The new instrument for upgrading informal settlements in South Africa: Contributions and constraints

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Introduction

The persistence of informal settlements in South Africa, and their continued growth despite extensive government subsidised housing delivery since 1994, has increasingly received national attention. In 2004, this led to the development of an Informal Settlement Upgrading Programme with a dedicated subsidy mechanism, as part of a larger refinement of the National Housing Policy in the form of a document called *'Breaking New Ground': A Comprehensive Plan for the Development of Sustainable Human Settlements*. In its introduction, the Informal Settlement Upgrading Programme (hereafter referred to also as 'the Programme') calls for a paradigm shift in relation to informal settlement intervention.

Various national political dynamics and shifts led to a growing consensus on the need to develop this new paradigm. They were reinforced internationally by initiatives in response to the United Nations Millennium Development Declaration addressed at reducing poverty globally. The UN–Habitat/World Bank initiative 'Cities Alliance', of which former South African President Nelson Mandela is the patron, has promoted slum upgrading and 'scaling up' to city as well as national level (Cities Alliance, 2003). Cities Alliance's support to the national Department of Housing in developing the new Informal Settlement Upgrading Programme in 2004 meant that international insights and experiences could be incorporated into the Programme.

Timeframes for the formulation of the new Housing Plan and its Informal Settlement Upgrading Programme were too tight to allow for comments from the public, in particular civil society, and some aspects of the Upgrading

Programme remain unresolved. However, the national Department of Housing has committed itself to monitoring and evaluation leading to review and refinement of the Programme.

This chapter examines the new Programme for Informal Settlement Upgrading. It discusses the Programme in the context of policy formulation around 2004, and within the objectives of the new *Comprehensive Plan for Sustainable Human Settlements*, referred to as '*Breaking New Ground*'. The chapter then reviews the Upgrading Programme, identifying its possibilities and constraints in relation to the objectives of poverty alleviation, reduction of vulnerability and increase of social inclusion, in order to discuss the extent to which the Programme enables the paradigm shift for which it calls.

The context of the policy formulation

Following almost a decade of housing-policy focus on the subsidised delivery of turnkey housing (for which the former — second — Housing Minister Sankie Mthembi-Mahanyele received a UN-Habitat Scroll of Honour Award in 2003 — see UN-Habitat, 2003), the persistent problem of informal settlements began to receive national attention in 2003 under a new (third) Housing Minister, Bridget Mbandla. Drawing on her human rights background, Minister Mbandla brought concerns of farm worker housing and informal settlements onto the national agenda (see Mbandla, 2004). This coincided with extensive reviews of the first 10 years of democracy in South Africa (see Republic of South Africa, 2003). In 2003, the national Department of Housing, with the United States Agency for International Development (USAID), commissioned various review studies, including a study into beneficiary satisfaction with housing delivery (Zack & Charlton, 2003). Collectively, these studies across various sectors were providing evidence of increased unemployment and poverty, and a certain amount of dissatisfaction from the poor, in particular with aspects of housing delivery, although the public's general approval of the government's housing intervention had increased (Republic of South Africa, 2003). The ANC government identified poverty and unemployment as challenges that it sought to address in a new term, and accordingly developed the concept of 'a people's contract to create work and fight poverty' (Mbeki, 2004b).

A further development in 2003 was a first official delegation from the South African Department of Housing to the Brazilian Ministry of Cities and key Brazilian municipalities, as part of the high-level South Africa-India-Brazil intergovernmental cooperation agreement. One of the policy areas discussed in Brazil, and project types visited, was informal settlement upgrading (see Bayat, Bosch,

Napier & Arendse, 2003). This is an area in which Brazil has decades of experience, although the scale of the challenge remains commensurate with that in South Africa. Other influential international initiatives were those of the Cities Alliance and the United Nations Millennium Development Declaration, in particular the Millennium Development Goal (MDG) 7, Target 11, globally 'to achieve significant improvement in the lives of at least 100 million slum dwellers by 2020' (United Nations, 2000).

Building on the reviews of 2003 and international initiatives, terms of reference were developed by the national Department of Housing under Minister Mbandla for a *Study into the Support for Informal Settlements* (Department of Housing, 2004b). This was put out to tender shortly before the 2004 (14 April) national elections. The terms of reference for this study explained the emerging policy orientation as emphasising 'a demand-driven, supply-negotiated delivery regime embedded in asset-based community development approaches' (Department of Housing, 2004b: 1). It acknowledged 'the growing slums and shantytowns' as 'physical manifestations of social inequality, exclusion, marginalisation and discrimination' and expanded as follows:

These settlements are products of failed policies, ineffective governance, corruption, inappropriate regulation, exclusionary urban (economic) development/ growth paths, poor urban management strategies, dysfunctional and inequitable land markets, discriminatory financial systems, and a profound democratic deficit (2004b: 1).

Based on the ANC government's position, the terms of reference further suggest that

combating poverty, inequality and discrimination through appropriately designed public policies to support informal settlements could not only deepen democracy and citizenship, but also improve the prospects of robust and socially inclusive economic growth. (2004b: 2)

Arguing that informal settlement support 'needs to go beyond traditional approaches that have tended to concentrate on improvement of housing, infrastructure and the physical environment', the terms of reference put forward three key policy objectives:

▓ poverty eradication;
▓ reducing vulnerability; and
▓ promoting inclusion. (2004b: 2)

The overwhelming support given to the ANC by the poor in the April 2004 elections was seen as a mandate to the ANC government to intensify poverty

alleviation or 'eradication' (Mbeki, 2004a). In terms of housing, this involved a commitment to relieve cities of the phenomenon of informal settlements. In her budget speech in June 2004, the newly appointed (fourth) Housing Minister, Lindiwe Sisulu, emphasised that 'this government has indicated its intention to moving towards a shack-free society' (Sisulu, 2004). Referring also to MDG 7 Target 11 to improve the lives of 100 million slum dwellers by 2020, she further noted that the Premier of the Gauteng Province intended to 'eradicate informal settlements' in his Province in the next 10 years (Sisulu, 2004).

While 'poverty eradication' is clearly related to measures to improve the well-being of the poor, the 'eradication of informal settlements' can be misunderstood as a blanket mandate to remove shacks, in the absence of solutions that eradicate poverty, remove vulnerability and promote inclusion. This interpretation was reflected in a *BBC News* article (admittedly poorly researched) titled 'SA's controversial housing policy' (Hamilton, 2004). Unwittingly, the political message to informal settlement dwellers may be that *they* are to be eradicated, or at best displaced, and probably not given a meaningful role in defining a solution.

As mentioned in the introduction to this chapter, the revision to the housing policy occurred under enormous time pressure. In his Opening of Parliament address (21 May 2004), President Mbeki mandated the newly appointed Minister of Housing, Lindiwe Sisulu, as follows: 'A comprehensive programme dealing with human settlements and social infrastructure, including rental-housing stock for the poor, will be presented in Cabinet within three months' (Mbeki, 2004a).

In September 2004, Cabinet approved *'Breaking New Ground': A Comprehensive Plan for the Development of Sustainable Human Settlements* (Department of Housing, 2004b). This includes an Informal Settlement Upgrading Instrument (2004b: 17). I return in more detail to this new plan and instrument in the sections that follow.

At the time when the appointment of a consulting team for the *Study into the Support of Informal Settlements* was made in June 2004, a Task Team had been constituted with housing officials from national, provincial and local government for the speedy development of an Informal Settlement Upgrading Programme. Cities Alliance had made its sub-Saharan African representative Carien Engelbrecht available to the Department of Housing to assist with the drafting of the policy. The appointed research team was asked to devote its first two weeks to the preparation of an input into the Task Team, and to comment further on the draft Programme, before embarking on the actual three-month research into the support of informal settlements. Rather than to inform the policy formulation, this research was later to inform the implementation, evaluation and review of the Informal Settlement Upgrading Programme.

The research team, which I coordinated, had to weigh the poor alignment between its research and the policy-making process against the benefit of high-level political support and pressure for the development of an Informal Settlement Upgrading Programme, and against the brief opportunity to make an input into this process. As the research team included representation from the Community Urban Resource Centre (CO-URC, a Slum Dwellers International affiliate working closely with the Homeless People's Federation and the newly formed Coalition of the Urban Poor), it sought to incorporate into its early recommendations to the Task Team the experiences, concerns and suggestions of organised informal settlement residents, while also consulting with professionals with experience in working with informal settlement intervention in South Africa. However, the full formulation of recommendations on informal settlement support (University of the Witwatersrand Research Team, 2004b) were only formulated in August 2004. I ask later in this chapter to what extent the wide-reaching concept of informal settlement support, as specified in the research brief and explored in the research project, can be achieved though the four-phased project-oriented Informal Settlement Upgrading Programme that was formulated (the four phases of the Programme are (1) application, (2) project initiation, (3) project implementation and (4) housing consolidation).

The 15 May 2004 FIFA announcement that South Africa had won the bid to host the 2010 World Cup (see Mbeki, 2004c) appeared to add an additional agenda to the Informal Settlement Upgrading Programme, namely that of transforming all informal settlements 'visible' to international visitors into respectable built environments. In a draft stage, the Informal Settlement Upgrading Programme was differentiating between visible and non-visible informal settlements (visibility presumably referring to what can be seen from high-order transport routes), prioritising the former for replacement with formally constructed medium density rental/social housing blocks, whereas the latter were to receive *in situ* land tenure and service intervention. While this differentiation was not adopted as such into the final version of the Programme, it informed the development concept of the N2 Gateway project (which had its origins in discussions between national, provincial and local government in 2003 — see Khan, 2004). The project is directed at the informal settlements visibly lining the N2 freeway from the Cape Town International Airport to the historical centre of Cape Town, and envisages their replacement with medium-density rental/social housing (see Department of Housing, 2005b; see also Cross, in this book: Chapter 13). The N2 Gateway pilot project formulation was taking place at the same time as the formulation of the Informal Settlement Upgrading Programme, with direct inputs made from the high-level N2 Gateway project team into the deliberations of the Task Team

for the Informal Settlement Upgrading Programme. This approach differs from the conventional 'piloting' or testing of a fully formulated programme.

Breaking new ground: The premises of the refined housing policy

The new *Comprehensive Plan for the Sustainable Development of Human Settlements* is based on the challenges of changing and growing urban housing demand in the context of slow employment creation, the experience of housing delivery over the past 10 years, and the worrying slowdown of this delivery. It seeks to address the challenges by emphasising the role of housing delivery in poverty alleviation, linking this to employment creation and to access to subsidised property as a form of 'wealth creation and empowerment'; housing delivery is to leverage economic growth, combat crime, and improve social cohesion and quality of life (Department of Housing, 2004b: 7).

The new plan addresses itself not only to low-income housing, but to 'the functioning of the entire ... residential property market', with the objective of 'breaking the barriers' between the formal market (or 'first economy') where the growth is located, and the informal market (or 'second economy') which has experienced a slump (2004b: 7). It seeks to move beyond the 'dominant production of single houses on single plots in distant locations' (2004b: 8). It therefore sets out to respond flexibly to demand, rather than simply to allocate the same product equitably to all households. One of the programmes that is linked to this objective is the Informal Settlement Upgrading Programme (2004b: 8), which is framed as 'progressive informal settlement eradication' (2004b: 12).

With the intention to integrate informal settlements urgently 'into the broader urban fabric', the document introduces 'a new informal settlement upgrading instrument to support the focused eradication of informal settlements' (2004b: 12). Clarifying what is meant by 'support' and 'eradication', the new document explains that 'a phased in-situ upgrading approach to informal settlements, in line with international best practice' is adopted. Accordingly, 'a range of tenure options and typologies' is supported (2004b: 12). Thus '[t]he plan supports the eradication of informal settlements through in-situ upgrading in desired locations, coupled with the relocation of households where development is not possible or desirable' (2004b: 12). In a context where municipalities have been hugely constrained by the very limited allocation for the purchase and rehabilitation of land in the National Housing Subsidy System (only a small percentage of the household-linked subsidy was permitted to go towards land), it is important to emphasise that where development *is* possible, it is substantially redefined in the detail of the Informal Settlement Upgrading Programme, to which I return below.

The earlier differentiation between visible and non-visible informal settlements emerges, framed instead as well-located versus less well-located settlements. For the former, 'measures will be introduced to optimise the locational value and preference will generally be given to social housing (medium density) solutions' (2004b: 12). The document further refers to nine pilot projects that will be identified, the lead pilot project being the 'N2 upgrading project from the Airport to Cape Town' (2004b: 12), now referred to as the N2 Gateway Project. The informal settlements in this project are identified as 'highly visible' settlements — as highlighted by the Minister of Housing in a February 2005 media briefing (Department of Housing, 2005b).

How affordability is dealt with in an *in situ* upgrading project through social/rental housing is not resolved. Several months after its initial launch, the N2 Gateway project has become a serious political challenge for Cape Town's elected politicians, with a series of community protests across Cape Town over 'perceived unfair housing allocation for the N2 Gateway Project' (*Mail & Guardian*, 2005; *Sowetan*, 2005). The project is now no longer intended to benefit only those originally living in the informal settlements flanking the freeway. After intense political pressure from the wider under-housed Cape Town constituency, the decision was made that 30% of the new units will be allocated to back-yard shack residents from surrounding formal settlements (see Kahn, 2004). Half of the existing population in the N2 informal settlements will be resettled elsewhere.

By June 2005, the other provincial pilots had been identified by the provincial governments (Department of Housing, 2005a) as follows:

▦ Gauteng: Winnie Mandela Park in Ekurhuleni Metro, with partial relocation to Old Mutual Park and Esselen Park,

▦ Eastern Cape: Duncan Village in Buffalo City Municipality (East London); Soweto on Sea in Nelson Mandela Metropolitan Municipality (Port Elizabeth),

▦ Mpumalanga: Emsangweni/Enkanini in Emalahleni Municipality; Ngodwana and Phumulani in Mbombela Municipality (Nelspruit); Thakukhanya Extension 4 and 5 in Mkhondo Municipality,

▦ Northern Cape: Lerato Park in Sol Plaatjie Municipality,

▦ Limpopo Province: Phomolong in Mookgophong Local Municipality,

▦ North-West Province: Klerksdorp (no further details),

▦ Free State: Grasslands area, Mangaung Municipality (Bloemfontein), and

▦ KwaZulu-Natal: Mount Moriah (no further details).

The choice of pilots appeared primarily to be politically motivated by the provincial governments, rather than identified by municipalities. At the time of writing, it was too early to establish details of their planning and implementation.

As the politics of implementation unfold, possibly in unpredicted ways, new suggestions will be made for aspects of the Informal Settlement Programme. The *Comprehensive Plan for the Sustainable Development of Human Settlements* commits the Department of Housing to develop a 'comprehensive housing sector monitoring, information and reporting system based on key performance indicators', both 'qualitative and quantitative' (Department of Housing, 2004: 27). It further commits the Department to using this information 'to support policy development and enhancements' (2004: 27). Civil society input should be welcomed in this process, as the Comprehensive Plan requires 'that communities and the beneficiaries of government housing programmes be mobilised to partner [with] the Department in the implementation of the new human settlements plan' (2004: 26).

A paradigm shift? Limits and possibilities of the new instrument for informal settlement upgrading

The recently approved Chapter 13 of the *National Housing Code*, titled 'National Housing Programme: Upgrading of Informal Settlements' (Department of Housing, 2005c), speaks to situations such as the N2 Gateway project experience. It introduces the objectives of the Programme with the statement that

> [t]he challenge of informal settlements upgrading must be approached from a pragmatic perspective in the face of changing realities and many uncertainties. Informal settlements should also not be viewed as merely a 'housing problem', requiring a 'housing solution' but rather as a manifestation of structural social change, the resolution of which requires [a] multi-sectoral partnership, long-term commitment and political endurance. At the outset therefore, a paradigm shift is necessary to refocus existing policy responses towards informal settlements from one of conflict or neglect, to one of integration and co-operation. (Department of Housing, 2005c: 4-5)

The 'long-term commitment' relates to the concept of *informal settlement support* (poverty eradication, reducing vulnerability and promoting social inclusion, all of which cannot be achieved through a once-off project but require long-term 'support'), as formulated in the Department of Housing's (2004b) research brief. However, the four phases of the Informal Settlement Upgrading Programme, as per Chapter 13 of the code, are limited to a once-off project, and do not contain guidelines and regulatory and funding regimes for long-term support. Aspects of

this four-phased project (as per Chapter 13 of the code) represent a major departure from former instruments that were available to provincial and local governments for intervention in informal settlements — as of 1994, the Project-linked Subsidy (Chapter 3 of the *Housing Code*); as of 1998, the People's Housing Process (Chapter 8 of the *Housing Code*); and, as of early 2004, in certain circumstances the Housing Assistance in Exceptional Urgent Housing Situations (Chapter 12 of the *Housing Code*).

In the following paragraphs I will discuss the extent to which the new Informal Settlement Upgrading Programme enables a paradigm shift that centres on poverty eradication, reduction of vulnerability and promotion of social inclusion, as called for in the terms of reference for the *Study into Supporting Informal Settlements*. At the time of finalising this chapter (June 2005), the *National Housing Code* was being rewritten by the national Department of Housing into more user-friendly language (Bayat, personal communication). The quotes below may therefore not be found in the new version of the code, which is expected towards the end of 2005. However, the principles of Chapter 13 of the code will remain the same.

The relevance of land rehabilitation for poverty reduction/eradication

In situ upgrading is more likely to be responsive to poverty and vulnerability, and to lead to social inclusion, than a relocation process, due to the socio-economic disruption (of delicately balanced livelihoods) associated with the latter. Plans for relocation are usually motivated on grounds of unsuitability of the occupied land for residential occupation. It is important to note that, in support of *in situ* upgrading, the Informal Settlement Upgrading Programme makes funding available for land rehabilitation: In certain cases 'upgrading may be possible if extensive rehabilitation is undertaken to make land suitable for settlement' (Department of Housing, 2005c: 10). As already mentioned above, this substantially redefines where upgrading is possible, and forms part of the paradigm shift that municipalities have to undergo in their engagement with informal settlements. However, the Programme requires its upgrading projects to be 'within an approved Integrated Development Plan [IDP] of the municipality in question'; further, land rehabilitation will be funded only on the basis of 'sound financial and socio-economic indicators' (Department of Housing, 2005c: 7).

Where municipal IDPs have not been revised to embrace the paradigm shift towards tenure security, health and safety, and empowerment (three broad objectives spelt out in the Informal Settlement Upgrading Programme — see Department of Housing, 2005c: 5), existing plans might be used by municipalities to argue for relocation to newly developed sites rather than to investigate the

feasibility of *in situ* upgrading. This is the case with the Harry Gwala informal settlement in Ekurhuleni Metro (the former East Rand), where the municipality (Alida Koetzee, personal communication) has admitted to the community (which is resisting relocation) that a small but undefined portion of the site may be upgradeable *in situ*, but relocation is more practical and in line with the applicable plans.

The kinds of land rehabilitation that are enabled through the Informal Settlement Upgrading Programme are typically drainage, storm water intervention and 'the engineering of steep slopes' (Department of Housing, 2005c: 15), presumably over and above the conventional earthworks required on land considered 'suitable' for residential development. 'No ceiling amount [referring to cost] is provided for land rehabilitation but detailed technical information will be required in support of this activity' (2005c: 15). Section 13.11 of the *Housing Code*, which deals with 'General Conditions for Pilot Projects', states that areas to be rehabilitated 'typically comprise areas with extremely high water tables, settlements situated on floodplains and settlements located on infill areas or near mine dumping sites/slime dams' (Department of Housing, 2005c: 38-39). Under 'Identification of Pilot Projects' (13.11.2), it is stated that '[t]he focus should be on settlements located in dangerous areas posing a threat to health and safety and areas known to be affected by disasters' (Department of Housing, 2005c: 31). The frequency of flooding and fires in the N2 informal settlements in Cape Town suggest appropriateness for piloting the Programme.

The funding available for land rehabilitation allows for creative responses through *in situ* upgrading. However, these will be limited by engineering knowhow and creativity, a paradigm shift among civil engineers being called for as much as among planners and project managers. While those responsible for the Programme implementation explore the limits of what can be defined as re-habitable land, engineering solutions may have to include water precautionary measures on low-risk dolomitic land, walls to reduce noise levels from freeways or other busy roads, and measures to extract harmful gases from waste dumps. Where municipalities are not willing to explore such solutions, an increasingly informed civil society will be calling for innovative measures, taking their rightful position as active participants in the 'design, implementation and evaluation of projects' (see *Social Capital*, Department of Housing, 2005c: 5).

Land acquisition: Reducing poverty by securing tenure and supporting livelihoods through well-located sites

The Informal Settlement Upgrading Programme highlights the social, economic, political and financial costs of relocating informal settlement residents to 'peripheral sites' (Department of Housing, 2005c: 13). The Programme therefore encourages municipalities to put forward a motivation (using 'three independent valuations') for the purchase of well-located land that is occupied. Where relocation cannot be avoided, the purchase of unused well-located land is encouraged. State departments and other public entities are encouraged to make well-located land available at no cost (2005c: 13).

The Programme does not give a definition of well-located land as such, but does give various clues. Under 'General conditions for pilot projects' (13.11.2), the Programme emphasises that '[p]rojects should further the principle of spatial restructuring and integration' (Department of Housing, 2005c: 31). While the majority of informal settlements are found in and around existing low-income residential areas, where eviction threats have been least, there have been numerous invasions of valuable but unused real estate in middle-income areas. These are settlements that have challenged the spatial structure of the city, and, to date, with a handful of exceptions, they have lost their struggle for convenient space in the city. Whether the Informal Settlement Upgrading Programme will provide new backing in the legal struggle for upgrading of such informal settlement communities, against municipalities determined to relocate them to orderly housing developments on the urban periphery and against strong middle-income ratepayer associations, remains to be seen. It would be hoped that a broader promotion of the principles of the Informal Settlement Upgrading Programme and the *'Breaking New Ground'* document among all city residents would reduce the perceived vulnerability of the middle-income residential market to the proximity of the poor. At the time of writing, June 2005, neither Chapter 13 of the *Housing Code*, nor *'Breaking New Ground'* was available on the website of the Department of Housing.

A further clue to the definition of well-located land is given under the *Principles of the Programme* (Department of Housing, 2005c: 6), which states that '[t]he flexibility of the Programme is intended to encourage local solutions through a process of engagement between local authorities and residents living within informal settlements'. This suggests that informal settlement residents should be involved directly in identifying whether a portion of land is well-located in relation to their livelihood strategies and opportunities for the development of their human capital (such as ability to access educational and social facilities). The same paragraph under 'Principles' emphasises that residents have to agree to a chosen relocation site (which also has to be part of an Integrated Development Plan). Again, it is important that municipalities revise their IDPs so as to align them with the principles of the Informal Settlement Upgrading Programme.

A further clue to the definition of well-located land is reference to 'sound

financial and socio-economic viability indicators', according to which the Programme will fund land acquisition and rehabilitation. The socio-economic viability indicators must be those that trace households' livelihood strategies and ability to access higher level social and educational amenities (that cannot be funded through the Programme itself) — a form of social impact assessment of land, which should examine impacts of a relocation on poverty, vulnerability and social inclusion.

While the Programme seeks to minimise relocation, it acknowledges that in certain cases households will have to be relocated — from hazardous conditions that cannot be rehabilitated, or to make space for essential infrastructure. However, 'relocation must take place at a location as close as possible to the existing settlement and within the context of a community approved relocation strategy' (Department of Housing, 2005c: 19).

The Programme further makes a maximum of R600 available for household support in the relocation process, of which an 'average' allocation of R250 is for food support. This food-support allocation is viewed as problematic by various community groups and officials, as food parcels and food vouchers have served to 'buy' instant community support for a relocation that does not make long-term livelihood sense, and have resulted in community conflict over scarce resources (University of the Witwatersrand Research Team, 2004a).

Responding to poverty and vulnerability through provision of social and economic facilities

The provision of social and economic facilities plays a major role in the Informal Settlement Upgrading Programme's objective of empowerment. Social development is envisaged 'through the development of primary, municipal-level social amenities and community facilities such as sports fields, community halls etc.' (Department of Housing, 2005c: 5). Under *Project Implementation*, the following possible social facilities are added: 'early-childhood development facilities, primary health clinics, recreational and community facilities [and] public open space improvements' (Department of Housing, 2005c: 16). Economic development in turn is to be achieved through 'municipal-level economic infrastructure such as transportation hubs, workspaces and markets' (Department of Housing, 2005c: 5). The decision as to which social and economic facilities are to be provided should be arrived at 'through a process of engagement between the local authority and residents' (2005c: 6). The Programme provides funding 'for the construction of limited social and economic infrastructure' (Department of Housing, 2005c: 8), whereas operational costs are to be born by the municipality.

The Gauteng Province Department of Housing, which, unlike other provincial

governments, has assumed the status of direct implementer of housing projects (in other provinces this is the function of municipalities), has disagreed with the principle of providing social and economic amenities with the new upgrading of informal settlements. The Province argues that, as long as there is a backlog of such amenities in older low-income residential areas, application of this principle exclusively to the new upgrading of informal settlements will lead to political conflict. It has therefore allocated available funding for social and economic amenities to previously developed subsidised housing areas. The Province claims otherwise to have embraced the principles of the Informal Settlement Upgrading Programme, which it implements at scale (without a pilot stage, although a pilot project has been identified) through what was previously the Essential Service Programme (Odendaal, personal communication).

Whether the paradigm shift that is called for in the Informal Settlement Upgrading Programme has taken place in the Gauteng Provincial administration and the Province's municipalities will have to be a subject for the ongoing Programme monitoring and evaluation. As with the N2 Gateway project, it appears inevitable that political decisions will override important programme principles, particularly those that are delicately supported by the concepts of poverty, vulnerability, and social inclusion. The same trend has been observed in the implementation of the government's People's Housing Process (Bay Research Consulting Services, 2003, cited by Khan & Pieterse, 2004).

Addressing vulnerability through interim services

Reduction of vulnerability is addressed in a significant way through the Informal Settlement Upgrading Programme in that it requires the initial/immediate provision of basic infrastructure (water and sanitation). This can be funded through the Programme, and addresses health risks, while also freeing up time for women and children to pursue activities that secure a livelihood or develop human capital (such as education). The importance of access to water and sanitation in addressing vulnerability is discussed in detail in Thomas (in this book: Chapter 14).

It is interesting to note that the unavailability of water to informal occupiers of land has been interpreted by authorities and landowners as a health risk to the occupiers. In some instances, this has been used as a justification for eviction, as in the application for an urgent eviction in the Bredell case in Benoni (in Ekurhuleni Metropolitan Municipality east of Johannesburg) in 2001, which led to the immediate forceful eviction of all 'occupiers', ignoring the fact that many had lived on the land for more than six months and therefore had legal rights to alternative accommodation (Huchzermeyer, 2003). A similar argument around access to water (though not leading to an eviction) was brought by the then Lekoa

Vaal Metropolitan Municipality to the Kanana informal settlement invaders in Sebokeng south of Johannesburg (People's Dialogue, 1997, cited in Huchzermeyer, 2004: 208). Availability of funding for initial engineering services might make this reasoning for eviction less tenable in the courts.

Social inclusion and tenure security through *in situ* upgrading rather than relocation or redevelopment

Social inclusion and tenure security cannot be achieved without affordability. Solutions that are not affordable to beneficiaries in the long term will lead to their displacement to housing areas that impose fewer costs, usually new or remaining informal settlements. If the living environment created through the informal settlement intervention is no longer affordable to the original residents, these will eventually be excluded, irrespective of the inclusiveness of the initial allocation procedures. This poses a challenge to the measure that the *'Breaking New Ground'* document recommends for well-located informal settlements, namely social/rental housing at medium densities (Department of Housing, 2004a). As yet there are no proven models through which social housing rentals of acceptable units will be affordable to the socio-economic group that normally resides in informal settlements, and the approach in the N2 Gateway project is not resolved with regard to affordability.

However, unlike the *'Breaking New Ground'* document, Chapter 13 of the *National Housing Code* does not directly call for the social/rental housing approach, and instead details the phased approach to *in situ* upgrading (procedures and mechanisms for medium density housing were being developed under a separate programme at the time of writing this chapter). *In situ* upgrading is more likely to achieve social inclusion than large-scale redevelopment into medium density social/rental housing, as *in situ* upgrading enables continued owner occupation of the existing dwelling structures and their incremental improvement over time, thus not imposing rigid housing-related costs. With regard to well-located land, Chapter 13 of the Code merely states that 'where substantial public funding is invested in the acquisition and rehabilitation ... public interest factors may support tenure forms which encourage retention of land and housing assets for long-term occupation by lower-income groups' (Department of Housing, 2005c: 8).

The recommended tenure form is a permit/permission to occupy (Department of Housing, 2005c: 29 — Annexure A), also referred to as *commodatum* or 'gratuitous loan for use'. This tenure form is 'available under South African common law' (University of the Witwatersrand Research Team, 2004c: 69) and was recommended by the research team conducting the *Study into Supporting Informal*

Settlements. The research team also noted that '[i]n time, it would probably be preferable to enact a dedicated informal settlement support statute along the lines of the comparative models in Zambia (*Statutory and Improvement Areas Act*) and Namibia (Flexible Land Tenure Bill)' (University of the Witwatersrand Research Team, 2004c: 30). The current *commodatum* does not impose costs on the resident household, but provides adequate tenure security for household investments to be made in the dwelling. 'As lawful occupiers, residents of informal settlements would be entitled to compensation for improvements to the land from the municipality, but not in law from the person to whom they transferred their rights. In practice, of course, an informal market in structures will likely develop, and this should be tolerated' (2004c: 30).

Social inclusion through a community-based or area-based subsidy

The new Informal Settlement Upgrading Programme prevents exclusion in the procedure that allocates project benefits to residents, as it enables all existing residents of an informal settlement to benefit from an upgrading project, irrespective of whether they qualify for the household-linked capital subsidy under the Housing Subsidy Scheme. The grant to the municipality for the land regularisation and upgrading intervention is not linked to the individual qualifying household, as is the case with most of the subsidies available under the national subsidy system. The individual household qualification criteria apply only in the last (fourth) phase of the Programme, which focuses on the improvement of the dwelling structures.

This new community-based or area-based subsidy mechanism for land and infrastructure is central in achieving tenure security, as it does not apply qualification criteria. This, in turn, can play an important role in addressing vulnerability — internationally, tenure security is considered central in strategies to alleviate poverty (UN-Habitat, 2001). In contrast to the project-linked capital subsidy (through which most municipalities have intervened in their informal settlements), the Programme does not exclude single people without dependents, those with incomes slightly higher than the capital subsidy cut-off amount, or those who have benefited from the capital subsidy programme or owned property before. The Programme also does not exclude 'illegal immigrants', though it states that 'benefits of the Programme will not necessarily be available to such persons' (Department of Housing, 2005c: 11). The Department of Home Affairs is to be notified of the presence of people without legal residence documents.

Social inclusion, however, is limited in Phase 4 of the Programme, *'Housing Consolidation'*. In this phase, the Programme reverts back to the household-linked capital subsidy mode of the national subsidy scheme through which municipalities

intervened in informal settlements over the past 10 years. This phase of the Programme appears to be poorly resolved and in contradiction with the earlier phases. Instead of treating individual ownership as one of several tenure options, and indeed not the most recommended one (see Department of Housing, 2005c: 29), it treats individual freehold ownership as the ultimate end state of the upgrading, and as the condition for application for a consolidation subsidy (Department of Housing, 2005c: 17). It goes further to classify residents into groups that are excluded altogether from such ownership (such as illegal immigrants and child-headed households), which have to pay the full cost of land acquisition, servicing and transfer in order to obtain freehold ownership (those earning above R3 500), and which may apply for consolidation subsidies (those meeting all subsidy qualification criteria as under the Housing Subsidy Scheme since 1994). Households consisting of only one person may obtain individual ownership but may not apply for a consolidation subsidy until 'such a person complies with the remaining qualification criteria' — this may unwittingly call for premature pregnancies or unions, as having a dependent qualifies single people for the consolidation subsidy. Further, under Phase 4, the Programme states that '[p]revious owners of residential property, existing owners of residential property and previous beneficiaries of state housing assistance schemes' will 'not necessarily qualify for assistance under the programme including phases 1 to 3', though they are to be 'considered on a case-by-case basis'. (Department of Housing, 2005c: 17)

The *'Breaking New Ground'* document makes quite different statements on the final phase of the Upgrading Programme:

> There is a need to establish a new funding mechanism of PHP [the People's Housing Process], adopting an area-wide or community, as opposed to individual approach. In particular, this revision should ensure that resources and support for beneficiary-level capacity building and organisation building are made available with locally constructed social compacts. (Department of Housing, 2004a: 18)

This appears to be reflected in Phase 3 of the Programme, during which Housing Support Centres are to be established 'to support households at an early stage regarding their rights, housing options and construction of various housing typologies in accordance with their needs, means and aspirations' (Department of Housing, 2005c: 15). However, a community-wide approach to housing consolidation finds no mention under 'Phase 4'. Nor is there mention of the role for the Housing Support Centres, or support for savings and community-based microlending, which would enable the incremental consolidation of upgraded informal settlements. Interestingly, the Minister of Housing, Lindiwe Sisulu, recently (29 May 2005) gave significant support to community savings and micro-lending approaches, when pledging a grant of R10 million to the uTshani Fund of the Homeless People's Federation (Slum Dwellers International, 2005).

Social inclusion through participatory layout planning

Inclusion of the resident community in the definition of the upgrading process is detailed in Chapter 13 of the Code in relation to various aspects or stages of the Programme, further defining the extent of the paradigm shift that is called for. It is important to highlight that funding for the community empowerment and participation process is available through the Programme (this has not been the case with the project-linked capital subsidy programme). An important aspect of the paradigm shift will lie in community involvement in the layout planning process. The Programme notes that it is 'not desirable to determine uniform or minimum stand sizes', and that 'actual stand sizes should emerge through a process of dialogue between local authorities and residents' (Department of Housing, 2005c: 7).

Within the spirit of the *'Breaking New Ground'* document, the Programme encourages higher densities than have been common in the subsidised greenfield housing developments of the past decade. The Programme notes that vehicular access need not be provided to each unit, but layouts must enable access for pedestrians and municipal infrastructure and services, including emergency services. The examples given in the Programme, which indeed are typical challenges for informal settlement management, are waste collection and the prevention of fires. These requirements present a paradigm challenge to civil engineers, who need to explore new ways in which engineering solutions can facilitate community-based management of externalities (such as refuse) and of risk (such as fires). The Programme does prescribe adherence to the National Norms and Standards with respect to Permanent Residential Structures for engineering services (while exempting house construction from these). Possibly, as pilot projects are evaluated, this will require a revision or refinement of the municipal engineering requirements in the National Norms and Standards, to be more responsive to the density and irregularity of informal settlement layouts.

Conclusion

The new Informal Settlement Upgrading Programme resulted from a high-level political prioritisation of poverty eradication. Although the policy formulation process afforded no space for public consultation, the Programme that has

emerged makes many advances towards achieving the reduction of poverty, vulnerability and social exclusion within South African urban environments. *In situ* upgrading, rather than relocation, is enabled through new measures for the acquisition and rehabilitation of well-located occupied land by municipalities (substantially redefining in which cases upgrading is feasible), and through flexibility in the layout planning allowing for non-standardised and higher density solutions, which may be based on the informal layout of the settlement. Social inclusion is supported through participatory decision making in (a) the layout planning, (b) the provision of social and economic amenities, and (c), where required, in the relocation process. Communities are further given a role in monitoring and evaluation of the Programme. Social inclusion is also enabled through a community-based or area-based grant for the land acquisition and regularisation, rehabilitation and service provision, therefore not requiring individual households to comply with subsidy qualification criteria. Further, vulnerability is addressed through initial or immediate provision of interim engineering services, later to be upgraded to permanent services.

A significant shortcoming in the Programme lies in the provisions of Phase 4, the housing consolidation. This is formulated within the framework of the household-linked Housing Subsidy Scheme, and contradicts many of the objectives of the Programme and indeed of the *'Breaking New Ground'* policy. This should be revised as soon as possible, while further revisions to the Programme should result from the monitoring and evaluation of pilot projects. This monitoring and evaluation will have to pay particular attention to the political dynamics that unfold during implementation. It is important to monitor these both in the way they limit and in the way that they advance the Programme. The Gauteng Provincial administration, in anticipation of such dynamics, is limiting, or, more strongly stated, 'violating' (see Pieterse & Khan, 2004: 20) aspects of the Programme implementation. This trend may be challenged through monitoring and evaluation in other provinces, where the Programme may be piloted in full.

The focus in the past decade has been on redistributive equity through a standardised approach to housing, and, associated with this, a strong entitlement to a given product and a perceived mandate to the state from the electorate for relatively top-down provision became entrenched. The objectives and approach of the Informal Settlement Upgrading Programme can be seen to contradict the entrenched political processes of standardised delivery with the associated, often clientelist, political gains to be made (housing delivery in return for the vote). The paradigm shift that is called for in the introduction to the Programme must therefore transcend not only the municipal planners, engineers and implementers of the Programme, but more broadly the political spectrum.

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