



Urban LandMark

working towards improving access to land and property rights

Land Governance in South Africa

Implementing the Land Governance Assessment Framework

Acknowledgements

Photo credits: Felicity Kitchin and Wendy Ovens

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1

Introduction: Developing and applying the Land Governance Assessment Framework in South Africa

What is the Land Governance Assessment Framework?

The Land Governance Assessment Framework (LGAF) is an innovative and participatory diagnostic tool that assesses the state of land governance in a country. The LGAF process uses local experts and available evidence to facilitate a new view of land governance. It has been successfully applied in several countries.

The LGAF is a participatory process which uses local expertise and existing evidence and is therefore relatively simple to administer.

The LGAF focuses on the following key thematic areas:

- ▶ Rights recognition and enforcement (covered under the theme 'legal and institutional framework' in South Africa and in Nigeria)
- ▶ Land use planning, land management and taxation
- ▶ Management of public land
- ▶ Public provision of land information
- ▶ Dispute resolution and conflict management

The LGAF has optional modules for other topics such as large-scale land acquisition, forest land and regularisation of rights in urban areas. In South Africa, large-scale land acquisition was selected as an additional thematic area, as was the case in Nigeria.

A framework of approximately 21 land governance indicators guides the process in these thematic areas, each divided into three or four dimensions.

Implementing the LGAF involves experts preparing an informative report on each of the thematic areas. These reports form the basis for a series of panel discussions involving in-country experts to evaluate the set of dimensions.

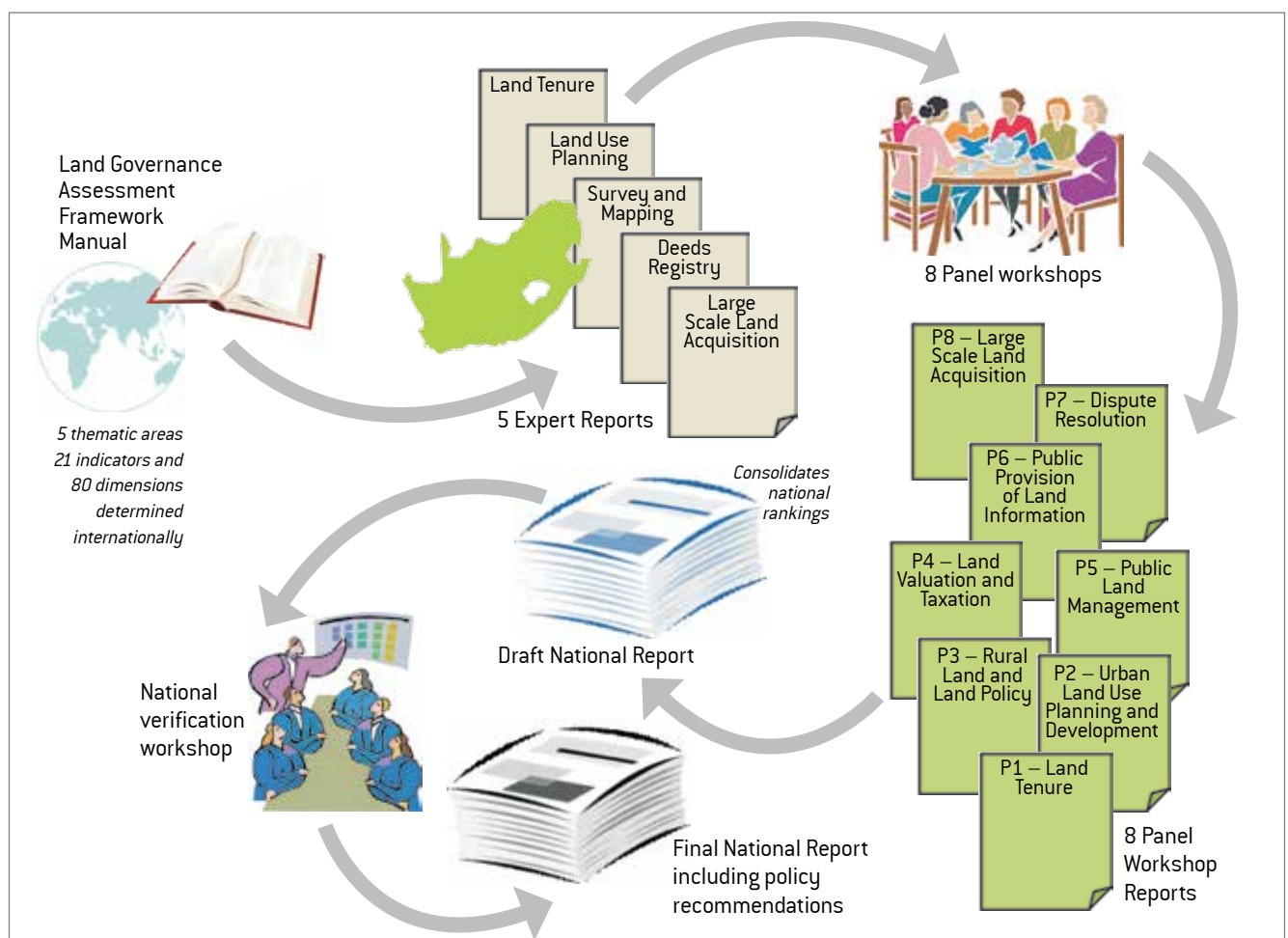
The LGAF in South Africa

In South Africa the LGAF process began in 2011. It was started by the World Bank and implemented by Urban LandMark. Local experts developed reports to form the basis for eight panel discussions on:

- ▶ Land tenure
- ▶ Urban land use planning and development
- ▶ Rural land use and land policy
- ▶ Land valuation and taxation
- ▶ Public land management
- ▶ Public provision of land information
- ▶ Dispute and conflict resolution
- ▶ Large-scale land acquisition.

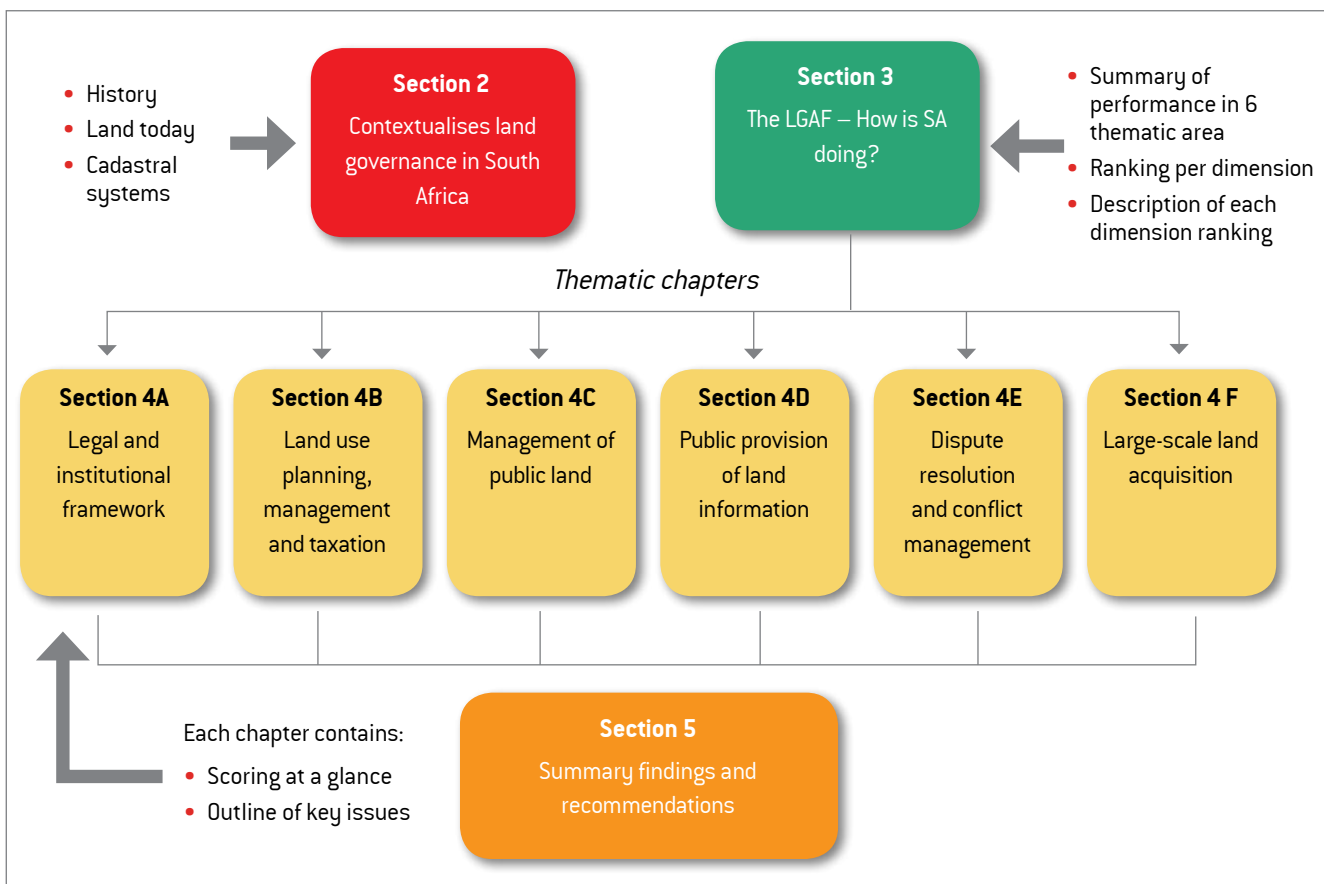
Panelists included experts from the private sector, non-governmental organisations, local government, national government and academic institutions. They scored each dimension individually, and then discussed the scores as a group. In all cases, there was active debate towards reaching consensus. Following this, the findings were debated and verified at a national workshop. Participants in the process were asked to comment again on these findings in 2013, and no significant changes were identified.

Figure 1: The LGAF process that was followed in South Africa



This booklet summarises the results of the LGAF process in South Africa. Section 2 contextualises key issues around land, looking at the history, situation today and the cadastral system. Section 3 provides a broad overview of where South Africa is doing well, and where not so well, in terms of land governance issues. Sections 4A to 4F present the LGAF findings for each of the six thematic areas, each starting with performance against the LGAF scorecard for that thematic area, and then discussing key issues. Section 5 summarises the findings and main recommendations which emerged during the LGAF process in South Africa. Section 6 concludes this resource, and suggests some key areas for further examination.

Figure 2: Using this booklet



What is useful about this approach is that it is fairly simple to implement, relies on local expertise and data, and covers most of the land governance issues in South Africa. The results can serve as a resource for land practitioners, connecting the often fragmented aspects of the management of land administration.

What has the LGAF process shown us?

Conducting the LGAF process in South Africa has led to a number of observations about land governance in the country. In some areas, the country is performing very well, whereas in others it is not. The following sections outline these aspects in more detail. However, several high level observations were made during the LGAF process:



1. **Diversity of the land sector and its governance:** Land management involves a wide range of sectors, legislation and specialists. There tends to be a fragmentation of expertise, with the result that the experience and knowledge of one sector are not necessarily shared with others, even though integration and sharing would be beneficial. This LGAF process has therefore been valuable in that it has brought together a broad range of related and interconnected specialists to address key issues around land governance.
2. **Rural versus urban distinction:** A second observation is the distinction between rural and urban areas in South Africa. 'Rural' includes different types of areas such as typical 'white' commercial farmland outside of former homeland areas¹, typical 'black' commercial farming areas within the former homeland areas², communal areas in the former homelands, protected areas³ and forests.

The fact that urban and rural areas are often so closely interlinked makes any distinction between them difficult and sometimes artificial. For example, in the transition of people moving from rural to urban areas, there is a strong link between people leaving traditional authority or communal areas and accessing the city, with informal settlements in the city being important as reception areas for new migrants from rural areas. This distinction between rural and urban areas is reflected to a certain extent in the structure and even titles of government departments, for example, the Department of Rural Development and Land Reform, and the Department of Cooperative Governance and Traditional Affairs. This can reinforce what is clearly an artificial distinction between urban and rural, and may not promote a consideration of rural and urban as interconnected.

3. **Tenure complexity and security:** Tenure in South Africa is very complex, with over 100 different tenure types.

Of the approximately 16 million to 19 million South Africans who live within rural areas, more than 90% are located on communal land. Although South Africa's Constitution recognises traditional rights and traditional tenure, what these mean and how they are enforced is not always clear. The legal framework recognises procedural rights such as the guarantee against dispossession and eviction, and it also makes provision for compensation. Oral evidence is often enough to guarantee 'tenure security', but most rural residents do not have registered land rights. Securing people's tenure in rural areas, so that they are able to sell their land, obtain loans and invest with security is critical.

To untangle all these issues will take a long time, and might need the development and implementation of different approaches.

¹ Homelands were established by the apartheid government during the apartheid era as a means of enforcing racial segregation.

² An example may be the Magwa Tea Estates outside Lusikisiki in the eastern part of the Eastern Cape Province.

³ Areas covered by national and provincial parks.



2

Land in South Africa

The history of land in South Africa is extremely divisive. Even prior to apartheid, indigenous people were restricted to only 13% of the land area. This continued throughout the apartheid years, and apartheid patterns of land ownership and spatial development are proving extremely difficult to dismantle.

Land use management, the meaning and use of land, and spatial patterns of development in South Africa today stem from hundreds of years of colonialism and apartheid, and are proving extremely difficult to restructure. As a result of this history, land issues remain highly contested and politically charged. Considering the short duration of the post-apartheid period, the land policy debate in South Africa is remarkably lively and active, with extensive reforms being adopted since 1994. Much of the focus has been on redressing inequalities in land tenure and access, and thus many of the projects both within and outside of government have supported a pro-poor agenda.

History of land in South Africa

Land in South Africa has a bitter and deeply divisive history. Dispossession of the land by white settlers began in the 17th century. Legislative frameworks were then established to facilitate the spatial segregation of racial groups. The 1913 Natives Land Act established the so-called 'reserves', which comprised only 13% of the land surface of South Africa. All land purchases or rent tenancy by black indigenous South Africans outside of these reserves were regarded as illegal.

During the apartheid years (1948 to 1994), racial segregation intensified. During the 1950s the pass law system restricted Africans from accessing urban areas unless they had employment there. The Group Areas Act further demarcated South Africa into areas based on race and resulted in massive forced removals. Later, the apartheid government transformed the reserves into ethnically determined 'independent' homelands, which were accompanied by further waves of forced removals and land dispossession. While commercial white farmers were given financial subsidies and other support, productive land was lost for black families, which undermined small-scale farming in rural areas. By 1994, 40% of the country's population, or approximately 16 million people, were living in extreme poverty in the former homeland areas.

South Africa today

South Africa is now a constitutional democracy with an independent judiciary and three independent spheres of government, namely, national, provincial and local government. The Constitution defines these spheres as distinctive, interdependent and interrelated, and all have legislative and executive authority in their own spheres.

South Africa has a population of approximately 50 million people and consists of nine provinces, the most populated being Gauteng (with 22.3% of South Africa's population) and KwaZulu-Natal (with 21.3% of the country's total population), while the Northern Cape has the lowest population density.



Table 1: Population density per province

Province	Density per km ²
Eastern Cape	40.3
Free State	21.2
Gauteng	623.0
KwaZulu-Natal	114.5
Limpopo	44.2
Mpumalanga	47.8
North West	10.4
Northern Cape	8.6
Western Cape	40.2

Patterns of migration in South Africa show that Gauteng and the Western Cape generally receive migrants. As they contain five of the eight metropolitan areas (metros) in the country⁴, this suggests an increasing tendency toward urbanisation. The highest rate of out-migration occurs from Limpopo and the Eastern Cape, the two provinces which contain large numbers of poor rural households living within the communal land areas. Urbanisation occurs through a system of networks, the informal settlements in the metros being the key reception areas for new migrants to the city.

In addition, while out-migration may be occurring, the migrant retains land within the communal land area through household or family structures, hence the increase in pressure on the urban areas is not balanced by a decrease in land pressure on the rural areas.

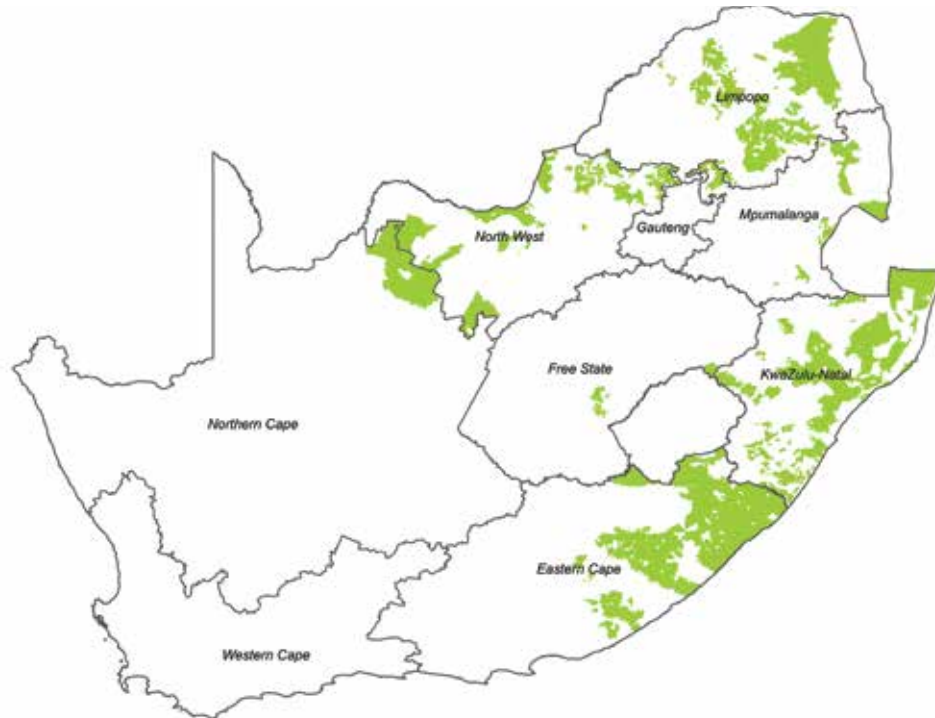
Figure 3: Communal land, Eastern Cape



⁴ Gauteng contains the Johannesburg, Tshwane and Ekurhuleni metros, the Western Cape comprises the Cape Town metro and KwaZulu-Natal the eThekweni metro.

Communal or traditionally owned land is found within all provinces, with the exception of the Western Cape, with only very small portions in Gauteng (see figure 4). Traditional leaders form advisory bodies at both national and provincial levels, and have representation on the municipal council in their area.

Figure 4: Location of communal land in South Africa



LAND TENURE IN SOUTH AFRICA

Historically, indigenous South Africans were substantially denied tenure rights. Many resided on land set aside and held by parastatal trusts, commonly referred to as communal or tribal land. This legacy has persisted into the democratic (post-1994) era in South Africa, with government yet to adopt appropriate tenure reform legislation. Despite this shortcoming, communal land is managed and administered in accordance with the tenets of customary law. Tenure reform on communal land has been particularly controversial and politically sensitive.

Land tenure varies according to the type of area in which the land is located. In rural areas, land situated in former homelands is communal land, administered by a traditional council, with communal tenure and plots registered in the name of the state. Rural farmland is mainly owned by whites; land is surveyed and titled under freehold. Despite the land redistribution programme, equity has been slow to accomplish. Land redistribution usually involves title under corporate tenure.

This racially discriminatory and fragmented land tenure system has been difficult to dismantle. Race and class distinctions are still built into the spatial landscape of the country. Formalisation of tenure is slow in informal areas. As a result, many people living in urban areas continue to experience tenure insecurity despite some legal protection through anti-eviction legislation.



Tenure in South Africa falls into one of three broad categories:

- Established tenure (in formal, mainly urban areas)
- Evolving tenure
- Emerging tenure.

Established tenure is registered and secure, whereas emerging tenure is not registered and is insecure.

South Africa's cadastral system

A cadastral system is a public inventory of immovable property, which provides a land management system that deals with the relationships between people and land. It consists of two sub-systems: Land Registration and Cadastral Surveys. In South Africa, the Land Survey Act (1997), the Deeds Registries Act (1937) and the Sectional Titles Act (1986) determine the framework for the cadastral system. The agencies responsible for land registration and cadastral surveying fall under the national Department of Rural Development and Land Reform and consist of four Surveyors-General and nine provincial Deeds Registry offices⁵.

The cadastral system defines property ownership rights, and forms the basis for land valuation, land taxation, development planning, local authority demarcation and land administration. However, the concept of a cadastre is not fixed and is being modified by the International Federation of Surveyors (FIG) to take into account non-Western and non-colonial contexts⁶, for example.

There are several shortcomings in the current system. One is that the cadastre currently only provides ownership information. This means that information on public restrictions has to be sourced elsewhere, for example, information on zoning and building lines, etc. can be accessed from municipalities, and restitution claims need to be referred to the Department of Rural Development and Land Reform. Even property owners themselves may not be aware of the restrictions.

Implementing the principles of Cadastre 2014, as formulated by FIG, could address this shortcoming. It will ensure that cadastral plans reflect all rights and encumbrances on land, like building lines, height restrictions, etc. This should be possible in the larger municipalities that have the necessary technology and systems, but they may need to consolidate information and share data⁷. It would be useful to include information relating to government ownership of customary land. It is also important to upgrade the technology used by the Surveyor General's office to manage spatial information effectively, including surveying all property and recording rights across the country.

Another major shortcoming is that the current system is rigid and costly to implement. All land parcels, whatever their size, value or location, must be surveyed to tight specifications⁸.

⁵ Constable, 2005

⁶ Kingwill, 2004

⁷ Ibid

⁸ Van den Berg and Hoffman, 2003



This means that the system's cost and complexity set it beyond the reach of many poor people. In addition, a high level of professional expertise is needed to manage the system, which is currently in short supply.

The fact that “the cadastral system is based on a well-surveyed and managed system of control beacons strategically placed throughout the country creates confidence amongst banks, other lending institutions, business and the affluent public regarding the accuracy, description and safe lodgement of land records. Very few boundary disputes reach the courts. This system needs to be preserved, but at the same time, it must be adapted to suit the needs of the majority of people in South Africa”⁹. In particular, the system needs to be “flexible enough to allow for upgrading of land tenure when the need arises. It is possible to extend the cadastral system to include the rural and low-cost urban housing projects, without prejudicing the integrity of the cadastral system”¹⁰.

Concluding comments

Since the election of a democratic government in 1994, South Africa has implemented extensive reform to address inequalities in access to land. However, this has proved difficult and slow. Significant portions of land in rural areas are communally owned where tenure reform is extremely politically sensitive. In informal settlements in urban areas, people also do not have secure tenure, although they have some protection through anti-eviction legislation, while processes of incremental tenure are being piloted in some areas. And although South Africa's cadastral system in formal areas is impressive, it is also expensive and inflexible, and needs to be adapted to aid increased tenure security for poor households.

⁹ Van den Berg and Hoffman, 2003

¹⁰ Ibid



3

How are we doing?

In addition to the expert reports developed, and panel discussions and workshops held around assessing the state of land governance in South Africa, a country scorecard was used to determine how South Africa performs against each of the assessment indicators and dimensions developed internationally and applied in all countries participating in the LGAF process. The country scorecard grouped these indicators and dimensions into the six broad thematic areas for assessment, as mentioned earlier in this resource:

- ▶ Legal and institutional frameworks
- ▶ Land use planning, management and taxation
- ▶ Management of public land
- ▶ Land information
- ▶ Dispute resolution and conflict management
- ▶ Large-scale land acquisition.

The scorecard indicates how South Africa performs on each dimension using a four-point scale, ranging from “doing well” (indicated by the green colour in the tables which follow in this section); to “doing reasonably well” (yellow); “not doing very well” (orange); and “not doing well” (red).

Section 3 provides a summary representation of the scoring for each thematic area, highlighting where South Africa does well and where it does not do so well. The A to F sub-sections of section 4 that follow provide a more detailed discussion of the scorecards.

Legal and institutional framework

Meets requirements for good land governance

- More than 90% of individual properties in urban and rural areas are formally registered. This does not necessarily mean the final certificate or title has been issued; it may mean rights are recorded unambiguously in the land administration system, with few disputes over the recorded information.
- More than 45% of land registered to physical persons is registered in the name of women.
- Common property under condominiums is recognised and there are clear provisions in the law to establish arrangements for its management and maintenance.
- More than 80% of property holders liable for land/property tax are listed on the tax roll.
- The amount of property taxes collected exceeds the cost of staff in charge of collection by a factor of more than five.

Mostly meets requirements for good land governance

- The existing legal framework recognises rights held by 70% - 90% of both the urban and the rural population, either through customary or statutory tenure regimes.
- The tenure of most groups in rural areas is formally recognised, but the means for them to gain legal representation or organise themselves are not regulated.
- Where people lose rights as a result of land use change outside the expropriation process, compensation in cash or in kind is paid such that they have comparable assets, but cannot continue to maintain prior social and economic status.
- There are regulations regarding urban and rural land use, ownership and transferability that are justified on the basis of overall public interest, but they are not enforced.
- Informal fees need to be paid to effect first-time registration, but this is significantly less than the formal fees.

Struggles to meet requirements for good land governance

- Group tenure in informal urban areas is not formally recognised, but groups can gain legal representation under other laws.
- The law provides opportunities for those holding land under customary, group or collective tenures to individualise land ownership (full or partial use). Procedures are not affordable or clear, leading to widespread application by discretion or failure to apply procedures even when those affected desire to do so.
- Non-documentary forms of evidence are used to obtain recognition of a claim to property along with other documents when other forms of evidence are not available. They have less credibility than the required documents.
- Legislation exists to recognise long-term, unchallenged possession formally, but due to the way this is implemented, formal recognition is granted to very few applicants.
- The requirements for formalising housing in urban areas are not clear, straightforward or affordable, but many applicants from informal areas are managing to satisfy the criteria.
- Policy exists or can be inferred from existing legislation, but it is incomplete (some key aspects are missing or only part of the country is covered, such as only urban or only rural areas), or land policy decisions that affect some sections of the community are made without consultation with those affected.
- Land policies incorporate some equity objectives, but these are not regularly and meaningfully monitored.
- The implementation of land policy is not fully costed and/or there are serious inadequacies in implementing the policy in at least one area of budget, resources or institutional capacity.
- Land institutions report on land policy implementation, but in a way that does not allow meaningful tracking of progress across different areas, or it is done sporadically.

No progress or limited progress made in meeting requirements for good land governance

- Less than 10% of the area under communal or indigenous land has boundaries demarcated and surveyed, and associated claims are registered.
- The cost for first-time sporadic registration of a typical urban property exceeds 5% of the property value.



In the LGAF, a consideration of legal and institutional frameworks includes issues around recognition of rights, enforcement of rights, mechanisms for recognition, restrictions on rights and equity, and non-discrimination.

South Africa performs well in terms of gender and land, with women representing well over 45% of land registered to individuals. South Africa also performs well on registration of individual properties in urban and rural areas. However, challenges persist around tenure issues in traditional areas and informal urban areas. These relate to difficulties and expenses in accessing professional and legal services, and gaps in legislation or its enforcement. The implementation of land policy is not being effectively monitored or resourced.

Major problems exist in the lack of surveying of communal land and in the high costs associated with registration and transaction of urban property.

Land use planning, management and taxation

Meets requirements for good land governance

- More than 70% of the land that has had a change in land use assignment in the past three years has changed to the destined use.
- Existing requirements for residential plot sizes are met in at least 90% of plots.
- All applications for building permits receive a decision within three months.
- The assessment of land/property values for tax purposes is based on market prices, with minimal differences between recorded values and market prices across different uses and types of users. Valuation rolls are regularly updated (at least every five years).
- There is a policy that valuation rolls be publicly accessible and this is effective for all properties that are considered for taxation.
- There are limited exemptions to the payment of land/property taxes, and those that exist are clearly based on equity or efficiency grounds and applied in a transparent and consistent manner. This means that the basis for the exemption is clearly defined, widely disseminated and uniformly applied.
- More than 80% of property holders liable for land/property tax are listed on the tax roll.
- The amount of property taxes collected exceeds the cost of staff in charge of collection by a factor of more than five.

Mostly meets requirements for good land governance

- In urban areas, public input is sought in preparing and amending land use plans, and public responses are used by the public body responsible for finalising the new public plans, but the process for doing this is unclear or the reports are not publicly accessible.
- Mechanisms that allow the public to capture a significant share of the gains accrued from changing land use (for example, betterment taxes, levies for infrastructure and property tax) are applied transparently, but not always used.
- In the five largest cities, while a hierarchy of regional/detailed land use plans is specified by law, in practice urban development is guided by the provision of infrastructure without full implementation of the land use plans. In some cases, urban development occurs in an ad hoc manner, with infrastructure provided some time after urbanisation.
- Requirements to obtain building permission are technically justified and affordable, but not clearly disseminated.
- Between 70% and 80% of assessed property taxes are collected.

Struggles to meet requirements for good land governance

- In rural areas, public input is sought in preparing and amending land use plans, but public comments are largely ignored in the finalisation of the land use plans.
- In the largest city in the country, the urban planning process/authority is struggling to cope with the increasing demand for serviced units/land, as evidenced by the fact that most new dwellings are informal.

Land use planning, management and taxation include a consideration of issues around land use plans and changes to these, efficiency of land use planning, speed and predictability, transparency of valuation and tax collection efficiency.

South Africa performs well in implementing land use changes, developing publicly accessible and regularly updated valuation rolls, and collecting property taxes.

Although South Africa has legislated guidelines regarding public compensation and community participation, for example, in land use changes and development of rural areas, these are not always implemented effectively or are ignored. South African cities have well developed land use and spatial plans, usually cascading from regional to local level. These are not always aligned or implemented, and urban development sometimes occurs in an ad hoc manner. Cities struggle to cope with the increased demand for housing and services, as informal settlements proliferate. The collection rate of property taxes could also be improved.



Management of public land

Meets requirements for good land governance

- More than 50% of public land is clearly identified on the ground or on maps.
- Less than 10% of land expropriated in the past three years is used for private purposes.
- More than 70% of the land that has been expropriated in the past three years has been transferred to its destined use.

Mostly meets requirements for good land governance

- Public land ownership is generally justified by the cost-effective provision of public goods at the appropriate level of government, but management may be discretionary.
- All the information in the public land inventory is accessible to the public, but information for some types of public land (land used by the military, security services, etc.) is not available for justifiable reasons.
- Between 70% and 90% of expropriated land owners receive compensation within one year.
- Independent avenues exist to lodge a complaint against expropriation, but there are access restrictions (i.e. only accessible by those in the mid-income bracket and the wealthy).

Struggles to meet requirements for good land governance

- There is enough ambiguity in the assignment of management responsibility for different types of public land to impact to some extent on the management of assets.
- There are significant constraints in the budget and/or human resource capacity, but the system makes effective use of limited available resources in managing public lands.
- Key information for concessions (the locality and area of the concession, the parties involved and the financial terms of the concession) is recorded or partially recorded, but it is not publicly accessible.
- Where property is expropriated, compensation, in kind or in cash, is paid, but the displaced households do not have comparable assets and cannot maintain prior social and economic status.
- Compensation, in kind or in cash, is paid for some unregistered rights (such as possession, occupation, etc.); however, those with other unregistered rights (grazing, access, gathering forest products, etc.) are usually not paid compensation.
- Between 50% and 70% of the total agreed payments are collected from private parties on the lease of public lands.
- All types or some types of public land can be divested at market prices in a transparent process, but this only applies to a particular type of investor (e.g. domestic only or foreign only).

No progress or limited progress made in meeting requirements for good land governance

- A first-instance decision has been reached for less than 30% of the complaints about expropriation lodged in the last three years.
- The share of public land disposed of in the past three years through sale or lease by public auction or open tender process is less than 50%.

Management of public land involves recording the relevant properties, determining resources available, identifying incidences of expropriation, and ensuring transparency of procedures and processes. South Africa performs well identifying public land. Expropriation is primarily used for public purposes and most expropriated land has been used appropriately.

Compensation occurs within a year for between 70% and 90% of expropriated land owners. However, complaints against expropriation need to follow an expensive process, which means that the poor have little recourse. There are capacity shortfalls (financial and staffing) around management of public land. Problems around expropriation include the fact that displaced households do not have comparable assets despite receiving compensation, and that unregistered rights, such as grazing, are not usually compensated.

Major problems include the long period of time taken to resolve complaints about expropriation and the fact that disposal of public land has generally not been transparent.



Land information

Meets requirements for good land governance

- More than 90% of records for privately held land registered in the registry are readily identifiable in maps in the registry or cadastre.
- Relevant private encumbrances are recorded consistently in a reliable fashion and can be verified at low cost by any interested party.
- The records in the registry can be searched by both the rights holder name and land parcel.
- Copies or extracts of documents recording property rights can be obtained by anyone who pays the necessary formal fee, if any.
- Copies or extracts of documents recording rights in property can generally be obtained within one day of request.
- More than 90% of the ownership information in the registry/cadastre is up to date.
- The total fees collected by the registry exceed the total registry operating costs. Total operating costs include all non-capital investment costs (i.e. salaries and wages, materials, transportation, etc.) associated with registry operation. Registry operating costs do not include long-term capital investment or associated depreciation expenses.
- A clear schedule of fees for different services is publicly accessible and receipts are issued for all transactions.

Mostly meets requirements for good land governance

- Mechanisms exist to detect and deal with illegal staff behaviour in all registry offices, but cases are not systematically or promptly dealt with.

Struggles to meet requirements for good land governance

- Relevant public restrictions or charges are recorded, but this is not done in a consistent and reliable manner.
- Meaningful service standards have been established, but have not been published and there is little attempt to monitor performance against the standards.
- The cost for registering a property transfer varies from 2% to less than 5% of the property value.
- There is investment in capital in the system to record land rights, but it is insufficient to ensure that the system is sustainable and the poor have limited access to it.

An examination of land information involves considering issues around the completeness of the registry, the reliability of records, cost effectiveness, sustainability and transparency.

Overall, South Africa performs very well on land information issues. Land ownership is recorded efficiently, is readily available and is regularly updated.

There may be some level of corruption, despite mechanisms to deal with this in registry offices. Some challenges exist in recording public restrictions, in publishing and monitoring service standards and in improving access for the poor.



Dispute resolution and conflict management

Meets requirements for good land governance

- Land disputes in the formal court system are less than 10% of the total court cases.

Mostly meets requirements for good land governance

- Institutions for providing a first-instance of conflict resolution are accessible at the local level in less than half of communities, but where these are not available, informal institutions perform this function in a way that is locally recognised.

Struggles to meet requirements for good land governance

- There is an informal or community-based system that resolves disputes in a manner that is not always equitable. Decisions made by this system have limited or no recognition in the formal judicial or administrative dispute resolution system.
- There are parallel avenues for dispute resolution and cases can be pursued in parallel through different channels, but sharing of evidence and rulings may occur on an ad hoc basis.
- A process and mechanism exist to appeal rulings on land cases, but costs are high and the process takes a long time.

No progress or limited progress made in meeting requirements for good land governance

- A decision in a land-related conflict is reached in the first-instance court within a year for less than 50% of cases.
- The share of long-standing land conflicts is greater than 20% of the total pending land dispute court cases.

Dispute resolution and conflict management relate to conflicts and disputes around land issues such as planning, ownership and tenure. South Africa performs well with regard to conflict resolution in the formal legal system, but has made little or no progress in speeding up this process, with the result that some cases have been unresolved for more than five years. The appeals process is expensive and lengthy.

Large-scale land acquisition

Meets requirements for good land governance

- More than 70% of the area under forest land has boundaries demarcated and surveyed, and associated claims are registered.

Struggles to meet requirements for good land governance

- Conflicts related to use or ownership rights and directly or indirectly related to land acquisition are relatively frequent (more than 5% of rural land area affected), but emerging conflicts are addressed expeditiously and in a transparent manner.
- The land use restrictions applying to any given plot of rural land can be unambiguously determined on site for land occupied by 10% to 40 % of the population.
- Institutions that promote, channel or acquire land for purposes of interest to this study have clear standards of ethical performance, but implementation is variable and accounts are not subject to regular audits.
- There are written but unclear legal provisions or regulations regarding incentives for investors. Their applicability has to be negotiated on a case by case basis in a way that is often discretionary.
- Mechanisms to allow the public to obtain benefits from the investment (or investing party) other than compensation (e.g. schools, roads, etc.) are rarely used or they are applied in a discretionary manner.
- Investors provide some or all the information required from them, but this information is not publicly available .
- In most cases, investment application related documents are reviewed and receive a response within nine months of the submission date.
- Social safeguard requirements for investors are clearly documented and defined (i.e. with details regarding specific processes and elements in the assessment), but implemented with discretion.
- Environmental safeguard requirements for investors are clearly documented and defined (i.e. with details regarding specific processes and elements in the assessment), but implemented with discretion.
- Procedures to fully cover economic, social and environmental issues are in place, but not implemented effectively.
- Responsible government agencies follow up on the agreements to check for compliance, but do not take reasonable actions in cases of non-compliance.
- There is a process by which affected parties or the public at large can lodge complaints regarding investor compliance with safeguards, but mechanisms to deal with these fairly and expeditiously are not in place.

No progress or limited progress made in meeting requirements for good land governance

- Expropriation of land by the state is required and the process is murky.
- Information required from investors is not consistently required and is generally insufficient to assess viability and potential benefits from the project.
- Contracts do not have to specify either risk-sharing or benefit-sharing arrangements.

South Africa performs well on the demarcation, surveying and registration of forest land. Fairly frequent conflicts are experienced around use of ownership rights, but these are usually addressed quickly. There are some problems around unclear laws and regulations, lack of audits and monitoring, lack of publicly available information, lengthy times for processing investors' applications, inconsistent implementation of social and environmental safeguard requirements and procedures, and lack of action in cases of non-compliance with these.

Problems exist in lack of clarity around expropriation of land by the state, and insufficient information from investors to assess a project's viability, benefits and risks.



Concluding comments

Considering South Africa's performance across the thematic areas, two areas stand out as ones in which South Africa is generally performing well.

These are land use planning, management and taxation (with 8 'green' and no 'red' rankings, of a total of 15 indicators), and land information (with 8 'green' and no 'red' rankings, of a total of 13 indicators).

The poorest performing area is large-scale land acquisition. Alarming, this area has only one 'green' ranking, no 'yellow' rankings, 12 'orange' rankings and 3 'red' rankings, of a total of 16 indicators.

South Africa also performs fairly poorly in the area of dispute and conflict resolution, with 5 of 7 indicators being ranked 'orange' or 'red'.

The remaining two areas, legal and institutional framework, and management of public land, are more balanced, although both tip into overall negative performance.

4 Understanding the rankings

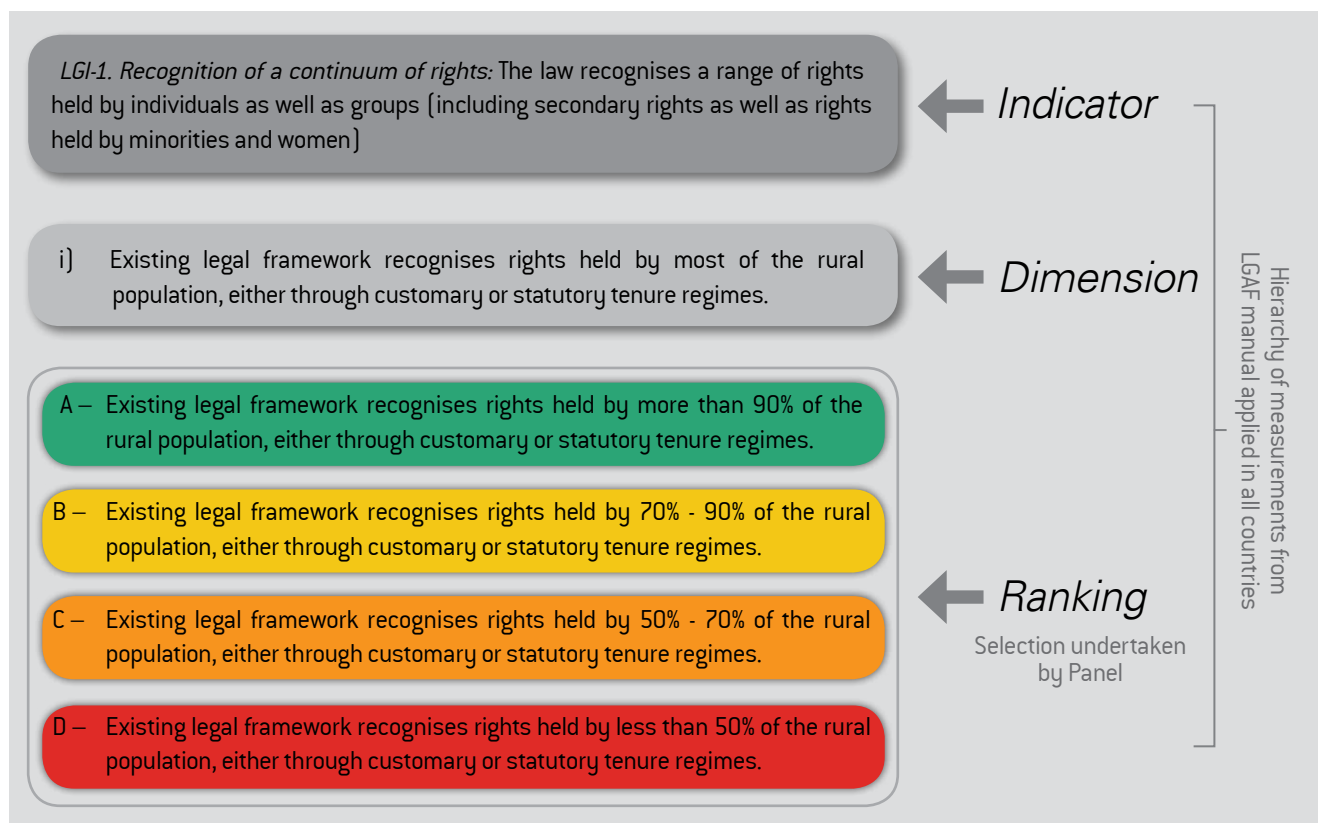
Having briefly reviewed how South Africa fares in the six thematic areas, the next six sub-sections (4A to 4F) of this resource now take each of these themes in turn and discuss them in more detail.

Each sub-section starts with the exact panel ranking of each of the dimensions arranged by indicator, giving scores of A, B, C and D in the tables for each thematic area, with A indicating a high score and D a low one.

These rankings were further tested with a wider range of experts at a technical validation workshop which was held at the close of the South African LGAF process.

The figure below gives an example of how the indicators each consist of several dimensions, and where the rankings (A, B, C or D) place the country's performance on each dimension.

Figure 5: Example of an LGAF indicator, dimension and rankings for scoring



4A Legal and institutional framework

Since 1994 South Africa has introduced a plethora of laws and policies to address the gross inequities associated with land distribution and access as a result of apartheid. This thematic area includes the following dimensions: recognition and enforcement of rights, mechanisms for recognition, restrictions on rights, and equity and non-discrimination. The table below provides the final scoring for each dimension and indicator. South Africa only performs well on three indicators, all of them associated with enforcement of rights. The two poorest performing dimensions are in surveying communal land and the high costs of registration.

LEGAL AND INSTITUTIONAL FRAMEWORK			Score			
Indicator & Dimension	Topic		A	B	C	D
Recognition of Rights						
1	i, ii	Land tenure rights recognition (rural and urban): <i>Rural and urban land tenure rights are legally recognised.</i>		■		
1	iii	Rural group rights recognition: <i>Rural group rights are formally recognised.</i>		■		
1	iv	Urban group rights recognition in informal areas: <i>Urban group rights are recognised in informal areas.</i>			■	
1	v	Opportunities for tenure individualisation: <i>Opportunities for tenure individualisation exist and are accessible.</i>			■	
Enforcement of Rights						
2	i	Surveying/mapping and registration of claims on communal or indigenous land: <i>Most communal or indigenous land¹¹ is mapped and rights are registered.</i>				■
2	ii, iii	Registration of individually held properties in urban and rural areas: <i>Individually held properties in urban and rural areas are formally registered.</i>	■			
2	iv	Women's rights are recognized in practice by the formal system (urban/rural).	■			
2	v	Condominium regime that provides for appropriate management of common property: <i>A condominium regime provides for appropriate management of common property.</i>	■			
2	vi	Compensation due to land use changes: <i>There is compensation for loss of rights due to land use changes.</i>		12		
Mechanisms for Recognition						
3	i	Use of non-documentary forms of evidence to recognise rights: <i>Non-documentary forms of evidence are used to recognise property rights</i>			■	
3	ii	Formal recognition of long-term, unchallenged possession: <i>There is formal recognition of long-term, unchallenged possession.</i>			■	
3	iii	First-time registration on demand is not restricted by inability to pay formal fees.				■
3	iv	First-time registration does not entail significant informal fees.		■		
3	v	Formalisation of residential housing is feasible and affordable.			■	
3	vi	There is an efficient and transparent process in place to formally recognise long-term, unchallenged possession.		■		
Restrictions on Rights						
4	i, ii	Restrictions exist regarding urban and rural land use, ownership and transferability		■		
Equity and Non-Discrimination						
6	i	Clear land policy developed in a participatory manner			■	
6	ii	Meaningful incorporation of equity goals			■	
6	iii	Policy for implementation is costed, matched with the benefits and is adequately resourced			■	
6	iv	Regular and public reports indicating progress in policy implementation			■	

*Numbers in scoring blocks point towards footnotes

¹¹ “Communal land is land to which a community has use and/or occupation rights or access. Such land may be owned by a community-based entity or it may be held in trust by the state or an organ of state, but it seldom has a private owner.” (LGAFA-SA definitions).

¹² There was a discrepancy between the panel findings and the workshop verification, which was discussed by Urban LandMark. The panel score was D, but it was agreed that the workshop verification view was a better reflection of the situation.



Rural land rights

Approximately 16 million to 19 million South Africans live in rural areas, of which more than 90% are located on communal land. While the Constitution of South Africa recognises traditional rights and traditional tenure, there is as yet no legal mechanism to register communal or indigenous land. Instead, the state holds this land in trust for the communities. There are temporary laws in place to ensure rural tenure rights in communal land areas. Although there are legal processes under way to address rural tenure rights in communal areas, there is an urgent need for a coherent legal framework to protect the rights of vulnerable groups in rural areas.

In commercial farming areas (or the previous 'white-owned rural areas'), the plight of farm workers who live on farms is of concern. Laws to extend rights to these workers and to protect them against arbitrary eviction and deprivation of rights are ineffective and under review. Consequently, farm evictions are common.

Urban land rights

In 2010 there were about 26.8 million people living in urban areas in South Africa, 4.9 million of them in informal settlements, with insecure tenure. In formal urban areas, tenure is secured through a title deed, lease or deed of grant. However, most of the urban poor fall outside the conventional property market, and many continue to remain outside of the subsidised land and housing developments being designed for low-income households, despite the high rate of delivery by the state.

In South Africa the registration status of properties does not necessarily reflect the rights of the people residing on them. Large tracts of registered land are, for example, occupied by informal settlements. These settlements proliferate in or around most urban centres, particularly within the major metropolitan areas of Johannesburg, Cape Town and eThekweni. In 2010, it was thought that 18% of the urban population lived in informal settlements. In these settlements, there is no access to formal title and rights are not formally registered or noted. Security of occupation is often tenuous. Access and retention of informal or undocumented rights often require paying an informal fee.

Urban LandMark has been advocating for an incremental tenure approach. This would commence with the application of benign zoning provisions recognising the existence of informal settlers, incrementally extending tenure rights to them (initially by administrative decision), progressing to legally secure tenure and ultimately including freehold tenure.

More than 90% of urban properties are formally registered, even those where informal settlements are located. An emerging challenge in urban areas is the slow rate at which formal registration of government-subsidised housing is taking place. In some instances, households in housing schemes completed more than three to five years ago are yet to receive proof of formal registration. This is related to delays in opening a township register (which is a prerequisite to formalisation and registration), delays encountered in upgrading of land rights, or delays resulting from the cross-linkages of property transfers to payment of tax to the state in the form of transfer duty.

There is an urgent need to protect vulnerable people in rural areas, and to address the plight of farm workers living on farms.



Group land rights

In South Africa the formal recognition of group rights is not a key concern. Rural groups are either culturally defined, as in the case of traditional communities, or voluntarily constituted. Both are recognised in law. Traditional communities are recognised under the Traditional Leadership and Governance Framework Act No. 41 of 2003. The rules, practices and procedures are recorded in the collective mind of the community concerned and recognised under the 1996 Constitution and by the Constitutional Court as part of South Africa's common law.

Non-traditional communities, especially land reform beneficiaries to whom land is transferred (Common Law Trusts or Communal Property Associations), are recognised under the Communal Property Associations Act No. 28 of 1996. However, implementing the various laws governing this group is hampered by factors such as the failure to register or lack of regulations.

In urban areas, there is a tendency for 'groups' to fight for individual tenure rights and not group rights. People occupying informal settlements will either be evicted by the land owner or be recognised by the municipality. Some municipalities have undertaken a process of acknowledging informal settlements through mechanisms such as enumeration of dwellings and the provision of basic services. This means that there is administrative rather than legal recognition of such communities or groups. Once the municipality has recognised the settlement, while there is no formal tenure right, there is a perceived group right to the land by the community.

In-situ upgrading may occur on suitable land. If it is not suitable, households are either relocated into Reconstruction and Development Programme (RDP) houses, for which individual title is obtained, or moved to a more suitable portion of land with no title given. In these cases, the municipality would continue to administer the community as a 'group'.

Women and land rights

Women owners represent over 52% of the registered owners of land in South Africa. This is mainly white registered ownership and emerging black (coloured, Indian and African) middle-class registered ownership. In this social category, legal barriers to female ownership are negligible. This does not, however, reflect *de facto* social barriers to ownership nor distribution of land ownership if one includes customary and protective land rights.

Women married in community of property are automatically registered as joint owners of purchased property, the number increasing due to recent removal of barriers under customary law and intestate succession. It is common practice among higher income families that own more than one property for the husband and wife to divide the ownership of properties between them, particularly as there are income tax implications on disposal of property. South Africa has a capital gains tax on property, but it is not clear whether this tax affects the gender distribution of ownership within families.¹³ In addition, intestate succession rules favour inheritance by the spouse and all siblings, rather than primogeniture, now increasingly being enforced in customary litigation. An emerging trend in South Africa is that women with capital are actively engaging in the property market.

¹³ Capital gains tax is a tax on the profit or gain you make when you sell or 'dispose of' an asset.

The slow rate at which the formal registration of government subsidised housing is taking place is a major challenge.



Women's land rights are recognised by law through the Constitution, statute, common law and increasingly, the 'living customary law'. Therefore, in the case of title registration, there are no legal obstacles to registering title in the name of women in South Africa. Policies in both the land and housing sectors explicitly discourage gender discrimination in land ownership.

In practice, however, the situation is extremely complex, for several reasons. These include historical legacies of gender discrimination, which carry over into current practices in both customary contexts and new formal housing projects. Consequently, 'registered rights' are a weak (or misleading) indicator of land governance in South Africa at this stage in the country's history.

In general, there are higher rates of female ownership in urban areas. Black female ownership is likely to rank much higher for urban than rural areas for the simple reason that most rural black land rights are off-register rights. Dissecting rural and urban land by gender is enormously complicated in South Africa where there is great social and political variation, not only *between* rural and urban areas, but *within* rural and urban areas. However, a recent survey conducted by the Community Agency for Social Change (CASE) demonstrated an increase in customary land allocations to single women, despite the 'traditional' barriers based on official customary law.

Figure 6: Newly constructed houses and toilets, Ndaka, KwaZulu-Natal



Restrictions on rights

Formal zones in South Africa's urban areas have strict restrictions regarding land use, ownership and transferability. The key challenge lies with enforcing these regulations. Municipalities may lack the capacity needed for enforcement, and in some cases, officials do not enforce regulations. Informal settlements within cities remain unregulated and have no formal mechanisms in place for facilitating the land market. There are informal systems for managing land use in these areas, but they are not recognised by the authorities (for example, backyard shacks in township areas).

Over 52% of the registered owners of land in South Africa are women. There is no legal obstacle to registering title in the name of women. Policies related to land and housing actively discourage gender discrimination, although in practice this is very complex. There is a higher rate of female ownership in urban areas, but recent research demonstrated an increase in customary land allocations to single women, in spite of 'traditional' barriers based on official customary law.

It is difficult to assess restrictions on land rights in rural areas due to the wide variation of rural settings found in South Africa. The country does have several restrictions on land rights in rural areas, yet the extent to which they are enforced depends on the setting. Enforcement is unlikely in communal areas, and enforcement capacity appears to be diminishing at all levels of government due to factors such as lack of resources.

Participation and equity in land policies

With regard to participation, practitioners claim that there was greater transparency in the policy-making process immediately after the first democratic elections in 1994 than there is now. Officials are increasingly giving 'lip service' to public participation, and meaningful public participation in a comprehensive process is rare. There is also a dearth of public reports due to the absence of a coherent policy on rural land development.

A major problem in South Africa is the acute vacuum around rural land policy. Redistribution, restitution and tenure reform on private land have all suffered from problems in design, implementation, capacity and the shortage of funding. The South African land reform programme is generally seen to be failing.

Tenure reform on communal land has been particularly controversial and politically sensitive. Despite tenure security being a constitutional imperative in the Bill of Rights, it is still without a law or programme as the Constitutional Court struck down the Communal Land Rights Act (CLRA) in 2010 since it was found to be in breach of the South African Constitution.

Agreement on key issues such as a coherent vision for agrarian reform has not yet been reached. Too much public debate has been about the 'speed' of land reform and the meeting of unrealistic targets. There is no government policy statement that links poverty reduction to the type and value of land-based livelihoods.

Despite the estimated cumulative cost of land reform to date being more than R30 billion, the related benefits remain uncertain. Key questions need to be asked about the failure of the reform process, and the upstream and downstream impacts on employment, the rural economy, rural infrastructure and assets.

The Department of Rural Development and Land Reform is undertaking extensive field-based research in wards associated with the Comprehensive Rural Development Plan. This research aims to understand household structure, associated support mechanisms and service requirements. In the long term, it may assist in providing insight into the changing nature of rural households and the impact of the current tenure situation.



LAND REFORM IN SOUTH AFRICA

There are several components to the South African land reform programme. “Restitution involves the return of land to people who were dispossessed after 1913, the year of the first Land Act, which legalised land dispossession on a large scale. Redistribution of land aims to address the highly skewed ownership of land along racial lines. Tenure reform aims to strengthen the rights of people whose land tenure is insecure as a result of discriminatory laws and practices in the past: farm workers, labourers and rural households living on privately owned land, and people living in former homelands under the authority of traditional chiefs.”

The Department of Rural Development and Land Reform in 2011 released a Green Paper on Land Reform, which seeks to address the challenges experienced in the current programme. It notes that “the current economic structure of South Africa, as a result of this historical process and phenomenon, has produced, and continues to produce, net factors which combine and undermine the creation of conditions which are conducive to fostering social cohesion and development amongst those historically dispossessed of their land”.



4B Land use planning, management and taxation

Land use planning, management and taxation includes the following dimensions: transparency of land use restrictions, efficiency of land use planning, speed and predictability (of applications and building permits), transparency of valuation, and tax collection efficiency. The table below provides the final scoring for each dimension and indicator. Overall, South Africa performs well in this area, particularly on the transparency of valuation, the efficiency of land use planning and on tax collection.

LAND USE PLANNING, MANAGEMENT AND TAXATION			Score			
Indicator & Dimension	Topic		A	B	C	D
Transparency of Land Use Restriction						
7	i	In urban areas, land use plans and changes to these are based on public input.				
7	ii	In rural areas, land use plans and changes to these are based on public input.			14	
7	iii	The public captures benefits arising from changes in permitted land use.				
7	iv	Speed of land use change: Actual land use changes to the assigned land use in a timely manner.				
Efficiency of Land use Planning						
8	i	Process for planned urban development in the largest city: Land use planning effectively controls urban development in the largest city in the country.	15			
8	ii	Process for planned urban development in the four largest cities (excluding the largest): Land use planning effectively controls urban development in the four largest cities in the country, excluding the largest city.	16			
8	iii	Ability of urban planning to cope with urban growth: Planning processes are able to cope with urban growth.				
8	iv	Plot size adherence: Residential plot sizes are adhered to in urban areas.				
8	v	Use plans for specific land classes (forest, pastures, etc.) are in line with use. ¹⁷				
Speed and Predictability						
9	i	Applications for building permits for residential dwellings are affordable and processed in a non-discretionary and effective manner.				
9	ii	The time required to obtain a building permit for a residential dwelling is short.				
Transparency of Valuation						
10	i	There is a clear process of property valuation.				
10	ii	Valuation rolls are publicly available.				
Tax Collection Efficiency						
11	i	Exemptions from property taxes are justified.				
11	ii	Property holders liable to pay property tax are listed on the tax roll.				
11	iii	Assessed property taxes are collected.				
11	iv	Property taxes correspond to the costs of collection.				

*Numbers in scoring blocks point towards footnotes

¹⁴ There was a discrepancy between the panel findings and the workshop verification, which was discussed by Urban LandMark. The workshop verification score was B, but it was agreed that the panel view was a better reflection of the situation.

¹⁵ There was a discrepancy between the panel findings and the workshop verification, which was discussed by Urban LandMark. The panel score was B, but it was agreed that the workshop verification view was a better reflection of the situation.

¹⁶ As above.

¹⁷ Panelists argued that they had insufficient knowledge to answer the question with certainty. The dimension required detailed research, which went beyond the scope of the terms of reference set for the panel.



Transparency of land use restrictions

Public participation

South Africa's legislation requires local government's administration, budgeting and planning to respond to the basic needs of the community. Legislation promotes integrated development planning, and an integrated development plan (IDP) is required in both urban and rural areas. Several plans support the IDP, such as a spatial development framework (SDF), an infrastructure investment plan, a housing strategy, a transportation plan and a disaster management plan.

Public participation processes for changes in land use through town planning applications such as a rezoning or consent use is well legislated and regulated. However, despite this, the public participation process is often criticised as being inadequate, token, lengthy and costly. In many areas, the documentation required means it is seen as a compliance issue rather than genuine participation. Municipalities also tend to receive far more objections to plans from affluent communities than the urban poor.

On the other hand, extensive public participation can sometimes be limiting. Government has a responsibility to govern and to implement plans which may have a local impact, but at the same time, they are for the greater good of the city. An example may be the implementation of a bus rapid transport system, which includes the planned increase of densities along the line. The system may not receive the approval of the affected communities, but it is in the long-term interests of the city as a whole.

In rural municipalities, the Municipal Structures Act allows for traditional leaders to participate in municipal councils. However, the capacity levels in many municipalities, especially those that contain a high percentage of communal land, are very low. Consequently, IDPs are often little more than a 'wish list' of development projects rather than realistic plans to provide integrated development. In addition, the spatial development plans often focus on the urban areas (town) rather than providing comprehensive spatial plans for the municipal area as a whole.

Benefits from changes in land use

Municipalities in South Africa need to be self-funded, with the majority of the revenue generated through rates and service charges¹⁸. A change in zoning results in increased rates¹⁹. Efficient and effective management of the process for a change in land use is therefore essential for improving a municipality's revenue base.

A further source of revenue for municipalities is in the form of application fees paid when a town planning application is made, with the actual fee linked to the size of the development proposed. Significant internal cross-subsidisation occurs, with many indigent households being exempt from municipal rates and service charges. Overall, the mechanisms for property tax are in place in South Africa and are generally well executed by the municipalities.

¹⁸ Metropolitan municipalities, and those which contain large urban areas, receive little or no national grant funding. However, many rural municipalities in South Africa are wholly reliant on grant funding from the national fiscus.

¹⁹ Municipal Property Rates Act No. 6 of 2004.



There is currently limited opportunity for municipalities to capture the benefits arising from public investment. An example is the steep increase in the value of properties in close proximity to the recently opened rapid rail system, the Gautrain. The rates policy provides some scope for such a development, but the valuation roll is only updated every five years and municipalities are generally slow to respond.

Efficiency in the land use planning process

The land use planning application process

Land use applications, including township establishment, are typically finalised within three to 13 months, and over 70% of all town planning applications are approved within three years. While there are legislated timeframes for processing planning applications, there is not always full compliance.

Delays are common, for example, as a result of incomplete applications, administrative lags and appeals, and the lack of alignment between various policies, particularly land use policies at national, provincial and local levels, which result in confusion. Land use policy and its application can also be affected by non-land use policies such as environmental legislation, which may require environmental assessments that have major time and cost implications.

The take-up of the change of land use also requires consideration. In some instances, change of physical use occurs prior to approval, whilst in others it may take longer than three years.

Metropolitan municipalities

All municipalities are required to prepare a hierarchy of plans, which are aligned to provincial growth and development strategies and other national and provincial plans. However, these policies tend to have no impact on shaping urban development through effective land use management control.

As an example, eThekweni metropolitan municipality has an innovative approach that makes use of a package of plans and service models, which works well in areas covered by schemes. The challenge mainly occurs within traditional authority areas (communal land) and the servicing of these areas. Within these communities, there is often a conflicting relationship between the traditional authority and the municipality around actual and perceived roles and responsibilities relating to planning and development. Currently, the traditional authority land within the metro, and elsewhere in the country, is not covered by planning and building control legislation applicable in other areas.



Figure 7: RDP housing in Bruntville, Mooiriver, KwaZulu-Natal



Cities in South Africa are still sprawling, with development happening on the periphery, frequently outside of the urban edge²⁰. Rather than promoting densification through an accessibility network and associated opportunities, densification happens by default on the periphery with informal settlements and new subsidised housing developments. The panel on urban land use planning and development noted that the largest driver for change in most cities in South Africa is the implementation of the RDP housing subsidy programme. This 'reverse mode densification' is typical of many cities and towns in the country²¹. Thus the policies that support spatial frameworks do not, in fact, change anything in reality.

Figure 8: RDP housing in Zamdela, Sasolburg, Free State



²⁰ Swilling, 2010.

²¹ Ewing and Mammon, 2010.



In most municipalities, the ‘regularisation’ or formalisation of informal areas and the proactive absorption of the poor into the city is one of the most challenging priorities. Over time, the urban poor have adopted increasingly fluid, complex and layered coping mechanisms and forms of informality as they respond to their environments and the challenges they confront on a daily basis. Due to the ‘illegal’ nature of much of this informal activity, the extent of the ‘problem’ is difficult to measure or quantify.

Ironically, as the panel on urban planning and development noted, the informal housing sector tends to be more efficient in providing a rapid response to housing needs than the formal sector.

The City of Johannesburg

The largest and most complex city in South Africa is Johannesburg, located in the Gauteng province. Prior to 2005, integration between development planning frameworks and infrastructure master plans was poor. In 2005, the City adopted the Growth and Development Strategy (GDS), which helped to align these two realms of development planning. Subsequently, the Gauteng Spatial Development Perspective (GSDP) of 2007 and the Gauteng Spatial Development Framework (GSDF) of 2010 were developed to ensure integration within the larger urban conglomeration.

While these plans provide high-level development guidance, local level plans take precedence when it comes to detailed planning.

For the City of Johannesburg, the most important development policy document is the Regional Spatial Development Framework (RSDF). This provides a guideline as to what type of land use and development changes are acceptable, and it supports the IDP. Each of the City’s 11 regions has an RSDF, which applies specifically to that region. The City is currently working on a consolidated zoning scheme to bring together the 14 different zoning schemes, which were inherited from previous planning regimes. This is being hampered by perceptions that it will involve a loss of rights, or additional rates or service charges.

The City of Johannesburg, through the GDS and RSDF, has become disciplined in regulating development and enforcing these plans through its approval process. It has established a clear set of priorities and has not approved any development that is not in line with its current policy. The City has also refused to deliver services to developments that are not within a priority area. These measures, however, have not been able to effectively deal with informal development and processes, which bypass the formal planning system.

Implementation of these plans is often impeded by limited specialist capacity and financial resources, changes in institutional arrangements and the limited ability of the political structures to ensure that implementation takes place.

There are currently 180 informal settlements in the City of Johannesburg, comprising approximately 200 000 households. The Regularisation of Informal Settlements Programme is seeking to address this issue in a clear and systematic manner. Progress is hampered by service delivery, infrastructure capacity and funding issues, resulting in growing backlogs and a concentration of poverty in the most deprived parts of the city.

The informal housing sector tends to be more efficient in providing a rapid response to housing needs than the formal sector.



This has been compounded by a lack of private investment within the lower income areas in the south of the city.

Conversely, new private sector-led, employment-related development continues to increase in the north of the city. This is perpetuating the segregated land use patterns introduced through apartheid spatial planning.

Figure 9: Individual house in a formal area north of Johannesburg



Figure 10: Formal gated developments, or estates, north of Johannesburg



Due to Johannesburg's low density and sprawling urban form there has been limited spatial expansion or growth of existing informal settlements located on the periphery of the city as these are places which offer limited opportunities for informal livelihood creation.



There is striking evidence of increased informal growth and densification in established formal urban areas or townships, particularly those areas that are well located. This has resulted in severe overcrowding through:

- ▶ the proliferation of backyard shacks and illegal structures
- ▶ 'hi-jacking' of buildings, particularly in inner city neighbourhoods, and the development of 'bad buildings', which the city is trying to address proactively
- ▶ illegal subdivision and subletting of residential units (houses and flats).

Figure 11: An example of housing in an informal settlement within Johannesburg



Speed and predictability

Obtaining a building permit

In South Africa, land use applications involve two costs: application fees and advertisement fees.

Application costs vary across the country in the form of:

- ▶ a fixed standard fee for all land use applications
- ▶ a fee determined by a land area in a particular site that is subject to a land use application
- ▶ a fee depending on the type of land use application such as rezoning, consent use, departures, etc.

In some cases such as Cape Town, there are additional costs, for example, those for Environmental Impact Assessments (EIAs), etc. In eThekweni, fees for subdivision applications have increased significantly in the recent past and have made even small subdivisions unaffordable.



Advertisement costs vary across the country in the form of:

- ▶ a fixed standard fee
- ▶ an actual quotation from a publication depending on the size of the advertisement.

The average timeframe required to obtain building plan approval is three months. However, there is a public perception that it takes far longer. As a result, there is also the tendency to commence with the building and to regularise later. Significant building occurs in low-income areas without building plan approval, once again reinforcing the notion of dual systems operating within the city.

Delays in obtaining building permits

The larger metropolitan areas have tracking systems in place to follow the progress of building permits, some of which provide an online service. The information retrieved from the systems assists in setting performance targets. Officials believe delays in the system are the result of poor quality submissions. Conversely, applicants feel that the limited administrative capacity causes delays in finalising applications.

Informal or 'speed' payments are not common in South Africa. This is because the building plan approval process incorporates several 'handovers' amongst large teams of officials. However, there is more potential for speed payments to building inspectors who operate alone, and in more rural settings where municipalities are small and officials are more likely to act unwatched.

Most residents in low-income residential areas do not use formal processes to obtain building permission. This is clear from the number of self-built backyard dwellings or house extensions.

Figure 12: Backyard shacks in Thlabane, Rustenburg, North West



Figure 13: Backyard shack in Zamdela, Sasolburg, Free State



Transparency of valuation

In South Africa, the core legislation for the management of property valuations is embodied in the Local Government: Municipal Property Rates Act No. 6 of 2004 (MPRA). The Act:

- ▶ regulates the power of a municipality to impose rates on property
- ▶ provides a transparent and fair system of exemptions, reductions and rebates through rating policies for implementation by municipalities
- ▶ allows for the exclusion of certain properties from rating in the national interest
- ▶ provides a fair and equitable valuation method
- ▶ provides an objections and appeals process.

Municipalities are required by law to determine a rates policy, which is subjected to a public participation process. Municipal property rates are calculated by multiplying the market value of the immovable assets²². A municipality's valuation role remains valid for a period of four municipal financial years.

In areas outside a metropolis²³ and large local municipalities, capacity for implementation of this law remains a challenge. In these areas, municipalities tend to appoint external service providers to prepare the valuations roll. Problems include the fact that in some provinces the appointed valuers have made use of a 'facturising' approach as opposed to the application of 'market-related' value stipulated in the Act.

Rates policies vary even between the three major metropolitan municipalities. This makes monitoring and evaluation difficult, but allows for variations in the financial status and capabilities of a municipality to be accommodated.

²² Immovable assets include land and buildings.

²³ Section 155 of the Constitution of the Republic of South Africa (1996) states that there are three categories of municipalities, Category A: metropolitan municipalities, Category B: local municipalities and Category C: district municipalities. The latter comprises two or more local municipalities. Category A and B municipalities are responsible for preparing and implementing municipal valuations.



The MPRA makes provision for the provincial departments responsible for local government to monitor whether municipalities are complying with the Act, and they may take any appropriate steps to ensure compliance²⁴. However, to date none of the provinces have developed their monitoring capabilities effectively. As a result, some smaller municipalities with limited capacity, which are failing in terms the Act, have not received support from nor been sanctioned by their province.

The current provisions in the MPRA should ensure public accessibility. A common challenge is that municipalities often do not have the postal address for the property owner. This has implications for compliance and reduces the owner's ability to object or appeal the valuation.

The Act allows a municipality to prepare a rates policy that addresses local conditions and requirements. A municipality is not compelled to adopt exemptions and rebates, and there are no prescribed categories and rebate limits for application. Consequently, rates policies vary significantly across the country, even between the three major metropolitan municipalities. While the variances between the municipalities make monitoring and evaluation at a national level difficult, the current law does accommodate differences in the financial status and capabilities of municipalities.

Tax collection efficiency

South Africa scores relatively well in terms of tax collection efficiency. The MPRA ensures that all property holders who are liable for rates are listed on the tax roll. However, in the amendment bill under way, new provisions are likely to be enacted that require a municipality to list *all* properties, including those subjected to exemptions, reductions and rebates.

Currently, municipalities assess all of their properties. However, the application of a municipality's indigent policy results in the collection of between 70% and 80% of the property rates of assessed properties. In most cases, the collection rate of households billed by municipalities is over 90%.

If property owners liable for rates fail to pay, the municipality is able to attach the property. In South Africa, those municipalities with established structures and a history of managing a valuation roll and the associated collection of rates are better placed to recover the cost of administration. In the metropolitan municipalities and the large, well-established local municipalities, the rates collected exceed a factor of more than five when compared with the cost of staff in charge of the collection. However, low-capacity municipalities find it difficult to recoup the cost of the general valuations roll.

²⁴ Local Government: Municipal Property Rates Act No 6 of 2004.



4C Management of public land

The management of public land includes the following dimensions: identification and clear management of public land, incidence of expropriation and transparency of procedures. The table below provides the final scoring for each dimension and indicator. South Africa only performs well around incidences of expropriation and the fact that there is a record of public land. The worst performing indicator relates to the lengthy process for appeals against expropriation.

MANAGEMENT OF PUBLIC LAND			Score			
Indicator & Dimension	Topic		A	B	C	D
Identification and Clear Management of Public Land						
12	i	Public land ownership is justified and implemented at the appropriate level of government.		Yellow		
12	ii	There is a complete recording of publicly held land.	Green			
12	iii	Assignment of management responsibility for public land: The management responsibility for public land is unambiguously assigned.			Orange	
12	iv	Resources available to comply with responsibilities: Sufficient resources are available to fulfill land management responsibilities.			Orange	
12	v	The inventory of public land is accessible to the public.		Yellow		
12	vi	Key information on land concessions ²⁵ is accessible to the public.			Orange	
Incidence of Expropriation						
13	i	Transfer of expropriated land to private interests: There is minimal transfer of expropriated land to private interests ²⁶ .	Green			
13	ii	Speed of use of expropriated land: Expropriated land is transferred to destined use in a timely manner.	Green			
Transparency of Procedures						
14	i	Compensation for expropriation of ownership: Compensation is paid for the expropriation of registered property.			Orange ²⁷	
14	ii	Compensation for expropriation of all rights: Compensation is paid for the expropriation of all rights.			Orange	
14	iii	Promptness of compensation: Expropriated owners are compensated promptly.		Yellow		
14	iv	Independent and accessible avenues for appeal against expropriation: There are independent and accessible avenues for appeal against expropriation.		Yellow		
14	v	Appealing expropriation is time-bound: Timely decisions are made regarding complaints about expropriation.				Red
Transparent Processes						
15	i	Openness of public land transactions: Public land transactions are conducted in an open transparent manner.				Red
15	ii	Collection of payments for public leases: Payments for public leases are collected.			Orange	
15	iii	Modalities of lease or sale of public land: Public land is leased and/or sold at market prices.			Orange	

*Numbers in scoring blocks point towards footnotes

²⁵ A concession is a right granted to a private party for a large parcel of public land (typically greater than 100 hectares and often substantially larger). A concession is a restricted use right and is granted for a specific purpose (for example, forestry, biofuel, cultural/tourism, etc.) and may be granted to foreign and domestic investors.

²⁶ In some countries, in the process of urban expansion, privately land held may be acquired before land use planning is implemented and then sold/ returned to previous owners in a different form. This is not to be considered for ranking this dimension.

²⁷ There was a discrepancy between the panel findings and the workshop verification, which was discussed by Urban LandMark. The workshop verification provided a score of A, but it was agreed that the panel view was a better reflection of the situation.



Identification and clear management of public land

Public land in South Africa is owned by all three spheres of government: national, provincial and local. Considerable tracts of land are also owned by state-owned enterprises such as Transnet and its subsidiaries, Portnet, Eskom, Airports Company of South Africa (ACSA) and Denel.

The challenge is not who owns the land, but rather how the land is being managed, because the owner and the developer of the land are often different. For example, local government may be responsible for implementing a housing project that is located on provincially owned land. Coordination requires solid intergovernmental relations and cooperation for the project to be implemented effectively and efficiently. This is not always the case, resulting in unnecessary project implementation delays.

In South Africa, more than 50% of public land is clearly identified on the ground and mapped. However, this is not the case for approximately 30% of the land on which traditional or rural households reside. There are approximately 20 million land parcels in communal lands areas, informal settlements and some of the low-income housing developments which are yet to be surveyed. However, the outer boundary of communal land areas have been surveyed, mapped and can be identified on the ground.

Public land management has both strong administrative and political imperatives. For example, land is often used as a political tool or 'bargaining chip' in managing relationships between the different spheres of government.

While all government spheres are required to contribute to common development goals, in some instances there is a lack of alignment of strategic plans and different development emphases. Land earmarked as strategic at local level may not be identified as such by provincial or national government. Constitutionally, local government is mandated to contribute to national and provincial development programmes. Conversely, national government departments have limited obligations to contribute to local government's strategic planning initiatives. There are cases where land has been released by national government for housing, but then used by the developing entity for other purposes²⁸. This has contributed to a breakdown in trust between the different spheres of government.

The departments of Public Works in national and provincial government appear to have sufficient capacity to manage their land assets. However, implementation and the timely release of land and buildings are key challenges. This is partly linked to the lengthy processes and procedures to be followed. In addition, South Africa only has approximately 500 registered land surveyors. The task of physically surveying the estimated 20 million informal sites is unrealistic given current capacity levels. A digital approach will therefore need to be adopted for the management of this process.

In South Africa, there is no single inventory of public land. Rather, this aspect is managed by each individual landowner. Access to information on expropriations largely depends on who is requesting it, who the custodian is, and the level of security risk attached to the land.

²⁸ This has occurred in Soweto where land was released for housing, but the municipality constructed a shopping centre.



Justification and fairness of expropriation procedures

The wording of the LGAF dimensions, and the associated underlying assumption in the management of expropriated land, confirm that this land should remain a state asset. However, in South Africa, where historical redress is required, land is expropriated and/or public land is developed for housing purposes with ownership being transferred to an individual owner. The land restitution process also requires the expropriation of land, which is then transferred to individual or group owners. Unlike the situation in other African countries, expropriations are not taking place in South Africa to facilitate unscrupulous private gain. Rather, this occurs overwhelmingly within the public interest in a unique context. This is notwithstanding the major challenges being experienced in the land restitution programme such as delays in implementation, project failure and corruption.

There are, however, delays in converting the expropriated land to its destined use, which are commonly linked to the expropriation process itself. However, this differs in rural and urban areas, since land use conversion occurs more speedily in urban areas.

In South Africa, expropriation is a difficult option for the acquisition of land. Often there is the public perception that compensation offered by the state is insufficient. The rate of compensation may vary depending on the location. In addition, the efficiency and effectiveness of different authorities may impact on price. There are cases of land price fixing or inflation where property owners benefit unfairly from the expropriation process.

It is considered a breach of contract if payment does not occur within the agreed period. In such cases, the person can obtain relief from the courts. The legal system for appealing expropriations is well developed in South Africa. However, there are obstacles to the system, which hinder the ability of the poor and vulnerable to gain access.

The management of concessions in South Africa is complex, and it is open to corruption and abuse. The process for obtaining and managing concessions needs to be more transparent and open to public scrutiny. Specific mention was made in the panel discussions of mining concessions and the implications for communities directly affected by these. Environmental and social impact studies often lack credibility. Many households have been required to relocate without adequate compensation.

Transparency of public land transfers

The sale of municipal land is open and transparent, in line with the Municipal Finance Management Act No. 1 of 1999. Public land owned by provincial and national government and the parastatals is subject to extensive regulations outlined in the Public Finance Management Act. However, there may be a lack of transparency within these two spheres of government around the disposal of land.

Expropriations are not taking place in South Africa to facilitate unscrupulous private gain, but are within the public interest.



4D Public provision of land information

Public provision of land information includes the following dimensions: completeness of registry, reliability of records, cost effectiveness and sustainability, and transparency. The table below provides the final scoring for each dimension and indicator. South Africa performs particularly well around issues related to the completeness of the registry.

LAND INFORMATION			Score ²⁹			
Indicator & Dimension	Topic		A	B	C	D
Completeness of Registry						
16	i	Mapping of registry records: The mapping or charting of registry records is complete.				
16	ii	Economically relevant private encumbrances: Economically relevant private encumbrances are recorded.				
16	iii	Economically relevant public restrictions or charges: Economically relevant public restrictions or charges are recorded.				
16	iv	Searchability of the registry (or organisation with information on land rights): The registry (or organisation with information on land rights) is searchable.				
16	v	Accessibility of records in the registry (or organisation with information on land rights): The records in the registry (or organisation with information on land rights) are accessible.				
16	vi	Timely response to a request for access to records in the registry (or organisation with information on land rights): There is a timely response to a request for access to records in the registry (or organisation with information on land rights).				
Reliability of Records						
17	i	Focus on customer satisfaction in the registry: Service standards are published and monitored.				
17	ii	Registry/ cadastre information is up to date				
Cost Effective and Sustainable						
18	i	Cost of registering a property transfer: The cost of registering a property transfer is low.				
18	ii	Financial sustainability of the registry: The registry is financially sustainable through fee collection.				
18	iii	Capital investment: There is sufficient capital investment in the system.				
Transparency						
19	i	Schedule of fees is available publicly: The schedule of fees is publicly accessible.				
19	ii	Informal payments discouraged: Informal payments are discouraged.				

²⁹ The workshop verification process agreed with the panel on all aspects.



In South Africa, more than 90% of ownership information in the land registry is accurate, up to date and readily identifiable on maps. The records in the registry are publicly available at a small cost and can be searched by both the rights holder's name and land parcel description. Generally, the systems and procedures are effective and efficient. An extensive project was recently undertaken to clean up the digital cadastral set for the country. However, while the Deeds Office is up to date, challenges remain in the Surveyor General's office.

The latest schedule of fees was published in August 2011 in the Government Gazette, with the average cost of transferring land being approximately 2.6% of the value of the land.

The Surveyor General and the Deeds Office have internally published standards to facilitate optimal service delivery. In addition, all public officials are required to adhere to the Batho Pele principles, which aim to guide and improve customer relations in the public sector. These are not always adhered to, however.

While there is no requirement to pay an informal fee for first-time registration, corruption may occur anywhere along the value chain. The extent to which this actually happens is unknown. However, a number of top officials have recently been arrested for corruption. This indicates that the systems for preventing corruption are in place and working. The City of Johannesburg recently needed to take action to prevent illegal land transactions from taking place.

Public restrictions on land may be included in title deeds, town planning schemes and related legislation and regulations. The Deeds Office is the custodian of title deeds, whereas municipalities have authority over the management of the scheme provisions. There are no set national standards for the quality and the contents of the town planning schemes. Consequently, there are wide variations between municipalities. A number of municipalities are yet to develop a single scheme for their area while others have to use more than 10 schemes due to the dis-establishment of the apartheid local structures.

Records in the registry can be searched by both the rights holder's name and land parcel description, as described earlier. The systems are reliable and consistent. Copies of extracts of documents recording rights in property can be obtained by anyone. The systems and procedures around provision of land information are generally effective and efficient.

The expert investigator at the panel discussion on land information systems commented that African freehold title is not adequately captured. In many instances, transfers are not registered for customary reasons. Families rely on oral traditions and are reluctant to have their rights recorded in a single person's name, as land is regarded as family property.



4E Dispute resolution and conflict management

The dispute resolution and conflict management theme includes the following dimensions: assignment of responsibility and low level of pending conflicts. The table below provides the final scoring for each dimension and indicator. Overall, South Africa does not perform very well in this area. Good performance is only reflected in one indicator – the fact that land disputes constitute a small proportion of cases in the formal legal system. The two poorest performing indicators are the speed of conflict resolution in the formal system and delays in resolving long-standing conflicts.

DISPUTE RESOLUTION AND CONFLICT MANAGEMENT			Score			
Indicator & Dimension	Topic		A	B	C	D
Assignment of Responsibility						
20	i	Accessibility of conflict resolution mechanisms: Conflict resolution mechanisms are accessible.		30		
20	ii	Informal or community-based dispute resolution: Decisions made by informal or community-based dispute resolution systems are recognised.			30	
20	iii	Forum shopping: There is clear assignment of responsibility for conflict resolution.			30	
20	iv	Possibility of appeals: There is a process for appealing dispute rulings.			30	
Low Level of Pending Conflicts						
21	i	Conflict resolution in the formal legal system: Land disputes constitute a small proportion of cases in the formal legal system.	30			
21	ii	Speed of conflict resolution in the formal system: Conflicts in the formal system are resolved in a timely manner.				30
21	iii	Long-standing conflicts (unresolved cases older than five years): There are few long-standing land conflicts.				30

*Numbers in scoring blocks point towards footnotes

Assignment of responsibility

In South Africa, there are parallel avenues for conflict resolution around land issues ranging from formal to informal. A household or person from a community may be able to access one or a range of systems for dispute resolution purposes. In poor and vulnerable communities, there is often no common first point for resolving disputes. However, in formal and advantaged communities, recourse often follows the legally established routes, which also has parallel options.

The vast numbers of people living within informal settlements and on communal land have no access or limited access to formal institutions for conflict resolution. Such communities make use of locally established systems and local leaders such as ward councillors, the traditional leader (nkosi) and in some urban areas, civic structures. The use of informal systems varies from one area to another, with some being well structured, long-standing and active, while others barely function. It does not always correlate that all groups in communities are empowered within those systems, especially considering the position of women and other vulnerable groups.

³⁰ Before the discussion, the panelists scored an A, B and C. However, after the panel discussion, it was decided not to return a ranking. The panelists confirmed the expert investigator's findings that there is no coherent recording of formal land disputes. As a result, they felt it was not possible to provide a ranking. During the workshop verification process, however, a score of A was assigned.



A key challenge in informal settlements in urban areas is that municipalities often do not recognise the informal dispute resolution mechanisms, and may not even be aware of these. In some cases, municipalities establish new structures, ignoring community-based processes, although they may be long-standing or have community-based legitimacy. In addition, in law, 'informal' often tends to equate to being illegal or criminal. This has the consequence of delegitimising community-based dispute resolution mechanisms and processes.

Locally recognised systems are yet to be adequately acknowledged and accepted by the formal systems in South Africa. However, informal or community-based decisions do have some recognition within the formal judicial system. For example, the community's 'word' within a formal court hearing may be sufficient to influence the outcome of the case. Poor legal representation and limited resources often lead to poor legal outcomes and the possible further disempowerment of the community. In cases where the courts do rule in favour of the community, the institutions that are then ordered to provide a remedy often fail to do so. An example is the recent 'Protea South'³¹ case, which was won by the community. The court ordered the City of Johannesburg to provide basic services and engage in a meaningful participation process. The City has taken very little subsequent action, thus largely ignoring the court action. Poor communities have limited resources and often lack the ability to continue returning to court to ensure the enforcement of the court ruling.

Mechanisms are in place for appealing rulings on land cases, but the costs are high and the mechanisms are not easily accessible to the poor and vulnerable. Communities do not always understand the appeal systems well, and these are not often used.

Level of pending conflicts

While there is no consistent recording of formal land disputes in South Africa, anecdotal evidence suggests that the resolution of land claims takes excessively long to resolve. The Department of Rural Development and Land Reform is known to have a poor track record in this regard. For example, the experiences of organisations such as the Association for Rural Advancement (AFRA) reveal that some cases have taken over 12 years to resolve.

Locally recognised systems are yet to be adequately acknowledged and accepted by the formal systems in South Africa, although informal or community-based decisions have some recognition within the formal judicial system.

³¹ Protea South is a neighbourhood within Soweto, Johannesburg.



4F Large-scale land acquisition

Large-scale land acquisition includes 16 indicators. South Africa performs poorly on all of them except the fact that most forest land is mapped and rights are registered. This is undoubtedly South Africa's poorest performing area.

LARGE-SCALE LAND ACQUISITION (LSLA)		Score			
Indicator		A	B	C	D
LSLA-1	Most forest land is mapped and rights are registered.				
LSLA-2	Land acquisition generates few conflicts and these are addressed expeditiously and transparently.				
LSLA-3	Land use restrictions ³² on rural land parcels can generally be identified.				
LSLA-4	Public institutions involved in land acquisition operate in a clear and consistent manner.				
LSLA-5	Incentives for investors are clear, transparent and consistent ³³ .				
LSLA-6	Benefit-sharing mechanisms regarding investments in agriculture (food crops, biofuels, forestry, livestock, game farms/conservation) are used regularly and applied transparently.				
LSLA-7	There are direct and transparent negotiations between land rights holders and investors.				
LSLA-8	Sufficient information is required from investors to assess the desirability of projects on public/communal land.				
LSLA-9	For cases of land acquisition on public/community land, investors provide the required information and this information is publicly available.				
LSLA-10	Contractual provisions regarding acquisition of land from communities or the public are required by law to explicitly mention the way in which benefits and risks will be shared.				
LSLA-11	The procedure to obtain approval for a project where it is required is reasonably short.				
LSLA-12	Social requirements for large-scale investments in agriculture are clearly defined and implemented.				
LSLA-13	Environmental requirements for large-scale investments in agriculture are clearly defined and implemented				
LSLA-14	For transfers of public/community land, public institutions have procedures in place to identify and select economically, environmentally and socially beneficial investments and implement these effectively.				
LSLA-15	Compliance with safeguards related to investment in agriculture is checked.				
LSLA-16	There are avenues to lodge complaints if agricultural investors do not comply with requirements.				

To address large-scale land acquisition in South Africa it is important to understand the assumptions behind this aspect, such as issues that have emerged through land reform and the extension of mining rights. It is necessary to have a clear understanding of what land is being acquired and for what purpose. An underlying assumption of the LGAF seems to be that large-scale land acquisition for agricultural purposes is a positive initiative as long as the systems are transparent, socially responsible and environmentally sensitive.

³² A land use restriction is a restriction imposed on land holders on the specific use of the land.

³³ Incentives for investors include any mechanism to increase the attractiveness of investments (tax breaks, subsidies, waiver of fee or licensing requirements, improved credit facility, improved insurance facility, etc.).



Forest land

There are between 1.2 million and 1.3 million hectares of commercial forest in South Africa. All forest land rights are registered, varying from private ownership, long-term notarial lease agreement, management agreement and community forest agreement. The ownership pattern is outlined in the table below. Half of all forests are part of the land claims process as outlined in the Restitution of Land Rights Act No. 22 of 1994.

Table 2: Ownership patterns

Institution	Percentage	Sector
Corporate organisations	59%	Private
Commercial farmers	20%	Private
South African Forestry Company Limited (SAFCOL)	10%	State entity
State and municipality	7%	Government
Small growers	4%	Private

Each of the major forestry companies has detailed spatial data of their forests, but this information is not publicly available. While practitioners question the accuracy of the information, the Department of Agriculture, Forestry and Fisheries has information on the following:

- ▶ vegetation types such as thickets, woodlands and champion trees
- ▶ department-owned forests
- ▶ leases in respect of commercial plantations
- ▶ state-owned plantations, indigenous forests, plantations and savannah woodlands.

Few indigenous forests exist in South Africa³⁴; these are found mainly in the Western Cape, Eastern Cape and KwaZulu-Natal provinces. They are mapped and governed by the National Forests Act No. 84 of 1998. Forests in close proximity to traditional or communal lands have appointed 'forest officers'. The Act makes provision for community forestry agreements. However, in KwaZulu-Natal, while some of the forest areas may be mapped, the community rights are yet to be registered.

Management of conflict and land acquisition

In South Africa, conflicts do occur in the large-scale land acquisition process and are commonly linked to the following:

- ▶ the forced removal of farm workers or employment losses
- ▶ possible loss of rights including occupation and / or use
- ▶ content of the trust or the Community Property Association agreement
- ▶ conflict between community members themselves
- ▶ collusion between landowners and officials around land fixing and land price inflation.

A common challenge is the limited capacity available for resolving conflicts. While there are, for example, land claims courts, the processing of cases is extremely slow. Many land

³⁴ Less than 0.5% of the surface area of South Africa is covered by indigenous forests.



redistribution and land restitution cases have dragged on for long periods of time due to a lack of clear procedures and numerous bottlenecks in the system.

With regards to mining rights, prospecting and mining applications, third parties create the most conflict between investors, the state, private landowners and communities. This may result from the following:

- ▶ losing use or occupation of the land
- ▶ removal from the land
- ▶ lack of benefit-sharing mechanisms
- ▶ benefits from long-terms goals
- ▶ environmental degradation of the land, and / or
- ▶ inefficient compensation.

Management of investors

South Africa has no specific laws or regulations providing incentives for investors engaging in large-scale land acquisition and its development. Commercial farming, forestry and related industries receive no economic assistance from the state. However, the Forest Sector Charter Council has drafted a proposal for the establishment of the Forest Grant which calls for state-funded grants for investment purposes.

Two South African asset management firms launched a R3-billion farmland investment fund in March 2010, which is expected to promote agricultural development in the country. The Futuregrowth Agri-Fund, launched by Old Mutual South Africa, Futuregrowth Asset Management and UFF Agri Asset Management, plans to tap institutional investors for the cash needed to invest in farms in South Africa.

Broad Based Black Economic Empowerment (BBBEE) could be considered an incentive scheme through which various government departments give preference and assistance (financially or otherwise) to previously disadvantaged people³⁵. This allows for easy access to loans, equity finance and loans for land reform beneficiaries.

When purchasing land owned by state-owned enterprises, investors must comply with the BBBEE guidelines for non-core property assets and the code of good practice, as prescribed by the BBBEE Act. According to the Restitution of Land Rights Act, investment on land awarded to communities is based on settlement models, which require investors to provide sufficient information about financial capacity, benefit-sharing models and social investment in the community. In both instances, information is publicly available.

There is a public perception that the process for supplying sufficient information to obtain prospecting permits in the mining industry is flawed with inefficiency and corruption.

Negotiations between land rights holders and investors

In South Africa, the willing seller-willing buyer principle applies with no restrictions on the size and/or extent of investment permissible on private land. People who own registered property are protected by law.

³⁵ For example, through programmes such as the Department of Agriculture, Forestry and Fisheries' AgriBEE programme and the Land Bank's BBBEE programme.

There are no mechanisms in the mining industry to prevent projects from proceeding based on the projected social impacts. The economic advantages outweigh the social consequences. The creation of jobs tends to overshadow all other considerations.



Within the communal land context, as the land is owned by the state, communities do not have formal or documented rights. In such cases, negotiations between the land holders³⁶ and investors are often not direct or transparent.

There are several examples of communities having little say in their removal from the land for mining purposes. While the Mineral and Petroleum Resources Development Act makes provision for public participation, the owners of the land, holders of land rights, or communities have no say in negotiations. Government plays an active role in receiving, processing (excluding the public participation process and the drafting of the application) and granting the prospecting and mining licences.

Social requirements and large-scale land acquisition

In South Africa there is a legal framework guiding the implementation of large-scale agricultural projects, such as adherence to the Labour Relations Act. There are limited requirements in the agricultural sector relating to social assessment or social impact assessment studies. However, the National Forests Act makes provision for the implementation of social and economic benefits and safeguards for local communities, for example, community forestry agreements and access to the forest for cultural and religious purposes.

Despite this, there are no mechanisms in place to prevent projects from proceeding based on the projected social impacts, thus the economic advantages outweigh the social consequences. Job creation tends to overshadow all other considerations. This is well demonstrated in the current proposal to introduce fracking for natural gas in the Karoo in the Eastern Cape. Economic imperatives must be balanced more effectively with social outcomes.

Environmental requirements and large-scale land acquisition

Extensive legislation and various policies are in place to manage environmental aspects in the agricultural sector. These include:

- ▶ Conservation of Agricultural Resources Act
- ▶ National Forests Act
- ▶ National Water Act
- ▶ Agricultural Pests Act
- ▶ National Environmental Management Act
- ▶ Legislation relating to waste management and pollution control, and hazardous and toxic substances.

The provisions of the Mineral and Petroleum Resources Development Act tend to favour the mining industry, often to the detriment of the environment.

³⁶ People living on the land.



5

Summary findings and recommendations

Overview

The South African Constitution is internationally known for being one of the most progressive and far reaching in its protection of rights. Post-1994, wide ranging legislation has been passed to facilitate rural and urban development. The government has attempted to be both proactive and reactive to the development needs of communities. In addition, academic and non-governmental organisations are robust in researching and lobbying the government. The policy-making system is well developed, with key challenges well acknowledged by all.

Notwithstanding this, a number of land governance challenges remain, which have been identified in the LGAF process. This section attempts to address key policy issues within the rural and urban sectors.

Rural areas

While there are rural land rights, the content and the enforcement of those rights require attention. Currently the legal framework recognises procedural rights, such as the guarantee against dispossession and eviction, and makes provision for compensation. Yet the vast majority of rural residents do not have registered land rights.

The provisions within the Constitution are clear. Section 25(6) of the Constitution states, “A person or community whose tenure of land is legally insecure as a result of past racially discriminatory laws or practices is entitled, to the extent provided by an Act of Parliament, either to tenure which is legally secure or to comparable redress”, with Section 25(9) requiring that Parliament enact the legislation to address these matters.

The policy response to the complexities of the communal land system to date has been slow. The task of translating oral tradition into written law in a manner which is fair and equitable is difficult.

Regarding communal land rights, a key concern is the lack of appropriate legislation for providing individual and communal rights. The Interim Protection of Informal Land Rights Act No. 36 of 1996 requires annual renewal by the Minister for Rural Development and Land Reform, and therefore does not offer stability.

In the short term, regulations need to be developed in support of the Interim Protection of Informal Land Rights Act. In the medium term, a more appropriate legislative response to communal land rights must be negotiated and finalised.



The State has sufficient capacity to provide individual or group tenure within communal land areas. While the outer boundaries of land held by traditional authorities have been surveyed and verified, the process for surveying the internal boundaries is yet to take place. South Africa only has 500 registered surveyors, which are insufficient for the task at hand. A strategy needs to be developed which identifies an alternative method for land parcel identification. Also, the definition of what constitutes a land parcel needs to be determined.

One of the weakest points in South African land rights are the rights of farm workers. While this group is protected to a certain degree, the law falls short of providing adequate measures for preventing extensive and ongoing farm evictions. Urgent and adequate relief must be found, and redistribution and restitution policies must be implemented.

When examining the complexities of rural land use and policies in South Africa, there is an urgent need to undertake an in-depth investigation into the development of a comprehensive land use system. Currently there is a vast range of legislation for restricting rural land use in the country. Consideration needs to be given to the rationalisation of such fragmented legislation into a possible omnibus. In addition, there is the need to improve and strengthen rural enforcement capabilities.

Greater levels of accountability are required for land reform, land restitution and land redistribution in South Africa. Current monitoring and evaluation of rural development appear to be falling short; a comprehensive understanding of rural conditions and associated community needs is lacking. The Department of Rural Development and Land Reform needs to pay attention to the development of appropriate baseline indicators and the reporting thereof. Mechanisms need to be developed to facilitate the inclusion of results into the policy cycle for short-, medium- and long-term objectives.

Urban areas

Within urban areas, the key response for addressing housing and tenure needs of the poor has been the State's 'RDP' housing strategy. This programme's implementation has been rapid, with roughly 3 million units being provided post-1994. However, since it is land extensive, such projects have been located on cheap peripheral land, which has contributed to the entrenchment of the apartheid spatial structure of many towns and cities in South Africa.

The State needs to develop a more robust housing policy which at minimum considers the delivery of rental stock, and a multi-pronged approach to the current housing subsidy. This requires a critical evaluation of the existing subsidy scheme and amendments. State-owned enterprises should be required to release well-located, non-core land for development purposes. The Housing Development Agency has been established for tracking housing delivery and assisting processes, such as the rapid release of well-located land. Additional resources and capacity should be made available for supporting the agency in its work.

Planning legislation also needs to be reviewed and simplified. This includes the introduction of mechanisms for improving spatial planning, ensuring greater community access to planning processes and the ring-fencing of development contributions. Clearer



roles and responsibilities need to be defined in relation to land management, especially for intergovernmental coordination. Major municipalities also need to strengthen their land use enforcement and planning capacities.

Little attention has been given to the so-called socially dominated market where personal relationships are more important than price in the financial market. This includes systems for acquiring and trading land in informal settlements. An extensive number of urban poor live in such settlements, and to date, municipalities have lacked innovation and the political will to determine an appropriate response. A national government policy needs to be formulated for approaches toward obtaining tenure security in urban areas.

Legal provisions for land valuation and taxation are sufficient in South Africa. However, the national government and the provincial governments should consider providing implementation support to improve collection rates in smaller municipalities.

Cross-cutting considerations

Several key considerations emerged regarding the management of conflict resolution in urban and rural areas. For example, comprehensive research needs to be undertaken to develop a greater understanding of what the informal institutions are, and how they perform their functions, and the links, if any, to formal systems for conflict resolution. There is also a need to formally recognise the role played by informal systems to ensure a fully participatory democracy. Recognition could be given at the municipal level and/or these systems could be incorporated into the state legal systems.

Mechanisms need to be put in place to improve community access to the appeals process and to speed up court rulings. Municipalities also need to consider integrating pro-poor approaches in land management and services.

The national government should set norms and standards to improve government accountability. Information on the processes and procedures for engaging in land disputes must be readily available. The Department of Rural Development and Land Reform should be responsible for assembling data, which can then be used by communities to hold the Department accountable.

Recommendations proposed

The panelists and workshop participants developed a number of recommendations arising from the LGAF process. These have been categorised below in terms of the broad thematic areas used in this report. However, some of these issues are cross-cutting and are therefore not easily categorised into one specific thematic area.



Legal and institutional framework

Recommendation: *Regulations need to be developed in support of the Interim Protection of Informal Land Rights Act*

Justification: Approximately 16 to 19 million South Africans live in the rural areas of which more than 90% are located on communal land. Currently the legal framework recognises procedural rights such as the guarantee against dispossession, eviction and also makes provision for compensation. Undocumented land rights exist in many rural communities where oral evidence is often sufficient to guarantee “tenure security”. However, the vast majority of rural residents do not have registered land rights. A coherent legal framework is therefore urgently required to protect the rights of vulnerable groups within the rural areas.

Short-term actions: The National Department of Rural Development and Land Reform needs to prepare and publish the regulations in support of the Interim Protection of Informal Land Rights Act.

Medium-term goals: The Department of Rural Development and Land Reform and other government departments must enact legislation in terms of Sections 25.6³⁷ and 25.9³⁸ of the Constitution. These should include enacting a revised version of the Communal Land Rights Act and ensuring that the revisions to the Communal Land Rights Act are constitutional.

Recommendation: *A programme should be initiated to rationalise the legislation guiding rural land use into a possible omnibus*

Justification: Legislation guiding rural land use is fragmented and complex, and as such, it is not user-friendly.

Short-term actions: The National Department of Rural Development should commission a study to identify all legislation guiding rural land use.

Medium-term goals: Omnibus legislation for rural land use should be enacted and fragmented legislation repealed.

³⁷ Section 25(6) of the Constitution states, “A person or community whose tenure of land is legally insecure as a result of past racially discriminatory laws or practices is entitled, to the extent provided by an Act of Parliament, either to tenure which is legally secure or to comparable redress.”

³⁸ Section 25(9) of the Constitution states, “Parliament must enact the legislation referred to in Subsection (6).”



Recommendation: *Appropriate policies and legislation should be prepared for ensuring greater protection of farm dwellers' rights to secure tenure*

Justification: There is currently a lack of protection for farm dwellers in South Africa. While there are procedural rights protecting this group, there are no land rights. This is insufficient.

Short-term actions: A database should be developed, and then policy and legislation promulgated.

Medium-term goals: The National Department of Rural Development and Land Reform should develop mechanisms that would provide improved tenure security for farm dwellers. Currently there is no database on the number and location of farm dwellers in South Africa. Such a database would facilitate the monitoring of farm evictions.

Recommendation: *A methodology and related tools should be prepared for supporting municipalities in the implementation of an incremental tenure approach*

Justification: In South Africa, little attention has been given to the so-called socially dominated markets, which depend on personal networks more than just market prices, when developing the systems for acquiring and trading land within the informal settlements. An extensive number of urban poor live in such settlements, and to date, municipalities have lacked innovation and the political will to determine an appropriate response.

Short-term actions: The National Department of Rural Development and Land Reform, in conjunction with the Department of Cooperative Governance, should develop an incremental tenure approach for urban informal settlement dwellers.

Medium-term goals: A support strategy for municipalities should be rolled out for the implementation of an incremental tenure approach for informal urban settlements.

Recommendation: *Systems and procedures should be developed to address the backlog in RDP registration and transfer*

Justification: There are approximately one million RDP housing units which are yet to be registered and transferred to the identified beneficiaries.

Short-term actions: The Department of Human Settlements should identify mechanisms to fast track the registration of RDP units.

Medium-term goals: The registration and transfer of RDP units should be fast-tracked.



Land use planning, management and taxation

Recommendation: *Undertake a review of the current subsidy scheme with the intention of developing a more robust housing policy*

Justification: Large tracts of peripheral land have been used for RDP housing developments perpetuating the apartheid spatial structure of sprawling, low-density settlements.

Short-term actions: The current housing policy and funding mechanisms should be reviewed.

Medium-term goals: There should be a reduction in the number of projects being built in areas far from economic opportunities and urban amenities/ networks.

Recommendation: *A comprehensive review of planning legislation should be undertaken and effective land use management tools developed for rural and urban areas*

Justification: Land use legislation is highly fragmented in South Africa.

Short-term actions: The Department of Rural Development and Land Reform must enact the proposed Spatial Planning and Land use Management Act.

Medium-term goals: Provincial and municipal policy and regulations must be developed to implement the national framework legislation

Recommendation: *Planning capabilities and capacity requirements of all municipalities should be assessed*

Justification: The planning capabilities of small and rural municipalities are limited since it is difficult to attract qualified planners to rural areas.

Short-term actions: The Department of Cooperative Development should develop a strategy for the implementation of service centres.

Management of public land

Recommendation: *A strategy should be developed to identify an alternative method for land parcel identification*

Justification: It was estimated that there are approximately 20 million land parcels in the communal lands areas and informal settlements, which are yet to be surveyed in South Africa.

Short-term actions: The National Department of Rural Development and Land Reform, in association with the Surveyor General's office, should undertake a feasibility study in relation to alternative survey methods.

Medium-term goals: A legal framework should be prepared and adopted to facilitate rapid land survey methods.



Land information

Recommendation: *Appropriate baseline indicators should be developed for monitoring the implementation of the land reform, redistribution and restitution processes*

Justification: The indicators currently used are too narrow. The National Department of Rural Development and Land Reform mainly focuses on assessments linked to their current strategic objectives. This falls short of a comprehensive monitoring of rural land use. Consequently, the monitoring being undertaken by the Department is not adequately identifying the failure of the land reform process.

Short-term actions: The National Department of Rural Development should commission a study to establish baseline indicators for monitoring the implementation of the land reform, redistribution and restitution process.

Medium-term goals: The improved baseline indicators for monitoring land reform, redistribution and restitution should be implemented.

Recommendation: *Improved levels of reporting should be identified*

Justification: There appears to be a disjuncture between strategic planning and related reporting on land governance with the possible misrepresentation or overstating of results to improve the outcome being projected. In some cases, this has resulted in a lack of credibility in reporting. The lack of reporting can sometimes be attributed to the current policy vacuum in rural development.

Short-term actions: A review of the current reporting methods used by the National Department of Rural Development and Land Reform should be undertaken.

Medium-term goals: Reporting clarity should be improved and a monitoring system established.

Recommendation: *The land information systems need to be reviewed to ensure greater accessibility for the poor*

Justification: Information on registered title deeds is available publicly for a fee. This includes information about property sales, which would be useful for prospective sellers to set prices more effectively. Information from the deeds registry shows that low-income housing is beginning to appreciate in value. However, mainly banks and estate agents use this information. Distressed sales information and a generally depressed market show that individuals do not have access to this information (and neither do some of the other institutions that are necessary in supporting a better functioning market).

Short-term actions: Costs for accessing deeds data must be reduced, the process for accessing deeds information should be simplified and a programme must be developed to make the aggregated data available to a broader audience at no cost.

Medium-term goals: A national database of cleaned deeds data should be available on a publicly-funded platform. A programme of home ownership education must be developed.



Dispute resolution and conflict management

Recommendation: *Government should lead research on informal dispute resolution mechanisms*

Justification: Municipalities often do not recognize the informal dispute resolution mechanisms or are not even aware of the community-based processes within informal settlements. In some cases, municipalities establish new structures, ignoring those which are long-standing and/or those which have community-based legitimacy. While informal dispute resolution mechanisms may exist, they do not always support the empowerment of all groups in communities, such as women and other vulnerable groups.

Short-term actions: The Department of Human Settlements should commission a study to gain an understanding of informal dispute mechanisms to facilitate improved participation in development programmes.

Medium-term goals: Based on the research findings, a national policy should be developed to guide the recognition of such systems within the formal systems.

Large-scale land acquisition

Recommendation: *The capacity requirements of the Housing Development Agency (HDA) should be assessed with the intention of making available additional capacity and resources*

Justification: There has been increasing concern in South Africa about the location of state-funded low-income housing projects and falling production rates. The Housing Development Agency has been established to fast-track housing delivery and assist with processes such as the rapid release of well-located land. However, the resources made available to the organisation are insufficient for it to address its mandate easily, especially with regard to the assembly of a significant land portfolio.

Short-term actions: The National Department of Human Settlements should undertake a capacity audit of the HDA. Based on the outcome, a resource plan should be prepared for implementation. Funding for land acquisition should be increased substantially if the HDA's mandate is to be realised.



Recommendation: *Funding should be identified for undertaking a time-based study on large-scale land acquisition within the Southern African sub-region to determine the implications*

Justification: Large-scale land acquisition is an area of growing concern in Southern Africa as many poor households lose access to land and resources through problematic land transactions.

Short-term actions: The National Department of Rural Development and Land Reform, in conjunction with the Department of International Relations, should undertake a study of large-scale land acquisition within the Southern African Development Community (SADC).

Medium-term goals: This study would determine the medium-term goals.

Recommendation: *Large-scale land acquisition for mining purposes will have an effect on food security, an aspect which must be studied and addressed*

Justification: There is large-scale land acquisition in South Africa for agricultural purposes; however, the key concern is the land acquired for mining purposes. It appears that there is insufficient compensation and/or participation of the affected communities.

Short-term actions: The National Department of Rural Development and Land Reform should commission a study on the impact of large-scale land acquisition for mining purposes.

Medium-term goals: This study would determine the medium-term goals.

Recommendation: *Community education and involvement is needed where land rights might be affected³⁹*

Recommendation: *Contracts and requirements related to large-scale land acquisition need to be published*

Recommendation: *Public officials should be accountable for large-scale land acquisition*

³⁹ Policy issues 17, 18 and 25 were not expanded upon at the Technical Validation Workshop.

6 Conclusion

The application of the LGAF in South Africa has been challenging. The country has a well-developed economy, including a well-functioning formal land market. However, informal systems, especially within the communal land areas, are steeped in oral tradition and practice. While not officially recorded, these systems are efficient and effective. This is also true for practices relating to access to the city and the functioning of socially dominated land markets, which are based more on personal networks than on market prices.

The introduction of democratic government in South Africa has led to the active preparation of policy and legislation to address the legacy of apartheid. In addition, the country has made innovative and active use of digital solutions for rapid delivery, such as GIS and digital boundaries, to determine municipal boundaries, and 'evaluation' solutions for rapid land appraisal. Within the formal sector, land governance systems are accurate, reliable and highly sophisticated, easily comparable to developed countries. This is often very different in more rural areas.

The application of the LGAF within the South African context has provided a useful 'snapshot' of the state of land governance in the country. It has exposed the obvious successes and failures of the current system, highlighting areas of sophistication and areas that need attention.

The LGAF's findings suggest the following key areas for further examination:

- ▶ Improved tracking of large-scale land acquisition in Africa and its impact: many foreign buyers are buying land, and tracking is currently mainly through media reports
- ▶ The preparation of a methodology and related tools for supporting municipalities in the implementation of an incremental tenure approach
- ▶ The development of a possible legal framework for supporting the implementation of an incremental tenure approach
- ▶ Support with the drafting of suitable legislation to enforce communal land rights.

Government is aware of the gaps within the land governance system in South Africa and is trying to address these in a number of ways. The National Department of Rural Development and Land Reform is currently preparing policy, which will lead to legislative change in relation to land reform. These findings from the LGAF are important for this process.



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About Urban LandMark

Established in 2006 with funding from the UK's Department for International Development (DFID), Urban LandMark works to find remedies to the problems that have made urban land markets dysfunctional, and hence land unaffordable.

Our initiatives aim to shift policies and practice to improve access to well-located urban land by making markets as well as land planning and management systems work better for poorer people, giving meaning to the idea of people having a right to land.

Urban LandMark plays a catalytic role by using research to inform policy, and by promoting dialogue between key stakeholders – government, the private sector and civil society – to foster a common understanding of and find effective solutions to prevailing obstacles in urban land markets.

Our work in South Africa, which shares common problems with cities and towns in many other developing countries, such as rapid urbanisation, rising land prices, unequal access to services, uneven legal protection and limited state resources, has been broadened to include a Southern African regional focus.



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Urban LandMark

working towards improving access to land and property rights