

**19 August 2016**

High Level Panel on the Assessment of Key Legislation  
Parliament of South Africa  
Committee 2: land reform

**Attention: Committee 2 - Land Reform**

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**THIRD SUBMISSION OF COMMENTS BY AFESIS-CORPLAN**

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As a follow up to Afesis-corplan's ([www.afesis.org.za](http://www.afesis.org.za)) earlier submission dated 10 August 2016 dealing with 1) communal land administration and 2) managed land settlement, please find a third submission on the next page dealing with 3) land acquisition and development.

We also would like to take this opportunity to thank you for the opportunity to make a verbal submission to the High Level Panel on the Assessment of Key Legislation on the 16 April 2016 in East London. Attached (annexure 1) find a copy of our presentation for your records.

We have also attached (annexure 2) a submission Afesis-corplan made to the Housing Development Agency (HDA) in 2015 that you may find of interest. This particular submission to HDA responded to their pre-draft report on a "coherent and inclusive approach to land".

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Yours sincerely



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### **Submission 3: Land acquisition and development**

*Comments in this section directly relate to the focus area on “land redistribution and restitution in the context of redressing skewed patterns of land ownership based on the past laws and practices that were racially discriminating”.*

One of the key gaps in legislation, in our opinion, relates to the challenge of municipalities and government to acquire sufficient land for settlement development at a rate that makes inroads into the housing backlog and keeps pace with future demand. Between 1994 and 2014 the South African Government has provided more than 2.5 million houses and another 1.2 million serviced sites, but the housing backlog has nevertheless increased from 1.5 million to 2.1 million units, while the number of informal settlements has gone up from 300 to 2 225.<sup>1</sup> The United Nations estimates that 71.3% of South Africa's population will live in urban areas by 2030 and nearly 80% by 2050.<sup>2</sup>

In order to address this urgent need to rapidly increase the supply of land for housing and settlement development to address this backlog and future needs, and to contribute towards the countries land redistribution targets, the following three issues and associated recommendations are highlighted<sup>3</sup>.

1. There is no single piece of legislation that clearly outlines who exactly is responsible for the acquisition and development of land for human settlements and what procedures should be followed to plan for, acquire, hold and develop such land. It is recommended that government needs to develop and/or modify legislation so as to require municipalities to develop a formal land acquisition and development strategy as part of their Spatial Development Framework and Integrated Development Plans. These land acquisition and development strategies could include reference to land banking mechanisms, land pooling and readjustment and other mechanisms that facilitate the acquisition and development of land.
2. There is also no dedicated funding source for land acquisition that municipalities can use. At the moment municipalities need to make use of funding sources such as the Urban Settlement Development Grant, the Municipal Infrastructure Grant, and (as a last resort) the Human Settlements Development Grant (HSDG) which means that funding for the purchase of land competes with other funding priorities such as the instillation of bulk services. Government therefore needs to establish a dedicated programme and fund (similar to the Settlement and Land Acquisition Grant of the past) that municipalities can access to plan for and buy land for settlement development purposes.
3. Presently the national budget that is set aside for land purchase, in the context of low income housing development and the HSDG, is just over 3% of the total funds set aside for land, services and top structures.<sup>4</sup> This amount needs to be reviewed, especially in relation to the acquisition of well located land which tends to be more expensive. It is recommended that the national Department of Human Settlements, in conjunction with treasury (and other appropriate government departments) increases the budget allocation (both in total amounts and as a percentage of the total government budget) and resources (e.g. human skills) that are allocated towards the acquisition and development of land for human settlement (and other) purposes.

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<sup>1</sup> South Africa's Housing Conundrum, SAIRR, @liberty, No 4, 2015/6 October 2015/Issue 20

<http://irr.org.za/reports-and-publications/atLiberty/files/liberty-2013-south-africas-housing-conundrum>

<sup>2</sup> *South Africa plans for mass urban migration*, available at: [http://www.southafrica.info/about/government/iudf-270515.htm#.VtmIO\\_I97IU#ixzz41wHzPK5z](http://www.southafrica.info/about/government/iudf-270515.htm#.VtmIO_I97IU#ixzz41wHzPK5z)

<sup>3</sup> These issues and recommendations are elaborated in an as yet unpublished report on “Managing and Curbing Unauthorised land occupation” developed by Afesis-corporation for the housing development paper. Once this paper is available it will be available at <http://goo.gl/l6wNRV>

<sup>4</sup> In 2014 the budget for land was R6,000 per site; services about R44,000 per site; and top structure R110,000 per site for a total of R160,000 per site. This also implies increasing human resources within the Departments that deal with land identification, acquisition and development.

**Annexure: 1 – Afesis-corplan presentation to parliaments High Level Panel on Key Legislation (East London, 16 August 2016)**

# Communal Land Administration & Managed land Settlement

Submission of comments to HLPKL  
By Afesis-corplan : Ronald Eglin  
16 August 2016  
East London



## Afesis-corplan

- Developmental NGO based in East London
- Promoting active citizenship and local governance (with emphasis on land for settlement)
- [www.afesis.org.za](http://www.afesis.org.za)
- Two Submissions:
  - Submission 1: Communal Land Administration
  - Submission 2: Managed Land Settlement



# 1. Communal Land Administration

- Issues
  - IPILRA 'protects' communal land rights but does not 'create' (or record) rights, creating land administration legal void.
  - On-going disagreement how to 'create' land rights in communal areas (transfer vs. social tenure)
- Legislative recommendations
  - Short term: Amend IPILRA & develop regulations to introduce new land records system (parallel to existing registration system)
  - Long term: Continue to consult and find negotiated long term 'solution' to land rights in communal areas



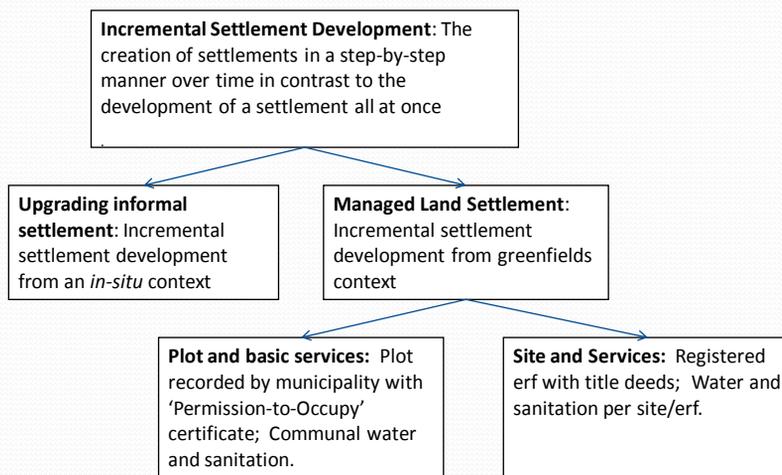
# 1. Communal Land Administration

- Land 'Registration' System: Land rights registered in the Deeds Registries and offices of the Surveyor Generals according to the
  - *Land Survey Act No.8 of 1997*
  - *Deeds Registries Act No.47 of 1937*
- Land 'Records' System: Land rights recorded in a locally administered & nationally constituted land administration system, as yet not found in national legislation. Similar to old Permission To Occupy (PTO) certificates.

## 2. Managed Land Settlement (MLS)

- Issue
  - Take more than 20 years to address housing backlog at current delivery rates
- Legislative recommendations
  - Short term: National govt. make policy statement recognising MLS as a form of incremental settlement
  - Long term: See 'housing as part of land redistribution programme → revise new human settlement policy → create new Human Settlement Act → new human settlement code (that accommodates MLS)

## 2. Managed Land Settlement



**Annexure 2: Comments submitted to the Housing Development Agency on “draft policy framework on a coherent and inclusive approach to land for human settlements” - June 2015**

See next page for copy of this submission.

## Comments on “draft policy framework on a coherent and inclusive approach to land for human settlements”

June 2015

Thank you for the opportunity to comment on the above mentioned draft policy framework. Note that these comments relate to draft policy framework version dated - 2015/04/22.

We are most excited that government is developing a policy framework on a coherent and inclusive approach to land for human settlements. The development of a policy on land in the context of human settlements has been long overdue.

The following is our initial and quick attempt to give some ideas as to what we feel should be included in such a policy framework. We have decided to make a number of recommendations on what we would like the policy framework to address rather than go through the draft report page by page.

These recommendations are categorised as follows:

- A. Unpack what is meant by a coherent and inclusive approach to land
- B. Establish clear institutional arrangements for land related matters
- C. Improve land categorisation and recordal systems
- D. Improve the relationship between land and spatial planning
- E. Build capacity within the land sector
- F. Conduct further research and policy development on identified topics
- G. Reprioritise areas of focus for land and settlement related matters

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**A. Unpack what is meant by a coherent and inclusive approach to land**

**1. Locate the right to land within the broader set of ‘rights to settlement’**

The South African constitution identifies a number of rights, which when combined can be considered as the ‘right to human settlement’. These rights include the right to the following rights related to specific products, on a progressive basis and within available resources:

- Land and property (section 25).
- Housing (section 26)
- Water (section 27.1.2)
- A healthy environment – including for example, sanitation, refuse removal etc ( 24.1- healthy environment and 24.2.a - prevent pollution)

If settlement is also understood to be the process of developing settlements (not just the product of a settlement) then a number of other rights relating to this development process also need to be addressed:

- Information (section 32)
- Just Administrative action (section 33)
- Participation in local government (section 152.1.e)

The right to land and property is then just one of the rights within the broad package of rights within the right to settlement. It is difficult to have any of the other rights to settlement without having land on which these other rights can take place, so on the path of the progressive realization of the right to settlement, the right to land comes towards the beginning of the path.

## **2. Differentiate between the right to access land and the right to property protection**

The property clause in the constitution has two broad rights:

- The right to access land: Section 25.5 states that ‘the state must take reasonable legislative and other measures, within its available resources, to foster conditions which enable citizens to gain access to land on an equitable basis.’ (sections 25.6, 25.7 also relate to this right to access land)
- The right to property protection: Section 25.1 states that ‘no one may be deprived of property except in terms of law of general application, and no law may permit arbitrary deprivation of property.’ (sections 25.2, 25.3 and 25.4 also relate to the right to property protection )

Any policy on land needs to take both these rights to access land and the right to property protection into account. This is the right to get land the right to keep land.

## **3. Identify and articulate the purpose of the land policy in the policy framework**

We propose that the land policy should aim to achieve two outcomes or purposes:

- Firstly the policy should directly outline how the state will address the right to land and property.
- Secondly the policy should contribute towards transforming our spatial landscape and restructure our settlements

Addressing land rights (building on the introductory comments on access to land and protection of property rights discussed in the previous recommendation) includes:

- In relation to the right to access/ get/ have land (the land access clause), the role of the state is to make sure that people who have been dispossessed of land have land returned to them (or compensated – as per land restitution policy), those who have not had an opportunity to acquire land are able to get land to live on and to use (land redistribution policy), and those that have been living on land under insecure conditions are more secure (tenure reform policy).
- In relation to the right to keep/ use/ transact in land (the property clause), the role of the state is to make sure that once people have land tenure security then the law relating to protection of tenure and other land related rights and obligations is upheld, in that people use the land for which it has been agreed, and they transact in land following agreed upon procedures, etc.

In relation to using land to contribute to spatial transformation, what this means for the role of the state is that the state manages, administers, and facilitates the planning and regulatory systems in a way that contributes to spatial transformation. In other words the state intervenes in the land market, as broadly defined, including the formal land market through the deeds registry office, and through more ‘off-deeds’ register markets such as found in areas under customary and communal administration, as well as in informal settlements.

## **4. Unpack and reach general agreement on what is meant by spatial and land transformation**

Transformation is understood to mean moving or transforming from one system, condition to another, with the following providing examples of such transformations in the context of land:

- From separate development (apartheid) – to integrated (democratic) development

- From land uses that generally separate activities from each other - to land uses that more spatially integrated activities
- From income groups or classes living separate from each other - to classes living in more integrated neighbourhoods
- From living in locations that are poorly located relative to opportunities - to locations that are well located relative to opportunities
- From living in locations that make it difficult to access public transport - to locations where it is easier to access public transport
- From living in regions where settlements, agricultural and conservation areas are planned and located in separate places - to regions where areas for settlement, agriculture and conservation are found within a nested or fractal hierarchy of such spaces
- From many people living without tenure security - to everyone living with tenure security
- From generally less dense settlements - to generally more dense settlements (while still recognising the need to accommodate a range of settlement densities and typologies, as part of a continuum from more dense to less dense)
- From treating land as an infinite resource base and a waste sink within a linear environmental resource use system - to managing land within nature's throughput carrying capacities as part of a circular resource cycle
- From communities told what will happen in relation to land related matters - to communities participating in land related matters and shaping their spatial futures
- From land related departments operating in silos - to departments coordinating their land related interventions

For further discussion on what is meant by spatial transformation, see for example page 23 of the report on “SPLUMA as a tool for spatial transformation” that can be found on the following link: <http://sacitiesnetwork.co.za/wp-content/uploads/2015/04/spluma-as-a-tool-for-spatial-transformation-final.pdf>

In the same way that spatial transformation needs to be clearly defined and explained, it is also important to define and explain what is meant by other commonly used terms like Integrated, Sustainable, Human and Settlement as these terms play an important role in governments overall policy direction. We do not however make any suggestions in this report as to what these definitions could be. This is left for further discussion.

## **5. Unpack and reach broad agreement on why we need a coherent and inclusive policy framework and what it means**

The policy document needs to explain where the concept of a ‘coherent and inclusive’ policy framework emerged from and why it is being promoted.

One of the earliest references we could find where the terms, ‘coherent’ and ‘inclusive’ were originally mentioned can be found in an earlier draft of the National Development Plan (NDP) (see [http://www.gov.za/sites/www.gov.za/files/devplan\\_2.pdf](http://www.gov.za/sites/www.gov.za/files/devplan_2.pdf) page 254), but for some reason these terms did not find themselves in the final NDP (see <http://www.poa.gov.za/news/Documents/NPC%20National%20Development%20Plan%20Vision%202030%20-lo-res.pdf>). However, the terms reappeared in governments Medium Term Strategic Framework 2014- 2015, in Outcome 8 on Human Settlements, where one of the actions identified is to “Develop a more coherent and inclusive approach to land.” (MTSF 2014 – 2019, Outcome 8 page

1) <http://www.thepresidency-dpme.gov.za/keyfocusareas/outcomesSite/Pages/the-Outcomes-Delivery-Agreements.aspx>

The policy framework document needs to unpack what is meant by a coherent and inclusive policy framework.

- Coherent – fits together nicely as one whole, can be treated as one coordinated approach. ‘Logical and well-organized: easy to understand.’ <http://www.merriam-webster.com/dictionary/coherent>
- Inclusive – deals with all aspects, sectors, issues, responds to all peoples issues and concerns. ‘Covering or including everything. Open to everyone: not limited to certain people.’ <http://www.merriam-webster.com/dictionary/inclusive>

In other words a coherent and inclusive land policy deals with:

- all land in from urban, through rural to wilderness areas (this is continuum of land realms is unpacked in more detail elsewhere in this report)
- the whole land development cycle from identifying, acquiring, developing, using, and transacting in land
- land administration across all departments, including the Department of rural development and land reform (DRDLR), Department of Human Settlement (DHS), Department of Cooperative Governance and Traditional Affairs (CoGTA), Department of Environmental Affairs (DEA), Department of Agriculture Forestry and Fisheries (DAFF), Department of Public Works (DPW), Department of Transport (DT), Department of Water Affairs (DWA), Department of Mineral Resources (DMR), etc.

A framework is ‘the basic structure of something: a set of ideas or facts that provide support for something.’ <http://www.merriam-webster.com/dictionary/framework> The framework provides a mental model to be used to guide thinking. It outlines the broad areas within which more detailed thinking and work needs to be undertaken.

A policy can be defined as ‘a definite course or method of action selected from among alternatives and in light of given conditions to guide and determine present and future decisions, [and/or] a high-level overall plan embracing the general goals and acceptable procedures especially of a governmental body.’ <http://www.merriam-webster.com/dictionary/policy>

A policy framework on a coherent and inclusive approach to land therefore needs to:

- articulate governments position on all land questions (see recommendation section dealing with ‘land questions’)
- look at how all programmes and funding dealing with land relate to each other such as the Human Settlement Development Grant (HSDG) including all the housing subsidy programmes; as well as the Urban Settlement Development Grant (USDG) and the Municipal Infrastructure Grant (MIG), the Neighbourhood Development Partnership Grant (NDPG), Integrated City Development grant (ICDG), Public Transport Infrastructure Grant (PTIG), etc.
- look at how all plans relating to land relate to each other including for example Integrated Development Plan (IDP), Spatial Development Framework (SDF), Built Environment Performance Plan (BEPP), etc.
- look at how all spatial targeting instruments relate to each other such as Special Economic Zones (SEZ), Social Housing Restructuring Zones (RZ), Strategic Integrated Project (SIP), Priority Housing Development Areas (PHDA), etc.

## 6. Develop a coherent and inclusive set of land or spatial principles

The coherent and inclusive approach to land should also help bring together all the spatial principles that have been developed in other legislation. The following table outlines principles that can be found in the white paper on spatial planning and land use management, the national development plan and the Spatial Planning and land use Management Act. This is drawn from page 29 in the following report on SPLUMA:

<http://sacitiesnetwork.co.za/wp-content/uploads/2015/04/spluma-as-a-tool-for-spatial-transformation-final.pdf>

Planning principles thematic areas:

White paper on spatial planning and land use management (2001)	National development plan	Spatial planning and land use management
Principle of equality	Spatial justice	Principle of spatial justice
Principle of sustainability	Spatial justice	Principle of spatial sustainability
	Spatial resilience	Principle of spatial resilience
	Spatial quality	
Principle of efficiency	Spatial efficiency	Principle of efficiency
Principle of fair and good governance		Principle of good administration
Principle of integration		

## 7. Explore and develop a principle relating to the promotion of a sense of place.

The land policy needs to include a principle that acknowledges and helps promote a sense of place.

In a similar way that a home is not just a house providing shelter, a space is not just a place where people live or work. A space becomes a place after people give their own meaning to that space. Culture plays an important role in helping to create this sense of place.

## 8. Incorporate a temporal dimension into the land policy

Activities happen in space over time and as such land cannot be conceptualised and explored as a static entity devoid of any temporal dimension.

Land can be used at different times for different purposes For example school classrooms can be used for teaching during the day and for community meetings at night. Another example is where markets and government services rotate on a periodic basis from location to location, thereby making it easier for people in different locations to access the mobile facilities at different times.

## 9. Identify and begin to answer key questions that form part of what people refer to as ‘the land question.’

Another way to try and develop a policy framework on land is to unpack what many people refer to as ‘the land question’. The land question is actually better understood as a set of land questions:

1. What land can be used for which purpose?

2. Who should have rights to use that land?
3. What should these rights entail?
4. How should these rights be transferred between parties?
5. What role does government play in managing and regulating land?

These questions correspond to the following areas of human endeavour:

1. Where should different activities be located in space? Spatial planning (SDF, layout plans)
2. What procedures need to be followed to change land use? Land use management system (zoning scheme and regulations)
3. What procedures need to be followed to develop land? Land development management
4. How should land be 'held' by a party and transacted between parties? Land tenure administration, land conveyancing
5. What land records should be kept and by whom? Land surveying and land recordal systems (keep data, process for maintaining data, process for accessing data )
6. How is land taxed? Land valuation and land taxation

Various groupings will emphasise different land questions:

1. Landless: What land can we access?
2. Land owners: How can my land be secured (and how can I benefit from increases in its land values)?
3. Traditional leaders: How can we retain cultural traditions relating to land?
4. Government /Municipalities: How can we get income/ revenue from land? How do we make sure people follow the law in relation to land? How do we use land to transform our society?
5. Future generations: How can we ensure we have better (or at least the same) rights to land as people that have come before us?
6. Individuals: How can I be protected to do what I want on and with my land?
7. Society: How can we benefit from any land value increases due to government and societies investment in neighbourhoods?

## **10. Conceptualised and treat land as a commons**

Land can be conceptualized as a commons, in the sense that ultimately land belongs to everyone – it belongs to society as a whole. The preamble to the SA constitution says that ‘South Africa belongs to all who live in it, united in our diversity.’ This can be interpreted to mean that the land mass within the boundaries of the country of South Africa belongs to all of us - together as a society.

No one created land in the same way that, for example, someone created or built a car. Land is one indivisible resource (in the sense that even if broken up into properties it still is a continuous mass, it can't be moved around, and managed as separate pieces like say a car or a business). Land is the space, location and stage on which human activity takes place. Human activity in relation to land needs to be managed as one coherent and inclusive whole.

The law of conservation of energy states that energy cannot be created or destroyed, only changed from one form to another or transferred from one object to another (<http://examples.yourdictionary.com/law-of-conservation-of-energy-examples.html>) In the same way, the ‘law of land’, if it existed, would state that you can't create new land, you can just convert it from one use (e.g. agricultural) to another use (e.g. housing).

For more on conceptualizing land as a commons see <http://www.earthrightsinstitute.org/> and <http://www.onthecommons.org/>

If we recognise land as a common resource that is effectively owned by us all - as society as a whole – then this will have fundamental implications for how we manage land. The sections on land tax and land value capture that follow in this report begin to outline some of these implications.

The experiences of South African changing its water laws in the mid to late 1990's – where the rights towards water are held in common by all members of the public but are exercised privately (see for example <http://www.lead-journal.org/content/07179.pdf>) - should be investigated to see if any lessons can be drawn for possible changes in land law.

## **11. Allow municipalities to use alternative property tax systems including land (or site) tax**

If we start from an assumption that land is a commons then it can be argued that we all need to pay society a fee for the right to use this land, while at the same time owning the improvements we make on the land. In effect we would separate the land from the improvements to the land. One way to move towards such an approach is to change the way that we tax land, by moving from a flat rate (where the tax rate is calculated from the value of the land plus improvements) which is the system we have at the moment, to a land (or site) rate calculated on the value of just the land, or a composite rate where the tax rate is higher for the land than for the improvements to the land.

We should allow municipalities to experiment with different property tax systems ranging from pure site tax, through various composite to flat tax rates. The legislation preventing municipalities using composite or site rates needs to be changed allowing such experimentation.

See the article on land as a commons at: <http://www.afesis.org.za/sustainable-settlements/sustainable-articles/484-balancing-public-and-private-rights-to-the-commons-new-thoughts-on-land-management.html>. Also see the new book by Martin Adams (2015) *Land: a new paradigm for a thriving world* (<http://www.unitism.com/>). And for more detailed information on land/site tax see <http://www.theiu.org/>

## **12. Establish a high level panel to conduct a series of investigations into land value capture mechanisms**

This concept of land/ site tax fits within a broad set of development interventions that are referred to as 'land value capture'. Land value capture is recognized in the National Development Plan (page 285) as an important avenue and instrument that needs to be explored and implemented. For an introduction on Land Value Capture see: <http://www.afesis.org.za/sustainable-settlements/sustainable-articles/501-accelerating-housing-delivery-through-%E2%80%98value-capture%E2%80%99.html> and also see the work by Urban LandMark for more detailed analysis: [http://www.urbanlandmark.org.za/downloads/improving\\_access\\_city.pdf](http://www.urbanlandmark.org.za/downloads/improving_access_city.pdf)

one example of how Land Value Capture works is where governments investment in a new bus rapid transit system means that the property values of portions of land adjacent to these interchanges increase due to them becoming more accessible. This property value increase is not as a result of anything the land owner has done, but is rather as a result of governments (or societies) investment in the surrounding neighbourhood. Society as a whole, it is therefore argued, should benefit from these land value increases. Land taxes (or contributions) can be used to capture all or some of this value increase; the proceeds of this capture can then be reinvested into improvements in the neighbourhood or shared amongst members of society.

One of the challenges of using Spatial Development Frameworks (SDF) as a tool for forward planning is that when present land owners get to hear that their land is planned for future settlement development they put up the price, even if the present land use is zoned as residential. The high level panel looking at opportunities for using land value capture mechanisms needs to find ways to address this challenge so that any land value increases that are as a result of the land being shown as a certain land use in a SDF are captured for the benefit of society as a whole and not by the present land owner alone.

### **13. Treat land as one indivisible resource from urban, through rural to wilderness**

Given that land is one indivisible resource, we suggest that a coherent approach to land for human settlement cannot be considered without also looking at land for agricultural production as well as land for wilderness conservation. As such land for human settlement needs to look at how humans settle on, or interact with the whole landscape across the following three realms:

- urban land for human settlement (the built environment or landscape)
- rural land for agricultural production (the planted and reared environment or landscape)
- wilderness land for conservation areas (the conserved environment or landscape).

Conceptualising land within the three realms of Urban, Rural and Wilderness can be extended, for example, to help develop a concept for ‘good’ land’ or land fit for purposes. For example:

- Good settlement land is land that is well located for residential, business, industrial etc. purposes relative to other portions of land
- Good agricultural land is land that has good soil quality and access to water, and is close to markets, etc
- Good conservation land is land that has high biodiversity, and land that can form part of a broader network of conservation areas.

### **14. Introduce the concept of the ‘spatial transect’ to help explain the urban – rural - wilderness continuum**

A transect is a path or cut through part of the environment showing a range of different habitats. <http://transect.org/transect.html> For a human settlement habitat, a transect provides a very useful tool to help explain how settlement on land needs to be conceptualized as part of a continuum from urban, through rural to wilderness.

See more on transects at: [http://en.wikipedia.org/wiki/Transect\\_%28urban%29](http://en.wikipedia.org/wiki/Transect_%28urban%29). The transect also provides a useful tool, along with urban corridors and urban and resource edges (e.g. wilderness areas, or areas of high agricultural or scenic beauty), that planners can use to help structure future settlement patterns within the environment.

### **15. Include both urban and rural land within land reform policy (including its components of restitution, redistribution, and tenure reform)**

When dealing with land redistribution, do not only think of this as redistributing land for rural or agricultural purposes, but also see redistribution of urban land for housing as an important element of land redistribution.

The same applies to tenure reform, which should also include the issue of tenure reform for informal settlement residents, and not just for people living in rural areas or areas under customary and communal administration.

When setting and measuring land reform targets, this more comprehensive understanding of what land reform is aiming to achieve needs to be used. For, example land redistribution targets should not just be about how many hectares of land is transferred to previously disadvantages (mainly in a rural agricultural context), but should also include how many households have accessed land for residential purposes.

### **B. Establish clear institutional arrangements for land related matters**

#### **16. Locate responsibility for land within one department**

Land is one of the key issues that this country is dealing with. Government needs to elevate the importance of land in its policies and institutional arrangements. At the moment, it is difficult for government to coordinate all aspects relating to land across multiple departments. Consideration should be given to creating (or allocating land to) a single department responsible for land. Dealing with land from a coherent and inclusive perspective will be facilitated if the responsibility for dealing with land is located within one department.

Presently land is located within the DRDLR, however it can be argued that this is an inappropriate department, as locating land in this department means that land tends to be seen as a rural issue, whereas, as explained elsewhere in this report, land is also an urban and conservation issue.

Options for where the responsibility for land can be located include within:

- the Department of Cooperative Government, as we have wall to wall municipalities, we can then have a wall to wall management of land.
- the Department of Human Settlements, if a human settlement is understood to be more than housing and includes other land uses as conceptualised within the concept of the settlement transect (as described elsewhere in this report).
- the Department of the Environment as land is a significant element of the environment, that includes air, water, minerals, etc.
- its own new dedicated department.

Whatever decision is taken as to where to house land, his department needs to be responsible for overseeing the coherent and inclusive approach to land across all departments. It may be preferable not to rush to any hasty decision on where best to locate responsibility for land, in which case the land cluster and land mainstreaming recommendations (that follow) could be seen as transitional arrangements until a home is found for land.

#### **17. Establish a land cluster within government**

Over and above locating the land function in an appropriate department, as described above, government should also create a cluster of departments dealing with land, in the same way that government has established clusters for 'social protection, community and human development' as well as 'economic sectors, employment and Infrastructure development', amongst others. It does not matter if this means that some departments will be in multiple clusters, as this is already the case

with human settlement for example which is already found in the two clusters mentioned above. Such clusters need also be established at provincial (and even local) government level.

Government may need to prioritise certain departments that have a more direct land related function to be part of this land cluster, and consider other methods (e.g. See the recommendation of mainstreaming land) for dealing with all the other departments that have a more peripheral relationship with land.

Proposed priority departments for the land cluster include:

- Department of Rural Development and land reform (DRDLR) as they deal with the rural aspects related to land
- Department of Agriculture, Forestry and Fishery (DAFF) as they deal with the agricultural aspects relating to land
- Department of Human Settlement (DHS) as they deal with the human settlement aspects relating to land
- Department of Environmental Affairs (DEA) as they deal with the environmental aspects related to land
- Department of Cooperative Government and Traditional Affairs (COGTA) as they deal with spatial and municipal planning

Examples of departments with a peripheral relationship to land include (amongst others):

- Department of Water Affairs
- Department of Mineral Resources
- Department of Public works

## **18. Establish an Operation Phakisa (Big Fast Results Methodology) for the land sector**

Given the importance of land, government should - drawing on their experience with establishing an Operation Phakisa in the ocean and health sectors, and the proposed establishment of similar operations in the mining and small business sectors - establish an Operation Phakisa for land.

Areas that could form part of this include identifying, developing and piloting mechanisms to:

- make land available for landless and previously disadvantaged and keep this land affordable for the poor; and/or
- deal with the challenge of managing land in areas under customary and communal administration.

An Operation Phakisa dealing with land should also draw on the international experience of establishing social labs (or laboratories). A social lab is ‘a multi-stakeholder platform for addressing a particular complex social challenge’ (see for example, <http://reospartners.com/service-view/223>). Addressing the land question in South Africa certainly fits the bill of being a complex social challenge. Also see: <http://social-labs.org/>

## **19. Establish a Presidential land working group.**

Another recommendation to institutionally deal with land, given the importance of land in the South African context, is to include a land related function into the President’s Office, thereby demonstrating the countries serious commitment to dealing with the land questions. This can be done by establishing a presidential land working group, similar to the presidential working groups on

business, labour, youth, women, communication, religious affairs, and higher education and innovation. <http://www.sabinetlaw.co.za/economic-affairs/articles/presidential-working-groups-back-agenda>

This working group could provide overall oversight on many of the institutional arrangements suggested elsewhere in this report (such as Operation Phakisa on land, and land mainstreaming).

## **20. Mainstream land into all government departments**

As much as government states that land is important, in reality it can be argued that land is not actually one of governments main priorities. Land does find expression in the rural development strategy of government, but it can be argued that the budget allocated to funds for purchasing land for redistribution does not match what is required if land redistribution was to be seriously addressed.

If it is accepted that land needs to be one of the key priorities for the country then land needs to be mainstreamed into all government departments. Mainstreaming involves bringing land in from being treated as a peripheral issue that is discussed on the edges of our policy discourse to the centre of our policy discussions. All the institutional recommendations suggested in this report are geared to bringing land into the mainstream.

Mainstreaming land also involves integrating land across all sectors of society. All departments (e.g. economics, health, education, agriculture, industry, human settlements, etc.) need to look at how they impact on and are affected by land. This includes looking at how the work of their department impacts and affects land. For example, investments by the Department of Transport into new public transport infrastructure makes certain land locations more appealing for development than other land portions, or new subsidies for businesses may mean that these businesses dispose new chemical wastes into waste disposal dumps and into the environment. It also includes looking at how their work is affected by land. For example certain businesses prefer to locate in certain land locations to benefit from movement of people, and certain agricultural activities are more suitable in certain land/soil conditions.

This spatial and land analysis, conducted as part of a process of mainstreaming land into their decision making processes, should influence the decisions that various sector departments reach and make.

## **21. Call for and enter into strategic partnerships with identified role-players in the land sector**

The National Development Plan calls for all sectors to work together to support the countries development efforts. Government alone will not be able to solve the countries land and development challenges. It requires a collective approach where stakeholder partner with each other to jointly work towards development solutions. The draft land policy paper (page 42) also calls for such strategic partnerships.

For example, there are many NGO's who are willing and able to pilot and test alternative land and settlement development approaches, and there are CBO and social movements willing to work with government and others to implement land and settlement programmes. The private sector, unions, faith based organisations, academics, media and many more all have contributions to make.

Government should regularly call for an expression of interest, calling on stakeholders to motivate for entering into strategic partnerships with them around land and settlement development. Strategic partnerships cannot be created through a normal tendering process (as mentioned in the draft land policy framework document on page 41), as by its nature special partnerships are unique partner to partner relationships where each partner brings a unique role and function to the partnership arrangement. The call for expression of interest therefore needs to draw on the negotiated or single source bidding methodology, so that strategic partnerships can be negotiated.

It is important however, that the process of forging these strategic partnerships is transparent, with the nature and content of the partnership arrangement open to the public.

## **22. Decentralize the HDA to provinces and districts and explore what other structures can perform similar functions**

The Housing Development Agency (HDA) has been established to both assist various state entities to package and get land ready for settlement development and well as project manage the development of these settlements.

The need and demand for the services of organisations like the HDA is large. The HDA should explore how it can decentralise its activities down to provincial and even district offices so it is able to reach and support more government and other role-players who require their services.

Government and the HDA need to look at how they can support other entities to also perform similar functions as to what the HDA is performing in supporting the packaging and developing of land for settlement purposes.

Structures like the HDA (as well as others) should also look at how they can support civil society as well as private sector organisations and not just support government entities.

## **23. Promote and support innovation within the land and human settlement environment**

Government needs to establish a land related innovation programme within the department or departments dealing with land related matters, and set aside funds for piloting and reflecting on experiences with such approaches.

An evaluation and review unit needs to be established as part of this innovation programme so that lessons from such innovative project attempts can be drawn and recorded. The innovation unit must also share and publicise these lessons with the broader public through the media, digital technology, the organising of special events etc.

The innovation programme must make it possible for and encourage all stakeholders from academics, the private sector, non government organisation and civil society as well as government itself to access funds to undertake innovative projects. The projects implemented through this programme must not be constrained by existing legislation and rules. Innovation by definition requires people to think outside of the box of what has been done and allowed before.

Operation Phakisa for land (referred to elsewhere in this submission) can form the basis and start of such an innovation unit.

## **24. Identify, plan and implement catalytic projects**

The National Department of Human Settlements should continue with and expand its strategy to develop catalytic human settlement projects. This involves building on the existing catalytic and mega project initiatives of the HDA and also find ways to promote catalytic projects through other mechanisms.

A catalytic project should include:

- Mega projects being projects of more than say 10 000 units, as well as
- Projects of any scale that have a catalytic impact on addressing both the right to land/ property as well as transforming our spatial landscape.

## **25. Review land funding and create a land fund to complement existing funding streams used to obtain land**

Government needs to review all its grant programmes to determine which grant instruments can be and have been used to purchase land for human settlements, agricultural development, conservation and other purposes. Examples of funds that can be used include:

- Various programmes funded under the human settlement development grant
- The urban settlement development grant
- Land redistribution for agricultural development grant
- etc

A dedicated land fund needs to be created, that can, in a complementary manner, be accessed by appropriate government and other identified entities to purchase and prepare land for identified purposes.

### ***C. Improve land categorisation and recordal systems***

## **26. Speed up the development and administration of a single coordinated and publically accessible land data base**

The NDP calls for the development of a national observatory for spatial data assembly and analysis. (NDP: page 291) Such an observatory should manage a single data base wherein all land related information can be recorded and accessed. This includes for example (but not limited to):

- Property boundaries
- Land ownership
- Land use
- Land values
- Future plans
- Environmental features (e.g. soil conditions, vegetation region, etc)
- Engineering availability (e.g. roads, water, sanitation, electricity, etc)

This facility needs to be located within the department that is responsible for land. All departments need to feed into and draw from information in this data base. All information on this data base needs to be available to the public, unless specifically protected by other appropriate legislation.

Government, through the HDA and through other processes has started a process to establish a centralised land related data base. This process needs to be prioritised and speeded up. The public also needs to be kept informed of progress in implementing this system.

## **27. Differentiate between land tenure rights conferred through the deeds registry and associated acts and legislation, with land rights conferred off-registry.**

In South Africa there are broadly two ways that a person can get access to tenure security rights.

- The first is through the deeds registry process and associated legislation governing land surveying, conveyancing etc.
- The second are all other 'off-deeds' registry systems, ranging from tenure secured through permission to occupy certificates, through communal property associations, through rental agreements with private land lords, through to informal tenure recognition systems in informal settlements etc.

This two tiered system is not going to go away in a hurry, and any policy and strategy needs to take both these tenure systems into account.

The rights that a person has with regards to a particular item or property are referred to as real rights, which can be recorded in the deeds office (deeds registries act 47 of 1937). Personal rights refer to the ability of parties in a relationship to contract with each other. In many situations relating to land, such as when people are living in informal settlements, the real rights holder (e.g. a municipality of a private land owner) can consent and give personal rights allowing the land occupiers to live on this land. Land policy needs to accommodate both these real and personal rights as they relate to the 'on-deeds register' and the 'off-deeds register' categorisation described above.

## **28. Speed up the simplification of the categorisation of land tenure**

The policy framework needs to be careful in its use of terminology when describing land categories. For example state and public land appears to be used interchangeably in many policy discussions but technically they refer to different types of land. According to the white paper on South African land policy 1997:

“Public land includes land held by provincial and national governments, as well as land held by local authorities and parastatals. State land is land which is held by the national and provincial governments, but excludes local authority and parastatal land. This includes former SADT land and land already allocated to communities and individuals in the former homelands and former coloured reserves.”

<http://www.gov.za/sites/www.gov.za/files/whitepaperlandreform.pdf>

Having different terminology such as this just creates confusion. The categorisation of types of land needs to be simplified

Further, as a result of homeland and apartheid legislation, the new democratic South African government has inherited a situation where a range of different entities are recorded as owning land in South Africa. The new government has embarked on a process to simplify the categorisation of land tenure ownership, making it easier to know who exactly owns or is responsible for which piece of land.

Public awareness raising on this land categorisation needs to accompany this categorisation process.

## **29. Conduct a legislative review of the procedures of transferring land from one entity to another, especially state/public land**

Government needs to conduct a comprehensive legislative review of the procedures involved in transferring land from one land holding entity to another, with the intention of simplifying and speeding up these processes

The public awareness raising process described in the previous recommendation can be used to keep the public updated and involved in this legislative review process.

## **30. Review and update tenure security typologies**

The new South African government has inherited a vast array of different tenure typologies, ranging from formal title deeds, share block ownership, Communal Property Associations, to permission to occupy, and even to tenure security under the Interim Protection of Informal Land Rights Act, (IPILRA) and many more even down to tenure forms established by apartheid era homelands.

These typologies and their usefulness need to be categorised and unpacked. Consideration needs to be made to scrapping some typologies and amalgamating others, while new forms may need to be considered and introduced.

An example of a possible new tenure typology that could be recognised as a legitimate typology and may lead to specific legislative changes making it possible for people to obtain tenure surety through this form, is that of ‘family title’, which has emerged as a hybrid form of tenure in the very few contexts where ‘blacks’ were able to obtain private ownership in ‘white’ areas prior to the introduction of apartheid legislation. For more on this see the work of Rosalie Kingwill on “Family Title: Title Deeds, ownership and ‘Law’” that can be found at:

<http://www.afesis.org.za/sustainable-settlements/sustainable-articles/474-family-title-title-deeds,-ownership-and-%E2%80%98law%E2%80%99-by-rosalie-kingwill.html>

## **31. Speed up the development of a centralised project management data base**

One of the other challenges with regards to land and settlement development is that project management systems for monitoring the development of land are not adequate. Government itself has recognised the need to establish integrated monitoring systems for tracking the implementation of the pipeline of projects. (Medium Term Strategic Framework 2014 -19, Outcome 9: Page 8)

The development and implementation of this integrated project management and monitoring system needs to be speeded up. The Public needs to be kept up to date with progress in this regards.

The information located on this monitoring system needs to be open to the public so communities can track progress with the development of land, settlement and housing projects, and hold those accountable for delays accountable.

### ***D. Improve the relationship between land and spatial planning***

## **32. Establish SDF’s as the primary tool for guiding development in space and on land.**

Spatial Development Frameworks (SDF) need to perform a dual role of 1) representing a spatial articulation of the IDP, and at the same time SDF's need to 2) guide the location of projects and activity that is found in the IDP. In other words SDF's should inform and be informed by the IDP. Planning and land related legislation needs to be reviewed and where necessary modified making it clear that SDF's are the primary tools for guiding development in space. Budget allocations between government spheres and departments needs to be contingent on the projects and programmes being reflected in SDF's.

Legislation needs to be clear that the participatory processes required for the development of IDP's needs to also apply to the development of SDF's.

### **33.Link all spatial planning into the concept and legislation related to Spatial Development Frameworks**

The use of the term 'master planning' should NOT be used in the land policy document and the term framework planning be rather used instead. Firstly the term master planning is not found in any government legislation, and secondly master planning, as its generally understood in planning literature, has been discredited internationally by some. See for example: Alison Todes (2011) *Reinventing Planning: Critical Reflections*, found at <http://wiredspace.wits.ac.za/bitstream/handle/10539/11641/Todes%2060229511.pdf?sequence=1> and the article by Craig Sam (2013) *A Critique of spatial development framework planning*, found at: <http://www.afesis.org.za/images/stories/pdf/journal/July%20December%202013.pdf> It is recognised that in a fast changing environment the master plan (which sets an anticipated future environment that the planners would like to see) quickly becomes out of date.

The term national master spatial plan should rather be termed National Spatial Framework (as also recommended in the NDP page259), and also thereby building on existing spatial planning legislation (SPLUMA) which creates a hierarchy of spatial plans.

### **34.Establish land and spatial forums at the municipal (and provincial) scale**

Legislation needs to be modified and/or developed requiring municipalities to establish land and spatial planning forums, where both government and non-governmental structures are able to contribute to and oversee the implementation of SDF's as part of the IDP process. Similar processes as required for public participation in the IDP process should apply to these land and spatial forums.

Amongst other functions, these forums need to make sure that there is a development pipeline of settlement projects, and monitor the implementation of the land and settlement development project pipeline.

These forums can also perform the functions outlined for the social spatial compacts as reflected in the NDP (page 282).

Similar land and spatial forums need to be established at whatever scale a SDF is developed be it at a municipal, regional or a provincial scale.

### **35.Government must review the role of ward committees, with specific attention to their role in land related matters**

The ward committee system is one of the primary mechanisms government has introduced to facilitate community participation in the IDP, budgeting and other government processes.

The role of these committees needs to be generally reviewed, but special attention needs to be given to reviewing and modifying the role of ward committees in relation to land related matters. Issues to consider include for example:

- The land sector must be reflected as one of the sectors in ward committees
- Ward committee structures need to be consulted in the development of SDF's and land and spatial sector policies, strategies and plans.
- Wards must send representatives to participate in land and spatial forums of the municipality

Government legislation and regulations governing the functioning of ward committee systems may need to be modified as a result of the findings from this review.

### **36. Explore and accommodate various spaces where communities can confront and potentially transcend wounds relating to past land and related injustices**

Land is a very emotive issue for most people. There is still a lot of bitterness and anger when it comes to the impact of past colonial and apartheid policies and practices as they relate to land. We are still a wounded and angry society.

As a country, we need to find ways, community by community, to help heal these wounds. The concept of Networked Healing Spaces as outlined in the article on *Addressing Woundedness, Resilience and Development through Networked Healing Spaces*, (Ronald Eglin, 2014 found on page 68 at <http://ggln.org.za/1solg-publication-2014.pdf> )

The process of developing spatial social compacts, as suggested by the national development plan (as referenced elsewhere in this report) provides a unique opportunity for us to initiate these processes using Networked Healing Space methodologies.

### **37. Municipalities (and provinces) must develop land policies and strategies**

Municipalities must be required to develop land policies, strategies and plans that address the following two issues:

- How the municipality plans to address the two issues identified in the constitutional property clause (i.e. the right to access land and the right to property protection); and
- How the municipality plans to transform spatial patterns in the municipal area (see discussion elsewhere in the report on spatial transformation). The NDP even states that every municipality should have “an explicit spatial restructuring strategy that is linked to instruments for implementation.” (NDP: page 286)

The municipalities response to the land questions should also form the content of any municipal land policy, strategy and plan. The land and spatial forum referred to elsewhere in this report needs to be responsible for developing these land policies, strategies and plans.

#### ***E. Build capacity within the land sector***

### **38. Conduct skills audit of land related disciplines**

Government needs to conduct research to determine the skills needed in all aspects of the land sector, ranging from spatial planning, land use management, land tenure, land valuation, property transfer, land surveying, etc. Government needs to also undertake a land audit to identify what the existing skills are in the sector, and compare this audit to the skills required.

The department responsible for land should then coordinate and oversee a process of developing a skills development programme aimed at incrementally building the necessary capacity for the country to address its land challenges and questions.

### **39. Establish more appropriate educational courses relating to land**

Government, working with institutions of higher learning, the youth, people from the land sector, and others needs to review opportunities for higher learning in the land sector and revise and develop more appropriate courses and degrees for the needs of the land sector.

Examples include:

- Land economics
- Land as a commons
- Land taxation
- Communal land administration
- Land surveying technician
- Etc

### **40. Introduce spatial literacy within the education syllabus**

Most people do not view society and their lives through a spatial or land lens. This leads to a situation of underplaying the importance of land in shaping peoples lived experiences. From an early age all citizens of this country should be exposed to spatial literacy, over and above the numeracy and literacy that they are exposed to in school.

The department of education needs to be approached to explore, as they have done with environmental education, to look at introducing spatial literacy into the syllabise. Spatial literacy looks at issues such as:

- How to read maps
- The implications of conceptualising land as a commons that belongs to us all
- Appreciating the relationship between mobility and land use
- Understanding how the property market works
- Etc.

### ***F. Conduct further research and policy development on identified topics***

### **41. Conduct legal research and confirm that temporary basic services can be provided on private land.**

There has been and is some confusion and disagreement of the right of municipalities (and government) to provide basic services to people living on non municipal owned land. Government needs to obtain detailed legal opinion on this matter and make a policy pronouncement supporting

the rights of the state to provide basic services to communities living on any form of land, so that everyone in the country is aware of this situation.

The eThekweni Metropolitan Municipality have taken a position, after seeking legal opinion, that they have the constitutional mandate to provide temporary emergency basic services to people on land, they do not own, including private land. Basically the argument is that the right to basic services trumps the property clause in the constitution, as long as the services are seen as temporary services.

#### **42. Conduct research into and test various approaches to land acquisition and packaging**

One of the big challenges at the moment with regard to land and settlement development is the ability of the state and others to access well located land for low income settlement development. Well located land is often very expensive making it difficult to access for low income housing. The policy framework needs to highlight various options that need to be explored and tested further by various role-players to access land. Examples include:

- Transfer of public/ state land at market value (where the state as a land owner sells or transfers land to the municipality or similar at market rates)
- Transfer/ Donation of public / state land at discount value (where a state/ public land holder transfers the land to the municipality or other appropriate entity at below market rates. Legislation may need to be changed and introduced to make this possible, as present legislation requires state owned assets like land to be disposed of through market mechanisms)
- Land banking (where an entity purchases land ahead of need and ‘banks’ it so that it can be used in future when circumstances make it appropriate.)
- Land pooling (a group of land owners pool their land into one package making it easier for the larger package of land to be planned as one)
- Land readjustment (Groups of land owners who have planned their land as part of a land pooling approach, agree to transfer smaller portions of their land back to each other after the land is serviced, so that the original land owners receive a serviced portion of land to an equivalent value to the original unplanned and unserviced land)
- Land swaps (one land owner swaps their land with another so that settlement development can occur on the more appropriate portion of land.)
- Land availability agreement - LAA (a developer enters into a LAA with a land owner, agreeing, for example, that the developer will put in services but only arrange for transfer to end users of the land once the land is developed)
- Land purchase under willing seller willing buyer (a municipality or similar entity enters into a purchase agreement with a land owner who is freely willing to sell the land. Note that in situations where the state is wanting to buy a specific piece of land – e.g. it is part of a land restitution claim or its part of an identified new catalytic settlement development, then the seller is not necessary a willing seller and as such in these situations the seller often is able to increase the asking price above what a ‘normal’ willing seller willing buyer relationship would reach).
- Land purchase using “just and equitable” methods to determine compensation value ( a municipality or similar entity uses a formula to arrive at a fair and equitable compensation price for the land, drawing on the criteria mentioned in the constitution as described in the next recommendation)

- Land expropriation (where the state expropriates a particular piece of land that is needed for public purpose or public benefit. Effectively this approach would use the just and equitable method for determining compensation.)

The findings from all this research needs to be publicised and made open to the public.

### **43. Develop clear guidelines for land expropriation procedures**

If land identified in plans cannot be secured using willing seller willing buyer methods, expropriation legislation can be used. The problems that people make reference to with regards to willing seller willing buyer (WSWB) are not so much to do with the WSWB concept but they are confusing this WSWB with Unwilling Seller and Willing Buyer.

In situations of unwilling seller and willing buyer the state can use expropriation legislation. The Housing Act 107 of 1997 specifically gives Municipalities via MEC's responsible for housing and human settlements the power to expropriate land for settlement purposes. [http://afesis-corplan.org.za/participatorydemocracy/wiki/images/0/02/Expropriation\\_final.pdf](http://afesis-corplan.org.za/participatorydemocracy/wiki/images/0/02/Expropriation_final.pdf)

Over and above this it would be useful for government to develop clear guidelines outlining the procedures it envisages for acquiring land through what it now calls 'just and equitable compensation'. This term emerges from the provision in the constitution dealing with expropriation (section 25.3) that states that "the compensation and the time and manner of payment must be just and equitable, reflecting an equitable balance between the public interest and the interests of those affected, having regard to all relevant circumstances, including:

- a) The current use of the property
- b) The history of the acquisition and use of the property
- c) The market value of the property
- d) The extent of direct state investment and subsidy in the acquisition and beneficial capital improvement of the property; and
- e) The purpose of the expropriation"

There are broadly two issues that are questioned when it comes to expropriation

- Does the state have the power to expropriate. In other words what is the expropriation for? Is it for public benefit or public purpose?
- What value will be paid for the expropriation?

The definition of public benefit and public purpose should be reviewed and updated in legislation, based on the recommendations of this land policy, and the method of determining compensation should also be reviewed and legislation or guidelines developed to be followed for how this compensation is determined.

### **44. Develop template for how to calculate land value**

Government needs to develop a template, or pro-forma, that can be used on a case by case basis to determine the value of compensation for a piece of land that the state or other similar entity wants to purchase for settlement development.

The discussion on just and equitable compensation elsewhere in this document needs to be taken into account in this regards. This recommendation also supports a similar recommendation made in the

present draft policy framework (page 49) which refers to the concept of residual land value. This concept of residual land value needs to be explained in the policy.

Residual land value is a method used to determine the value and potential profitability of a piece of property minus any expenses related to the land. Residual land value is the value of the land that remains after any and all deductions associated with the cost of developing, maintaining or reselling the land.

#### **45. Conduct research on and test various approaches for accessing and keeping well located land affordable for low income households**

One challenge with regards to land is to make well located land available for low income households. The next challenge becomes how to keep this land in the hands of low income households into the future.

There are no easy solutions for addressing these challenges. Options that could be considered include for example, in relation to keeping land affordable into the future:

- Providing social rental housing in well located areas
- Providing public rental options using the Community Residential Unit (CRU) subsidy programme
- Promoting restricted equity cooperative ownership where the value that households can receive when transferring their cooperative ownership tenure is restricted by a formula that takes into account the value of improvements, but excludes any locational value.
- Introducing rent control legislation for designated areas
- Cross subsidising the rates and services for low income households using income received by government from land/site taxes (see section elsewhere in the report on land/ site tax and on land value capture).

Government needs to undertake research on how low income households are dispossessed of well located land and what strategies have been and can be used to overcome this problem. Government needs to also provide spaces and opportunities for a range of role-players to pilot and test various approaches to accessing and keeping well located land affordable. See for example sections elsewhere in this report on innovation and Operation Phakisa for how this can be done.

#### **46. Review and update the housing allocation system of government.**

For low income households, the main way they can access land for housing (and for agricultural production) is through the governments land and housing (and rural or agricultural) subsidy mechanisms. In many instances the legitimacy and effectiveness of the allocation systems used to determine who can gain access to these subsidies over time is questionable.

Government has introduced a national housing demand programme and data base. This programme needs to be reviewed and a participatory process needs to be undertaken to update the policy and programme on how land and subsidies are allocated for low income households. A similar process should be conducted for allocation of agricultural or rural land subsidies.

National government should develop broad standards and principles that need to be applied across the whole country but at the same time a system needs to be put in place that allows local municipalities to approach land and subsidy allocation in different ways.

#### **47.Undertake a participatory process to develop a comprehensive strategy for land administration in areas where land is held under customary and communal administration**

The land administration system in rural areas where land is held under customary or communal administration has collapsed. (Easter Cape Provincial Development Plan, 2014, page 118) and spatial planning is in a crises (page 116). For example, it is unclear who is responsible for allocating and recording occupation rights on land in these areas; there are very weak systems for land use control to determine who can undertake what activity on which piece of land; there is almost no revenue collection system in place to collect any fees from these areas; and no one wants to take or is able to take responsibility for enforcing control over who is able to stay on which portion of land under what conditions.

There is not easy solution to address this crisis. Government needs to consult broadly with all role-players from government structures, communities and traditional structures to get the views and input of all stakeholders.

Government needs to facilitate processes and create spaces where various approaches to land administration in these areas can be piloted and tested, so that we can learn from experience what approaches work in different contexts. See recommendations elsewhere in this report on innovation and Operation Phakisa for examples of how to do this.

#### **48.Establish participatory processes to set and monitor the achievement of land related targets**

The land policy should put in place a process for how land related targets will be determined. The public needs to be given the opportunity to comment on and contribute towards land related targets. Careful attention needs to be given to what will be measured, including for example, a review of the appropriateness of setting targets for a specific number of hectares of land to be transferred from whites to blacks. Targets such as this do not, for example, take into account the quality and location of the land that is transferred. An alternative, for example, may be to set a target of transferring land to a certain number of smallholder farmers, and transferring an agreed number of high density plots in well located areas to homeless.

A balance needs to be found between setting too many targets that people find difficult to follow,, and setting too few targets that do not take into account unique differences. Once these targets are set mechanism for involving the public in the review of the achievement of these targets needs to be created.

### ***G. Reprioritise areas of focus for land and settlement related matters***

#### **49.Introduce a new programme on Managed Land Settlement to complement the existing programme on upgrading of informal settlements**

Despite the laudable efforts of the South African government to build housing for its citizens over the last 20 odd years, the housing backlog continues to rise and presently stands at 2.3 million households (up from 2.1 million in 1994).

<http://www.dhs.gov.za/sites/default/files/speeches/BUDGET%20VOTE%20SPEECH%20BY%20MINISTER%20OF%20HUMAN%20SETTLEMENTS%20HON%20L%20SISULU.pdf>

If, as a country, we are to seriously address the challenge of housing these people we cannot continue with similar strategies and programmes that we have been using up to now. We have to try new approaches.

One such new approach is Managed Land Settlement (MLS), where people are allowed to settle on land in an organised manner, with access to basic tenure and basic services, and over time, with support from government and others, using the upgrading of informal settlements and other programmes, to upgrade their neighbourhoods and houses.

MLS is similar to the upgrading of informal settlements programme (UISP) which focuses on the upgrading of settlements only after people have illegally occupied the land. What is missing from governments 'arsenal' of programmes is a MLS programme that will pre-empt the need for households to illegally occupy land in the first instance.

More information on MLS can be found on incremental settlement link found at:  
<http://www.afesis.org.za/2014-04-22-13-09-30/incremental-settlement.html>

## **50. Increase land redistribution for small holder farming**

The government is attempting to balance two land mandates. On the one hand government has a mandate to provide people who were dispossessed of land or were unable to access land with land; while on the other hand they have a mandate to ensure that the land is being used productively to feed the country.

At the moment government is tending to focus on the use of land to feed the population, by generally looking at redistributing larger portions of land to black farmers (see introduction chapter and chapter on small holder farming in book by Ben Cousins and Cheryl Walker (2015) *Land Divided Land Restored: Land reform in South Africa in the 21<sup>st</sup> century*, Jacana Media).

Government should put far more attention to redistributing land and making land available for those who, because of apartheid, were unable to access land. This can be achieved by acquiring land that is not being productively used and developing smallholder plots for distribution. There are a number of smallholder support programmes that government can introduce to support these smallholders, ranging from low interest loans, appropriate training and extension services, bulk buying and marketing cooperatives support, rotating market programmes, etc.

## **51. Consider alternative approaches relating to land taxation, etc rather than land ceilings**

Government needs to review its policy position of introducing land ownership ceilings. Land ownership ceilings become very difficult to determine when the productive carrying capacity of the land is so variable depending on issues ranging from the soil quality and rainfall patterns to location relative to markets.

Mechanism like property taxes, and vacant land taxes should be explored to see how they can be used to ensure that unproductive land – land held for speculation for example – is taxed at higher rates.

## **52. Focus more government resources on land**

Government needs to increase its budget allocation to the land sector (including urban and rural and conservation land), even to the extent that this will mean budget reductions in other sectors like defence and social security.

### **53. Focus more on width when it comes to housing subsidies**

Government's budget allocations within the Human Settlements department should be primarily directed towards programmes like the upgrading of informal settlements, managed land settlement (as explained elsewhere in this report) and the development of serviced sites.

The reason for this is that government should adopt more of width approach to addressing its constitutional mandate to provide housing on a progressive basis to its citizens. There are broadly two approaches government can take to progressively, within available resources, provide everyone with a house.

- The one approach, that can be called the width approach, is where government, using its limited resources, provides a few people with a full housing package (like an RDP house), and then over time government provides more people with this full package.
- The other approach, the depth approach, is where government, again with available resources, provides more people with access to land and basic services, and then over time progressively provides these people with better and better services until their housing needs have been addressed.

The problem with the depth approach is that a few people, at the front of the housing queue benefit from a house now while the rest have to wait in unhygienic and inadequate conditions while they wait for government to get to them to provide them with a full package.

The advantage of the width approach is that it helps address the right to land and the right to a healthy environment much earlier on in the housing development path. It also could be argued that the width approach addresses the equity principle in the constitution, in that more people are given a similar level of services at a time, rather than a few people getting more services while the rest get nothing. It can also be argued that the width approach contributes to the dignity principle in the constitution, in that, for example, the provision of access to land and basic services for more people gives people their dignity, rather than them having to wait in un-hygienic conditions for government to get around to providing them with a full package (in the depth approach).

See the recommendation of Managed Land Settlement for more on a programme that helps government address its land and housing challenge through a width approach.

### **54. Focus more on development support**

A focus on width means that government will take longer to come back to households, once their basic needs have been met, to provide them with subsidised top structures. This means that households will be expected to help themselves build their own houses. Instead of government just leaving households to fend for themselves, there is a lot government can do to help them build their own houses, ranging from:

- Providing low interest loans
- Providing building advice and sample house plans
- Providing information on material suppliers and builders
- Helping establish savings and loan schemes

- Helping with bulk buying clubs

This government support for helping people to help themselves also applies to supporting smallholder farmers make productive use of their own smallholding farms.

This housing support recommendation is included in this coherent and inclusive approach to land as a strategy for allowing and supporting more incremental approaches to land and settlement development requires different ways for government to approach the provision of housing.

### **55. Focus more on public spaces and facilities**

Far more resources should be redirected to the development of public spaces within human settlements. Programmes like the Neighbourhood Development Programme and the Social and Economic Facilities programme need to be expanded.

This recommendation is included as the provision of land for sustainable human settlements is not just about land for housing, but, in the spirit of spatial and land transformation, is also about the development of integrated human settlements. Households are able, with the (sometimes limited) resources at their disposal, to build shelter for themselves, but they are not able to develop quality public spaces for their communities by themselves. They need government support for this.

### **56. Focus more on public transport**

Far more resources need to be redirected to the provision of public transport within the settlement continuum from wilderness through rural to urban. This does mean that government needs to reprioritise funding from other sectors to the public transport sector. This is similar to the arguments made in the recommendation to prioritise resources for the land sector.

Land is useless for people if they are unable to access the urban and other opportunities associated with settlements from this land. Access at the local level, for low income households, can be accommodated through pedestrianisation, but at a larger scale access is achieved through public transport.

The prioritisation of public transport can further be motivated from climate change and peak oil perspectives, where the provision of public transport will reduce the need for carbon based transport costs, thereby reducing the amount of greenhouse gas emissions and reducing the extraction of oil for transport.

The whole public transport framework of settlements needs to encourage and support the movement of low, middle and higher income households, not just low income households.

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Once again thank you for the opportunity to comment on the 'draft policy framework on a coherent and inclusive approach to land for human settlements'.

We look forward to further engagement on this most exciting and important initiative.

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