalities to follow certain procedures to consult with communities and procure their participation in the planning processes. As these structures have to be in place, they will be available and should be used to involve the relevant communities in the process of upgrading of informal settlements. (See Chapter 5 and 9.3)

Primary responsibility: Municipalities

1.4.3.4 Planning and identification of land

Section 23(1) of the Local Government: Municipal Systems Act 32 of 2000 instructs municipalities to undertake developmentally oriented planning for its area of jurisdiction.

In this process municipalities will also be required to identify areas suitable for settlement and the development of housing. (See 6.4, 11.2, 11.3)

Section 31 of the Local Government: Municipal Systems Act 32 of 2000 states that a MEC for local government may monitor the process, assist municipalities and facilitate the planning process.

Primary responsibility: Municipalities
Secondary responsibility: MEC for local government

1.4.3.5 Acquisition of land

In terms of housing legislation and policy, local government is the appropriate sphere of government to be at the forefront of housing

development, and should in most cases act as the developer of housing. Municipalities should therefore acquire suitable land for housing development. (See 11.14)

Although land should preferably be acquired in the name of municipalities, the national and provincial Departments of Housing should assist them in the process. Municipalities should get priority access to all land suitable for housing development belonging to the National and Provincial Governments, as well as the Provincial Housing Development Board and other parastatals.

The upgrading of informal settlements and the provision of housing is one of the means by which the state is delivering on its responsibility in terms of section 25 of the Constitution to promote land reform. The primary responsibility for land reform rests with the Department of Land Affairs. The Department of Land Affairs should therefore also play a role in the acquisition of land for housing for the previously disadvantaged communities.

Primary responsibility: Municipalities
Secondary responsibility: National and Provincial Departments of Housing
Department of Land Affairs

1.4.3.6 **Monitoring of land invasions**

Land invasions and unlawful occupation of land left unchallenged can negatively affect the planning process and the delivery of housing.

Municipalities, because of their situation (close to the community) and the nature of their functions, are in the best position to monitor land invasions and unlawful occupation of land. The Prevention of Illegal Evictions and Unlawful Occupation of Land Act 19 of 1998 also makes it possible for a municipality, as an organ of state, to take measures to deal with unlawful occupation on land other than that of the municipality. Other spheres of government, as major landowners and in most cases absent landlords, however, have the responsibility to assist municipalities in this task. (See Chapter 8)

Primary responsibility: Municipalities
Secondary responsibility: Provincial and National Government

1.4.3.7 **Co-ordination and integration**

There is a need for co-operation between all the role players involved in the upgrading of informal settlements, and to ensure that the upgrading of informal settlements is undertaken in an integrated fashion.

In terms of the instruction of section 7 of the Housing Act 107 of 1997, the Provincial Department of Housing is in the best position to fulfil this role.

Primary responsibility: Provincial Department of Housing

1.4.3.8 **Financing**

National Government is the ultimate source of funding as far as housing is concerned. This resource is specifically earmarked to assist the homeless with subsidies to obtain adequate housing, but is by far inadequate to address the need in the short term. Unfortunately the annual housing budget allocation to the province can also be regarded as the maximum funds forthcoming from the National Government in this regard. The upgrading of informal settlements is an attempt to improve the standard of living of people until the beneficiary actually has acquired adequate housing.

The Provincial Government and Municipalities also have funds (Equitable share, CMIP, own income etc) which should be channeled to these projects and related functions. (See 10.13)

Primary responsibility: National Government

Secondary responsibility: Provincial Government and Municipalities

1.4.3.9 **Implementation**

Municipalities are the best positioned to act as developer, but should be assisted by National and Provincial Government if they lack capacity. (See Chapters 9 & 10).

Primary responsibility: Municipalities

Secondary responsibility: Provincial and National Government

1.4.3.10 **Maintenance**

Municipalities are the best positioned, but should be assisted by National and Provincial Government if they lack capacity.

Primary responsibility: Municipalities

Secondary responsibility: Provincial and National Government

1.5 **LEGISLATION THAT MAY HAVE AN IMPACT ON THE UPGRADING OF INFORMAL SETTLEMENTS**

1.5.1 Introduction

1.5.2 Legislation

1.5.2.1 The Constitution

1.5.2.2 National Building Standards and Building

Regulation

1.5.2.3 Land Use Planning Ordinance 'LUPO'

1.5.2.4 Health Act

1.5.2.5 National Environmental Management Act

1.5.2.6 Prevention of Illegal Eviction from an Unlawful

Occupation of Land Act

1.5.2.7 Removal of Restrictions Act

| | |
|----------|--------------------------------------|
| 1.5.2.8 | EnvironmentalConservationAct |
| 1.5.2.9 | LessFormalTownshipEstablishmentAct |
| 1.5.2.10 | ProvisionofLandandAssistance |
| 1.5.2.11 | RestitutionofLandRightsAct |
| 1.5.2.12 | WesternCapeLandAdministrationAct |
| 1.5.2.13 | WesternCapePlanningad |
| 1.5.2.14 | HousingAct |
| 1.5.3 | Otherlegislationwhichmaybeapplicable |
| 1.5.4 | ScheduleofLaws |

1.5.1 Introduction

The principles of natural law, liberty, dignity, equality and the reciprocal acknowledgement of basic human rights of all persons must be entrenched in all efforts to address the symptoms, effects and challenges of urbanisation - such as the handling of issues pertaining to informal settlements.

Urbanisation and land release policies must be strategically designed and implemented. All spheres of government [National, Provincial and Local Government] as well as the private and public sector, have a role to play in this regard.

The identification and release of land must form an integral part of National and Provincial programmes, including those dealing with growth and development [e.g. population development, rural development, employment creation and urbanisation]. Whatever legislation is in place, it is of paramount importance to make land available for informal settlements. This highlights the critical importance of a properly co-ordinated land availability/release strategy for the Cape Town Metropole and all other areas that are likely to be the target of urbanisation. In its absence the current undesirable situation will continue and attempts to provide infrastructure, secure tenure and housing will be increasingly frustrated.

1.5.2 Legislation

1.5.2.1 THE CONSTITUTION OF THE REPUBLIC OF SOUTH AFRICA, NO 108 OF 1996

The Constitution of the Republic of South Africa is the supreme law of the Republic and thus must always be taken into consideration. In formalising informal settlements, the relevant provisions of the Constitution would be as follows:-

HOUSING:

Section 26(1)

Everyone has the right to have access to adequate housing.

Section26(2)

The State must take reasonable legislative and other measures, within its available resources, to achieve the progressive realisation of this right.

Section26(3)

No one may be evicted from their home, or have their home demolished, without an Order of Court made, after considering all the relevant circumstances. No legislation may permit arbitrary eviction.

HEALTHCARE, FOOD, WATER AND SOCIAL SERVICES:

Section27

Everyone has the right to health care services, including sufficient water.

CHILDREN:

Section28

Children have the right to basic nutrition, shelter, health care services and social services.

FUNCTIONAL AREAS OF CONCURRENT NATIONAL AND PROVINCIAL LEGISLATIVE COMPETENCE:

Schedule4, PartA

Housing is one of these concurrent functions of National and Provincial Government.

1.5.2.2 NATIONAL BUILDING STANDARDS AND BUILDING REGULATIONS ACT, NO 13 OF 1977

This Act will have to be taken into consideration in the planning and implementation of the relocation or formalisation of informal settlements.

For example, Section 4 of the aforementioned Act provides that any persons wanting to erect any structure or building will have to submit plans to the local authority in a specific form and these plans will have to be approved by them prior to any building works commencing. (See 10.6.2.3)

This provision applies, unless the State can show that by virtue of economic considerations, necessity or expediency the State is exempt in a particular case.

Similarly a certificate of occupancy needs to be provided by the local authority to state that all the requirements of the Act have been met before the occupants may take up residence.

The Act also contains references to minimum fire and safety requirements, which will also have to be adhered to. Failure to comply with

any of these may lead to the Municipality being obliged to enforce the provisions thereof in terms of that particular Act.

1.5.2.3 THE LAND USE PLANNING ORDINANCE NO 15 OF 1985

In terms of the aforementioned Western Cape Ordinance, any rezoning, departure or like applications relating to land use planning and matters incidental thereto will have to be made to the relevant local authority and the provisions of this Ordinance complied with in respect of the planning, zoning and subdivision of the area. The zoning scheme of the area will have to be considered, as this will determine use rights of the land. A subdivision will have to take into consideration density requirement, setbacks, building lines, etc.

An alternative, and faster, legal route is indicated in 1.5.2.9.

1.5.2.4 THE HEALTH ACT, NO 63 OF 1977

The Health Act was enacted to provide measures for the promotion of the health of Republic of South Africa citizens. The Department of Health must take steps to promote a safe and healthy environment. The Health Act sets out certain minimum requirements, which must be adhered to prevent overcrowding, dirty, unsanitary or verminous conditions in any dwelling or other buildings, and to see that diseases or sicknesses are not spread. Should there be a health risk the municipalities would serve notices on the landowner to provide minimum services or otherwise deal with the situation to ensure that the health risk is averted.

The Act also prohibits the building of structures without adequate sewerage, drainage, water, washing and sanitary conveniences, lighting and ventilation and refuse removal.

Clearly all the requirements of the Health Act will have to be met, both in the planning process and to ensure after the formalisation of the informal settlement or the provision of formal housing that unlawful persons do not occupy the property causing it to be either too densely populated, or overcrowded and giving rise to health and safety risks.

1.5.2.5 THE NATIONAL ENVIRONMENTAL MANAGEMENT ACT, NO 107 OF 1998

This Act has as its objective the endorsement of all citizens' rights to an environment, which is not harmful to their health and wellbeing, it obliges the state to protect, promote and fulfil the social, economic and environmental rights of everyone.

The general environmental plan to be drawn up and implemented by all organs of state will have to be adhered to and taken into consideration in dealing with informal settlements.

1.5.2.6 PREVENTION OF ILLEGAL EVICTION FROM AN UNLAWFUL OCCUPATION OF LAND ACT, NO 19 OF 1998

The aforementioned Act sets out the constitutional Principle, that no one should be deprived of his or her home without a Court Order, after the Court has taken consideration of all relevant circumstances. It is in terms of this Act that Court orders will have to be sought for the eviction or removal of any unauthorised persons, their structures and possessions. (See Chapter 8)

This Act would be of application to informal settlements in the following circumstances:-

- 1.5.2.6.1 Where it was necessary to relocate the occupants of the informal settlement in conditions where the land on which they were residing was not suitable for housing or residential use and the occupants refused to vacate.
- 1.5.2.6.2 Where, on advising persons at the informal settlement that they would be formalised or provided with formal housing, other persons, not originally part of the informal settlement, settled there with a view to taking advantage of the services or housing to be provided to the members of that informal settlement and in effect jumping the queue.
- 1.5.2.6.3 Where certain persons who do not qualify for housing, should the occupants be formally housed, refuse to vacate the property on which the informal settlement is situated or the property to which they are relocated.
- 1.5.2.6.4 Where an informal settlement has been relocated temporarily or permanently and the land which they previously occupied (which is either to be left vacant, or to be developed for housing, or to be utilised for a different purpose) is now occupied by persons without the consent of the owner of the property or the person in charge thereof.

In this regard it should be noted that security measures would have to be taken to ensure that any land which is vacant or to be developed for housing of informal settlements be secured either by way of fencing or enclosing the property and the policing thereof by an informal housing unit to ensure that the resources are not later wasted in having to apply for a Court Order to have them and their structures and their possessions removed.

1.5.2.7 REMOVAL OF RESTRICTIONS ACT, ACT 84/1967

Restrictive title conditions on land are currently removed or amended in terms of this Act.

However, the Less Formal Township Establishment Act, [Act 113/1991] (see 1.5.1.9) also empowers the responsible Provincial Minister to remove or amend title conditions upon township establishment applications.

The legislation to be used to formalise an informal settlement [Less Formal Township Establishment Act, 1991, Provision of Certain Land for Settlement Act, 1993 or Upgrading of Property Rights Act, 1991] will accordingly determine whether it will be necessary to apply the provisions

of Act 84/1967.
(See 10.3).

1.5.2.8 ENVIRONMENT CONSERVATION ACT, ACT 73/1989

This Act provides for the proclamation and protection of natural environments and the identification of activities, which may have a detrimental effect on the environment.

In terms of the regulations promulgated in terms of the Act, permits and environmental impact assessment reports are required for certain developments. (See 4.5.3)

The legislation to be used to formalise an informal settlement will determine whether the provisions of Act 73/1989 are applicable.

1.5.2.9 LESS FORMAL TOWNSHIP ESTABLISHMENT ACT, ACT 113/1991

This Act *inter alia* provides for shortened procedures for the designation, provision and development of land, establishment of townships and for less formal forms of residential settlements. (See 10.3)

The Act further provides for the acquisition of additional land to accommodate settlement needs.

This Act is at present probably the most suited for the upgrading of informal settlements.

1.5.2.10 PROVISION OF LAND AND ASSISTANCE, ACT 126/1993

This Act provides for the designation of state or private land [made available by the owner thereof] by the Minister of Land Affairs for settlement purposes and regulates the subdivision of such designated land. **[N.B. This Act has not been assigned to the Provinces]**

Grants made available by the Department of Land Affairs in terms of its Land Reform Programmes can only be accessed once the land in question has been designated by the responsible Minister in terms of Act 126/1993.

1.5.2.11 RESTITUTION OF LAND RIGHTS ACT, ACT 22/1994

This Act governs the process for restitution claims to land on the basis of a right that had existed in the past and of which persons or communities were dispossessed under or for the purpose of furthering the objects of racially based laws.

The upgrading of existing informal settlements will accordingly be affected by any claims for restitution submitted in terms of this Act in respect of the land to be developed as part of the upgrading process.

1.5.2.12 **WESTERNCAPELANDADMINISTRATIONACT,ACT6/1998**

This Act provides for the acquisition of immovable property and the disposal of land, which is vested in it by the Western cape Provincial Government.

The provisions of the Act will only be applied where informal settlements are located on provincial state land as defined by the Act.

1.5.2.13 **WESTERNCAPEPLANNINGANDDEVELOPMENTACT,ACT
7/1999**

This Act [**which will become operational at a future date**] can best be described as a consolidation of legislation in the Province of the Western Cape pertaining to urban and rural development, regional planning & development and provincial planning into one law. It will eventually, *inter alia*, repeal the Land Use Planning Ordinance, 1985, The Less Formal Township Establishment Act, 1991 and the Removal of Restictions Act, 1967 as far as the Western Cape is concerned.

1.5.2.14 **HOUSINGACT,1997[ACT107/1997]:ExpropriationOfLand
RequiredFor HousingDevelopmentByAMunicipality** (See
10.11.2.2)

In terms of Section 9(3)(a) of Act 107/1997 a municipality may, by notice in the Provincial Gazette, expropriate any land required by it for the purpose of housing development in terms of any national housing programme, if:-

It is unable to purchase the land on reasonable terms through negotiation

It has obtained the permission of the MEC [Provincial Minister of Housing] to expropriate such land prior to the notice of expropriation being published in the Provincial Gazette - permission of MEC is only valid for six months

IMPORTANT

- (a) In terms of section 9(3)(b) of Act 107/1997 the provisions of Sections 1, 6-15 and 18-23 of the Expropriation Act, 1975 [Act 63/1975] shall apply to such expropriation.
- (b) The permission to expropriate must be granted by the Provincial Minister of Housing in terms of Section 9(3)(a) of Act 107/1997 and **not** the Expropriation Act, 1975. This Act, Act 63/1975, has not been assigned to the Provinces and the authority to expropriate in terms of this Act vests with the National Minister of Public Works.
- (c) As set out below, the relevant provisions of the **Expropriation Act, 1975** [Act 63/1975] only deal with procedural issues: -

Section 1 - contains the definitions for the purpose of the relevant Act

Section 6 - provides for investigation of the land prior to expropriation

Section 7 - is prescriptive regarding the contents of the Notice of Expropriation

Section 8 - deals with the passing of ownership and possession of the expropriated land to the relevant authority

Section 9 - deals with the duties of the expropriated owner upon expropriation

Section 10 - deals with the manner in which the compensation aspects are to be handled

Section 11 - deals with the payment of the expropriation compensation

Section 12 - prescribes the basis on which the expropriation compensation is to be determined

Section 13 - provides for the payment of compensation for rights arising from unregistered lease agreements relating to the expropriated land

Section 14 - provides for the determination of compensation by way of arbitration or through the High Court

Section 15 - determines the basis for the awarding of costs by the High Court

Section 18 - deals with determination of compensation and appeals in this regard

Section 19 - payment of compensation to bondholders on basis of agreement between bondholder and expropriated owner

Section 20 - deduction from compensation and payment of rates and other monies to local authority

Section 21 - payment of compensation to Master of High Court in instances where owners cannot be traced

Section 22 - termination of unregistered rights in respect of land

Section 23 - procedure for the withdrawal of expropriation notices

1.5.3 Other Legislation which may be applicable to Informal Settlements in certain circumstances

1.5.3.1 LAND TITLES ADJUSTMENT ACT, 1993 [ACT 111/1993]

The main purpose of this Act is to help persons who own land, but are not in possession of title deeds - for example, due to the fact that persons who lived before them or from whom they inherited the land had not taken steps to have the land transferred into their name - to be able to secure their rights

1.5.3.2 DISTRIBUTION AND TRANSFER OF CERTAIN LAND ACT, 1993 [ACT 119/1993]

This Act promulgates the appointment of a Land Distribution Commissioner who has to verify the identity of people who have claims on land, to test the validity of such claims and to oversee the subdivision of such land under such people.

1.5.3.3 UPGRADING OF TENURE RIGHTS ACT, 1991 [ACT 112/1991]

This Act provides for the upgrading of certain lower order property rights to full property ownership, which includes the framing and approval of General Plans and the opening of township registers.

The provisions of this Act will most probably not be applicable to new developments, but there are however a number approved General Plans in respect of existing informal developments in the Province of the Western Cape, previously approved in terms of the Black Communities Development Act, 1984 [Act 4/1984] and regulations issued in terms thereof, that still have to be formally registered in terms of the provisions of Act 112/1991.

1.5.3.4 CAPE OUTSPANS ACT, 1937 [ACT 17/1937]

This Act provides for the issue of deeds of grant to municipal councils in respect of outspans consisting of Crown land in the Province of the Western Cape.

This Act will only be applicable where an informal settlement is located on a proclaimed outspan. The Sun City development in Sir Lowry's Pass is one such an example.

1.5.3.5 NATIONAL ROADS ACT, 1971 [ACT 17/1937]

The purpose of this Act is to provide for the construction and control of national roads.

This Act could pose considerable problems for physical development where a national road is involved. The development of Wallacedene and Bloemkombos was, for example, considerably delayed by the proclamation of the N7 near Kraaifontein.

The prescriptions in the Act relate to road reserves, building lines along national roads and other restrictions which may be relevant in specific circumstances.

1.5.3.6 COMMUNAL PROPERTY ASSOCIATIONS ACT, 1996 [Act 28/1996]

This Act enables communities to form juristic persons, to be known as communal property associations, to acquire, hold and manage property on a basis agreed to by the members of a community in terms of a written constitution.

The Act is administered by the Department of Land Affairs. It may be necessary to make use of this Act in a rural context where informal settlements of an agricultural nature are to be upgraded.

1.5.4 Schedule of Laws

The Constitution of the Republic of South Africa, Act 108/1996

National Building Regulations and Standards Act, Act 103/1977

Land Use Planning Ordinance (LUPO), 15/1985

Health Act, Act 63/1977

National Environmental Management Act (NEMA), Act 107/1998

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

Removal of Restrictions Act, Act 84/1967

Environment Conservation Act (ECA), Act 73/1989 (Regulations)

The Less Formal Township Establishment Act (LFTE), Act 113/1991

Provision of Certain Land for Settlement Act, Act 126/1993

Restitution of Land Rights Act, Act 22 of 1994

Western Cape Land Administration Act, Act 6/1998

Housing Act, Act 107/1997 plus the Housing Amendment Act, Act 4/2001

Land Titles Adjustment Act, 1993 [Act 111/1993]

Distribution and Transfer of Certain Land Act, 1993 [Act 119/1993]

Upgrading of Tenure Rights Act, 1991 [Act 112/1991]

Cape Outspans Act, 1937 [Act 17/1937]

National Roads Act, 1971 [Act 17/1937]

Communal Property Associations Act, 1996 [Act 28/1996]

Interim Protection of Informal Land Rights Act, Act 31/1966

Extension of Security of Tenure Act, Act 62/1997 [ESTA] (see 11.13.1.4)

Housing Consumer Protection Measures Act, Act 95/1998 [NHBCRC]

Western Cape Planning and Development Act, Act 7/1999

Land Use Bill [06 April 2002] National Legislation.

1.6 AN INFORMAL SETTLEMENTS PROGRAMME

1.6.1 Broad Strategy

Many local authorities are faced with a situation where the number of informal housing structures are increasing at a faster rate than the production of new housing. The consequences of this must be met with appropriate positive action.

It is recommended that local authorities create a 5-year housing strategy which incorporates a phased programme to upgrade informal settlements. This would range from the introduction of basic services in some settlements, the provision of an incremental housing process in others, and the formal development of housing in others. As an integrated exercise by the local authority it would also incorporate non-housing elements.

Obviously, the programme would have to be based upon an understanding of the range of needs that exist within the area of jurisdiction of the local authority, and upon a set of principles that will guide the prioritisation of responses in accordance with available resources.

1.6.2 Detailed Components

It is the object of this Handbook to identify for a local authority all the components that would be required for creating an Informal Settlements Programme. Different settlements and communities will require different solutions and strategies.

The basic intent of a phased approach to upgrading is to use scarce resources in the most efficient way, to obtain maximum benefit from minimum outlay, and to have each phase build upon the previous one without having to duplicate effort and expenditure.

The essence of an incremental approach is that each upgrading exercise is clearly part of a greater project, and increasingly involves the community in decision-making about their neighbourhood. It is also the aim to so improve the circumstances in a settlement that its inhabitants are prepared to pay the charges that will be levied.

The first component of an upgrading will usually be the provision of essential services such as water, sanitation and electricity. Access-ways can be introduced in a phased manner and the provision of formal plots and starter houses can follow.

The following chapters of the Handbook provide resource material that can be used in the creation of strategies for addressing informal settlement issues in general and for addressing the challenges presented by a particular settlement or community.

