

Upgrading of Informal Settlements: An Assessment with Reference to the Application of 'Breaking New Ground' in Cape Town and Johannesburg

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Peer reviewed and revised

Abstract

The inadequacy of human settlements in South Africa is manifestly seen in the growth of informal settlements in all major cities and towns. Although there has been a history of informal settlement upgrading this has not been wide spread, nor has it been official policy until 'Breaking New Ground' was proclaimed as part of the housing policy of the government in 2004. There are two aspects, among others, that we explore in the state's response to upgrading of informal settlements. Firstly, the timeous legal recognition of informal settlements and, secondly, the provision of opportunities for stable multiple livelihoods. With reference to the cases of Cape Town and Johannesburg, we contend that one of the initial state interventions in terms of informal settlement upgrading should be to legally recognise the informal dwellers as citizens, and that a sustainable livelihoods approach should be explicitly stipulated and described in policy implementation.

OPGRADERING VAN INFORMELE NEDERSETTINGS: ANALISE MET VERWYSING NA DIE TOEPASSING VAN 'BREAKING NEW GROUND' IN KAAPSTAD EN JOHANNESBURG

Die ontoereikendheid van menslike vestiging in Suid-Afrika is duidelik sigbaar in die groei van informele nedersettings in al die hoofstede en -dorpe. Alhoewel daar 'n geskiedenis van die opgradering van informele nedersettings bestaan, was dit nóg wydverspreid nóg amptelike beleid tot 'Breaking New Ground' as deel van die owerheid se behuisingsbeleid in 2004 geproklameer is. Daar is onder andere twee aspekte van die staat se reaksie ten opsigte van die opgradering van informele nedersettings wat ons ondersoek. Eerstens die tydige, wetlike erkenning van informele nedersettings en tweedens die voorsiening van geleenthede om 'n stabiele, veelvoudige bestaan te kan maak. Met verwysing na die situasies in Kaapstad en Johannesburg, meen ons dat een van die aanvanklike staatsingrepe tot informele nedersettingopgradering die erkenning van die informele bewoners as burgers behoort te wees en dat 'n volhoubare bestaan-maak benadering spesifiek uitgestip en beskryf moet word in beleidsimplementering.

NTLAFATSO YA MADULO A MEKHUKHU: PATLISISO YA YONA KA THOMELO YA TSHEBEDISO YA 'BREAKING NEW GROUND' HA CAPE TOWN LE JOHANNESBURG

Tlhoko ya madulo a lekanang a batho naheng ya Afrika Borwa e bonahetse ka kgolo le keketso ya mekhukhu ditropong tse kgolo tsohle. Leha ho bile histori ya bodulo ba mekhukhu, ntlhafatso ya bona ha e a ka ya etsahala haholo. Hape e ne e se leano la mmuso ho fihlela 2004 ka phatlalatso ya 'Breaking New Ground' jwaloka karolo ya leano la bodulo la mmuso. Ho na le ditaba tse pedi, ka hare ha tse ding, tseo re di batlisisang karabong ya mmuso ya ntlafatso ya bodulo ba mekhukhu. Pele, ke kamohelo ka nako le ka molao ya madulo a mekhukhu. Ya bobedi, ke ho fana ka dibaka tsa ho phedisa batho ka mekgwa e mengata e tiileng. Haele ka mehlala ya Cape Town le Johannesburg, re re e nngwe ya di-tsela tseo mmuso o ka namolang ntlafatsong ya madulo a mekhukhu, e tshwanetse ho dumela ka molao ba dulang mekhukhung jwaloka baahi ba nnete ba naha ya Afrika Borwa. Hape, ho tshwanetse ho laelwa pepeneneng le ho hlalosa ditokomaning tse kenyang melao, katameloe e phedising ka mehla.

1. INTRODUCTION

At the core of the developmental state is the idea that through strategic planning and management the transformative objectives, as laid down in the Constitution, can be realised. Municipalities are at the coal face of planning these objectives by marshalling resources and integrating the various modes of delivery.

Although there are competing issues that demand attention, one of the key problems in South Africa is the provision of shelter, especially for indigent people. The inadequacy of human settlements in South Africa is manifestly seen in the growth of informal settlements in all major cities and towns. Although there has been a history of informal settlement upgrading this has not been wide spread, nor has it been part of official policy until recently (Charlton, 2006: 50). There are two characteristics that stand out when observing informal settlements (also called shack settlements or slums): firstly, the inadequacy of the human living and working conditions in the settlements and, secondly, the prevalence of non-formal multiple livelihood strategies among households and families living in these settlements.

This article analyses the state's response to the above, in the form of the housing policy, *Breaking New Ground: A Comprehensive Plan for the Development of Sustainable Human Settlements (BNG)*. Specifically it looks at its phased implementation in relation to upgrading of informal settlements. The upgrading of informal settlements defined here as the "delivery of physical products (tenure, engineering infrastructure, social and economic facilities), and that of the process by which this is to be achieved (community participation in the project cycle and labour intensive construction)" (Charlton, 2006: 51).

There are two aspects, among others, that this article explores in the state's response to upgrading of informal settlements. The first is the timeous legal

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recognition of informal settlements and the second is the provision of opportunities for stable multiple livelihoods. It should be noted that while legal recognition touches on the issue of tenure security, the latter is not the main concern in this article.

Firstly, this article contends that one of the initial state interventions in terms of informal settlement upgrading should be to legally recognise the informal dwellers as citizens, as a basis for any upgrading process to begin. This legal recognition is considered to be 'emerging international orthodoxy' (Kitchen & Williams, 2008) and is also seen as a pre-condition to leverage financial and other support from various government initiatives such as the Neighbourhood Development Partnership Grant, Settlement Land Planning Grant by the Johannesburg Council (CoJ, 2007).

It is felt that this aspect is not adequately addressed in the first two phases of the Department of Housing's *National Housing Code, National Housing Programme: Upgrading of Informal Settlements, Chapter 13* (hereafter Chapter 13). Chapter 13 details the regulatory and operational aspects of the upgrading of informal settlements referred to in the 'BNG'.

Secondly, it is contended that although the incorporation of a livelihoods approach in the informal settlement upgrading process is implicit in the phased implementation of Chapter 13, it is not being applied in most cases as it is not explicitly stipulated and described in the various phases.

2. METHODOLOGY

This article is based on a larger study, conducted for the Research Department of the National Department of Housing (NDoH), which reviewed four of the six metropolitan municipalities namely, Johannesburg, eThekweni, Cape Town and Ekurhuleni, and two small local municipalities, Kwadukuza and Bushbuckridge. The selected metropolitan municipalities contain the largest number of people living under conditions of informality. In all these cases informal settlements were defined as those that have no formal legal standing, and hence outside the regulation of the city. For the larger

research project managers of the various municipalities, and where appropriate and possible other role players such as NGO staff were interviewed. Observation techniques were employed. In addition, considerable documentation was consulted with regard to the information that municipalities had on the nature, size, and spread of the informal settlements in their areas of jurisdiction. For the purposes of this article only two cities are focused upon, Cape Town and Johannesburg. These cities were chosen because they are among the largest municipalities, and they illustrate particular aspects of the phased implementation approach that incorporates legal recognition. They also provide innovative approaches to incorporating Chapter 13 in their *in situ* upgrading of informal settlements. They have direct relevance to the provision of stable livelihood options. In other words, these metropolitan areas provide in their particular practices, especially in the cases of Hangberg and Freedom Park in Cape Town, important elements which contribute to critical and innovative understanding of how to implement Chapter 13. In addition, they provide contrasting approaches to the question of how *in situ* upgrading should take place in relation to Chapter 13. It should be noted that there is no extended discussion in this article on the role of the national or provincial Departments of Housing. This is not because the authors think they are unimportant but rather that they should receive a full critical analysis in their own right. Also BNG and Chapter 13 envisage that implementation takes place, as it currently does, at municipal level and hence the focus of this article.

The two city case studies are analysed in terms of the following issues: quantification of informal settlements; the approach to informal settlements; institutional arrangements and *in situ* upgrading approaches. This assessment is followed by evaluating the constraints and challenges with a particular focus on livelihoods and legal recognition.

Table 1: Households in Informal Dwellings in Selected Municipalities

Municipality	Census 2001 %	Community Survey 2007 %	Number of Households 2007
eThekweni	15.6	12.6	105,066
Johannesburg	13.3	10.4	121,161
Cape Town	14.5	09.3	83,912
Ekurhuleni	21.8	16.9	143,540
South Africa	12.3	9.7	

Source: STATSSA, 2007: 23; 120; 121; 168; 336

3. THE CONTEXT OF INFORMAL SETTLEMENTS IN TERMS OF THE URBANISATION OF POVERTY IN SOUTH AFRICA

Since at least the mid-1990s South African cities, particularly the six metropolitan areas have been undergoing rapid urbanisation. In 1994 it was estimated that a minimum of 150 000 new households a year would house themselves in informal dwellings or just over half million people per year (NDoH, 1994: 9). The 2001 census gives the number of households in informal settlements as 1 376 706 or approximately 5.23 million people, representing 12% of the population.¹ The 2007 Community Survey (Table 1) claims that there is a drop in the percentage of informal dwellings from 12.3% in 2001 to 9.7% in 2007. The 9.7% represents approximately 1.2 million people living in informal settlements.

This is close to the 1.1 million households without access to formal houses reported by the State of the Cities Report (2007) for the year 2004 (Misselhorn, 2008: 14). These figures suggest a drop in the number of informal settlement households from 2004 to 2007, but the actual number is more than likely to be higher than official statistics. The reasons are:

- Research from the municipalities themselves suggest otherwise. For example, in Cape Town the number of informal settlement households was estimated as 65,113 by the 2004 General Household Survey, whereas the City estimated it at 94,972.
- Actual dwelling units are counted, and not the households or families within a dwelling unit.
- Statistics South Africa's data is based on those willing to identify themselves. In many of the urban centres there is a high level of foreign migrants who refuse to be identified fearing this would lead to reprisals and deportation.

¹ It should be noted that the census data collects information on informal settlements defined as 'informal settlement/shack not in backyard. It does not make any distinction between informal settlements that has some level of services (water, electricity, waste removal etc including those on fully legalized serviced sites) and those that do not receive such benefits (Huchzermeyer et al., 2004).

- There are no accurate statistics on informal settlements having changed their status from illegality to legality, or from informal to *in situ* upgraded or relocated settlements.

Thus it is difficult to say, with any degree of accuracy, whether the recent Community Survey findings are either accurate or have any validity, and therefore what impact in quantitative terms the housing policies are having.

In post-apartheid South Africa, the participation of informal settlers in its formal economy is limited and they are forced to create multiple livelihood strategies primarily within the informal sector without any state assistance or intervention to integrate their aspirations and needs into the advanced skill based economy. The provision of permanent services and housing to poor households has been largely relegated to a supply driven production of RDP 'matchbox' houses by municipalities. In essence, the State has responded to a perceived housing need that is isolated from their livelihood needs and nothing much else since 1994. Significant continuities rather than the discontinuities with the past tend to prevail. Indeed, contrary to the visions embedded in the Constitution and the State's intentions the current practices, albeit sincere attempts at transforming apartheid human settlement patterns, reproduce social inequalities and spatial marginalisation.

4. BRIEF OVERVIEW OF THE INFORMAL SETTLEMENT UPGRADING PROGRAMME

Despite the above statistics, informal settlements "received little focused attention in national policy until almost ten years after the introduction of the post-apartheid government's housing programme", (Charlton, 2006: 50). According to Huchzermeyer (2006), it was only due to a number of local and international developments in recent years that attention has shifted to informal settlement interventions. Within government a high political priority was accorded to poverty eradication. Hence the main drive in the informal settlements programme was towards the 'reduction of poverty vulnerability and social exclusion' by placing an emphasis on the acquisition and rehabilitation of occupied land. This allowed for local participation in the planning and layout of *in situ* upgrading and the provision of various social and economic amenities. International developments

that placed informal settlements on the agenda include the UN Habitat agenda of the 1990s and the World Bank/UNCHS (UN Habitat) sponsored Cities Alliance for 'Cities without Slums' (see Huchzermeyer, 2006, for details regarding the evolution of Informal Settlement Upgrading Programme).

The first major local empirical work that embraced informal settlements and *in situ* upgrading was commissioned by the National Department of Housing and undertaken under the umbrella of the University of the Witwatersrand Research Team (UWRT) in 2004. The study was entitled 'Study in support of Informal settlements', which was designed to inform the implementation and assessment of the Informal Settlement Upgrading Programme, rather than the policy formulation (Huchzermeyer, 2006: 44).

The recommendations of this study broadly reflected approaches associated with the supporter/enabler paradigm, originally advanced by Abrams (1964) and Turner (1976), and refined by the World Bank and UNCHS (Habitat) agencies in the 1990's (Bauman & Huchzermeyer, 2004, Report 4). These initiatives were strengthened by the UN's Millennium Development Project in 2000, which included a goal to improve the lives of 100 million slum dwellers. A main criterion for this goal was to "increase their tenure security with a particular emphasis on protecting them from unlawful evictions" (Berrisford, Kihato & Klug, 2003: 9). A significant finding in the UWRT study for informal settlement support was 'affirming informal settlement residents as citizens' through three interventions; namely legalisation of land occupation, land use and construction inclusion in decision making, and finally, an increase in people's ability to make choices, i.e. increasing their choice of livelihood strategies (Baumann, Huchzermeyer & Mohamed, 2004: 26-27).

The affirmation of citizenship in the informal settlement upgrading programme is still threatened by two major concerns: evictions and a state driven top-down mode of delivery. The Informal Settlement Upgrading Programme may be undermined by unlawful evictions as none of the existing rights outlined in the *Constitution, Prevention of Illegal Eviction (PIE) Act, act 19 of 1998, the Development Facilitation Act (DFA), Act 67 of 1995, (DFA) or Extension of Security of Tenure Act (ESTA), Act 62 of*

1997, provide longer term protection and thereby long term investment by the state or the residents (Baumann *et al.*, 2004: 28). The potential inclusionary and participatory gains intended in the Informal Settlement Upgrading Programme may be constrained by an ingrained mode of service delivery that is 'top down' and open to manipulation (Huchzermeyer, 2006: 58).

Despite these potential shortcomings, the 'Breaking New Ground' Plan and Informal Settlements Upgrading Programme (Chapter 13 of Housing Code) which it is an integral part of BNG, represents a formidable challenge to the current focus on delivery of houses as the main focus of attention by the national Department of Housing. In the next section we briefly outline the BNG and its relationship to Chapter 13 of the National Housing Code.

4.1 Outline of BNG Policy and Chapter 13 in relation to Informal Settlements

The new informal settlement upgrading instrument (Chapter 13) emerged from the re-engagement with the disjuncture between intentions of the State in providing sustainable human settlements and their paltry outcomes. The new sustainable housing development framework, *Breaking New Ground: A comprehensive Plan for Sustainable Human Settlement* (BNG) adopted in 2004, represented a shift away from the earlier narrow focus on the quantity of housing units provided towards a treatment of housing as a catalyst for achieving a set of wider socio-economic goals, particularly poverty alleviation, job creation and leveraging growth in the economy (NDoH, 2004b: 7, 11). Thus, in its commitment to creating sustainable human settlements, the National Department of Housing, expected the delivery of housing to:

- improve the quality of the residential environment through:
 - ♦ a broader range of settlement and housing types;
 - ♦ affordability variations, tenure preferences;
 - ♦ a healthy and secure environment;
- promote integrated development with the cooperation of community and different government departments by:
 - ♦ integrating housing and land use;

- infrastructure development such as provision for roads (including transport infrastructure), electricity and water;
- other services, including education (e.g. schools, further education colleges) cultural, entertainment and police/security services, civic halls; and
- reduce poverty through:
 - providing greater use of housing as an investment asset (growth in the housing as tradable and negotiable asset);
 - locating/re-locating settlements near economic, market and employment opportunities;
 - promoting and granting land and tenure rights and security (NDoH, 2004b: 11-15).

The BNG does not set out the actual process and procedure for informal settlement upgrading, although it makes a major departure from policies of the past by placing a greater emphasis on linking housing to the provision of livelihoods and thus attempting to mitigate the effects of poverty. The process and procedures of this approach are detailed in Chapter 13 in four phases (NDoH, 2004a: 12-19).

4.2 The four phases of Implementation

In BNG it is envisaged that the above aims would be achieved in relation to informal settlements through a four phase implementation process. The first phase would be the application phase whereby municipalities on behalf of communities would submit funding applications based on Interim Business Plans. These business plans include a pre-feasibility study that contains basic historical information on the formation of the settlements, its environmental context, and basic social and economic data, including the identification of illegal immigrants. Once funding has been granted Phase 2 would begin with the acquisition of land, survey and registration of households, installation of interim services and the undertaking of pre-planning studies. On approval of a Final Business Plan by the MEC the municipality would receive funds to undertake the following in phase 3:

- Establishment of project management capacity;
- Establishment of housing support centres;

- Initiate planning processes such as town planning and surveying of sites;
- Resolve land occupational disputes;
- Rehabilitate the land if required; and
- Installation of permanent engineering infrastructure, social amenities, economic and social facilities (NDoH, 2004a: 15)

The first three phases are intended to form the foundation for the long-term development of sustainable human settlements. Phase four then is housing consolidation, involving property registration, house construction and the outstanding social amenities constructed. The benefits of this phase would be based on individual qualifications and would exclude illegal immigrants, and previous subsidy recipients.

In creating sustainable human settlements through the implementation of the above objectives and four implementation phases, the programme hopes to reduce the vulnerability of the poor in informal settlements by enhancing their livelihood strategies and providing new and challenging economic and employment opportunities. Policy makers also recognise the role that existing informal settlements play in the urban centres and call for an approach that facilitates their stabilisation and integration into the broader urban fabric through the social and economic development programmes at the local level:

- Municipal social and economic development programmes. The social programmes should facilitate the provision of social services through the development of primary, municipal-level social amenities and community facilities such as sport fields, community halls etc. to serve the needs of the residents of informal settlements providing the platform for the future delivery of secondary and tertiary social services such as schools, hospitals and police stations.
- Economic development should take place in three interconnected ways: (a) municipal level economic infrastructure such as transportation hubs, workspaces and markets; (b) at the household level by supporting the development of human capital and (c) community based job creation through government programmes such as Expanded Public Works and Urban Renewal.

- Encouraging the development of social capital and co-operative relations to reduce vulnerability by supporting the active participation of communities in the design, implementation and evaluation of projects. This is intended to: (a) enhance the long-term sustainability of interventions and (b) build mutual trust, reciprocity and enhance social networks, ultimately reducing household vulnerability, social crime and enhancing security (NDoH, 2004a: 5)

These co-operative imperatives are to be aligned in the municipalities integrated development plans (IDPs) and programmes for local economic development (LEDs). While these policy directions may be termed a paradigm shift in the approach to informal settlement upgrading, it is worth noting that between policy formulation and implementation exists a gap that can be exploited by other governmental structures to the detriment of the objectives of the policy (Huchzermeyer, 2006: 52; Menguelé, Khan & Vawda, 2008: 187). Huchzermeyer has commented on the possibility of political manipulation of the process (2006: 52, 58). She also signals possible problems relating to issues such as security of tenure, the different approaches of provinces and municipalities to housing the poor and vulnerable; the less than clear definition of 'well-located land' for the acquisition and rehabilitation of land for either relocating or upgrading of settlements; the limitation on social inclusion through housing subsidies in the final phase of the programme; the exclusion of foreign migrants and questions the current mind set by planners and engineers that favours standardised housing delivery processes rather than flexibility and local level solutions (Huchzermeyer, 2006: 54-58). The empowerment of informal settlement dwellers is a key aspect in a consultative, negotiated, participatory approach to phased *in situ* upgrading or relocating such settlements and linking it to 'the alleviation of asset poverty' (NDoH, 2004b: 11-12). It is linked to a sustainable livelihoods approach which we shall outline in a later section.

The planning of sustainable livelihoods has been called, in the context of South Africa, the 'lynchpin' for co-operative governance involving the informal settlement dwellers and the three spheres of government. The significance of such planning is that it envisions and promotes an integrated

infrastructural development programme with poverty eradication and securing livelihoods as its primary objective, and thus precedes the construction of top structure dwelling units (Menguelé, *et al.*, 2008: 189-191). While advancing such an ambitious strategy, the state simultaneously seeks to decrease future formations of informal settlements over time. Thus Chapter 13 calls for increasing 'delivery of formal housing at scale', while recognising that the phased participatory upgrading approach will take several years to eradicate all informal settlements. Indeed, the policy envisages the eventual elimination of current informal settlements at the rate of 193 000 household per annum until 2020 (NDoH, 2004a: 4).²

In essence BNG is a policy attempt to bridge the perceptible boundaries between formality and informality (NDoH, 2004b: 7-8, 10-11, 12, 17) in the housing sector as mediated through new state regulatory and distributive measures (NDoH, 2004b: 12-15, 16, 18-19). It is a multi-agency approach that is strongly associated with intergovernmental, interdepartmental co-operation (NDoH, 2004b: 10, 17, 20, 21, 22), social compacts and agreements (NDoH, 2004b: 10, 11, 17-18, 21, 23, 26), fused with participatory, capacity building processes from below (NDoH, 2004b: 23, 25 see also NDoH, 2004a: 5-6). Seen from the perspective of informal settlements, its vision is to overcome the inadequacy of living conditions for informal settlement dwellers and the incorporation and integration of their multiple livelihoods into the main stream of an advanced urban society and economy.

However, although BNG has a fairly comprehensive set of intentions, these do not explicitly address the issue of prior legal recognition and the promotion of sustainable livelihoods in the upgrading process of informal settlements, which is the focus of this article.

5. THE CONCEPT OF LEGAL RECOGNITION AND INFORMAL SETTLEMENTS

The four phases of implementation of informal settlement upgrading as depicted in the BNG implicitly assumes some form of recognition of the informal

dwellers by the municipality. Given that municipalities operate within a legal institutional framework one can assume that in order for them to begin to implement the four phases they would require some form of legal framework to work within. To this end, legal recognition goes beyond the usual reference to tenure security in that it refers to a broader legal framework within which a municipality or other government departments, can take decisions involving expenditure of state funds.

Viewed from a broad philosophical perspective 'legal recognition' could be encompassed in the concept of "citizenship" and the recognition of being a 'citizen'. Viewed from a legal perspective, 'legal recognition' must be enshrined in legislation designed and enacted to protect people's rights.

According to Erlank, Shabangu, Murray, Maptisa, & Sekonyana (2008: 30) the concept of citizenship is taken from western understandings of the term. However, whether one uses western or African conceptions of citizenship, the term essentially includes the notion of rights (political, social or economic) and obligations between individuals/communities and governing/institutional structures (Turner, 1990).

The term citizenship also defines a relationship, in political terms between an entity such as the state or a city, and those who live in that entity. It is about both inclusion, i.e. those who are citizens, and exclusion i.e. those who are not considered citizens. Interestingly, the legal component of the City of Johannesburg's citizenship formula recognises that citizenship goes further than 'birth' or 'permanent residence', to include migrants to South Africa who may not have full citizen status at the national level (Erlank *et al.*, 2008: 36). Finally, the most conventional contemporary understandings of citizenship incorporates the ideas of rights i.e. what a state or a city owes to a citizen or community of citizens, and ideas of responsibility i.e. what an individual or a community owes to the state or a city.

It is within this recognition of the mutual set of obligations that the concept of citizenship for informal residents is important. By a city recognising residents of

an informal settlement as citizens it acknowledges its obligation to them and thereby their rights to be accommodated in that city. Furthermore, it provides the residents with a broader legitimacy in terms of other organs of the state as well as NGOs. It could further be argued that this legitimacy provides the 'space' for informal residents to become more active participatory citizens in processes like the People's Housing Process and other self-help initiatives, as well as a range of livelihood activities.

From a legal perspective, 'legal recognition' would be encompassed within existing legislation starting with the South African Constitution and the rights it endows upon the residents of the country. Legal recognition by a city of informal residents could further be implemented through the use of legislation such as the Development Facilitation Act which was designed and enacted to address low income community housing development needs and to expedite these developments (Harrison, 2008: personal communication).

Therefore through the combination of acknowledging citizenship and its associated obligations and the use of legislation to facilitate and ensure compliance, residents of informal settlements as well as municipalities could acquire the required tools to provide the institutional framework to facilitate other state sectors participation in the upgrading of these informal settlements, e.g. health facilities, transport and road access, water, electricity among others social amenities. Of course there will always be the lag between the stated intentions and the eventual outcomes. But these gaps need not be the responsibility of the state authorities that provide these services, but that of the citizens as well.

6. UNDERSTANDING THE LIVELIHOODS APPROACH

Many of the key elements of the BNG are found in the theoretical underpinnings of the sustainable livelihoods frameworks. Livelihoods, in brief, refers to the access that people have to assets and income generating activities within a social and institutional framework in order to sustain themselves. Although

² The BNG plan also exhibits a strong influence of the UN-Habitat agenda of the 1990s and more recently the World Bank/UNCHS (UN-Habitat) sponsored Cities Alliance initiative 'Cities without Slums'. These endorse the notion of sustainable human settlements by improving the lives of slum dwellers by the year 2020, through firstly, taking account of informal dwellers' priorities and empowering such dwellers through knowledge and secondly, ensuring the security of their civil, economic, developmental rights, rather than simply the delivery and provision of dwelling units in a linear top-down fashion (Cities Alliance, n.d.: online)

the sustainable livelihoods approach is not articulated as a theoretical concept within Chapter 13 or in BNG, it clearly associates itself with perspectives pioneered by Amartya Sen (1981; 1985; 1999), and the writings of Chambers & Conway (1992), and further developed by others such as Carney (1998), Ashley & Carney (1999) and operationalised by the United Kingdom's Department for International Development (DFID) in a series of papers and guidance sheets (DFID, 1999a; 1999b; 2000a; 2000b; 2001a; 2001b; 2001c). Its specific application to urban contexts was analysed by, among others, Moser (1996; 1998), Beall & Kanji (1999), Beall (2005) and Rakodi & Lloyd-Jones (2002). The general approach refers to the access that poor and vulnerable people have to assets and income generating activities within an institutional and governance framework in order to sustain themselves. These are generally divided into five types of capital, namely human, financial, physical social and natural. In the case of informal settlement dwellers, key activities would be organisation of the household and social relationships in and outside the household (social and human capital); wage work, grants, pensions, credit and savings (financial capital), access to land, and its physical location. (natural capital) and various public access services such as water, electricity, access routes, security of tenure as well as the physical structure of the dwelling unit and its improvement (physical capital). The key aspect for our purposes is the extent that the state assists in securing these assets thus offering a measure of protection against their vulnerability to the vagaries of social and economic forces. As indicated above in the policy objective as articulated in the BNG and Chapter 13 such interventions by the state presumes considerable participation of the poor and vulnerable within informal settlements in development planning and specifically the upgrading of informal settlements..

7. SUTURING 'INTENTION' AND 'PLANNING' WITH 'PARTICIPATION'

Between the intentions and the imagined outcomes are, as always, tensions and struggles around resources and capacity constraints, the mechanisms and procedures of co-operation and project management that turn the visions, imaginary and plans into the envisaged human settlements. In terms of process

the BNG represented an attempt to combine "(1) the packaging, projection and socialisation of its development vision, and (2) the managerial, technical and administrative capacity of the state to drive and sustain that vision and project" (Menguelé *et al.*, 2008: 179).

The implementation of BNG thus hinges not simply on overcoming the ever present challenge of co-ordinating state bodies to achieve desired ends through finance and project administration, but poses a more fundamental one of marshalling and managing state resources through the ever present tensions, capacity and problems associated with co-operation within and between government levels and informal settlement communities. Mitigating the silo mentality of government is a key provision of the BNG Policy. As Menguelé *et al.* (2008: 181) comment, it is about constructing 'a collective, shared and inclusive meaning so as to reduce or off set the surprising consequences of ill-managed imaginary'.

Intrinsic to building a shared meaning of what needs to be done and its implementation is the principle of citizenship participation in the public sphere. It is within the public spheres that individual and collections of individuals are able to interact and mobilise to make their claims as citizens. By exercising their citizenship in the public sphere through participatory practices, legitimate forms of contestations issues such as shelter in human settlements and relocation of informal settlements can be addressed as social, developmental or economic rights. Indeed such participation, as envisaged by the BNG policy not only ensures participation, but also addresses people's livelihoods as part of the public spaces for housing debates, solutions and implementation of policy.

Several interventions are introduced which support this process with a focus on funding mechanisms, provincial pilot projects, redefining the People's Housing Process, and institution building. The Informal Settlement Upgrading Programme allows municipalities to apply for a community-based or area-based subsidy that is not linked to individual households, but is based on the actual cost of improving an informal settlement as a whole. There is no limit on land costs (purchase and rehabilitation), and funding is available for interim services and community empowerment. Indeed, the two principle funding mechanisms, namely, (i) the HSRDP

(Human Settlement Redevelopment Programme) to fund much of the first phase, (ii) The SA Housing Funding for infrastructure, permanent municipal services, project management and top structures, should take care of much of the criticism of the inadequacies of current subsidies. It should be noted that there are no specified time frames, i.e. these are incremental upgrading phases with budgets determined by negotiations with all interest groups concerned. There is no formal definition of *in situ* upgrading in the BNG or Chapter 13. However Chapter 13 does refer to *in situ* upgrading, by which is meant the upgrading of informal settlements in a context of urban structural change through the provision of tenure security, and an incremental approach to providing a basic health and safe environment, amenities, social services and support for social capital. The focus is on inclusion, rather than marginalisation of informal settlement dwellers in the planning and upgrading of the settlement.

Despite the lack of a precise definition of *in situ* upgrading, the BNG makes a significant policy shift in acknowledging the existence and significance of informal settlements and Chapter 13 focuses on the rules and regulations by which such *in situ* upgrading is to take place. Taken together these principles support a livelihoods approach. For example, under the objectives of the programme, tenure security and empowerment is envisaged as part of incremental social and economic development. While economic infrastructure is supported by the state, there is a focus on the household as constituting human capital and its physicality as 'the most productive asset of the poor' (see NDoH, 2004a: 5).

In suturing the policy intentions with planning and citizen participation, there is an acknowledgment of the existence of informal settlements, not as a housing problem requiring a technical solution, but as a feature of the structural changes occurring in South Africa, particularly in the urban environment. Such a perspective lays the basis for less rigid adherence to norms, standards and stand sizes in the development of informal settlements over time. Such acknowledgement amounts to an implicit or tacit legal recognition of informal settlements.

8. THE BNG'S INFORMAL SETTLEMENTS PROGRAMME SINCE 2004

Practices by municipalities, provincial and national governments who are charged with implementing the BNG and Chapter 13 over the last four years have been less than dramatic. Neither has the phased approach been put into practice, nor have the regulatory mechanism or system been put in place. This is reflected in many officials being unaware of the two principle funding mechanisms contained in Chapter 13. Municipalities have not explored the space created by the shift in policy and have continued to focus on RDP housing delivery. In addition, the KZN provincial legislation to eradicate slums, which is said to be replicated in other provinces, sends confusing signals (Huchzermeyer, 2008: personal communication; Misselhorn, 2008: 27). Not only is it directly against the spirit of the BNG, but possibly contradicts the *Prevention of Illegal Eviction and Unlawful Occupation of Land Act of 1998* and the *Constitution*.

There are also other challenges that exist: the involuntary relocations of informal dwellers into temporary relocation areas causing disruption of livelihoods, social bonds and networks, the lack of effective consultation and participation often resulting in frustration and the failure to attend to emergency situations as a result of flooding, fire, and other forms of disasters such as xenophobic attacks.

While the informal settlements all have many similar characteristics, the approaches by municipalities to resolving housing problems vary considerably. In this article we use Cape Town and Johannesburg to illustrate the differences in approaches, which range from limited engagement with informal dwellers to long term pursuance of a slum clearance strategy and the provision of formal housing, rather than *in situ* upgrading. In evaluating the approaches by metropolitan municipalities we have tried to discern the degree to which the formal features of the BNG policy have been applied and what have been the results thus far, four years after the formal adoption of the policy. Two case studies are explored, not simply to highlight the problems we have already identified, but to analyse critically what steps have already been taken, and what possibilities exist for a full implementation of the policy.

8.1 Case Study 1: Cape Town Metropolitan Municipality

While the publicity of the N2 Gateway project and Delft temporary relocation areas in Cape Town does not always seem to portray housing in a favourable light, there are many more positive signs that the BNG paradigm is being tested in many other settlements with varying degrees of success. Most important in Cape Town is that with the assistance of NGOs, in particular Development Action Group (DAG), the livelihoods component of the BNG is being seriously applied with some notable successes. In particular the livelihoods approach to informal settlement upgrading is being pioneered in two important informal settlements: Freedom Park (Mitchell's Plain, next to Tafelsig) and Hangberg (Hout Bay). There are other settlements where such an approach is being undertaken such as in Imizamo Yethu (Houtbay), Marconi Beam, Morkel Cottage, Mocke Rood and Kayamandi Zone F (see Smit, 2006). However, this case study will be confined to the aforementioned two informal settlements

8.1.1 Cape Town's Informal Settlements

The recent STATSSA Community Survey 2007 suggests that there are only 83 912 informal households in Cape Town (STATSSA, 2007). However, in 2004 there were 136,623 informal dwelling structures (Misselhorn, 2008: 14). In 2007, Cape Town recognized 135 693 informal dwellings. A more recent estimate has placed the number at a conservative 113 047 dwellings in 223 settlements (CoC, 2008b). In terms of their proposed incremental upgrading plan, 37 902 dwellings will have to be relocated because they are on flood plains, experience severe flooding in winter, are on servitudes or proposed developments such as schools.

The change in the terminology from 'household structures' to 'informal dwellings' is significant in that it gives an insight into the change in approach to informal settlements. In the early 1990's the housing or shelter needs of informal dwellers was not a priority, nor was there a policy as how to deal with informal settlements (DAG, 2007a: 10). At the time it was perceived that informal settlements were simply land invasions, and the policy adopted in response was to stop the growth of informal settlements by evicting dwellers, and in the process deny them their rights to adequate housing, health and the right

to work. The City of Cape Town's latest policy vision on informal settlements states that they will:

Upgrade informal settlements in a sustainable manner which aligns to the City's integrated housing plan and addresses peoples Constitutional rights to health and dignity (CoC, 2008a).

Furthermore, the policy acknowledges that the growth of informal settlements is fuelled by in-coming migration. The acceptance that informal settlements are a feature of the city at least in the medium to long term, and to provide in an incremental manner essential, basic and full services, to be followed at a much later stage with full top structures, has a significant implication in the way the city approaches *in situ* upgrading.

8.1.2 The Approach of Cape Town to informal settlements

The guiding principles of the Cape Town's informal settlement strategy are as follows:

- Acknowledge peoples constitutional rights.
- Access to essential services, aligned to an incremental housing upgrade programme.
- Development of a fair transparent and equitable prioritization model.
- Greenfield developments are not exclusively for the surrounding informal settlements.
- Housing allocation based on longest waiting list to include backyarders.
- Zero tolerance for land invasions.
- Ensure continuous development of communities.
- Integrated developments through land use planning principles (CoC, 2008a: 4).

Unlike other municipalities, the City of Cape Town has established a model for incremental upgrading divided into different levels of service: essential, basic and full. These services are depicted in the table below:

Table 2: Levels of Service

Service level	Sanitation	Water	Refuse removal	Area Lighting	Electricity (City areas)
Essential	Shared service, ratio determined by technology option subject to densities, e.g. container toilet, chemical toilet, pit liners	One standpipe within 100m for every 25 dwelling units subject to densities.	Community based distribution of black bags and collection and area cleaning	Flood lighting	Pre-paid electrical connection on unencumbered land on condition infrastructure to be used for 3yrs
Basic	Shared service*, ratio determined by technology option, e.g., dry sanitation, chemical toilet, anaerobic toilet, pour - flush toilet	One standpipe for every 25 dwelling units	Community based distribution of black bags and collection and area cleaning	Flood or Street lighting	Pre-paid electrical connection
Full	One toilet per household, e.g., full-flush toilet	One metered water connection per dwelling	Door to door collection service	Street lighting	Pre-paid electrical connection

Source: CoC, 2008a

In pursuing this model of incremental upgrading, the City makes a distinction between short and long term upgrading. In order to further distinguish between settlements that require urgent attention and those that have a longer time span for upgrading, a ranking system based on three broad criteria was aligned to the incremental upgrading model. These criteria are the age of the settlement, whether the area is on a flood prone, whether it poses a fire risk, and the availability of water and sanitation (CoC, 2008c). With the model and ranking system in place the short term and long term upgrading can be addressed and settlements prioritised accordingly:

In the short term the following will apply:

- Essential servicing only of settlements on unsuitable land e.g. road reserve, servitudes, private and state land.
- Implement a priority land acquisition programme.
- Formalise orderly movement of people within settlements.
- Apply strict enforcement and growth management.

For the long term the following forms of upgrading will be considered:

- Basic servicing of new land based on future planning layout with tenure option (Greenfields).
- Incremental upgrading may involve roll over upgrading and *In situ* upgrading of settlements on suitable land aligned to an incremental upgrade programme.

- Introduce the strategy of preference to backyarders to discourage invasion of land.
- De-densify settlements to facilitate a healthy and safe environment.
- Where relocation takes place the policy of one plot, one household, will apply.
- Apply strict enforcement and growth management.
- Develop capacity building programmes to ensure skills development, entrepreneurship and job creation (CoC, 2008a: 8-9).

8.1.2.a Institutional arrangements

This approach creates institutional arrangements that involve multi-disciplinary teams led by the Integrated Human Settlement Services (IHSS).

The principal agent for ensuring that services are delivered to the informal settlements is the Service Delivery Integration Directorate whose main function is to ensure that all line function departments are co-ordinated to deliver the services they have agreed upon (through signing Service Level Agreements (SLAs)). By dividing up the city into zones, the 18 people in the informal settlement unit operate with flexibility and in an emergency are easily re-deployed.

All funding for these projects will be sought through the appropriate funding mechanisms established by the National Department of Housing. However, funding in terms of Chapter 13

was not mentioned by officials. Instead, the use of funds from the National Treasury in the form of Neighbourhood Development Grants was mooted as an additional source.

8.1.2.b Observations: livelihoods and *in situ* upgrading

Although the City of Cape Town's new integrated housing policy and programme has incorporated some of the key aspects of the BNG, it is still premised on the delivery of houses and services. There is an acknowledgment that the economic aspects of these settlements such as the lack of investment, lack of employment prospects and poor standards of transport point to underdevelopment of the areas, as well as poverty and vulnerability in which informal settlement dwellers find themselves.

However, there are at least two major projects being undertaken by the NGO, Development Action Group (DAG), which has pioneered a livelihoods approach in the incremental upgrading of urban informal settlements (See Smit, 2006, for a description of other DAG projects in Cape Town). The two settlements from which the lessons on livelihoods approaches are drawn are Freedom Park and Hangberg. DAG has worked with the municipality and the residents of the settlements in assisting with the implementation of the incremental housing upgrading. Rather than taking an oppositional role to the government (or local municipality), DAG defines their initiatives in the informal housing sector as piloting a

'people-driven approach to pro-poor urban development, which is multi-sectoral and is driven by the principles of inclusive participatory development' (DAG, 2007a). DAG articulated the following important challenges that are common to these settlements:

- There was initial struggle to insist on their right to exist, and to be recognised as an integral part of the urban environment, and that their settlement requires services and developmental aid.
- The physical upgrading – *in situ* or roll over housing and servicing developments – are envisaged as a point of debate and conflict between residents' needs and desires and municipality rules, regulations and insistent imperative to minimise costs and achieve economies of scale through their rational planning and technical approaches.
- There is a need to minimise disruption to people's lives and households through relocation where necessary.
- Participation and community action is crucial in ensuring that the struggle for recognition of the settlement, the right to shelter, services and other development contributes to minimising their vulnerability.
- Develop a participatory livelihoods framework in which to conduct the research and develop the assessment methodology in association with the community/settlement's representative committee.
- A number of techniques are then assembled and the research carried out. Among the aims and anticipated findings were:
 - ♦ A socio-economic profile of the area;
 - ♦ A map of their realities is developed representing:
 - Places of danger such as areas where gangs meet or shebeens, or criminal activity;
 - The socio-economic divisions within their settlements such as:
 - * The well off;
 - * The better off;
 - * The vulnerable;
 - * The poor.
 - Places where food parcels, clothing and other aid is supplied and obtained; A profile of the social problems

that is prevalent in the settlement (Interview with DAG, Informal Settlements Unit, 18 April 2008; see also DAG, 2007a):

It would be anticipated that from an official's point of view, 99%, if not most people in such settlements would be earning under the R3500 income band, which would automatically place them in a certain category to receive state sponsored housing assistance. However, such a blanket categorisation as is common by municipalities misunderstands the development needs as simply one of providing a house. The two cases studies of Freedom Park and Hangberg illustrate the complex nature of informal settlements and their various and area specific needs beyond that of mere housing (see DAG, 2007 b; c and d)

On Freedom Day, 27 April 1998, a group of families from Michells Plain occupied a vacant piece of land in an area known as Tafelsig³. Served with eviction notices by the municipality, they fought back by forming the Tafelsig People's Association (later to become the Freedom Park Squatters Association, and then the Freedom Park Development Association), and with the assistance of the Legal Resources Centre, appealed their eviction. Although the settlement was illegal in terms of the law, after mediatory intervention highlighting the state obligations to provide shelter, the settlement was eventually allowed to stay. Some rudimentary services were initially provided, minimal toilet facilities, communal water standpipes and refuse collection. The DAG group became involved in 2000. In a series of negotiations with the city, an upgrading project was agreed upon. However, there were contrasting views on how to plan the upgrading. The municipality focussed on delivery of houses on a lowest cost per plot involving the provision of bulk infrastructure along envisaged long straight roads that would also maximise the occupation space in a grid type pattern with one central public park. The Freedom Park Development Association in considering the municipality upgrading plans approached it with a very different perspective. They wanted the roads and infrastructure designed around the maximisation of current household plots, with narrow roads and several enclosed public spaces (the physical capital/assets) that

discouraged criminal activity, particularly related to drug abuse and gender based violence (social assets/capital). The reasons for these contrasting perspectives between the municipality and the residents become very apparent as a result of a participatory livelihoods analysis conducted by DAG.

As a result of the livelihoods analysis a number of social and economic challenges were identified (rather than only physical structures). These challenges and subsequent initiatives were undertaken to develop or support the development of various kinds of capital or assets. These were to generate income by recycling plastic to make handbags (financial capital), communal vegetable gardens (use of natural capital), and social programmes such as literacy classes, construction skills courses, or training as pre-school carers (human capital). They also included community based neighbourhood watches to curb the crime including pervasive domestic violence and drug abuse (social capital).

Hangberg is a settlement in Hout Bay, an affluent suburb of Cape Town. Located at the foot of the Sentinel Mountain, it was built to house workers in the fishing industry. It is composed of a mix of low income housing, apartments and informal dwellings constructed in the 1980s and 1990s. It is one of the few settlements that have not been subjected to forced removals. Since the late 1990s no further housing was built due to the unavailability of land. However, the demand for housing did not diminish, and with no alternative housing available, permission was granted by the City of Cape Town to occupy council owned land directly behind the council apartments. The municipality only allowed two bedroom 'bungalows' to be constructed without the use of bricks or concrete. There are now over 700 households accessible through narrow pathways (physical capital). The residents of the informal settlements see themselves as integrated into the local community through kinship and friendships ties (social capital). They further point out that Hangberg is their place of birth and would prefer for their settlement to be upgraded, rather than be relocated. The Hout Bay Civic Association, formed in 2002, represents their interests and has been instrumental, together with DAG, in negotiating with the municipality for a range of

³ These brief descriptions of Freedom Park and Hangberg informal settlements are based on DAG, 2007 b, c and d)

rudimentary services such as water and sewage reticulation, a sloop to contain water run-off from the mountain, and a tarred access road (physical assets). A business plan for further upgrading has been submitted to the provincial Department of Local Government for approval (van der Heyden, 2008: personal communication).

In Hangberg the social networks within the settlement and between the formal township apartments and the informal settlement were very important to their survival and sustainable livelihoods (there is a high employment rate) (the social and financial capital). Additional employment opportunities were identified through a livelihoods analysis. Pro-poor tourism was identified as one of the most likely ways in which additional income could be generated (financial capital).

These livelihoods analyses are important in that:

- It points to the internal socio-economic differentiation within the settlement. Such settlements are not homogenous and a one size fits all approach is not likely to serve all equally.
- That development can be targeted for specific and most vulnerable groups so that they can withstand the stress and shocks to their livelihood strategies.
- Settlements are places of conflict within themselves (such as crime) and between residents and authorities.

8.2 Case Study 2: Johannesburg Metropolitan Municipality

To date the City of Johannesburg (CoJ) has concentrated on finalising large housing projects, mainly 'greenfields' projects that were started before BNG. There are very few *in situ* upgrading projects being undertaken within Johannesburg at present. According to Baumann *et al.* (2004: 24), the current informal settlement upgrading projects in Johannesburg focus on tenure, servicing and house construction, addressing the backlogs in housing, water and sanitation, thereby 'limiting the extent they truly integrate citizens into the fabric of urban opportunities'. Furthermore, 'there is general recognition in the city

of Johannesburg that the statutory forms of participation in the city are not enabling satisfactory levels of citizen involvement in the improvement of the lives of those living in informal settlements.' (Baumann *et al.*, 2004: 23).

8.2.1 Johannesburg's Informal Settlements

Recently, the Johannesburg Housing Department has undertaken a count of informal settlements in the Johannesburg area, and have arrived at a figure of 182, housing some 190 000 households (Harrison, 2008: personal communication). Estimated growth in terms of shacks could be approximately 6 to 7% per annum where as the population growth is 3 to 4% per annum. Based on a calculation of current backlogs and growth Johannesburg would need to produce about 90 000 units per annum to meet the 2014 target. Of these about 60 000 would need to be subsidised, of which about 45 000 would have to be met through inclusionary housing⁴ and *in situ* upgrading of existing informal settlements (Harrison, 2008: personal communication).

In 2004 Baumann *et al.* (2004: 19) reported that there were 89 informal settlements within the Johannesburg metro area accommodating approximately 170 000 households. It was further recorded that the City of Johannesburg planned to eradicate these informal settlements through formalisation/relocations by the year 2007. The above contemporary figures showing Johannesburg's current backlogs indicate to what extent the City of Johannesburg has failed to contain the growth of informal settlements using their current delivery methods.

One of the main reasons for this, according to Harrison (2008: personal communication), is that the current township establishment approach to *in situ* upgrading developments is 'lengthy and involves a very intensive project management process'. Using the Ordinance 25 of 1965 or Ordinance 85 of 1986 requires services to be installed before any approval of the township. Despite the *Less Formal Township Establishment Act 113 of 1991* (LFTE) approach enabling a municipality to over-ride public objections and generally have more powers, the average township establishment takes

approximately two years. According to Harrison (2008: personal communication), essentially some form of legal recognition of the informal settlement is required to unlock public sector investment by other sector departments as well as from residents themselves. According to Harrison, (2008: personal communication) in order for support, such as the Neighbourhood Development Partnership Grant, from National Treasury or the Settlement Land Planning Grant, from the Department of Land Affairs to be obtained legal recognition of the beneficiaries is required.

8.2.2. The Approach of Johannesburg to Informal Settlements

In response to the above, the Johannesburg Housing Department has undertaken feasibility studies on approximately 130 settlements to determine whether they can be upgraded *in situ* and to put in place a programme for *in situ* upgrading, which would be in accordance with Chapter 13 of the Housing Code. In conjunction with this, the Town Planning Department has been focusing on informal settlements, determining what can be done to regularise them from a planning legislative perspective. The aim is to provide some form of recognition for the residents of these settlements so that they become citizens of the city from both a beneficiary and from a responsibility perspective (CoJ, 2007).

The proposed approach would effectively pertain to those settlements earmarked in the above mentioned feasibility study, for *in situ* upgrading. There are two key tools that the city will use to give rapid legal recognition to both residents and the informal settlements. The first is through the use of the City's existing town planning schemes, by zoning informal settlements 'special zones for transitional residential settlements'. The scheme would then provide regulations for minimum safety levels with regard to the layout and construction of top-structures. In addition, a draft plot layout would be prepared in order to give residents 'occupant permits' for registration purposes. This approach would effectively enable the regularisation of land use and the determination and application of regulations for each settlement (CoJ, 2007)

⁴ Inclusionary housing in South Africa means the harnessing of private initiatives in its pursuit of housing delivery to middle/higher income households and the provision of (inclusive) affordable housing opportunities in order to achieve a better socio-economic balance in residential developments and also contribute to the supply of affordable housing.

With regards to the recognition of rights to land of the occupants, the City of Johannesburg intend to use the *Development Facilitation Act of 1995*, Chapter 5, Sections 30 to 33. These sections make provision for the establishment of land development areas, the recognition of settlements within these land development areas, as well as 'initial ownership' for residents (on publicly owned land) before the conventional proclamations and opening of township registers have been complied with. These sections further allow any restrictive conditions and servitudes to be suspended on land development areas. Furthermore, the tribunal is allowed to set aside the National Building Regulations or other building by-laws and apply another set of standards. Finally, the chapter 5 sections allow for the inclusion of the land development areas into a town planning scheme. The 'initial ownership' in terms of the DFA, affords the occupant limited rights to occupy their site, pass it on to heirs but will not allow sales transactions. On privately owned land the city would either enter into Land Availability Agreements with the owners, or negotiate partnerships, land swaps or even expropriation (CoJ, 2007; Baumann *et al.*, 2004).

8.2.2.a Implementing legal recognition

The above process would be a 'blanket approach' to informal settlements earmarked for *in situ* upgrading. This approach would set up the framework or basis for the ongoing phased formalisation of these settlements. This approach could contribute to the completion of phases 1 and 2 (of the Chapter 13 programme) across all *in situ* upgrade settlements across Johannesburg in a short period of time. This approach has been formally adopted by the City of Johannesburg Council and is now in the process of being implemented.

It should be noted that together with the above approach it is proposed that the City of Johannesburg continue to identify and purchase land for de-densification and relocation of residents in poorly located and unsafe settlements.

With regards to a relocation policy, the City of Johannesburg does not have a specific general city policy, rather this is decided on a settlement by settlement basis (Naidu, 2008: personal communication). However, it is acknowledged by the CoJ that the Local Economic Department of the CoJ should have

a better understanding on issues of livelihoods in particular settlements and should work together with housing to determine people's livelihoods and therefore who could be the most appropriate households for relocation when required.

8.2.2.b Observations

The following Observations can be derived from the Case Study:

- There is an acknowledgement that *in situ* upgrading should take place in a phased incremental manner;
- There is an acknowledgement that the current statutory approach to informal settlement upgrading is not working;
- Johannesburg Town Planning Department has put forward a regulatory approach that gives informal settlements legal recognition within an 9 to 12 month period using the existing DFA legislation;
- The Town Planning Department has devised specific town planning zones as well as proposed standards for the provision of appropriate facilities for informal settlements upgrading based on a range of densities;
- The intended benefit of the Town Planning scheme approach is recognition of 'initial ownership' on public owned land, no removals; consultation; register of occupants and certificates; governance and regulation; and finally a trajectory towards full formalisation;
- Furthermore the recognition of informal areas can take many forms including, formalising the layout plan and providing occupation rights and obtaining funding for the upgrading process from other government sectors other than the Province or municipality;
- The Housing Department has undertaken a feasibility study of all informal settlements within their jurisdiction to determine which can be upgraded *in situ*.
- Those informal settlements deemed unsuitable for *in situ* upgrading due to being located in unsafe areas will be relocated to other 'well located' areas.

9. CONCLUSION

The case studies show that the full implications of the Upgrading of Informal Settlements Programme (Chapter 13), introduced through BNG has not yet become part of the process and procedures of *in situ* upgrading in informal settlements, particularly in the CoJ. However, there are indications that by legally recognising informal settlements, as in the City of Johannesburg case, a more sustained upgrading can be planned and implemented. By providing for a series of upgrading steps, there is an acknowledgement by local municipalities that such settlements are a permanent feature of the urban landscape, and therefore are legally recognised as such.

Furthermore, the metropolitan municipalities here do appear to be taking the IDP and other similar development legislation seriously – integration implies co-operative working and regard for livelihoods and LED, as well as secondly, a more co-operative approach to informal settlement upgrading between the various government departments to achieve sustainable settlements.

In the Johannesburg and Cape Town case studies, one is seeing a shift in thinking, if not in practise, towards a more integrated approach to housing delivery. The Cape Town case study, further illustrates that the most immediate challenge is obtaining a co-ordinated integrated approach between the different levels of government and government departments moving the focus away from the silo mentality that pervades the civil service towards integrated development

The Cape Town case study clearly illustrates how a livelihoods approach can be applied in an *in situ* upgrading process. Although, in the Johannesburg case study the informal upgrading approach of 'legal recognition' has not yet been implemented, the approach of the City of Johannesburg does illustrate two significant points. Firstly, it illustrates how legal recognition of informal settlements can be achieved in the short term, and secondly, how the new approach provides legal options for a municipality to use existing legal options to expedite an incremental informal settlement upgrading process, with its associated benefits to the residents. All the activities detailed in these two case studies required increased integration between the various sector departments within the municipalities.

As regards the BNG's phased implementation approach, up front legal recognition of informal settlements should become standard practice and should happen in or even prior to Phase 1. In addition, initial studies that would facilitate a livelihoods approach to informal settlement upgrading should ideally be part of the Interim Business Plan for Phase 1 of Chapter 13 of the Housing Code.

Early legal recognition of informal settlements residents as well as the active implementation of a livelihoods approach would significantly contribute towards a more stable and sustainable basis for the ongoing phased upgrading process and possibly even for the scaling up of informal settlement upgrading.

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