

**A study of the Amathole District Municipality's settlement plan in the  
light of the land reform and spatial planning measures.**

A thesis submitted in fulfillment of the requirements of

MASTER OF LAWS

of

RHODES UNIVERSITY

by

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July 2007

## Abstract

This study concerns the analysis of policy, and the statutory and regulatory impact of spatial planning on the land reform programme with emphasis on the land reform settlement plan (LSRP) of the Amathole District Municipality (ADM). There is a brief historical overview of the effect of the policy of spatial segregation in both rural and urban areas of the ADM.

This study demonstrates, *inter alia*, the challenges faced by the ADM in both consolidating and physically integrating communities that were hitherto divided across racial lines. The critical question is whether the ADM has the ability to produce a Spatial Development Framework (SDF), which will be responsive to the needs of the region and serve as a catalyst in reversing the physical distortions caused by the land-planning legislation of the apartheid past. The greatest challenge lies in meeting the developmental aspirations of the Development Facilitation Act, 1995, the Local Government: Municipal Systems Act, 2000 and the National Spatial Development Perspective, 2003.

Chapter 1 deals with the purpose, research problem and the method of research, as well as the definition of terms used in this research and literature review. Chapter 2 deals with the evolution of central themes of spatial planning and land reform, spatial development plans and integrated development plans (IDPs), the alignment of Amathole SDF and Eastern Cape Spatial Development Plan and the co-ordination of spatial frameworks.

Chapter 3 deals with the composition of the ADM and the evolution of the LRSP, as well as land-tenure reform programmes impacting on the Amathole Municipality region. This chapter analyses the settlement plan against spatial planning legislation, the issue of institutional arrangements and mechanisms of consolidated local planning processes.

Chapter 5 deals with the thorny issue of participation of traditional leaders in municipal planning and the government's land-reform programme. Despite the existence of legislation in this regard, implementation seems to pose some difficulties. This chapter also deals with the co-operative governance framework. Chapter 6 is a concluding chapter dealing with the gaps discovered in the Amathole Municipality in the light of existing legislation. Reference to cases is made to demonstrate the challenges confronting the ADM.

One notable aspect is the issue of urban-rural dichotomy and how the two worlds are positioned in their competition for the use of space. It is evident from this research that the post-1994 policy and legislative framework and implementation machinery lacks capacity to change the current form of the apartheid city-planning paradigm, something which impacts immensely on the sustainability of the current human-settlement development programmes. Population dynamics in terms of migration are hugely driven by search for employment opportunities and better services. The efficiency and ability of the municipal spatial development frameworks in directing and dictating the identification of development nodes in its juristic boundary informed by the overarching national policy and legislative framework is key in building a better South Africa.

## CONTENTS

Abstract	I
Abbreviations	1
Acknowledgements	3
1 Chapter 1	4
1.1 Context	4
1.1.1 Composition	4
1.1.2 Population structure	5
1.1.3 The locality	6
1.2 Purpose	17
1.3 Research problem	18
1.4 Method of research	19
1.5 Research plan	20
1.6 Literature review	21
1.7 Definition of terms used in this research	24
2 Chapter 2	28
2.1 Evolution of central themes of land policy and spatial planning in South Africa	28
2.2 Spatial planning	31
2.3 Spatial planning and land reform	41
2.4 Spatial development frameworks and the 1DP	<u>42</u>
2.5 Strategic investment policy approach advocated by Provincial Spatial Development Plan and Amathole District Municipality Integrated Development Plan	43
2.6 The principles contained in the Provincial Spatial Development Plan and the Amathole District	

	Municipality IDP	44
2.7	Co-ordination of Spatial frameworks	46
2.8	Policy and legislation	47
3	Chapter 3	56
	Existing inherited settlement patterns co-existing within the Amathole District Municipality and the evolution of the new settlement plan	56
3.1	Introduction and history	56
3.2	Urban Tenure	64
3.3	Land tenure reform programmes impacting on Amathole District Municipality region	65
3.4	Evolution of the settlement plan	66
4	Chapter 4	
	The land reform and settlement plan and the spatial planning legislation	
4.1	Overview	73
4.2	Institutional arrangements	76
4.3	The issue of restitution cases of betterment planning	80
4.4	Spatial planning approaches and planning principles.	81
4.5	Spatial management approach advocated by the Provincial Spatial Development Plan and the Amathole District Municipality Integrated Development Plan	82
4.6	Social Principles established through consultative processes in Land Reform and Settlement Planning process	83
4.7	The ADM's assigned powers and functions	84
4.8	Mechanism of planning processes in communal Areas	87

5	Chapter 5	89
	The role of traditional leadership in the implementation of the land reform and settlement plan	
5.1	The role of traditional leaders	89
5.1.1	Overview	89
5.1.2	Brief historical perspective	89
5.1.3	The envisaged role of traditional leaders	94
5.2	Co-operative governance framework	96
6	Chapter 6	112
	The land reform and settlement plan and challenges for the future in relation to implementation	112
7	Chapter 7	131
	Conclusion	131
	Bibliography	136
	Annexures	144

## ABREVIATIONS

AD	Appellate Division
ADM	Amathole District Municipality
ADC	Amatola District Council
All SA	The All South African Law Reports
ARDRI	Agricultural Reform and Development Research Institute
BRC	Border Rural Committee
CBO	Community Based Organisation
CC	Constitutional Court
CILSA	The Comparative and International Law Journal of Southern Africa
CLARA	Communal Land Rights Act
CSIR	Centre for Scientific and Industrial Research
De Jure	De Jure
DFA	Development Facilitation Act
DLA	Department of Land Affairs
DALA	Department of Agriculture and Land Affairs
DHLG	Department of Housing and Local Government
DHLG&TA	Department of Housing Local Government & Traditional Affairs
DOA	Department of Agriculture
DPLG	Department of Provincial and Local Government
DWAF	Department of Water Affairs and Forestry
EL	East London
GPS	Geographic Positioning Satellite
HC	High Court
HSRC	Human Sciences Research Council
IDP	Integrated Development Plan
KKH	Keiskammahoek
LAC	Land Administration Committees
LAWSA	The Law of South Africa
LCC	Land Claims Court

LDO	Land Development Objectives
LED	Local Economic Development
LG&H	Local Government and Housing
DHLG&TA	Dept. of Housing Local Government and Traditional Affairs
LUMB	Land Use Management Bill
LRSP	Land Reform and Settlement Plan
LR&SP	Land Reform and Settlement Plan
NGO	Non-Governmental Organisation
NLC	National Land Committee
PLAAS	Programme for Land and Agrarian Studies
PLRO	Provincial Land Reform Office
Proc	Proclamation
PTO	Permission to Occupy
RA	Released Area
RDP	Reconstruction and Development Programme
RSA	Republic of South Africa
SALR	South African Law Reports
SADT	South African Development Trust
SAJHR	South African Journal on Human Rights
SALJ	South African Law Journal
SAPL	South African Public Law
SC	Decision of the Supreme Court
SDF	Spatial Development Framework
SDI	Spatial Development Initiative
SG	Surveyor General
Stell LR	Stellenbosch Law Review
TC	Traditional Council
THRHR	Tydskrif vir Hedendaagse Romeins-Hollandse Reg
TSAR	Tydskrif vir Suid Afrikaanse Reg

## **ACKNOWLEDGEMENTS**

I thank the Amathole District Municipality for the generous financial assistance for this thesis and specifically, Professor R B Mqeke, for all the guidance in the preparation of the thesis.

I also thank my colleagues at Amathole and staff at Rhodes University Law Department for all their assistance during the course of my studies, and Prof. J R Midgely, Bron Kaplan, Hennie van As, Jayshree Thakrar and Chris Phiri for their advice in the editing and perfecting this thesis.

I would like to thank my family for all their support and guidance.

## Chapter 1

### 1.1 CONTEXT

#### 1.1.1 Composition

The Amathole District Municipality (ADM) occupies the central coastal portion of the Eastern Cape Province of South Africa, bordered by the Eastern Cape districts of Cacadu, Chris Hani and O R Tambo, respectively to the west, north and east. The district includes all former administrative areas of the Eastern Cape, namely, the former Transkei and the Ciskei homeland areas and some of the former Cape Provincial areas located mainly in what was formerly called the Border area.

The **ADM's** area of jurisdiction is made up of eight local municipalities, as follows:

- **Buffalo City Municipality**, comprising the city of East London, the main town of King William's Town and surrounding urban centres (including the Provincial Capital, Bhisho, and Dimbaza), a number of coastal towns, and numerous peri-urban and rural settlements;
- **Amahlathi Municipality**, comprising the towns of Stutterheim, Cathcart, Keiskammahoek and Kei Road, and numerous peri-urban and rural settlements;
- **Nxuba Municipality**, comprising the towns of Bedford and Adelaide and surrounding rural areas;
- **Nkonkobe Municipality**, comprising the towns of Alice, Fort Beaufort and Middledrift, the smaller towns of Hogsback and Seymour, and numerous peri-urban and rural settlements;
- **Ngqushwa Municipality**, comprising the town of Peddie, the coastal town of Hamburg, and numerous peri-urban and rural settlements;

- **Great Kei Municipality**, comprising the town of Komga, the small coastal towns of Kei Mouth, Haga Haga, Morgan Bay and Cintsa, and a number of rural settlements;
- **Mnquma Municipality**, comprising the main town of Butterworth, the small towns of Ngqamakwe and Kentani, and numerous peri-urban and rural settlements; and
- **Mbhashe Municipality**, comprising the towns of Dutywa, Elliotdale and Willowvale, and numerous peri-urban and rural settlements.

### 1.1.1.2 Population Structure

The total population of the ADM is: 1,675 million<sup>1</sup>. The distribution of the population across the district is as follows:

Table 1: Population of Amathole<sup>2</sup>

Local Municipality	Population	Percentage
Amahlati	140,213	8.4%
BCM	708,779	42.3%
Great Kei	44,431	2.7%
Mbashe	256,395	15.3%
Mnquma	286,707	17.1%
Ngqushwa	84,627	5.1%
Nkonkobe	128,858	7.7%
Nxuba	25,003	1.5%
Amathole	1,675,013	100.0%

<sup>1</sup> Statistics South Africa *Census report*, (2001).

<sup>2</sup> Presidency *National Spatial Development Perspective Resource* (2004).

The Buffalo City Local Municipality has the highest population concentration of 43%<sup>3</sup>. The least populated local municipalities are Nxuba and Great Kei. Buffalo City is the biggest city within the district and is the centre of economic activity for the district.

### 1.1.1.3 The locality

Amathole district spans the area from Bedford to Dutywa, and has the port city of East London located within it. The Amathole district is home to the provincial government, located in Bhisho.

The district spans the “border” area – the area that was a colonial frontier and also the border between the Cape Province and the homelands of Transkei and Ciskei. Figure 1 shows the district and local municipality boundaries overlaid on the topography of the Eastern Cape. From Figure 1 it can be seen that the district has a narrow mountainous strip in the north-west, and a broken (rolling) coastal strip cut by numerous rivers. The western side of the district is considerably dryer, with less than 500mm per annum, than the Eastern side, which has rainfall as high as 1000 mm per annum along the coast.

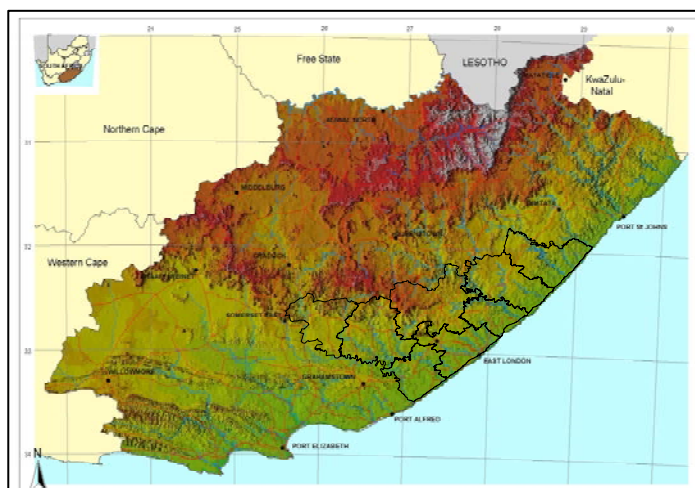


Figure 1<sup>4</sup>

<sup>3</sup> The explanation for this concentration can be attributed to the size of the city and the people's search for employment opportunities.

<sup>4</sup> www.deat.gov.za, the maps have been down loaded from the Department of Environmental Affairs and Tourism website.

Figures 2 and 3 show the road, rail and air infrastructure of the district. It can be seen that there is only a secondary route (the R72) between East London and Port Elizabeth, the two main economic centres of the province. (Figures 2<sup>5</sup> and 3).<sup>6</sup>

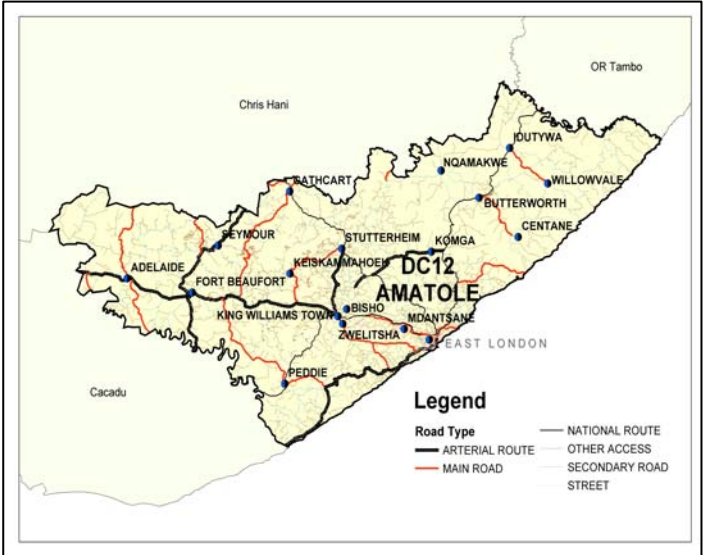


Figure 2

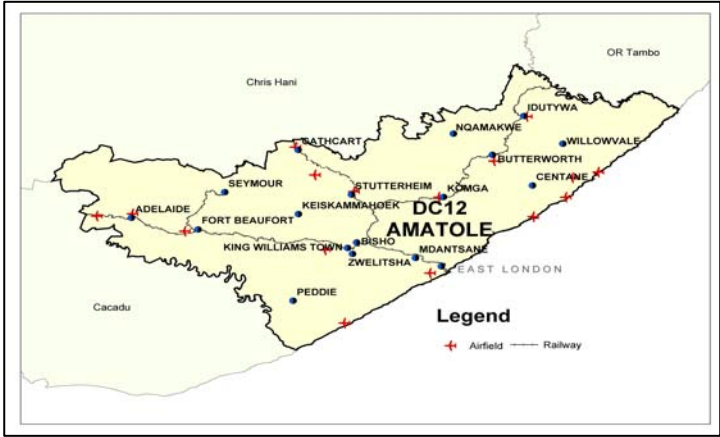


Figure 3

<sup>5</sup> Eastern Cape Socio-Economic Consultative Council (2003).

<sup>6</sup> Eastern Cape Socio-Economic Consultative Council (2003).

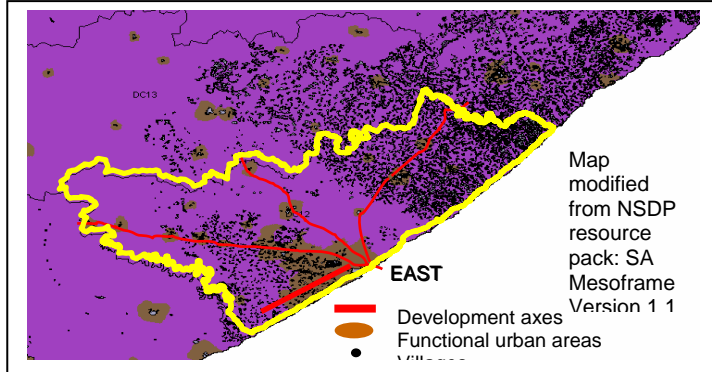


Figure 4

Figure 4 shows the distribution of human settlements in the district. The district has small towns located primarily along the four main development axes, namely: along the R67, along the N6, along the R72 and along the N2. The major urban centre for the district is East London, at the heart of the Buffalo City Municipality.

The second-tier towns include Butterworth, King William's Town, Stutterheim and Alice. Third-tier towns include Fort Beaufort, Adelaide, Peddie, Dutywa, Bedford and Cathcart. In addition to these, the district has 15 smaller towns. As reflected in Annexure 3, the former Transkei areas of Butterworth, Ngqamakhwe and Idutywa were surveyed for quitrent and later allowed for Permission to Occupy (PTO) and the regulation and control of land was undertaken under Proclamation 227 of 1898. Centane and Willowvale were part of the 21 unsurveyed areas which only had PTO.

The regulation and control of unsurveyed districts were administered in terms of Proclamation 26 of 1936.<sup>7</sup> It was amended by the Transkei Land Amendment Act No. 4 of 1968 which brought it into line with the Transkei Authorities Act No. 4 of 1965. In the former Ciskei, four districts, namely, some parts of the Keiskammahoek, King William's Town, Peddie, and Middledrift were surveyed. PTO was later introduced in these areas in terms of Regulation 188 of 1969.

The ADM has inherited areas with different statutory regimes, most being passed prior 1994, providing different settlement patterns, namely, the quitrent tenure system and tenure under, PTO and limited free-hold tenure from the former

<sup>7</sup> Proclamation No. 26 of 1936.

Transkei and Ciskei. The settlement patterns reflected in Annexures 3 and 4 mirror the glaring effects of apartheid's spatial segregation.

Van der Walt<sup>8</sup> correctly describes the aim of apartheid land law as being to facilitate the transition to a situation where separate political, social and legal spaces and structures were established for each race group, and where each group could enjoy its own rights within the exclusive space set aside for it. In its promotion of cultural pluralism, the apartheid state treated land rights as space and as exclusive areas for the autonomous growth and development of individuals and race groups.

This has resulted in what Hanri Mostert<sup>9</sup> describes as rural areas that are subjected to a system of dual rule, namely traditional councils, which are given a role to play in terms of the Traditional Leadership and the Governance Framework Act.<sup>10</sup> Municipal system, under the notion of which wall-to-wall municipalities were created in terms of the Municipal Structures Act.<sup>11</sup>

Since the abolition of influx-control regulations,<sup>12</sup> there has been unprecedented exodus or migration from rural areas to the cities resulting in "unsavoury and intolerable living conditions".<sup>13</sup> Sachs J in the *Port Elizabeth Municipality* case<sup>14</sup> (supra) on page 223 indicated that in South Africa, the process of movement to urban areas took place in the context of colonial domination, apartheid segregation

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<sup>8</sup> See further A J Van der Walt "Dancing with codes- Protecting, Developing and Deconstructing Property Rights in a Constitutional State" (2001) 118 SALJ 258 at 269.

<sup>9</sup> See Hanri Mostert "Land Restitution and Social Justice and Development in South Africa" (2002) 119 SALJ 400

<sup>10</sup> Act No. 41 of 2003.

<sup>11</sup> Act No. 117 of 1998.

<sup>12</sup> Abolition of Racially Based Land Measures Act No. 108 of 1991.

<sup>13</sup> This is the terminology used by Yacoob J in the *Republic of South Africa and Others v. Grootboom and Others* 2001 (1) SA 46 (CC) and Sachs J in *Port Elizabeth Municipality v. Various Occupiers* 2005(1) SA 217 (CC).

<sup>14</sup> *Port Elizabeth Municipality v. Various Occupiers* 2005(1) SA 223.

and migrant labour. The learned judge said that in 1997, it was estimated that about 8 million South Africans lived in informal settlements on land, which they neither owned nor had permission to occupy. The writer chose the ADM in the light of perceived challenges that would arise when the Communal Land Rights Act<sup>15</sup> takes effect as most of rural areas falling under its jurisdiction are unsurveyed.<sup>16</sup>

As most of the rural areas falling under the ADM lack the minimum basic services listed in s152 (1) (b) of the Constitution,<sup>17</sup> it is one of the writer's aim to examine the extent to which the ADM's LRSP meets the objectives of the Development Facilitation Act, 1995,<sup>18</sup> which has firmly established spatial perspective<sup>19</sup> as a

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<sup>15</sup> Act No. 11 of 2004.

<sup>16</sup> As reflected in Annexure 3, 21 districts in the former Transkei, inclusive of Centane and Willowvalle are unsurveyed and in the former Ciskei, the following areas are unsurveyed: areas in Keikammahoek, Upper Nqhumeya, Chatha, Gwili-Gwili, Mnyameni, Mthwaku, Gxulu, Lower Rabula, Zanyokwe, in Middledrift two thirds of the district is unsurveyed, in King William's Town several localities were previously surveyed and not taken up and some areas in Peddie and Victoria East districts are not surveyed.

<sup>17</sup> Constitution of the Republic of South Africa Act No. 108 of 1996 (see the detailed provisions of this section in note 45 below at page 16.

<sup>18</sup> Act No. 67 of 1995, hereafter referred to as DFA.

<sup>19</sup> J Latsky in G Budlender, J Latsky & T Roux *Juta's New Land Law* (1998) 2 expresses the view that the Act contains provisions introducing a "mini Bill of Rights" in relation to land development on a nationally uniform basis. The author describes the central theme of the Act as "the integration of various aspects of land development," identifying the different aspects of integration in four categories; applying a holistic approach to the spatial patterns inherited from apartheid; the integration of all-embracing developmental planning approaches with physical planning, the application of policy formulation as a technique to give direction to decision-making; and use of technical procedural measures to achieve the developmental objectives that are outlined in the policy". See also. A L Mabogunje *The development process, A spatial perspective* (1980) 29 who makes the following observation on the significance of a spatial perspective: "The Marxian paradigm of development analysis is, nonetheless, of increasing importance for many reasons, not least of which is the new and serious appreciation of the spatial perspective which it encourages for a full understanding of the development process. This spatial perspective is predicated on one fundamental premise, namely, that underdeveloped country has within its boundaries the two most important resources necessary for its development: productive land and the labour of its population. The development process is consequently the application of rational thought to the mobilization and

developmental tool embracing both the bottom-up and top-down approach<sup>20</sup> to the economic and social development of the impoverished rural sector. The principles<sup>21</sup> contained in section 3 of the Act seem more for the economically

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utilization of these two fundamental resources to improving the material conditions of the people as a whole. The weakness of the older paradigm is that focusing on capital, it limits the concern to what can be done for the people rather than what the people can do together for themselves.” This observation seems apt particularly with regard to the areas falling under the ADM.

<sup>20</sup> In terms of the DFA, the Premier has to do certain preparatory acts, for example, the establishment of the Provincial Land Development and Planning Commission, which does the groundwork, including the appointment of the Provincial Development Tribunal, which has to consider and approve the development applications. The community affected by land development should actively participate in the process of development.

21 Section 3 of the DFA lays down the following general principles for land development:

- a) Policy, administrative practices and laws should provide for urban and rural land development and should facilitate the development of formal and informal, existing and new settlements;
- b) Policy and administrative practices and laws should discourage the illegal occupation of land, with due recognition of informal land development processes;
- c) Policy, administrative practices and laws should promote efficient and integrated land development in that-

They should:

- i. promote the integration of the social, economic, institutional and physical aspects of land development,
  - ii. promote integrated land development in rural and urban areas in support of each other;
  - iii. promote the availability of residential and employment opportunities in close proximity to or integrated with each other;
  - iv. promote a diverse combination of land uses, also at the level of individual erven or subdivisions of land
- d) members of the community affected by land development should actively participate in the process of land development;
- e) laws, procedures and administrative practices relating to land development should:
- i. be clear and generally available to those likely to be affected thereby;

depressed areas, such as those falling under the ADM. Moreover these principles appear to be in line with the notion of integrated developmental planning, as defined in section 25 of the Local Government: Municipal Systems Act, 2000.<sup>22</sup> The aforementioned Act has also made provision for the establishment of various Provincial Development Tribunals that are intended to ensure that the developmental principles referred to in note 21 above are adhered to. There is also a provision for the resolution of development-related conflicts by means of mediation and arbitration.

It is in this context that Carey Miller and Anne Pope<sup>23</sup> see the Act as a code of land-development law intended to address the problems of complexity and diversity inherent in the existing situation. In the ADM area there are various pieces of legislation and regulations currently in force, administered by different authorities exhibiting a diverse array of settlements. See in particular Annexure 1 dealing with land legislation, which also applies in the Eastern Cape, and Annexure 2 dealing with land-use legislation in the former Transkei, Ciskei and RSA. Annexure 3 deals with land-tenure systems in respect of rural areas of the ADM where the freehold system does not apply on its own. Annexure 4 deals with rural tenure according to present local municipal boundaries of the Amathole district area.

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- ii. in addition to serving as regulatory measures, also provide guidance and information to those affected thereby;
  - iii. give further content to the fundamental rights set out in the Constitution.
- e) policy, administrative practices and laws should promote sustainable land development at the required scale in that they should-
- iv. promote the establishment of viable communities;
  - v. meet the basic needs of all citizens in an affordable way.”

<sup>22</sup> Act No. 32 of 2000 provides that a municipality must undertake developmentally-oriented planning so as to ensure that it-

- a) strives to achieve the objects of local government as set out in s152 of the Constitution;
- b) gives effect to developmental duties as required by s153 of the Constitution;
- c) and together with other organs of state contribute to the progressive realization of the fundamental rights contained in s24, 25, 26, 27 and 29 of the Constitution.

<sup>23</sup> Carey Miller with Anne Pope *Land Title in South Africa* (2000) 412.

The DFA should be seen in the light of other development-oriented legislation.<sup>24</sup> The approach adopted by the post-apartheid government to development is in sharp contrast to the spatial planning adopted in other less-developed areas, which were characterized by the following:

“firstly the temptation to over-plan, to produce too many plans in too sophisticated a manner and without adequate political and public consultation. Secondly, problems were caused through “pseudo planning”, where the planner played more or less a ceremonial role in the state machine and where the object of the “game” was more bureaucratic prestige than practical achievement. The views of national and local planners may differ widely on fundamental issues such as the acceptable level of urban concentration or the introduction and timing of spatial equity policies”.<sup>25</sup>

The whole development focus of the Development Facilitation Act is aimed at meeting the basic needs of all the citizens.<sup>26</sup> In the Municipal Systems Act,<sup>27</sup> corporate planning is at the heart of government’s development objectives.<sup>28</sup>

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<sup>24</sup> These include, *inter alia*, Provision of Certain Land Assistance Act No. 126 of 1993 as amended by the Provision of Certain Land for Settlement Amendment Act 26 of 1998; the Extension of Security of Tenure Act No. 62 of 1997 and the Less Formal Township Establishment Act No. 113 of 1991

<sup>25</sup> A G Gilbert *Development Planning and Spatial Structure* (1976) 11.

<sup>26</sup> See in this regard the provisions section 3(f) (v) of DFA. This also appears in the long title of the Act, which declares the aim of the Act as being “to introduce extraordinary measures to facilitate and speed up the implementation of the reconstruction and development programmes and projects in relation to land”. See further comments in this regard in Pienaar and Muller “*The impact of the Prevention of Illegal Eviction From and Unlawful Occupation of Land Act No. 19 of 1998 on homelessness and unlawful occupation within the present statutory framework* (1999) 10 *Stell L.R* 370.

<sup>27</sup> Act 32 of 2000. This Act will hereafter, be referred to as Municipal Systems Act. Under section 1 of the Act, sustainable development is said to include integrated social, economic, environmental, spatial, infrastructural, institutional and human resource upliftment of the community aimed at

- (a) improving the quality of life of its members with reference to the poor and disadvantaged sections of the community and;
- (b) ensuring that development serves the present and future generations.

Chapter 4 of the Municipal Systems Act defines development to mean public participation and consultation with regard to identification and prioritization of development needs and challenges. In both the DFA and the Municipal Systems Act, the emphasis is on sustainable development.<sup>29</sup>

Pienaar<sup>30</sup> describes land reform and sustainable development as being:

“like the proverbial horse and carriage that go together like love and marriage. However, for this marriage to be happy and successful, the two partners need to work together: *in tandem* so to speak. This is not, however, a marriage of convenience - it is a marriage of necessity. Unfortunately, like many marriages, there is a continual interplay between idealism on the one hand and realism on the other.”

Scholtz<sup>31</sup> sees the notion of sustainable development as embracing the protection of the environment for the present and future generations. According to him, the state must put in place legislative and other measures to prevent pollution and ecological degradation, “promote conservation, and secure ecologically sustainable development and use of natural resources while promoting justifiable economic and social development”.<sup>32</sup>

The ADM, which inherited parts of the former homeland rural areas falling under traditional leaders (the areas referred to in this research are Mbhashe and Mquma

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See also the different models of sustainable development noted by D Tladi “*Sustainable Development, integration and international law and policy: some reflections on the World Bank efforts*” (2004) 29 SAYIL 164.

<sup>28</sup> See 1.7.12 at page 26 below.

<sup>29</sup> *Ibid*, see s3 (h) of the DFA and s23 (1) of the Municipal Systems Act.

<sup>30</sup> J M Pienaar “*Land reform and sustainable development- a marriage of necessity*” (2006) 25.2 *Obiter* 269.

<sup>32</sup> W Scholtz “*The anthropocentric approach to sustainable development in the National Environmental Management Act and the Constitution of South Africa*” (2005) TSAR 69. According to the author, the anthropocentric approach in section 24 of the Constitution refers to the promotion of sustainable development. This is strengthened by the principle that “environmental management must place people and their needs at the forefront of its programme...”

in the former Transkei homeland and Nkonkobe, Ngqushwa, Buffalo City and Amahlathi areas in the former Ciskei homeland), faces a mammoth challenge of having to define the role of traditional leaders in rural development.<sup>33</sup>

The White Paper on Local Government,<sup>34</sup> makes the following observations in this regard:

“Over half of the nearly 40 million people who live in South Africa are currently urbanised. Increased urbanization, from natural urban population growth and migration from rural to urban areas, is expected to continue and result in dramatic increase in the proportion of urbanized citizens over the next two decades. Metropolitan areas and secondary cities are expected to absorb most of this growth. The end of apartheid and removal of legal restrictions to movement (influx control and group areas), demarcation of new boundaries and migration trends within the Southern African sub-region have not (yet) meant fundamental change in national population distribution, urbanization and migration.”

Van der Walt<sup>35</sup> asserts that in South Africa land law has been employed to entrench the political ideology of racial segregation by means of spatial separation of race groups, thereby creating a controversial body of statutory law which may be called “apartheid land law”.

According to the author:<sup>36</sup>

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<sup>33</sup> The role of traditional leaders in respect of land development and administration appears in the Traditional Leadership and Governance Framework Act, No. 41 of 2003; see section 4 of the Act dealing with functions of traditional councils.

<sup>34</sup> Government of the RSA, March (1998) 6.

<sup>35</sup> Van der Walt “*Towards the development of post-apartheid land law*” 1990 *De Jure* 2. See also Hanri Mostert “*Land Restitution, Social Justice and Development in South Africa*” 2002 *SALJ* (119) 400 who correctly points out that the black land rights were not as strong as white land rights. The author is of the view that apartheid land law was responsible for the introduction of informal spatial separation of people and communities.

<sup>36</sup> Van der Walt “*Dancing with codes- Protecting, Developing and Deconstructing Property Rights in a Constitutional State*” (2001) 268.

“apartheid land law in its dynamic mode treated land and land rights as instruments for social change. Individual rights were subjected to large-scale state interferences for the sake of building the dream, establishing the colossal social experiment that was apartheid... The dynamic or instrumental aspect of apartheid land law is illustrated most clearly by the instrumental role that apartheid land law played in social engineering in the sweeping social and legal changes that were involved in establishing and enforcing spatial race segregation.”

The author correctly points out that the country was divided into exclusively white and black areas, people from one group being prohibited statutorily from owning and using land in an area designated for people from another group. In the author’s own words, the aim of apartheid land law was to facilitate the transition to a situation where separate political, social and legal spaces and structures were established for each race group, and where each group could enjoy its own rights within the exclusive space set aside for it. In its promotion of cultural pluralism, the apartheid state treated land rights as space and as exclusive areas for the autonomous growth and development of individuals and race groups.<sup>37</sup>

It is clear from the above statements that the ideology of apartheid was aimed at destroying settlements, dividing tribes, families and fragmenting the communal land tenure.<sup>38</sup> The policy of apartheid manifested in the Native Land Act of 1913,<sup>39</sup> in which so-called traditionally black land was “identified” and “reserved” for exclusive use and occupation by black groups, while all other land in the country was

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<sup>37</sup> Van der Walt “*Dancing with codes- Protecting, Developing and Deconstructing Property Rights in a Constitutional State*” (2001) 269.

<sup>38</sup> This refers to statutes such as the Black Authorities Act No. 68 of 1951, Group Areas Act No. 69 of 1955 and the Land Act No. 27 of 1913. See also the comments made by Pienaar and Muller “*The impact of the Prevention of Illegal Eviction From and Unlawful Occupation of Land Act No. 19 of 1998 on homelessness and unlawful occupation within the present statutory framework* (1999) 10 *Stell L.R* 370.

<sup>39</sup> Black Land Act No. 27 of 1913.

“reserved” for exclusive white use and occupation. This contributed to the creation of landlessness among the black population. The lopsided approach in the distribution of land across different racial groups made it impossible for blacks to use land as a means of earning a livelihood<sup>40</sup>. Commenting on these Acts, Masiphula Mbonga, Rogier van den Brink and Johan van Zyl, observed that the combination of all these measures began to erode the development of African farming, and by the 1920s, increasing population pressure caused African households in the reserves to spend 60 percent of their income on food:

“Infant mortality increased and signs of malnutrition began to surface... By gradually destroying tribal institutions and closing many income-earning opportunities - the exception being labour markets, the capital, wealth, farming skills and information base that African farmers had accumulated over generations began to wither away.”<sup>41</sup>

A look at the effect of the past spatial policy on the physical structure of the ADM area reflects Fair's<sup>42</sup> description of spatial aspects of inequality as relating to “who gets what where”, that is, inequalities in the level of development between one region of a country and another or between rural and urban areas or between one part of the city and another. These are issues of spatial integration, which constitute the focal points of the Municipal Systems Act.<sup>43</sup>

## 1.2 Purpose

The purpose of this study is to review the ADM's LRSP and SDF<sup>44</sup> in the light of the threshold set out in section 152 and section 153 of the Constitution of the

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<sup>40</sup> See also Carey Miller with Anne Pope *Land Title in South Africa* (2000) 29.

<sup>41</sup> Masiphula Mbonga, Rogier van den Brink and Johan van Zyl: *Evolution of the agrarian structure in South Africa*, in J van Zyl, J Kirsten and H P Binswanger (Eds) *Agricultural Land Reform in South Africa* (1996) 47.

<sup>42</sup> T J D Fair *South Africa: Spatial Frameworks for development* (1982) 11.

<sup>43</sup> Act No. 32 of 2000.

<sup>44</sup> Amathole District Municipality *IDP* (2005). This will be commented upon in Chapter 3 below.

Republic of South Africa Act, 1996.<sup>45</sup>

It also seeks to examine the settlement plan in relation to a variety of the critical issues relating to land holding, the possible future role of traditional leaders in the development of the Amathole District Integrated Development Plan (IDP) and the latter's interface with various pieces of legislation dealing with spatial planning.

### 1.3 Research problem

The research question considers the extent to which the ADM's LRSP seeks to operationalise the development objectives of the Local Government Municipal Systems Act<sup>46</sup> as well as dealing with issues of spatial competition and integration.

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<sup>45</sup> Act, 108 of 1996, in terms of Section 152 -

- (1) The objects of local government are-
  - (a) to provide democratic and accountable government for local communities;
  - (b) to ensure the provision of services to communities in a sustainable manner;
  - (c) to promote social and economic development;
  - (d) to promote a safe and healthy environment; and
  - (e) to encourage the involvement of communities and community organisations in the matters of local government.
- (2) A municipality must strive, within its financial and administrative capacity, to achieve the objects set out in subsection (1).

Section 153 - Developmental duties of municipalities states that;

A municipality must-

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

<sup>46</sup> The main objects of the Municipal Systems Act are:

- to provide for the core principles, mechanisms and processes that are necessary to enable municipalities to move progressively towards social and economic upliftment of local communities, and ensure universal access to essential services that are affordable to all;
- to provide for community participation;

The critical question of the harmonization of the differing land holdings inherited from parts of the former Ciskei and Transkei, the relationship between the traditional leaders and elected local government Councillors and how that relationship affects the ADM's development programme, will be dealt with.

This study also examines the evolution of the country's land policy and the extent to which the policy has influenced the development of the ADM's LSRP. Challenges faced by the ADM have been identified in the light of experience demonstrated by the cases that deal with development-related issues, such as informal settlement and access to land and housing. The question is whether the ADM, in the implementation of its plan would benefit from the wealth which can be gleaned from the decisions of the Constitutional Court<sup>47</sup> in interpreting the preamble of the Constitution.

#### **1.4 Method of research**

The writer has adopted a historical approach and analysed the existing sources dealing with the chosen field of study.

#### **1.5 Research plan**

The research problem raised in 1.3 above will be dealt with in the following chapter headings:

- 
- to establish a simple and enabling framework for the core processes of planning, performance management, resource mobilisation and organisational change which underpin the notion of developmental local government.

<sup>47</sup> See in particular the remarks of Sachs J in *Port Elizabeth Municipality v. Various Occupiers* 2005 (1) SA 228 (CC) already alluded to, and *Jafftha v. Schoeman and Others* 2005 (2) SA 140 (CC). In the latter case, Mokgoro J at 152 remarked as follows, "This Court has made it clear that any claim based on socio-economic rights must necessarily engage the right to dignity." She then pointed out that the lack of adequate food, housing and health care are the unfortunate lot of many people in this country and are blights on their dignity.

## **Chapter 2: Evolution of central themes of land policy and spatial planning in South Africa**

This chapter will also look at the relevant legislation and regulations aimed at meeting the basic needs of the citizens.

## **Chapter 3: Existing inherited settlement patterns co-existing within the Amathole District Municipality and the evolution of the new settlement plan**

This chapter will look at the different land regimes currently obtain in the former homelands of Transkei and Ciskei as well as the genesis of the settlement plan that form the basis of this study.

## **Chapter 4: The land reform and settlement plan and the spatial planning legislation**

This chapter will consider the settlement plan in relation to the whole range of planning legislation.

## **Chapter 5: The role of traditional leadership in the implementation of the land reform and settlement plan**

This chapter will look at the role of traditional authorities in the implementation of spatial planning.

## **Chapter 6: The land reform and settlement plan and challenges for the future in relation to implementation**

This chapter will deals with the challenges facing the ADM in the implementation of the settlement plan.

## **Chapter 7: Conclusion**

This is concluding chapter presenting recommendations and developmental options on housing, land, migration and the escalating squatter problem.

## 1.6 Literature review

There is a growing body of literature covering this area of law.<sup>48</sup> Some writers correctly express the view that spatial planning and land-use planning are much more complex.<sup>49</sup> The need for further research in this area is clearly evident from Hanri Mostert's<sup>50</sup> proposal for a system of land and property distribution patterns which "should be freed from the shackles of apartheid".

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<sup>48</sup> P J Badenhorst, Juanita M Pienaar, Hanri Mostert *SILBERBERG and Schoeman's The Law of Property* Sixth Edition(2006) 4.

Hanri Mostert "*Land restitution, social justice and development in South Africa*" (2002) 119 SALJ 400; A J Van der Walt "*Dancing with codes- Protecting, Developing and Deconstructing Property Rights in a Constitutional State*" (2001) 118 SALJ 258; Zola Skweyiya "*Towards a solution to the land question in a post- apartheid South Africa: Problems and models*" (1990) 6 SAJHR 195; Tessa Marcus "*Land reform-Considering national, class and gender issues*" (1990) 6 SAJHR 178; D L Carey Miller with Anne Pope *Land title in South Africa* (2000) .; A J Van der Walt "*Towards the development of post-apartheid land law: An exploratory survey*" (1990) *De Jure* 1; T Roux "*The Restitution of Land Rights Act*" in Juta's *New Land Law*; Alfred Tokollo Moleah *South Africa, Colonialism, apartheid and African Dispossession* (1993); T W Bennett "*Redistribution of land and the doctrine of aboriginal title in South Africa*" (1993) 9 SAJHR 443; Vinodh Jacchand *Restitution of Land Rights A Workbook* (1997); Wilson and M Ramphela *Uprooting poverty : The South African challenges* (1989) and Wilemien du Plessis, Nic Olivier and Juanita Pienaar "*Delays in Land Reform-South Africa emulating Zimbabwe*" (2001) 16 SAPR/PL 432, "*Progress in Land Reform, Illegal occupation of land and judicial interpretation*" (2002) 17 SAPR/PL 178, "*New measures to expedite land reform*" (2000-1) SAPR/PL 549.

<sup>49</sup> See Carey Miller with Anne Pope *Land Title in South Africa* (2000) 457 who quote with approval the following statement from the 1997 White Paper on Land Policy: "Land tenure reform is the most complex area of land reform. It aims to bring all people occupying land under a unitary, legally validated system of land holding..." See also Van der Walt 2001 *op cit* at 261 where the author observes that the relationship between apartheid land law and transformation land law are much more complex and problematic.

<sup>50</sup> Hanri Mostert "*Land restitution, social justice and development in South Africa*" (2002) 119 SALJ 402.

The present writer is in agreement with Bennett's<sup>51</sup> statement that the demand for redistribution of land in South Africa springs from a deeply felt sense of injustice which requires a redress. Hans Binswanger and Klaus Deininger<sup>52</sup> make the following pertinent comment:

“given the complexity of existing land relations and widely diverging aspirations of different social and political groups, a new land law should be anchored in the Constitution (as currently protected by section 25 of the Constitution) and should include provisions for secure private ownership, for more flexible forms of communal tenure than are currently allowed, and for government ownership of ecological reserves and perhaps, national forests”.

These authors<sup>53</sup> further observed that one of the most important questions in the debate about future land policy is whether the current land distribution provides a good basis for future growth of output and employment in the agricultural sector and for a gradual elimination of the inequalities in access to land, or whether land reform and resettlement are necessary to achieve these goals.

The White Paper on Local Government<sup>54</sup> identifies three key approaches to drive the transformation of local government into a developmental role. These are: integrated development planning and budgeting; performance management; and municipalities working together with local citizens. These and other pertinent issues raised in the White Paper justify an in-depth study of this topic.

Lebert and Westaway<sup>55</sup> point out that the task of realizing the vision in the White

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<sup>51</sup> T W Bennett “*Redistribution of land and the doctrine of aboriginal title in South Africa*” (1993) SAJHR 9 .443.

<sup>52</sup> Hans Binswanger and Klaus Deininger in J van Zyl, J Kirsten and H P Binswanger (eds) *Agricultural Land Reform in South Africa* (1996) 94

<sup>53</sup> Hans Binswanger and Klaus Deininger in J van Zyl, J Kirsten and H P Binswanger (eds) *Agricultural Land Reform in South Africa* (1996) 64.

<sup>54</sup> This White Paper was published in March 1998.

<sup>55</sup> T Lebert and A Westaway “*Decentralised planning and development; the legal framework and experiences in implementation*” (2000) PLAAS 293.

Paper on Local Government has been underway since 1998 and has made substantial progress. The first piece of legislation that was passed was the Local Government: Municipal Demarcation Act,<sup>56</sup> 1998, which has put in place a Municipal Demarcation Board tasked with redefining the boundaries of local governments.

The second piece of legislation was the Local Government: Municipal Structures Act, 1998,<sup>57</sup> which defines the local government structures that were put in place after 2000 local government elections. The above Act provides greater clarity on the allocation of planning functions between district and local levels and also spells out the district municipality function in detail. As alluded to above, the third Act, the Municipal Systems Act, 2000,<sup>58</sup> introduced the notion of developmental local government.

The fourth enactment, the Municipal Finance Management Act , 2003<sup>59</sup> has as its main object, the securing of sound and sustainable management of the fiscal and financial affairs of municipalities and municipal entities by establishing norms and standards and other requirements for-

- ensuring transparency, accountability and appropriate lines of responsibility in fiscal and financial affairs of municipalities and municipal entities;
- the management of their revenues, expenditures, assets and liabilities and the handling of their financial dealings;
- budgetary and financial planning processes and the co-ordination of those processes with the processes of organs of state in other spheres of government; and
- borrowing of money.

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<sup>56</sup> Act No. 27 of 1998.

<sup>57</sup> Act No. 117 of 1998.

<sup>58</sup> Act No. 32 of 2000 provides for the core principles, mechanisms and processes that are necessary to enable municipalities to move progressively towards social and economic upliftment of local communities and ensure universal access to essential services that are affordable to all.

<sup>59</sup> Act No. 56 of 2003.

The Municipal Integrated Development Planning Regulations, 2001 provide for the information that should be captured in a Municipal IDP and for a performance management system that should be developed and linked to the implementation of the plan.

## **1.7 Definition of terms used in this research**

Below is the synopsis of the common concepts used throughout this study. The list is not exhaustive.

**1.7.1 Spatial competition.** Mabogunje<sup>60</sup> describes spatial competition as referring to processes of spatial organization, which, in part, results in the resolution of the opposition among spatial elements by action, which allows one or other of them to come to final expression:

“in human terms, aspects of spatial competition are reflected in location theories relating to agricultural, industrial or commercial activities. Competitiveness in this context involves specialization or the narrowing of the scope of activities so as to ensure greater effectiveness.”

**1.7.2 Spatial structure.** The above author describes spatial structure as referring to the ordered relations which exist between individual spatial forms or elements and the whole of which they form part.

“These spatial forms are concrete physical manifestations, such as farm lands, hamlets, villages, fences and roads. There is also a perennial issue of addressing the inherited economic distortions of the apartheid past, namely, “the question of equity-just distribution of wealth, goods and services” .<sup>61</sup>

**1.7.3 Permission to Occupy Certificates (PTOs).** This refers to tenure under permission to occupy<sup>62</sup>. These are unsurveyed areas where the holder is not

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<sup>60</sup> Mabogunje *The development process, A spatial perspective* (1980) 39.

<sup>61</sup> *ibid*

<sup>62</sup> This is a form of tenure granted in terms of numerous laws applicable mainly in the former Transkei and Ciskei areas.

granted a title deed.

**1.7.4 Freehold tenure.** This refers to the common law concept of property ownership in terms of which the land is registered in Deeds Registry and has been surveyed and received approval of the Surveyor General's Office.

**1.7.5 Betterment areas.** These are dense, planned settlements, with populations over 5000 people. These are normally larger rural areas.

**1.7.6 Communal tenure.** Communal tenure does not apply to one recognised system of tenure. Communal tenures are varied in the Eastern Cape, in that there is not one single identifiable system of communal tenure, and in most areas, it is a mixture of individual (e.g., PTOs or informal rights) and group rights (e.g., rights to common property, such as commonages).<sup>63</sup> The Communal Land Rights Act,<sup>64</sup> when it takes effect, will make it possible for communal rights to land to give rise to security of tenure.

At present, it is possible to register group-ownership arrangements in terms of Communal Property Associations<sup>65</sup> as well as Trusts. It is also possible to upgrade or register individual rights in terms of current laws if certain requirements are fulfilled (survey and planning, with land-rights adjudication to ascertain owners). Commonage can be held by CPAs or trusts or, or even by the municipality in trust for the particular group. It is, therefore, possible to provide secure tenure in the interim in expectation of more comprehensive legislation in the form of the Communal Land Rights Act when it takes effect.

**1.7.7 Informal settlements.** These are unplanned and largely unserved settlements, with populations over 5000 people. Most of these can be located next to urban areas whilst others are to be found in rural areas. Some intensive

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<sup>63</sup> Amathole District Municipality *Land Reform and Settlement Plan* (2004) 11.

<sup>64</sup> Act No. 11 of 2004.

<sup>65</sup> Communal Property Associations Act No. 28 of 1996.

commercial-farming settlements also fall within this category.

**1.7.8 Villages.** These are rural settlements with populations of more than 500, but less than 5000 people. These are often unplanned, traditional settlements or resettlement areas.

**1.7.9 Agri-villages.** These are planned, dense settlements in rural areas, which service the surrounding farms.

**1.7.10 Dispersed or scattered settlements.** These are mostly unplanned homestead settlements with a population of less than 500 people. There are extensive settlements in commercial farming areas, while some are located on communal land, and others in privately owned land, also fall in this category.

**1.7.11 Land administration.** This refers to the set of systems and procedures that<sup>66</sup> make up the *infrastructure* for securing land rights within a regulated environment. It is not the same as “land tenure” or “land rights”. Land tenure is one of the main *outcomes* of the application of land-administration *procedures*. Land administration can thus be seen as the information systems, records, technical processes, and registration procedures, etc., which make it possible to register any or all tenure rights.

**1.7.12 Integrated Development Plan (IDP).** This is a statutory planning document required by the Municipal Systems Act. In terms of both the Municipal Structures Act and the Municipal Systems Act (specifically, Chapter 5) each category of local government, whether a Metropolitan Municipality (Category A), a Local Municipality (Category B) or a District Municipality (Category C) must engage in integrated development planning and produce an IDP, which must be reviewed annually.

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<sup>66</sup> Eastern Cape Provincial Government *Land Administration and Training Procedures Manual* (2003).

The IDP is conceived of as a corporate plan for local government that incorporates various sectoral inputs and combines these in a strategic and integrated manner in order to enable municipalities to plan for the necessary resources and budgetary provisions required to implement development actions.

**1.7.13 Rural livelihoods.** This refers to the capacity of rural people to generate and maintain a means of living, enhance their well-being and that of future generations. Their capacity is contingent upon the availability and accessibility of options, which are ecological, economic and political and are predicated on equity, ownership of resources as well as participatory decision-making.

## Chapter 2

### 2.1 EVOLUTION OF CENTRAL THEMES OF LAND POLICY AND SPATIAL PLANNING IN SOUTH AFRICA

In this chapter, the writer looks at the evolution of central themes of land policy and planning in South Africa and how the Amathole District Municipality (ADM) IDP links up to the national land policy.

The post-apartheid land policy has evolved in a participatory fashion in the form of a Green Paper<sup>1</sup> which culminated into a White Paper<sup>2</sup>. The latter<sup>3</sup> projected the goal of the land-reform programme as being to contribute to “reconciliation, stability, growth and development in an equitable and sustainable way”. According to Robertson:<sup>4</sup>

“among the objectives of land-tenure reform strategy are mechanisms for the recognition of various kinds of tenure, including communal or group tenure, and the improvement of tenancy laws to ensure greater fairness in the system of tenancy “.<sup>5</sup>

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<sup>1</sup> Ibid, para 1.1. The main principles of land reform are stated in the Green Paper to be the following: social justice (to deal with apartheid land legacy); overcoming poverty; responding to the expressed needs (as opposed to government designed plans); government intervention in the reform processes; flexibility in approaches; gender equality; economic viability and environmental sustainability and democratic processes (involving participation and accountability at all levels).

<sup>2</sup> Department of Land Affairs *Green Paper on South African Land Policy* (1996).

<sup>3</sup> Department of Land Affairs *White Paper on Land Policy* (1998).

<sup>4</sup> See Michael Robertson *Land and post apartheid reconstruction in South Africa* in Susan Bright and John Dewar *Land law, Themes and Perspectives* (1998) 302.

<sup>5</sup> Department of Land Affairs *White Paper on South African Land Policy*, (1998) points out “Land, its ownership and use, has always played an important role in shaping the political, economic and social processes in the country. Past land policies were a major cause of insecurity, landlessness, homelessness and poverty in South Africa. They also resulted in inefficient urban and rural land use patterns and a fragmented system of land administration. This severely restricted effective resource utilisation and development. Land policy for the country need to deal effectively with:

- the injustices of racially based dispossession of the past;

A coordinated land-use management system within national government and between national and other tiers of government is necessary. In terms of the White Paper on Land Policy,<sup>6</sup> this requires a coordinating capacity to manage land-use planning at national government level, as well as between the three spheres of government.

The political and economic conditions of the apartheid era highlighted above are referred to in the Local Government White Paper,<sup>7</sup> which acknowledges that the beginning of geographic, institutional and social separation at local level existed long before apartheid was officially introduced in 1948.

Through spatial separation, influx control, and a policy of “own management for own areas”, apartheid aimed to limit the extent to which affluent white municipalities would bear the financial burden of servicing disadvantaged black areas. Literature<sup>8</sup> in land law indicates that planning has left deep scars on the

- 
- the need for a more equitable distribution of land ownership;
  - the need for land reform to reduce poverty and contribute to economic growth;
  - security of land tenure for all; and
  - a system of land management which will support sustainable land use patterns and rapid land release for development.

The White Paper further states that land policy should ensure accessible means of recording and registering rights in property, establish broad norms and guidelines for land use planning, effectively manage public land and develop a responsive, client-friendly land administration service.

<sup>6</sup> Department of Land Affairs *White Paper on Land* (1997).76.

<sup>7</sup> The Local Government White Paper, March 1998 states that municipalities are charged with an enormous challenge of developing sustainable settlements, which meet the needs and improve the quality of life of local communities. To meet these challenges, municipalities will need to understand the various dynamics operating within their area, develop a concrete vision for the area, and strategies for realising and financing that vision in partnership with other stakeholders. Integrated development planning is a process through which a municipality can establish a development plan for the short, medium and long term. In effect integrated development plans are planning and strategic frameworks to help municipalities to fulfil their developmental mandate.

<sup>8</sup> See Pienaar and Muller “*The impact of the Prevention of Illegal Eviction From and Unlawful Occupation of Land Act No. 19 of 1998 on homelessness and unlawful occupation within the present statutory framework* (1999) 10 Stell L.R 370.

spatial structure of our cities, towns and rural areas, and the lives of individuals and households. The spatial integration of settlements is, therefore, critical. It will enhance the economic efficiency, facilitate the provision of affordable services, reduce the costs households incur through commuting, and enable social development. Spatial integration is also central to nation building, to addressing locational disadvantages, which apartheid imposed on the black population, and to building an integrated society and nation. In dealing with above spatial distortions, the White Paper on Spatial Planning and Land Use Management<sup>9</sup> describes the

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point out that apartheid and its urbanisation policies are largely responsible for the housing crisis South Africa faces today. In their own words, these writers say that people were moved around as if on a giant chessboard and for a period, more houses were demolished than they were built.

<sup>9</sup> The Department of Land Affairs *White Paper on Spatial Planning and Land Use Management* (2001) outlines its broad objective as, "facilitate allocation of land to the uses that provide the greatest sustainable benefits and to promote the transition to a sustainable and integrated management of land resources." Conventional land-use planning has frequently failed to produce a substantial improvement in land management or to satisfy the priority objectives of land users. In recent years, planning has come to be viewed as one step in land-resources management, as well as being a mechanism for decision support rather than a technical evaluation procedure. An improved approach should thus call for *integrated planning for sustainable management of land resources*. This White Paper intends to show practical ways in which South Africa may move to this approach. The system should satisfy the following specific needs:

- the development of policies which will result in the best use and sustainable management of land;
- improvement and strengthening planning, management, monitoring and evaluation;
- strengthening institutions and coordinating mechanisms;
- creation of mechanisms to facilitate satisfaction of the needs and objectives of communities and people at local level.

Integrated planning for sustainable management of land resources should thus ensure that:

- development and developmental programmes are holistic and comprehensive so that all factors in relation to land resources and environmental conservation are addressed and included. In considering competing needs for land, and in selecting the "best" use for a given area of land, all possible land-use options must be considered.

Municipal Systems Act as requiring each part of the municipality's IDP be a spatial development framework (SDF). The White Paper spells out the minimum elements that must be included in an SDF and also proposes that it operates as an indicative plan, whereas the detailed administration of land development and land-use changes is dealt with by a land-use management scheme, which will actually record the land use and development permissions accruing to a piece of land. The inclusion of the SDF, with a direct legal link to the land-use management scheme, is an essential step towards integrated and coordinated planning for sustainable and equitable growth and development.

## 2.2 Spatial planning

Before one can deal with policies and the legislative framework pertaining to spatial planning in the South African context, it is useful to start by providing an understanding of what spatial planning means and the theoretical foundations upon which its conceptual analysis are based. Cadwell<sup>10</sup> states that land reform affects the very core of people's relationship with the environment. A change in the distribution of land ownership or in the people's right to use land frequently results in major changes in patterns of land use, agricultural productivity, and in settlement patterns. According to Coetzee<sup>11</sup> *et al*, colonization and apartheid have left deep imprints on contemporary South African society. These writers express the view that nowhere are these more compellingly apparent than in the highly skewed distribution of land between whites and blacks resulting from apartheid

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- all activities and inputs are integrated and coordinated with each other, combining the inputs of all disciplines and groups.
  - all actions are based on a clear understanding of the natural and legitimate objectives and needs of individual land users to obtain maximum consensus.
  - institutional structures are put in place to develop, debate and carry out proposals.

<sup>10</sup> W J Caldwell *Issues and responses: Land use planning in Eastern and Southern Africa* (1999) .5.

<sup>11</sup> Coetzee *et al Development theory, policy and practice*(2001).1.

legislation.<sup>12</sup> Of course, unfair distribution of land took place long before the previous regime came into power in 1948.<sup>13</sup>

Spatial planning is not an easy subject to define. Lewis Keeble<sup>14</sup> describes it as an art and science of ordering the use of land and the character and the location of buildings and communication routes so as to secure the maximum practicable degree of economy, convenience and beauty. The author indicates that physical planning, land planning and land-use planning are titles that have been used to refer to spatial planning. Nearly all development of land is, in some sense, planned, even if not set out in the drawing board before building operations begin.

Successful planning results in the improvement of the quality of life as well as the promotion of physical and infrastructural development. In terms of the White Paper on Spatial Planning and Land Use Management<sup>15</sup>, spatial planning is understood as planning in which different activities, land uses and buildings are located in relation to each other, in terms of distance between them, proximity to each other and the way in which spatial considerations influence and are influenced by economic, social, political, infrastructural and environmental considerations.

The South African National Environment and Planning Agency<sup>16</sup> describes spatial planning as “an activity centred on making decisions relating to the location and distribution of land-use activities”. One of the main objectives of spatial planning is

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<sup>12</sup> Following a series of colonial wars of dispossession, the Glen Grey Act of 1894, the Native Land Act of 1913, and the Native Trust and Land Act of 1936 which formed the legislative edifice of apartheid with regard to land matters, were enacted long before the National Party came into power in 1948.

<sup>13</sup> This refers to dispossession of land that occurred after the Frontier Wars.

<sup>14</sup> L Keeble *Principles and practice of Town and Country planning*, (1968) 1.

<sup>15</sup> Department of Land Affairs, *White Paper on Spatial Planning and Land Use Management* (2001).5.

<sup>16</sup> [www.nrca.org/plandev](http://www.nrca.org/plandev).

to ensure that the utilization of land resources is planned and implemented in an organized manner in order to meet the needs of present and future generations.

Spatial planning, therefore, requires an integrative and comprehensive planning approach in order to rationalize the appropriate land-use activities. This entails active state involvement at all levels.

Indeed Foglesong,<sup>17</sup> sees the state as a:

“factor of cohesion” of social formulation. In essence, he conceives the state as a “giant planner” who “soothes, or represses outbreaks of social discontent, and synchronises the various elements of society so as to ensure the continuing functioning of the underlying capitalist structure.”

The second question he raises<sup>18</sup> concerns the state’s internal processes or methods of policy formulation. On the negative side, the planning method of decision-making, because of its technocratic nature, does not correspond with the beliefs about how “democratic” decisions should be made; thus, it has a low capacity for maintaining the state’s democratic legitimacy.

Marxist literature, on the other hand, has conceptualised planning as a form of state intervention in the market. The Marxist<sup>19</sup> theory has conceptualised urban

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<sup>17</sup> R E Foglesong *Planning the capitalist city* (1986).11.

<sup>18</sup> Foglesong *Planning the capitalist city* (1986). 13.

<sup>19</sup> Foglesong *Planning the capitalist city* (1986).18. The Marxist approach can be contrasted with the United Nation’s experience in spatial planning. Most countries have a range of past and current strategic planning approaches at both national and decentralized levels. With regard to developing countries, many of these have been externally conceived, motivated and promoted by multilateral development banks, development cooperation agencies, UN organizations, international non-governmental organizations and other external organizations – often as planning mechanisms to implement international agreements or as conditions for securing financial assistance (IIED, 2002, p35). The systems, mechanisms and practices of the beneficiary countries such as development plans, local plans and socio-economic conditions are largely ignored. In many cases, technical experts and advisers working in different countries translocated their experience and approaches from one country to another. This inevitably results in outputs of impressive plans that, at best, have

conflict as a conflict over “the production, management and use of urban built environment”. The term “built environment” is conceived to refer to physical entities, such as roads, sewerage networks, parks, railroads, and even private housing – facilities that are collectively owned and consumed, or in the case of private housing, whose character and location the state somewhat regulates.

According to Foglesong, the task of the state is not only to maintain the system of use values, but also to provide for the co-ordination of these use values in space.<sup>20</sup> Dealing with the state intervention to the sphere of circulation and the need to produce spatial organisation, which facilitates the circulation of capital commodities, information, etc., based on the above theoretical analysis, the author has linked spatial planning to the problems arising from the uniqueness of land as a commodity, namely, the fact that land is not transportable, which makes it inherently subject to externality effects.

There are two structural contradictions that have influenced the course of development of spatial planning and in terms of which development must be understood. These contradictions include the one between the social character of land and its private ownership and control. The second is the “capitalist democracy contradiction”: the contradiction between the need to socialise the control of space in order to create conditions necessary to maintain capitalism, and the danger of capital of truly socialising, that is, democratising, the control of land.<sup>21</sup>

In a recent conference paper, it has been argued<sup>22</sup> that many countries are searching for ways to generate and promote social and economic progress within their respective countries through a system of integrated spatial development

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been only partly implemented. The limited emphasis placed on generating national ownership and establishing participatory processes in beneficiary countries is mainly to blame for this unfortunate situation.

<sup>20</sup> Foglesong *ibid.*

<sup>21</sup> Foglesong *Planning the capitalist* (1986). 19.

<sup>22</sup> M Swartz, T Shilenge and S Naidoo “*Rural development using spatial planning frameworks*” (2003).1

planning. The paper sees spatial planning as being currently in vogue by reason of its potential to support political goals, such as sustainable development, spatial efficiency and economic welfare.

Hoyle,<sup>23</sup> on the other hand, employs a technical and operational description of the development planning process as constituted by various phases, such as the evaluation phase, which entails taking account of the resources present and assessing their productive potential. The results of resource surveys are compared with technical requirements of various types of land use. A common practice is to produce a land-capability classification map, which shows land in terms of its “suitability” for one or more types of land use. Following this phase, economic and other factors are taken into consideration, leading to decisions on land-use recommendations.

Dealing with the subject from a public policy perspective, Wilson<sup>24</sup> mentions three main kinds of activities in planning as being policy, design and analysis. In turn, the main types of public policy instruments include the following:

- public expenditure;
- regulation e.g., land-use control;
- fiscal measures; and
- changing the form of government organisation.

If planning is seen as setting certain inputs to achieve certain outputs, then the public policy instruments<sup>25</sup> are the inputs, while any measurements of achievement of objectives and goals can be considered as different measures of outputs. The designer’s task is to generate alternative settings of public policy instruments, which lead to the achievement of objectives and goals.

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<sup>23</sup> B S Hoyle *Spatial aspects of development* (1974).38.

<sup>24</sup> A G Wilson *Urban and regional models in geography and planning* (1974), 12.

<sup>25</sup> Wilson *Urban and regional models in geography and planning* (1974), 19.

The need to address spatial planning emanates from several factors, which include unequal distribution of growth in different areas, a demand for a better distribution of resources and the real lack of spatial coordination of development-oriented policies. There was a glaring lack of spatial planning in the rural areas of South Africa during the apartheid era. The introduction of the Municipal Systems Act, 2000<sup>26</sup> saw the introduction of measures to redress spatial inequalities of the past.

Existing multiple systems for spatial planning have created several problems that have a detrimental impact on the development of rural areas. One of these is that the fragmented spatial structure prohibits the possibility of creating the reasonable community thresholds necessary to attract investment in rural areas. As a response, policies and legislation that have been developed, illustrate a definite shift in the approach to spatial planning and development. The most glaring example is the construction of low-cost housing at Izidenge in Amahlathi Municipality. This housing project exhibits the limitations of the current policies to provide proper rural housing options.

It is evident that spatial planning, land-use management and land development are becoming more process-oriented, developmental and based on a normative approach. The governments of developing nations have realised the crucial role of spatial planning in resource allocation.<sup>27</sup>

The lack of sustained development in the rural areas<sup>28</sup> of most developing countries has been attributed directly to the lack of adequate spatial planning for the promotion of development. The key objectives of spatial planning focus on

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<sup>26</sup> Municipal Systems Act, 32 of 2000.

<sup>27</sup> Swartz *et al Rural development using spatial planning frameworks* (2003).1.

<sup>28</sup> K Singh *Rural Development* (1999).20 defines rural development as an overall development of rural areas with a view to improve the quality of life of rural people. In this sense, it is a comprehensive and multi-dimensional concept, and encompasses development of agriculture and allied activities, village and cottage industries and crafts, socio-economic infrastructure, community services facilities, and above all, human resources in rural areas.

setting frameworks and principles to guide the location of development and infrastructure.

The imperatives for spatial planning in the rural areas centre around the following: planning strategies that must coordinate activities across all sectors, local participation in the planning process, an integrated urban-rural development strategy, a clear division of powers and functions between the three spheres of government and an enabling environment for development activities.

One of the most critical roles of SDFs is the coordination of such integrated development strategies. In South Africa, spatial planning legislation dates back to 1911.<sup>29</sup> Recent pieces of legislation in this regard include the Physical Planning Act, 1967<sup>30</sup> and the Physical Planning Act, 1991<sup>31</sup> provided basis for control and restriction of land uses in respect of land development in the Republic.

Since 1994, various policies and pieces of legislation have been introduced in order to address the shortcomings and effects of legislation that existed prior to 1994. In this chapter, the writer seeks to highlight those pieces of legislation that have a direct impact on spatial planning for rural areas of South Africa. It will be shown that these policies and statutory provisions signal a definite shift in the

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<sup>29</sup> The Colour Bar Act of 1911.

<sup>30</sup> Physical Planning Act, 88 of 1967. The latter Act provided *inter alia* for the promotion of co-ordinated environment planning and the utilization of the Republic's resources, and for those purposes to provide for control of the zoning and subdivision of land for industrial purposes; for the reservation of land for use for specific purposes; for the establishment of controlled areas; for restrictions upon the subdivision and use of land in controlled areas; for the compilation and approval of guide plans; and for restrictions upon the use of land for certain purposes unless reserved for use for such purposes; and for other matters incidental thereto.

<sup>31</sup> Physical Planning Act, 125 of 1991. This Act seeks, *inter alia*, to provide for the promotion of the orderly physical development of the Republic, and for that purpose to provide for the division of the Republic into regions, for the preparation of national development plans, regional development plans, regional structure plans and urban structure plans by the various authorities responsible for physical planning, and for matters connected therewith.

approach to spatial planning and development. Changes in emphasis have also been reflected in the changes in the relevant theories of spatial planning.

Spatial strategies, in the form of guide plans and regional and local structure plans, have been widely used to manage and guide spatial change, development investment and environmental quality at various levels of government in South Africa, albeit to support the segregationist policies of the past. The past spatial strategies have always exhibited some bias in favour of urban areas<sup>32</sup> to the total neglect of rural areas.

Another important object of spatial strategies is to provide the basis for the implementation of strategies, policies, plans and projects aimed at improving the quality of life of a particular town, city or region. The formulation of the frameworks is largely determined by the dynamics of social and economic change, not in the least so by government policy in respect of social and economic imperatives.

The implementation of spatial frameworks relies heavily on the governance practises of the time. National governments tend to play an overarching role relating to policy formulation and oversight functions. In most instances, the responsibility for spatial planning lies with local and regional government and the interest groups found at these levels.

Tomlinson,<sup>33</sup> in his analysis of changes from influx control to the Group Areas Act to the creation of 'homelands', points out that the implementation of apartheid has

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<sup>32</sup> P Roberts *Urban Regeneration; a Handbook*,(2000) 9 defines urban areas as complex and dynamic systems, reflecting many processes that drive physical, social, environmental and economic transition and they themselves are prime generators of many such changes. Urban areas have always performed a wide range of functions. Shelter, security, social inter action and a sale of purchase of goods and services are among the traditional roles of a town or city.

<sup>33</sup> R Tomlinson *et al Regional restructuring under apartheid ; urban and regional policies in South Africa* (1987).xv, assess industrial decentralisation policy and provide a detailed analysis of the attempt to create growth poles has failed, and they use the town of Butterworth to illustrate the problems confronting more peripheral growth points.

disrupted and physically fragmented the fabric of South African society. Among the policy changes which have spatial implications are: the 'reform' of influx control; the introduction of a scheme of 'orderly urbanisation'<sup>34</sup>; and establishment of Regional Services Councils as new forms of metropolitan government in the period of 1985. These developments came on top of a substantially revised industrial decentralisation policy offering greatly enhanced subsidies to industrialists. The incentives took into account newly created 'Development Regions'. In addition to all this, the Ciskeian government declared the area a 'free enterprise zone' and attempted to market it as a tax haven. It is hardly surprising that regional issues were attracting wider interest.

In theory, SPFs are supposed to direct the flow of regulatory and investment activity manifested in the form and location of development. However, the implementation of such frameworks, to a significant extent, remains an elusive task; an aspect that has led to substantial disillusionment with regard to planning frameworks,<sup>35</sup> for an example, there is a great difficulty to attract foreign investment to the Industrial Development Zones of the Eastern Cape Province, as the international investors have misgivings about the sufficiency of infrastructure and communication networks in that province.

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<sup>34</sup> P Roberts *Urban Regeneration; a Handbook* (2000) 86 points out that the physical appearance and environmental quality of cities and neighbourhoods are highly potent symbols of their prosperity of the quality of life and confidence of their enterprises and citizens. Run-down housing estates, tracts of vacant land and derelict factories, and decaying city centres are all too visible faces of poverty and economic decline; more often than not, they are symbols of a decline or town's inability to adapt quickly enough to rapid social and economic change.

<sup>35</sup> Tomlinson *et al* *Regional restructuring under apartheid ; urban and regional policies in South Africa* (1987).xxi, illustrates the application and abuse of decentralisation policy in describing the process of industrialisation at the Dimbaza industrial development point and paints an extremely interesting picture of the evolution of Dimbaza from 'dumping ground' to industrial area. The author points out that the industrialisation of Dimbaza has failed as there is a lot of unused and abundant infrastructure, because of the exodus of foreign investors. Moreover, most rural areas surrounding Dimbaza, including the people of Dimbaza, are subject to worst forms of poverty as they rely mainly on government grants for survival.

Another major function of spatial planning is the regulation of land-use change and development. This activity is also closely linked to other governance functions that include environmental policy, economic development, welfare and housing policies. There has been a recent shift (and rightly so) to emphasise economic development and environmental management in planning frameworks.

The planning system in South Africa, like the European models, reflects a hierarchical structure of national, provincial and local plans. This approach centres on the notion that local policies are subordinate to provincial policies and those in turn, are subordinate to national policies. This is based on the assumption that national government is the first custodian of public interest in respect of land-use management and development.

An interesting development in the realms of planning, especially within the context of democratic rule, has been the shift of the leading role in planning from the technocrats to the politicians. The decision-making processes regarding planning matters are increasingly intertwined between politicians and planners. As with European experience, the influence of politicians has increased over the last decade or so.<sup>36</sup> Plans that are not accepted by politicians more than often produce no results as they will not be marketed.

The planning process, in general, including spatial planning, has gained another dimension in the form of the participatory approach. This is partly due to the mobilisation of environmental concerns in planning decisions. However, it has

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<sup>36</sup> M Swilling *Apartheid City in transition* (1991).IX, points out that South Africans have a rich social history tradition, which demonstrates that what policy makers and administrators planned to achieve rarely occurred in reality. According to Swilling, it was not simply that the planners who carved up the society into racial categories had a mistaken assumption about the nature of the society. "It had to do with the fact that the people whose communities they were carving up had their own capacities to think, associate and organise. The result, therefore, was the constant struggle between a wide range of contradictory and cross cutting interests over control of industrial time, the structure and regulation of urban space, and the definition of political citizenship. In other words, whites were the only citizens that qualified for full political, industrial, and urban citizenship".

become common place for spatial plans to have the support of the public that it is intended for. It is generally acknowledged that public support for spatial plans has become an imperative for their success.

### **2.3 Spatial planning and land reform**

The majority of land reform projects take place in the rural areas. This is reflected in the key objectives of sustainable land reform<sup>37</sup> stated in the White Paper on Spatial Planning and Land Use management which are as follows:

- a focus on generating rural economic development and sustainable enterprises on land;
- encouragement of participants to invest in their own land;
- a focus on improving the quality of rural lives and food security; and
- to ensure the utilisation of land and natural resources are commensurate with its carrying capacity.

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<sup>37</sup> See paragraph 2.3.1 of the Department of Land Affairs *White paper on Spatial Planning and Land Use Management* (2001) where the following principles for sustainability are outlined:

The spatial planning, land-use management and land-development norms based on this principle are:

- Land may only be used or developed in accordance with law;
- The primary interest in making decisions affecting land development and land use is that of national, provincial or local interest as recorded in approved policy;
- Land development and planning processes must integrate disaster prevention, management or mitigation measures;
- Land use planning and development should protect existing natural, environmental and cultural resources;
- Land which is currently in agricultural use shall only be reallocated to other uses where real need exists and prime agricultural land should remain in production.

In order to achieve these objectives, land reform is projected as an integral part of the local planning process with local government as the focal point of delivery. The land-reform process has implications for future settlement patterns, the carrying capacity of the land and the land use. The Department of Land Affairs (DLA) advocates an integrated approach to planning in land-reform projects; a process that must be participatory and inclusive. SDFs, as the spatial component of IDPs, will form an important mechanism in this regard.

## **2.4 Spatial development frameworks and the IDP**

The SDF forms a legally binding component of the IDP as reflected in the Municipal Systems Act<sup>38</sup>. The IDP Guide Pack describes the purpose of an SDF as follows:

“Providing general direction to guide decision-making and action over a multi-year period aiming at the creation of integrated and habitable cities, towns and residential areas.

Creating a strategic framework for the formulation of an appropriate land-use management system, thereby:

- informing the decisions of development tribunals, housing departments and relevant development committees; and
- creating a framework of investment confidence that facilitates both public and private sector investment”.

The SDF of a municipality must address the following aspects:

- spatial development trends and issues emerging from the spatial analysis;
- localised spatial development principles including strategic guidelines to address spatial restructuring and spatial integration;
- a spatial representation of all development objectives and strategies with a spatial dimension;
- the location of all projects;
- a summary of land-reform issues and related projects; and

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<sup>38</sup> Act No.32 of 2000.

- maps which indicate:
  - the preferential and focal areas for certain types of land use; and
  - areas for which certain types of land use are excluded.

In the past, these aspects have only received attention in urban areas. Spatial planning in rural areas has been conspicuous by its absence.<sup>39</sup>

## **2.5 Strategic Investment Policy Approach Advocated by the Provincial Spatial Development Plan and the Amathole District Municipality IDP**

The application of the above strategic approach would mean that a policy of investment and management should be applied on three levels to achieve the most significant results.<sup>40</sup> These are illustrated in terms of the levels indicated below.

### Level 1

This level would fulfil basic human rights in the provision of basic services to both urban and rural areas, at a minimum level in terms of available resources. This would be guided by backlogs in these areas, the proximity of existing bulk services and priorities in terms of local and regional IDPs.

### Level 2

This level would ensure the managed investment of public-sector funding in the urban and rural areas in order to build local capacity, build on strengths and opportunities that exist and maximise the potential of the existing infrastructure and settlement system.

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<sup>39</sup> M Bunce *Rural Settlement in an Urban World* (1982) 13 argues that, despite the continuing increase in urban population and the proliferation of towns and cities, rural settlement still dominates much of the world's occupied land. "The majority of the world's population lives in rural areas, the great bulk of the world's land is used for rural activities, and most settlement units are rural. The reality and importance of rural life and land continues to be significant in the culture of most societies. Rural settlements are the object of much political and economic activity. The author acknowledges that the neglect of rural areas in South Africa was because of the racist segregationist policies of apartheid".

<sup>40</sup> Eastern Cape Government *Eastern Cape Provincial Spatial Development Plan* (2004).

### Level 3

This level would involve the provision of adequate funding to strategically targeted development zones, which have development potential. These will represent areas, nodes or corridors of opportunity, where special focus of effort and investment will attract interest from the private sector to invest either in joint ventures with Government or independently, to develop economic-growth opportunities which exist.

Policy should hold equality as an ideal whereby focus on level 3 will not deny the general order from access to basic services. Similarly, level 2 investments should also be targeted to areas outside the spatial development initiatives, where localised nodes of opportunity exist and can serve the needs of the growing population. Level 3 priority SDIs are seen to be a necessary strategic tool to focus special energy to create the spin offs needed to boost the economy of the Province.

## **2.6 The principles contained in the Provincial SDP and the ADM's IDP.**

In reviewing the above strategic spatial and development investment principles, the need to link these principles to the specific requirements of the LRSP was noted. The linkage of these principles to land reform and settlement issues was conceptualised as having two elements;

The first element represents an overarching view of various agencies' roles and responsibilities in relation to land reform and settlement development. At this scale, it is felt that the ADM's primary focus would be on meeting **Level 1: Basic Needs** by providing or facilitating access to land and services for mainly settlement purposes, or the extension of existing settlements. Additionally, the provision of related commonage in these instances is seen as fulfilling the basic-need criterion. The overriding concern here relates to increasing livelihood options for the 'landless', and rural and peri-urban poor.

In contrast, the addressing of **Level 2**: “Building Capacity” is seen to relate to promoting or developing projects where a productive or agricultural component is fundamental. The primary responsibility for meeting Level 2’s needs was seen to reside with the DLA/DOA. However, strategic partnerships between these agencies and the ADM would be countenanced, where necessary.

Finally, it is suggested that ADM would consider investing in **Level 3**: Targeted Focus Areas to support strategic agricultural (or industrial) projects, where these contribute to the development of the local and district economy and the economic viability of its area of jurisdiction.

Within the above overarching scheme, the second element of the linkage between the strategic investment principles and land reform and settlement needs relates to the prioritization of land reform/settlement projects, *per se*. In other words, the need to formalize a mechanism for prioritizing individual projects by, for example, defining criteria for prioritization or defining a hierarchy of land needs.

Within such a mechanism, it would be possible to prioritise, for example, landless communities without current access to services or facilities for settlement as having a greater order of need than the provision of additional commonage to an existing settlement.

Furthermore, beneficiaries seeking settlement in an area that has better access to existing infrastructure networks would be prioritised over those seeking settlement in more remote, un-serviced areas, based on the principle established in the ADM’s IDP of building on strengths. This principle was reaffirmed in the District Municipality’s Water Services Development Plan (June 2000).<sup>41</sup>

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<sup>41</sup> Amathole District Municipality *Water Services Development Plan* (2000).

## **2.7 Co-ordination of spatial frameworks**

The insufficient convergence between different planning frameworks at national, provincial and local levels, as well as between these levels and other sectors has led to a substantial criticism of spatial planning practises. This is particularly true with regard to strategic spatial planning. These frameworks are often based on fundamental differences in the motivations and mandates of the donor institutions, stakeholder power bases, concepts, ideologies and funding. The consequence is that the strategic frameworks have different objectives and stakeholders, and make use of different mechanisms.

There is a strong need to strengthen coordination and coherence especially in terms of fostering sustainable development outcomes. A basic common vision for continuous improvement must unite multiple strategies, otherwise the risk of duplication, conflict, waste of resources and a lack of goodwill would be great. While it is not feasible to merge all frameworks, it is feasible to work towards coherence and coordination so that different SDFs would be mutually supportive.

The process of convergence largely depends on the extent of information sharing with other role players. It is imperative that governments, in partnership with the private sector, civil society and development agencies, maintain an accessible database on existing and new strategic planning processes. This would greatly assist in the process of horizontal and vertical alignment. Such a system would ensure that new planning frameworks would build on existing frameworks and create links between frameworks.

The different frameworks aligned in terms of visions, objectives, strategies and monitoring would save costs and reduce efforts. Experience has shown that where

systems and strategies exist, there would be good progress and resulting strategies have broader ownership. This applies particularly to the South African context where there is a general process of consolidating laws and regulations as part of the strategic planning process. In the next page, the writer seeks to illustrate the kind of progress that has been achieved by means of policy formulation and statutory measures.

**2.8 Policy and legislation**

In this concluding part of this chapter the writer seeks to give a brief overview of the pertinent land policies and legislation. The discussion will commence by a reference to the policy objectives, its implications and the sphere of government that is entrusted with the policy implementation. The same pattern will be followed with regard to relevant legislation.

Purpose	Spatial Planning Implications	Responsibility
2.8.1. White Paper on Spatial Planning and Land Use Management, July 2001		
<ul style="list-style-type: none"> <li>• Promote integrated planning for the sustainable management of land resources.</li> <li>• Provides a uniform, effective and efficient framework for spatial planning and land-use management.</li> <li>• Rationalise the numerous planning laws into one national system.</li> <li>• Support the concept of the IDPs as provided in the Municipal Systems Act, 2000.</li> </ul>	<ul style="list-style-type: none"> <li>• The system, based on principles and norms, promotes normative-based planning.</li> <li>• Land-use regulators function as decision-making authorities.</li> <li>• Prescribes minimum elements to be contained in SDFs.</li> <li>• SDFs to operate as indicative plans.</li> <li>• Land development and land-use changes dealt with by a land-use management scheme.</li> </ul>	<ul style="list-style-type: none"> <li>• All spheres of government.</li> </ul>

Purpose	Spatial Planning Implications	Responsibility
	<ul style="list-style-type: none"> <li>• Gives SDFs the legal effect of guiding and informing land development and management.</li> <li>• Promotes the integration, co-ordination and alignment between various spheres of government to achieve efficient and effective spatial planning.</li> </ul>	
2.8.2. Rural Development Framework, May 1997		
Purpose	Spatial implications	Responsibility
2.8.3. Integrated Sustainable Rural Development Strategy, 2000		
<ul style="list-style-type: none"> <li>• Attain socially cohesive and stable rural communities.</li> <li>• Achieve sustainable economies and universal access to social amenities.</li> <li>• Capacitate in terms of human resources to contribute to growth and development.</li> <li>• Improve opportunities and well-being for the rural poor.</li> <li>• Enable South Africa's rural poor to realise their own potential contributing fully towards their country's future.</li> </ul>	<ul style="list-style-type: none"> <li>• The strategy must ensure more effective and efficient response to needs and opportunities of rural people.</li> <li>• Increase the efficiency of the application of public funds in rural areas to create the appropriate outputs.</li> <li>• Provision of an expenditure framework.</li> <li>• Participatory and decentralised rural development.</li> <li>• Enables local</li> </ul>	<ul style="list-style-type: none"> <li>• National sphere: Provide strategic leadership and coordination.</li> <li>• Provincial sphere: coordination.</li> <li>• Local sphere: Implement policies.</li> </ul>

Purpose	Spatial Planning Implications	Responsibility
	<p>government to align budgets to planned objectives.</p> <ul style="list-style-type: none"> <li>• Alignment with implementation and empowerment mechanisms such as the IDP process.</li> <li>• Operational approach builds on existing government projects through a well co-ordinated, bottom-up approach for rural development.</li> </ul>	
<ul style="list-style-type: none"> <li>• Examine spatial implications of government infrastructure and development programmes.</li> <li>• Ensuring better alignment between infrastructure investment and development programmes.</li> </ul>	<ul style="list-style-type: none"> <li>• Alignment of spatial choices around government investment and development spending across all spheres and sectors.</li> <li>• Focus of investment in areas with potential for sustainable economic development.</li> <li>• Spatial guidelines to determine spatial priorities.</li> <li>• Identification of development potential localities to inform spatial planning choices.</li> </ul>	<ul style="list-style-type: none"> <li>• All spheres and sectors of government.</li> </ul>

Purpose	Spatial Planning Implications	Responsibility
	<ul style="list-style-type: none"> <li>• Identification of priority areas accompanied by strategic response.</li> <li>• National space economy framework to guide future development.</li> </ul>	

2.9 The remaining pages will be devoted to a brief commentary on relevant legislation.

Purpose	Spatial planning implications	Responsibility
2.9.1. Constitution of the Republic of South Africa, 1996.		
<ul style="list-style-type: none"> <li>• To protect basic human rights.</li> <li>• To establish principles and imperatives for co-operative governance and public participation for planning and development</li> </ul>	<ul style="list-style-type: none"> <li>• Provides an overarching framework for spatial planning, land-use management and land development in South Africa.</li> <li>• All law is subject to the Constitution and no other law may be in conflict with it.</li> <li>• All planning policy and legislation must align to the spirit, purport and objectives of the Constitution to be valid.</li> <li>• Uphold the basic rights and give effect to the objectives of the Constitution in the SDFs.</li> </ul>	<ul style="list-style-type: none"> <li>• All spheres and sectors of government.</li> </ul>
2.9.2 Development Facilitation Act (Act 67 of 1995)		
Purpose	Spatial planning implications	Responsibility
<ul style="list-style-type: none"> <li>• To facilitate and expedite the implement</li> </ul>	<ul style="list-style-type: none"> <li>• Provides general principles that serve as guidelines for land development.</li> <li>• Promotes integrated land development in rural and urban areas in support of each other.</li> <li>• Encourages the optimal use of existing infrastructure and resources.</li> <li>• Encourages environmentally sustainable land development practices</li> </ul>	<ul style="list-style-type: none"> <li>• DLA – facilitation.</li> <li>• Provincial sphere: approval of LDOs and</li> </ul>

<p>Purpose</p> <p>ation of reconstruction and development programmes and projects in relation to land.</p> <ul style="list-style-type: none"> <li>• To establish general principles governing all land development.</li> <li>• To provide a nationally uniform procedure for land development in urban and rural areas.</li> </ul>	<p>Spatial planning implications</p> <p>and processes.</p> <ul style="list-style-type: none"> <li>• Encourages mixed land usage.</li> <li>• Emphasises the concept of sustainability.</li> <li>• Provides for Land Development Objectives.</li> <li>• Emphasises public participation and conflict resolution.</li> </ul>	<p>Responsibility</p> <p>co-ordination of advice.</p> <ul style="list-style-type: none"> <li>• Local sphere: formulation and implementation of LDOs.</li> </ul>
<p>2.9.3. Local Government: Municipal Systems Act (Act 32 of 2000)</p>		
<p>Purpose</p> <ul style="list-style-type: none"> <li>• To establish a simple and enabling framework for the</li> </ul>	<p>Spatial Planning implications</p> <ul style="list-style-type: none"> <li>• Emphasises the concept of co-operative governance.</li> <li>• Defines roles and responsibilities on the components of local government.</li> <li>• Introduces mechanisms, processes and procedures for community participation.</li> <li>• Introduces the notion of IDPs.</li> </ul>	<p>Responsibility</p> <p>DPLG</p>

Purpose	Spatial planning implications	Responsibility
<p>core processes that underpins the notion of developmental local government.</p> <ul style="list-style-type: none"> <li>• To empower the poor.</li> <li>• To provide a framework to progressively build local government.</li> <li>• To provide a framework for effective and efficient service delivery.</li> <li>• To provide for core principles, mechanisms and processes</li> </ul>	<ul style="list-style-type: none"> <li>• Prescribes minimum content of IDPs.</li> <li>• Requires spatial development framework as component of the IDP.</li> <li>• Establishes a performance management system.</li> </ul>	

<p>Purpose</p> <p>that will result in the upliftment of local communities.</p>	<p>Spatial planning implications</p>	<p>Responsibility</p>
<p>2.9.4. Land Use Management Bill, December 2000</p>		
<p>Purpose</p> <ul style="list-style-type: none"> <li>• Provides for co-operative governance.</li> <li>• Sets basic principles for spatial planning, land development and land-use management.</li> <li>• Provides for uniform legislation for spatial planning and land-use management.</li> <li>• To provide for a hierarchy</li> </ul>	<p>Spatial Planning implications</p> <ul style="list-style-type: none"> <li>• SDFs to guide spatial planning, land-use management and land development.</li> <li>• National SDF to serve as a guiding framework.</li> <li>• SDFs will give effect to the directive principles of the LUMB.</li> <li>• Effect alignment of all SDFs.</li> <li>• Effect compliance with applicable environmental planning legislation.</li> <li>• Co-ordination and integration of plans and programmes across different sectors.</li> <li>• Stipulate minimum contents of SDFs and land use schemes.</li> <li>• Land-use scheme to give effect to SDFs and IDPs.</li> </ul>	<p>Responsibility</p> <ul style="list-style-type: none"> <li>• DLA.</li> <li>• Provincial government.</li> <li>• Local government.</li> </ul>

Purpose	Spatial planning implications	Responsibility
of SDFs.		
2.9.5. Communal Land Rights Act No.11 of 2004		
Purpose	Spatial Planning implications	Responsibility
<ul style="list-style-type: none"> <li>• Provide for legally secure tenure on communal land.</li> <li>• Provide for general principles applicable to land tenure rights.</li> <li>• Provide for democratic administration of communal land.</li> <li>• Regulate the role of traditional leadership in communal land administration.</li> <li>• Provide for leases of communal land for the benefit</li> </ul>	<ul style="list-style-type: none"> <li>• Communal land rights will guide spatial priorities in certain rural areas.</li> <li>• Will contribute to co-ordinated spatial planning in rural areas.</li> <li>• Will encourage land administration that is efficient, effective, participatory, democratic, developmental and uniform.</li> </ul>	<ul style="list-style-type: none"> <li>• DLA.</li> </ul>

Purpose	Spatial planning implications	Responsibility
of communities.		

## **CHAPTER 3: EXISTING INHERITED SETTLEMENT PATTERNS CO-EXISTING WITHIN THE AMATHOLE DISTRICT MUNICIPALITY AND THE EVOLUTION OF THE NEW SETTLEMENT PLAN**

### 3.1 Introduction and history

This chapter provides a brief comment on the existing settlement patterns co-existing in the Amathole District Municipality (ADM). This will be followed by the evolution of the district's Land Reform and Settlement Plan (LRSP).

The different land tenure systems co-existing in the district are noticeable in the Mngquma Municipality, where Proclamation No. 227 of 1898 as amended applies. This was introduced to the surveyed areas where individual tenure under quitrent tenure prevailed. These areas include Butterworth (Gcuwa), Ngamakhwe, Tsomo and Dutywa.

In Mbhashe Municipality, under which Dutywa falls, there is an assortment of land-tenure systems. In Dutywa the quitrent system under 227 of 1898 applies.

In the unsurveyed areas of Willowvale and Elliotdale (Xhora), tenure is permitted in terms of Proclamation No. 26 of 1936, as amended by the Transkei Land Amendment Act No. 4 of 1968.

In the Ciskei, the Native Locations, Land and Commonage Act, 1879 made provision for dividing portions of locations into lots and granting titles for them to individuals upon payment of quitrent. At Burnshill in the Keiskammahoek, freehold plots were surveyed from 1866.

The land rights, whether derived from land tenure systems where land is surveyed or unsurveyed, or whether the rights are registered or not, were based on the

"location" system<sup>42</sup> developed in the middle of the last century. This system developed incrementally in response to the steady advance of the colonial military and legal machinery into former Xhosa territory. The early administrative system is still relevant today, as these locations became the key administrative units in all black areas throughout the twentieth century.<sup>43</sup>

Individual forms of tenure (quitrent and freehold) were introduced in the locations reserved for blacks during 1970s, but forms of modified "communal" tenure were also retained where some groups favoured it. Thus, in most districts of the Amathole region, a mixture of individual and communal systems has survived to this day, albeit highly modified over time to suit the prevailing policies of the Cape colonial government and, later, successive South African regimes. The administrative and legal framework evolved gradually to regulate and manage black land tenure and to control black occupation of white-owned farms.<sup>44</sup>

The policy of "reserved land", as embodied in the Land Act of 1913,<sup>45</sup> was thus, not new in the Eastern Cape but rather a continuation of the reserve system that developed during and after the frontier wars.

In terms of the 1913 Land Act, additional land was recommended for acquisition for black occupation, but it was not until the passage of the Black Trust and Land

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<sup>42</sup> In 1893, locations were established in the region between the Great Fish River and the Kei River, which became known as the Ciskei. Later renamed "administrative areas". residents themselves identify their areas of residence according to these areas, which are similar to farm names.

This system was developed by the colonial government to accommodate the Mfengu groupings (in present-day Peddie, Victoria East and Keiskammahoek districts) who assisted the British in the colonial wars that led to the large-scale expulsion of the Xhosa from the area west of the Kei River. It was also used to control the remnants of the Xhosas who remained behind in the colony in the present-day King William's Town, Stutterheim, Cathcart and East London districts<sup>42</sup>.

<sup>43</sup> ADM *LRSP* (2005).11.

<sup>44</sup> ADM *Land Reform and Settlement Plan* (2005) 31.

<sup>45</sup> Act No. 27 of 1913.

Act of 1936<sup>46</sup> that this was made possible. In the Amathole district (see the attached map) in annexure 5, the "locations" that were defined in the last century remained largely unchanged until the 1970s. It was only then that the South African Development Trust (SADT) purchased significant tracts of additional land for black occupation. Thus, for over a century, no additional land was acquired and rural blacks in the Amathole district were squeezed into the reserved locations that were set aside when the area was originally colonised. Under these circumstances, many black families bought farms, but later lost them due to mortgage foreclosures or forced "sales", or they were bought out by the SADT.<sup>47</sup>

These racially based legal restrictions to land access by blacks caused ever-increasing population pressure in the small pockets of reserved black settlements. It is, therefore, not surprising that all official forms of tenure became highly dysfunctional. Commonages were sacrificed to residential settlement, and eventually, betterment policies were implemented to rationalise land use. This involved villagisation<sup>48</sup> and the further loss of commonage and arable lands to the longer-term occupiers. Conflicts over land became more and more prominent, as long-term occupiers, especially those with some form of title, lost control of the grazing lands.

It was only in 1936 that the second Land Act, allowing for additional land to be purchased for black occupation, was passed. This was known as the Natives Land and Trust Act, 1936.<sup>49</sup> It defined areas that would be 'released' for additional black occupation. The land to be released was a good deal less than originally recommended by the Beaumont Commission. It was in terms of these provisions that large areas of land in the King William's Town district, in particular, were released for incorporation into Ciskei, but also in the East London district (e.g.,

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<sup>46</sup> Act No. 18 of 1936.

<sup>47</sup> *ADM Land Reform and Settlement Plan* (2003) 12.

<sup>48</sup> Villagisation refers to use of land for settlements only (creation of villages) and not for grazing purposes.

<sup>49</sup> Act, No. 18 of 1936.

Chalumna, Mount Coke and Needs Camp areas), Stutterheim (e.g., Heckel and land in the south), Cathcart (Goshen), Keiskammahoek (e.g., municipal area) and Middeldrift (e.g., municipal area). Larger blocks of land subsequently became known as "released areas" or RAs.

The passage of Proclamation R188 of 1969, on which the present administration of black land rights remains based in the former Ciskei, epitomised the high mark of repressive state control of the black rural areas. It coincided with intensified state intervention in these areas through Tribal and "Community" authorities. This was the culmination of attempts to draw the various tenure and administrative systems under centralised control in terms of a single piece of legislation. Thus, all the different forms of tenure in the Ciskei are regulated by this Act, which, however, absorbed many of the respective conditions that pertained to these systems historically.<sup>50</sup>

Thus, the conditions attached to quitrent and African freehold did not change substantially, but the administration thereof became subject to the increased powers of the state and its local adjuncts, that is, headmen and tribal authorities. In particular, the Act systematised the administration of the earlier piece-meal application of "certificates of occupation" or rights under Permission to Occupy (PTO) which became more rigidly regulated.

Thus, the "permit system" of tenure became the prevailing form of tenure and remains so today. However, it is important to note that Proclamation R188 of 1969 was never absorbed into the Transkeian legal framework except in respect of two formerly Ciskeian districts that were consolidated into the independent Transkei in 1976. Mqoke lists the district of Cacadu and Herschel as areas in which

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<sup>50</sup> Amathole District Municipality *Land Reform and Settlement Plan* (2003). In the Transkei Proclamation No. 26 of 1936 as amended by the Transkei Land Amendment Act 4 of 1968 applied in respect of the unsurveyed areas of the Transkei.

Proclamation No. R188 of 1969 applied, and those listed areas became part of Transkei on 1 December 1975.<sup>51</sup>

The quitrent system was the most widely used form of individual tenure for Ciskeian blacks (meaning, historically, those blacks who lived west of the Kei River). Quitrent tenure received general authorisation under the Native Locations Act of 1879. It provided that the Governor might divide a portion of a location into lots and grant titles for them on an individual quitrent tenure and could reserve land near them as commonage for the pasturage of stock belonging to the occupiers of the lots. However, the practice of granting quitrent title had a much longer history and can be traced to various location schemes and mission stations from the late 1840s.

It was part of the Cape's "assimilationist" policies of the time, in terms of which the Cape colonial authorities attempted to break up tribal rule and bring blacks under direct colonial government. It appeared to offer the dual advantage of 'modernising' African societies and generating a flow of revenue for the state. Thus, individual land holders became tax payers and land owners, but a key condition of quitrent title was that titleholders could not alienate the land without the permission of the Government.<sup>52</sup>

The Glen Grey Act of 1894 was passed to provide a new framework for individual tenure, combined with a system of local government and provisions that made it legally impossible for title holders to accumulate more than one surveyed plot. Newlands (EL), Mbems (Keiskammahoek) and Kwelerana (King William's Town) were surveyed in terms of this Act, but most other titles in the Amathole region were issued prior to this and are known as "Sir George Grey titles". In the former Transkei, eight districts were surveyed as a result of the passage of the Glen Grey

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<sup>51</sup> R B Mqeke *Basic approaches to problem solving in customary law, a study of conciliation and consensus among the Cape Nguni*, (1997) .91.

<sup>52</sup> ADM *Land Reform and Settlement Plan*. (2005).

Act, but for various reasons, the surveys were carried out in terms of Proclamation 227 of 1898 and not the Glen Grey Act.

From 1869, more systematic surveys of locations for individual tenure were carried out, but the government did not pay for the survey fees. Surveyors had to make their own arrangements for payment from the occupants. Some locations in Keiskammahoek, Middledrift and King William's Town were dealt with in this way. Village and garden lots were surveyed but titleholders rarely took occupation of their lots in the village. Instead they built their homesteads on the commonage adjacent to their fields.

Cattle posts were also set up in the distant parts of the commonage, which gradually became the residence of one of their relatives. In practice, therefore, titleholders and their successors occupied three sections of land, though they were the legal owners of only one, and moreover, they held title to a village lot, which they had effectively abandoned. Beacons fell into disrepair over time, and commonage was cultivated. Transfers to successors were generally ignored. From 1875 to 1894, a large number of surveys were carried out, but in many cases, particularly in the King William's Town Division (which then included Keiskammahoek and Middledrift), no titles were issued.

Thus, from very early stages of the introduction of quitrent title, the system was problematic. In 1881, the Surveyor General<sup>53</sup> submitted a detailed report on the state of the individual tenure system. He pointed to a widespread failure of occupants to take up titles. Part of the explanation offered was reluctance to pay the costs of the survey and title. A great deal of other problems were raised, e.g., failure to transfer lots when original owners died and failure to pay quitrent. Lots had been abandoned, sold or given away without formal sanction.

Building lots remained unoccupied while houses were built on the commonage. The Surveyor General identified 'preference for tribal or common tenure' as one of

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<sup>53</sup> ADM *Land Reform and Settlement Plan* (2005).

the factors causing the break down in the individual tenure system. In many locations as well, 'customary systems of tenure' continued to operate, leading to the conclusion that colonial law existed in name only and that people continued to follow traditional land laws and customs.

However, Proclamation R188 of 1969 post-dated the self-governing status of the Transkei where the original legislative process was already absorbed into the new state machinery. Consequently, Proclamation R188 of 1969 has never operated in the Transkei where the original Proclamations remained in force. The exceptions are Glen Grey (Cacadu) and Herschel districts (former Ciskei districts for the reasons explained earlier in this section. (See annexure 1, 2, 3, and 4 dealing with legislation and land administration systems applicable to the areas of the current boundaries of the ADM).

The system of land administration reflected the state's position as land holder of all black-occupied land, under an initially paternalistic system devised in the Transkei, but which became increasingly authoritarian and repressive as state power increased. In reality, magistrates took decisions on the advice of the headmen, who were their "ears and eyes". The officers performing land functions below the magistrates were principally Land Officers in the Department of Justice, various grades of administrative officials and administrative clerks.

The Department(s) of Agriculture contributed the "arms, legs and eyes" of the system in the form of officers who were responsible for the field work aspects of land allocation (e.g.,, investigation of physical location of the sites and production of sketch maps) and land-use control (e.g.,, demarcation of approved sites in terms of agricultural regulations) as well as investigating a range of land-related conflicts. The administration, planning and development of the areas within the former Republic of South Africa, previously known as "black spots" or "State Land Areas", previously fell under the jurisdiction of the Department of Development Aid, with administrative distinctions between dense rural settlements or peri-urban settlements and agricultural settlements.

Within these areas, certain functions were also administered by the Department of Agriculture. Land was regulated in terms of Government Notices, Proclamations and Circulars. After the dissolution of the Department of Development Aid, these functions were transferred to the respective Provincial Administrations, in the case of the Border Region, to the Cape Provincial Administration. Subsequently, this administration was transferred to the District Councils, hence, the Amatola District Council, now known as the ADM.

During 1993, a commission was appointed by the Department of Regional and Land Affairs to evaluate Proclamation R188 of 1969. This resulted in the repealing of certain legislation and regulations, with the revised Proclamation R188 of 1969 serving as the main legislation for land regulation.

Deeds Registries for Eastern Cape deeds are currently divided into three offices: Umtata, King Williamstown and Cape Town. In some cases, for example, the Mpopu district in Nkonkobe Local Municipality, the deeds information is distributed between the Cape Town and King Williamstown offices. There is no Office of the Surveyor General (SG) in the Eastern Cape, and all SG-related processes must be transacted in the Cape Town office of the SG.

No land-use legislation other than the emerging spatial and land-use management legislation for the country as a whole (rural and urban) exists for the communal areas.<sup>54</sup> The present writer is of the view that the enactment of the Land Use Management Bill<sup>55</sup> (LUMB) in its current form would also be difficult to apply to the communal areas in view of the predominance of the PTO system, where land-use

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<sup>54</sup> The emerging policy framework is currently contained within the Development Facilitation Act (DFA), which sets out normative planning principles for all land-use decisions. It is a move away from old planning approaches that emphasised controls. However, this legislation provides for new forms of tenure based on individual registration and ownership and is, therefore, difficult to apply in communal areas.

<sup>55</sup> Land Use Management Bill. 2002.

rights are issued to the individuals, and where land use is not separately regulated in terms of land-use zoning, as is the case in the freehold system. Spatial planning and land-use management principles envisaged in the LUMB would be equally difficult to apply in respect of the envisaged rights to be created in terms of the Communal Land Rights Act in its present form.

Land use in urban areas is regulated in terms of different laws, depending whether the town or township is in the former RSA,<sup>56</sup> Ciskei<sup>57</sup> or Transkei<sup>58</sup>, and with further breakdowns, for example, to distinguish different tenure systems, e.g., R293 tenure, freehold, leasehold, etc. The main regulatory mechanisms for land-use change applications are the Land Use Planning Ordinance (ex-RSA), Townships Ordinance (Transkei), and Land Use Regulation Act (Ciskei), each of which creates statutory land-use planning boards for the approval of applications. Each of these has its own distinct administrative procedures. (See annexures 1, 2, 3 and 4 of the different legislations and procedures applicable in former Transkei and former Ciskei areas.) The Development Facilitation Act with its Tribunal can supersede these acts in certain instances.<sup>59</sup>

Old legislation is still being used for land-use change applications, and the multiplicity of land-use planning institutions and legislation causes confusion and bottlenecks with regard to land-development applications. A particular problem that has beset the region where housing development projects are concerned is where land development involving a change of land use intersects with the off-register land-tenure regime. For a long time, the release of land for housing projects was regarded as a major cause for concern in terms of delivery, because it involves all

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<sup>56</sup> Regulation No. 1897 of 1986.

<sup>57</sup> Proclamation R293 of 1962.

<sup>58</sup> Township Ordinance No. 33 of 1934.

<sup>59</sup> This is being increasingly advocated as the authority to regulate land development in the Eastern Cape, but in reality, it cannot wholly replace the boards at this stage.

spheres of government, as well as the private sector, professional conveyancers and surveyors.

### **3.2 Urban tenure**

With the post-1994 restructuring of government departments and the dissolution of the former homeland administrations, land administration became, primarily, a functional area of responsibility of the Department of Land Affairs (DLA). It is no longer a functional area of responsibility of the provincially based agriculture departments, and nor are there district-level co-ordinating agents for land administration, such as performed in the past by the Magistrates and Land Officers under the Department of Justice.

### **3.3 Land-tenure reform programmes impacting on land rights in the ADM region**

The following programmes are currently being planned and implemented in the ADM region; however, land administration and land tenure are complicating factors. The current trend is towards privatisation, with the creation of individual registered titles to residential land, especially in new settlements or formalising settlements. Communal Property Associations are contemplated for commonages, with the alternative of municipal holding of such land. Tenure to arable land is generally individual in the older settlements. State redistribution of state or private farms to individuals continues to follow the Deeds and Cadastral systems.

It appears that the grand policy of apartheid, which was entrenched in the form of legislation through the Group Areas Development Act, 1955,<sup>60</sup> had devastating effect on social and economic development of particularly black South Africans. Dison and Mohamed<sup>61</sup> point out that in the beginning, the distinction was simply one between white and non-white. In the Transvaal Republic, in terms of the

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<sup>60</sup> Group Areas Development Act No. 69 of 1955.

<sup>61</sup> L R Dison and I Mohamed *Group Areas and their development* (1960) 14

Volksraad Besluit, 1855, no person other than a *burger* was entitled to own a property in the Transvaal.

All Coloured persons were specifically excluded from acquiring the *burger* right. Asiatics were similarly not entitled. The 1885 Law<sup>62</sup> provided that no member of the Coloured native races of Asia was allowed to own fixed property in the Transvaal Republic. Section 130 of the Precious and Base Metals Act, 1908,<sup>63</sup> commonly known as the Gold Law of 1908, prohibited all Coloured persons, including Asiatics, from acquiring any property rights, including acquisition of fixed property, in areas affected by the Gold Law.

Olivier<sup>64</sup> recognises that one of the basic problems facing land reform is the existence of legal pluralism, which permeates the total complex of land-related issues: forms of land control, town planning and deeds registration, as well as policy guidelines concerning urbanisation, settlement and development, to mention the most important ones.

According to Miers and Page,<sup>65</sup> legislation constitutes the single most important source of law in any society. Most government activity is carried on within the statutory framework. Section 2 of the 1996 Constitution<sup>66</sup> provides for the supremacy of the Constitution as the basis for statutory interpretation in South Africa. This means that all the laws that were promulgated before the 1996 Constitution will only be valid to the extent of their consistency with the principles enshrined in the Constitution.

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<sup>62</sup> Law No.3 of 1885.

<sup>63</sup> Precious and Base Metals Act No. 35 of 1908.

<sup>64</sup> N Olivier *South Africa in transition; urban and rural perspectives on squatting and informal settlement in environmental context* (1992),31

<sup>65</sup> D R Miers and A C Page *Legislation* (1990) 7

<sup>66</sup> Constitution of the Republic of South Africa Act No. 108 of 1996, section 2 provides:

“This Constitution is the Supreme Law of the Republic; law or conduct inconsistent with it is invalid, and the obligations imposed by it must be fulfilled.”

### 3.4 The evolution of the Land Reform and Settlement Plan

According to the White Paper on Local Government, through spatial separation, influx control, and a policy of “own management for own areas,” apartheid aimed to limit the extent to which affluent white municipalities would bear the financial burden of servicing disadvantaged black areas. According to Venter,<sup>67</sup> under apartheid, municipalities were perceived as the lowest level of authority in the political system, with very limited powers, which were exercised under strict supervision of the provinces and had no constitutional protection. Both the interim Constitution, 1993<sup>68</sup> and the 1996 Constitution<sup>69</sup> introduced new approaches to the local government system in South Africa. The 1996 Constitution, Chapter 7, outlines the powers and objects of a local government system in a democratic state.

In examining the transformation of local government, Venter<sup>70</sup> states that unscrambling the legacy of apartheid-driven local government structures was a major challenge facing local government during transition to the current dispensation. In his view, racial groups in South Africa were not only divided by law but also geographically, and ultimately, in terms of the nature and standard of typical municipal services.

As a background to the existing policies and legislative processes listed in the foregoing chapter, this chapter will give a thorough analysis of the theoretical framework underpinning municipal or government planning processes. David Gillingwater<sup>71</sup> describes planning as a unique and ubiquitous social activity, whose prime area of concern is the process by which decisions are made and implemented, together with the organisational framework within which that process takes place.

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<sup>67</sup> A Venter *South African Government and Politics* (1989) 105.

<sup>68</sup> Act No. 200 of 1993.

<sup>69</sup> Act No. 108 of 1996.

<sup>70</sup> A Venter *Government and Politics in the new South Africa* (2001) 107.

<sup>71</sup> D Gillingwater *Regional planning and social change* (1975) 31.

The present writer will argue that integrated development planning is at the heart of the Municipal Systems Act and is in agreement with Gillingwater<sup>72</sup> that the public planning process is characterised by the bending and manipulation of reality to suit certain class interests, as also stated by Karl Marx. This theory views planners as part and parcel of society's superstructure of authority-dependency relationships and that their view of society is necessarily and inevitably a distorted and selfish one. In this chapter the writer will show how the Municipal Systems Act, 2000<sup>73</sup> has responded to the theoretical framework reflected in the academic reviews. The ADM's Integrated Development Plan (IDP) was adopted in 2001 and complied with the provisions of section 34 of the Municipal Systems Act, 2000.<sup>74</sup>

In terms of the reviewed LRSP 2005/2006<sup>75</sup> the predecessor of the ADM completed its *Phase I* IDP in 1999.<sup>76</sup> One of the key actions required by the IDP

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<sup>72</sup> Gillingwater *Regional planning and social change* 70, states that "Public planning as a bureaucratic phenomenon can be described as ideological in the Marxian sense: as a process of distortion and mystification induced by bourgeois thought, and reified in practice through bureaucratisation and the process of embourgeoisment. According to the Marxian concept of ideology, public planning is alienated because it ascribes to plans and planning machinery a degree of power and characteristics which rightly belongs to that of the individual."

<sup>73</sup> Act.No.32 of 2000.

<sup>74</sup> Act No.32 of 2000.

<sup>75</sup> ADM *Land Reform and Resettlement Plan* (2005) , the following are the guiding principles of the settlement plan of Amathole:

"The following basic principles were established through the participative processes followed in the course of the Central Sub-Region LR&SP. These remain applicable:

- Equity: to ensure the equitable distribution of land.
- Address past imbalances: to redress past land imbalances and injustices through allocating land to the landless.
- Improve livelihoods: to improve the livelihood potential of beneficiary households in the process of land reform.
- Ensure sustainable development of the region: resulting in improved social, economic and political growth.

was the formulation of an LRSP for the Central sub-region of the ADM's area of jurisdiction, which comprised the six Magisterial Districts of East London, King William's Town, Komga, Stutterheim, Cathcart and Keiskammahoek.

This was done on the basis that the communities situated in this spatially defined area had identified the resolution of "land issues" and settlement needs as their top priorities. The Central sub-region's LRSP was completed in 2000 and formed the basis of a contractual agreement between the ADM and the DLA.

Following the transformation of local government in South Africa, and the assignment of new powers and functions to local and district municipalities in the Amathole district, the ADM embarked on a re-formulation of its approach to land reform and settlement development in 2003, as part of the process to review its first IDP, produced in 2002. Consequently, as one of a series of Sector Plans done as part of the IDP Review in 2002,<sup>77</sup> the ADM formulated a district LRSP. In 2004, the ADM initiated a mid-term review of the Plan, to feed into the revised IDP for the period 2005/2006.

The reviewed Plan sets out the revised strategic approach proposed by the ADM in undertaking its task of supporting local municipalities in its area of jurisdiction, as contemplated by section 83 of the Municipal Structures Act,<sup>78</sup> to meet the challenges of land reform and the management of land and land use for development in a sustainable and productive manner. Related to the Plan<sup>79</sup> is a District Spatial Development Framework, which integrates spatial proposals and key spatial development guidelines.

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- Affordable and sustainable levels of service: provided within a properly managed statutory framework."

<sup>76</sup> ADM *Integrated Development Plan* (2000).

<sup>77</sup> ADM *Integrated Development Plan* (2001)

<sup>78</sup> Act 117 of 1998.

<sup>79</sup> Amathole District Municipality *Spatial Development Framework* (2005).

The land administration and land tenure situation in the ADM area continues to be adversely affected by the poorly functioning land-administration system in the Eastern Cape. The relatively well-functioning Deeds and Cadastral systems impact on the poorly functioning systems in the former homelands manifested by a lack of integration at all levels.<sup>80</sup>

The 2003 review of the Land Reform and Settlement Programme<sup>81</sup> by the ADM has revealed that it has inherited the most difficult land-tenure system in the Eastern Cape, characterised by various forms of tenure reflected in annexures A-L. This has also been noted in the spatial and land-use overview of the area.

The analysis of the ADM's area further reveals different legal frameworks, which continue to apply to racially-based geographic regions, areas or former magisterial districts in respect of land administration, including the administration of different forms of land rights, as well as different processes for spatial planning and land-use management.

Land administration is viewed as the underlying administrative infrastructure that supports all processes associated with state, public and private land ownership and management. The argument is that the foundation for any land-tenure system is a sound administrative infrastructure; therefore, it follows that too much focus on land tenure policy and implementation, at the expense of building infrastructural capacity to administer tenure, will inevitably result in poor delivery or non-sustainability.

An important assumption underlying this investigation, and which will inform options for implementation, is that it is beyond the scope of the municipal government *on its own* to reform the scope and efficiency of land administration in its area. This is because there are key problems in relation to land-administration systems in all spheres of government, which impact on the services delivered by

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<sup>80</sup> Amathole District Municipality *Land Reform and Settlement Plan* (2003).

<sup>81</sup> ADM *LRSP* (2003).

the municipalities. The implication of this is that both the provincial and municipal governments must operate within the evolving national policy, as well as within the legal and institutional frameworks.

Options and solutions for change have to be framed within a holistic analysis that involves all spheres of government. This limits the ability of municipal government to impact on some of these problems in the short term, while on the other hand; creative or innovative mechanisms must be found for the administration of land and land tenure in the interim.

The post-1994 land-reform legislation, particularly the Communal Land Rights Act, 2004<sup>82</sup> seeks, *inter alia*, to redress a wide range of land rights, including off-register rights, such as PTOs, which are currently protected in terms of interim laws, or quitrent rights that may be upgraded and absorbed into the core system of land administration centring on the Deeds and Cadastral systems.

The poor cadastral cover and spatial information has a negative effect on land-development planning, spatial planning and land-use management. Extending the cadastral cover is not merely a matter of individual parcelling or ownership (which is not feasible, nor necessarily desirable at scale in the short to medium term) but should be viewed more broadly in relation to creating a network of accurately surveyed outer boundaries in order to improve the management of land. As indicated in annexures A-L, the ADM has inherited the lopsided pre-1994 spatial structure, which will take time to be resolved to the satisfaction of the policy makers.

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<sup>82</sup> Act No. 11 of 2004.

The broader *political and administrative systems and structures* within which the off-register rights originally nested have been largely disbanded in accordance with the Constitution and democratic governance, but the land rights created under these systems remain crucially relevant to the holders thereof. It is, therefore, impossible to “wipe the slate clean” and create a new system of rights without taking into consideration these existing rights, given that they represent the main form of evidence for landholding by the majority of citizens of the Eastern Cape: thereby, the necessity of the land-rights inquiry under the Act.

The new non-racial institutional functions, new non-racial administrative boundaries and the new constitutional mandates have been both innovative and adaptive. The new measure, however, is highly uneven and creates an element of unaccountability.<sup>83</sup> This has generally led to a glaring lack of integrated land-development programmes in some former homeland rural areas. This, in turn, manifests itself in the mushrooming of informal settlement patterns and land invasions in these areas as land administration is no longer contained within any formal organisational framework in the provincial government or any functioning legal framework.<sup>84</sup>

Presently there is a duplication of laws that operate in the Eastern Cape, for example, the public and private sector are using different laws to administer land in different parts of the Eastern Cape.<sup>85</sup> Land officers in charge of day-to-day management of land affairs make use of different land statutes inherited from various former homelands and thus, create a perception of inconsistency on the part of the consumer. This untenable position will come to an end when the Communal Land Rights Act<sup>86</sup> takes effect and is implemented in all parts of the province, but it will take a long time to put everything in place to promote implementation. At present, the majority of rural areas in the Eastern Cape have not yet been surveyed.

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<sup>83</sup> Creates a perception of unaccountability on the part of those responsible to drive the issues.

<sup>84</sup> This has been exacerbated by the lack of capacity, understanding and appropriate legal and policy instruments in the new municipalities to quickly extend their spatial planning and land-use management functions to their rural hinterlands.

<sup>85</sup> These laws, for example, include spatial planning and land-use management laws, municipal laws, laws controlling conveyancers and laws used to deliver land and land-use rights.

<sup>86</sup> Act No.11 of 2004.

## CHAPTER 4: THE LAND REFORM AND SETTLEMENT PLAN AND SPATIAL PLANNING LEGISLATION

### 4.1 Overview

In this chapter the writer gives an overview of the Land Reform and Settlement Plan (LRSP) and the related spatial legislation. He also touches on the key aspects of the institutional arrangements necessary for its operationalisation. The writer also highlights two significant developments in the Keiskammahoek district, which occurred in the context of the land-restitution programme, and sees additional land acquired in land restitution as a further spin-off to accelerate the LRSP, as well as dealing very briefly with issues of spatial policy and planning and associated principles.

The LSRP of the Amathole District Municipality (ADM) was developed with the understanding that strategic spatial planning should be seen as a tool to transform apartheid-based spatial relations; thus, making urban and rural settlements environmentally sustainable. This is an attempt to address the ongoing challenge of apartheid's historical, spatial structuring of the settlements. The present writer has misgivings about the ADM's strategic planning with regard to efficiency and spatial equity. This is because municipalities, in seeking to address the challenge of apartheid's spatial forms, are placing an increasing emphasis on "integrated human settlement" in order to prioritise the housing needs of the poor.<sup>1</sup>

After the completion and implementation of the Central sub-region's LRSP in late 2000, a new system of local government, which is founded on the concept of wall-to-wall local municipalities that "overlap" with a single district municipality, was brought into being. This system is shaped and guided by a number of laws,

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<sup>1</sup> South African Cities Network *State of the Cities Report* (2006) 6

principal amongst these, the Municipal Structures Act 1998<sup>2</sup> and the Municipal Systems Act 2000.<sup>3</sup>

One of the key consequences of the new approach to local government is the “split” between the functions assigned to local municipalities and those assigned to a district municipality within whose area of jurisdiction local ones are located. These functions relate to the core roles and functions of local government *per se*, as set out in the relevant sections of the Municipal Structures Act, and are assigned to either a local municipality or a district municipality by the MEC for Housing, Local Government and Traditional Affairs in the Eastern Cape, or the national Minister for Provincial and Local Government. Clearly, as noted above, land reform is a functional competency of the national Department of Land Affairs (DLA). However, it has been this department’s policy to seek to implement the delivery of land reform products at the local level of governance, where this is most appropriate.

In the conception of the Central sub-region’s LRSP in 2001, it was decided that the appropriate components of land reform where the local sphere of government would be principally involved would relate to their constitutionally assigned functions of municipal planning and the practice of “developmental” local government. This refers to those functions relating broadly to settlement planning and land-development processes, infrastructure development, and local economic development.

Therefore, where local government bodies become involved in the delivery of land reform, these processes are to be implemented on an agency basis, subject to a formal agreement between the principal, being the DLA, and the agency body, being a local or district municipality.

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<sup>2</sup> Act No. 117 of 1998, hereafter referred to as the Municipal Structures Act.

<sup>3</sup> Act No. 32 of 2000, hereafter referred to as the Municipal Systems Act.

As a result of this high demand, the issue of land reform and agriculture was noted in the Integrated Development Plan (IDP) as a land development objective (LBO) to be catered for through a specifically developed plan – namely the LRSP of 2000. The current LSRP, therefore, had its origins in the Integrated Development Planning process completed in the Amathole District in 1999. The plan was then used by the ADM to secure funding of R 33 million from the DLA for identified key projects.

The six goals set out in the LRSP are broad and non-prescriptive:

- the redistribution of land to achieve an equitable distribution of land access and ownership among all of the region's people;
- the reform of land-management administration in order to facilitate development and opportunities on communal or state-managed land;
- the creation of livelihood opportunities for rural and urban people through the development and utilization of land;
- the provision of options and choices for the landless within a framework of affordable and sustainable settlement types;
- the development of the regional economy through more effective land use and a stronger agricultural sector, and
- the facilitation of a land-reform programme as a priority goal for the district council and its constituent stakeholders and partners.

These goals provide one criteria against which implementation of the LSRP can be assessed. It needs, of course, to be kept in mind that it was drafted at a time when the distribution of local government functions and responsibilities were somewhat different to what they are today. During the transitional period of local government, the then Amatola District Council was responsible for two functions with regard to land reform, namely, to plan for the area of the district as a whole and then provide direct administrative support in the implementation of projects to the then Transitional Rural Councils.

In terms of the second function, the then District Council implemented and administered land-reform projects that had been identified through its IDP and the LRSP directly. Under the new dispensation, however, this has changed.

There are now wall-to-wall municipalities incorporating both rural and urban areas, with support provided by the ADM to local municipalities under its jurisdiction now being both direct and indirect. Direct support to local Category B municipalities by the ADM will now have to be clearly defined, and based on an agreement entered into between the local municipality and the district. Indirect support relates to the building of capacity at the local level to enable that level to take over planning and implementation activities – i.e. many of the functions previously carried out by the district.

As a consequence of these changes, the ADM is not planning to invest in and built up a large administration function in relation to land and settlement itself, since this responsibility has now shifted to the local level. The ADM does, however, plan to provide support to the local level if requested, and only until capacity has been developed at local level so that it can perform functions itself. It is clear that at this point, no local-level municipalities have the capacity to take on land administration and project implementation in the jurisdictional area.

Finally, what implication these changes in local government hold for the status of the expanded LRSP, the development of which is being driven by the district, are yet to be seen. Local municipalities, for example, need to take up the relevant components of the LRSP in their IDPs.

## **4.2 Institutional arrangements**

Both the ADM and the DLA have been central players in the ‘creation’ of the LRSP for the Central sub-region – the ADM in terms of locating land reform as a Land Development Objective (LDO) within its IDP, and DLA in terms of providing the

planning grant to develop the plan, and R33 million for implementation of its key projects.

Within the ADM, the land-reform programme falls under the Social Needs Cluster and the Land Reform Unit within the cluster. Previously staff in Land and Housing fell under Planning and Engineering, but with the plan being put in place, the new unit was formed. The Land and Housing Unit also includes legal staff. This unit is also part of a cross-departmental team, which includes engineering and environmental health.

In terms of the projects funded by the DLA grant, there is an internal team working as well as project specific meetings with service providers, relevant communities and local authorities. There is also an internal reporting process, particularly in relation to expenditure, and an internal projects coordinating committee.

The institutional changes undertaken at the ADM have, to date, been inadequate in addressing the capacity requirements of the LRSP. At this point, Amathole does not have adequate capacity to deal with the projects it already has on the books, and has no systems or capacity to deal, for example, with issues relating to commonage management and land administration.

A part of the reason for not addressing this need has been uncertainty in the local government arena since December 5, 2000 Local Government elections. There was a lack of clarity as to what the final local government structure and distribution of responsibilities and functions would be. As a result, there was a reluctance to make investment in functions that may well end up devolved to other levels. Now, within the Amathole district, the assignment of powers and functions to the various local municipalities and the ADM in the first quarter of 2003<sup>4</sup> has resulted in the need to re-conceptualise the roles each of these authorities would play in the delivery of land reform and the management of land use and land-development processes.

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<sup>4</sup> Amathole District Municipality *LRSP* (2001).

More importantly, those functions of local government relating to municipal planning are specifically assigned, *in the first instance*, to the local municipalities in the Amathole district. The core function of the ADM in relation to settlement planning, planning for land development and land-use management is, therefore, to build “the capacity of local municipalities in its area to perform their functions and exercise their powers where such capacity is lacking.”<sup>5</sup>

The consequence of this clarification of the powers and functions of local municipalities in relation to the district municipality as far as the Amathole district’s LRSP is concerned is that the principle role in driving land-reform processes and initiating land and settlement planning now resides with the local municipalities. The ADM would only be involved in these functions in instances where local municipalities make specific requests for their support and/or intervention. Such support would be rendered in accordance with explicit agreements relating to the scope and nature of the involvement required of the ADM.

In summary, the links between the ADM and the local municipalities within the district as they relate to land reform has resulted in the following changes to the approach adopted in the Amathole district’s LRSP:

- ♦ It focuses on establishing a common strategic approach to the key problems and issues related to land reform and settlement-development processes in the district;
- ♦ Spatial areas are identified as proposed areas for intervention and, in relation to these, certain land-reform and settlement planning projects are proposed. These, however, are not included as core elements of the LRSP but, rather, are seen as proposals to be considered and adopted by the local municipalities in the district.

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<sup>5</sup> Section 83(3) (c) of the Municipal Structures Act, as amended.

- ♦ As such, these spatial proposals are included in a District Spatial Development Framework,<sup>6</sup> which serves as an indicative and flexible guide to the proposed spatial arrangements and implications emanating from an integrated consideration of sectoral development priorities at the district level.
- ♦ For the purposes of the client body, the ADM, the LRSP focuses on formulating proposals that would enable the ADM to clearly conceptualise and operationalise its core capacity building and support functions in relation to the delivery of land reform and settlement planning projects.
- ♦ It is to be emphasised that this does not mean that the ADM is withdrawing from the arena of land reform but rather that it sees its future role in the first instance as a support agency rather than an implementing agency.<sup>7</sup>

A number of developments involving four pieces of legislation have occurred since the drafting of the LRSP in 2003, which impact primarily on issues of tenure reform, land administration and the capacity of various spheres of government to carry out the planning and management of the implementation of land-reform projects.

All of the four laws involved interlink either directly or indirectly to the Municipal Structures and Systems Acts and are noted as follows: -

- The promulgation of the Communal Land Rights Act, 2004<sup>8</sup> (hereinafter the CLaRA). CLaRA is cross-linked to the Traditional Leadership and Governance Framework Amendment Act, 2003<sup>9</sup> (hereafter the TLGF).
- The successful lodging of restitution claims to land rights lost as a result of betterment in terms of the Restitution of Land Rights Act, 1994<sup>10</sup> in two areas of the former Ciskei, and the campaign to have these results replicated in all Eastern Cape former homeland areas.

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<sup>6</sup> Amathole District Municipality *Spatial Development Framework* (2004).

<sup>7</sup> It is important to note that projects currently being implemented by the District Municipality would be seen through to finality in terms of prevailing contractual agreements.

<sup>8</sup> Act No.11 of 2004.

<sup>9</sup> Act No. 41 of 2003.

<sup>10</sup> Act No. 22 of 1994.

- The Intergovernmental Relations Framework Bill was introduced into Parliament in early February 2005.

Municipalities have the functional responsibility for spatial planning and land-use management, and for a number of functions that links with land administration. Given the imperative to upgrade land rights in rural communities within the framework of municipal spatial planning and land-use management plans, the implementation of the land laws referred to above will require inter-governmental co-operation if these are to be successfully implemented and managed post-implementation.

#### **4.3 The issue of restitution in cases of betterment planning**

Two precedent-setting restitution Settlement Agreements in the Keiskammahoek magisterial district (KKH), the Chatha Settlement Agreement and the Keiskammahoek Communal Areas Settlement Agreement, demonstrate the central importance of municipalities in land development and planning stemming from land reform. These two Settlement Agreements created a precedent-based policy situation that now means *de facto* that land claims in respect of loss of land rights and related losses in cases where so-called betterment planning was carried out in rural settlement areas in the apartheid era are accepted as valid claims.

Of greatest direct relevance for the present review of the LRSP is the fact that, in the case of the two Keiskammahoek claims, the Settlement Agreements have involved the transfer of development funds to the ADM. A number of problems, have, however been encountered with the implementation of these agreements.

The problems encountered in implementing restitution settlements in KKH (as well as tenure reform projects in other communities with overlapping land rights, such as Mgwali) provide evidence of lack of municipal capacity to deal effectively with integrated development flowing from land reform, particularly in cases of restitution awards and land-tenure upgrading.

Existing problems with planning and implementation-management capacity will escalate if capacity constraints are not addressed in the LRSP. If CLaRA becomes operative in the Eastern Cape, these capacity challenges will prove to be even much greater. In the light of the above, the application of CLaRA and the possible successful settling of betterment claims in many other areas in the future will affect the planning, budgeting and implementation prioritisation set out in the LRSP.

It seems inconceivable that neither CLaRA nor new betterment claim settlements will be implemented within the five-year lifespan of the present LRSP. Nevertheless, the need to anticipate these changes and upscale delivery of current LRSP projects suggest that strengthening of municipal capacity should be set in motion during the lifespan of the present LRSP.

#### **4.4 Spatial policy approaches and planning principles**

In line with the principles contained in the Development Facilitation Act (DFA), the spatial planning proposals contained in the Eastern Cape Provincial Spatial Development Plan, and the ADM's IDP (2002/2003)<sup>11</sup> and Water Services Development Plan (2000), reflect the shift from control-orientated planning to normatively based (i.e. principle-led) planning. Practically, this means that these plans contain substantive principles (norms) that are to guide land development and decision-making as opposed to prescriptive provisions.

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<sup>11</sup> Amathole District Municipality *IDP* (2003).

#### 4. 5 Spatial management approach advocated by the Provincial Spatial Development Plan and the ADM's IDP (2002/2003)

In the formulation of a strategic spatial-development management approach, the IDP takes into account the following unique spatial characteristics and development issues:

- **Settlement Hierarchy:** Investment should strategically focus at three levels of support as set out in the EC Provincial Spatial Development Plan.
- **Accessibility:** The location of regional investment programmes must promote greater accessibility to resources for the poor.
- **Flexible Zoning:** Zoning must be used to encourage special kinds of spatial investment in particular areas
- **Resource Sustainability:** The ADM should always monitor the use of resources and ensure the minimisation of environmental impacts in its projects.
- **Restricted Development Zones:** Utilizing the framework as set out in the Provincial Spatial Development Plan the ADM should ensure development does not occur in areas earmarked as environmentally sensitive (such as wetlands, state forests, dune systems, river estuaries, within 30 meters – or within 1:100-year flood lines – of water courses and major rivers, game and nature reserves, slopes steeper than 1:6, and on heritage sites).
- **Spatial Integration:** Development must encourage maximum spatial benefits and the integration of communities, as well as the economies of space.

Accepting that it is every South African citizen's constitutional right to receive basic services and have their basic development needs met, the Spatial Development Plan proposes the following spatial-economic strategy:

- That investment be focused and targeted at areas where optimum returns could be expected to generate further spin-offs.

To achieve this, the plan proposes that investment is focused in existing settlement areas and along major routes (reinforcing corridors) linking these areas to each other and their respective hinterlands. In this way, it promotes the identification of

nodes and corridors with opportunity and targets development initiatives that engender consolidation of settlement areas to facilitate cost-effective development / optimised returns on investment.

Accordingly, it is felt that there needs to be a policy, which would set criteria for investment in services, infrastructure and housing, so that what might be termed a *differential levels of services choice approach* is adopted. This would see criteria being applied, which would result in focused investment in areas where settlement could be encouraged, and the minimum of investment in areas where settlement should be discouraged.

#### **4.6 Social principles established through consultative processes in the LRSP process**

The following basic principles were established through the participative processes followed in the course of the Central sub-region's LRSP. These remain applicable:

- Equity: this seeks to ensure the equitable distribution of land.
- Redress past imbalances: this is intended to redress past land imbalances and injustices through granting land to the landless.
- Improve livelihoods: this principle seeks to improve the livelihood potential of beneficiary households in the process of land reform.
- Ensure sustainable development of the region: to improve social, economic and political growth.
- Affordable and sustainable levels of service: it is envisaged that this will take place within managed statutory framework.
- Participatory and transparent processes: this also flows from the principles of the DFA.

#### 4.7 The ADM's assigned powers and functions

As noted above, one of the most significant changes in the approach to the current settlement plan has been the need to take into account the new configuration of assigned powers and functions between the ADM and the local municipalities within its area of jurisdiction.

With specific reference to the implementation of land-reform initiatives, the following assignment of functional competencies applies: -

- ♦ In the first instance, land reform is a functional competency of the national DLA; however, provincial or local government bodies are able to undertake land-reform actions (i.e., specific planning and project implementation actions), where this is mandated by a formal agreement between the relevant organisation and the DLA, which remains the custodian of land reform *per se*. Typically, aspects of the LRSP that are specifically affected by this are tenure reform, land administration, and land-redistribution tasks.
  
- ♦ In contrast to the broad sweep of land reform, local spatial planning, development planning and settlement development are a local municipal competencies, which are seen to be assigned in terms of the requirement of municipalities to engage in developmental local government and municipal planning.

On this basis, it is clear that the key to the successful implementation of the LRSP in the Amathole district will be the process of defining appropriate planning and implementation agreements between the DLA, the ADM and the local municipalities.

However, for the purposes of the LRSP, the aim is to provide an integrated situational analysis, development framework and district spatial development framework to guide land reform and settlement development. Consequently, the

ADM and the local municipalities are likely to have different objectives, strategies and projects as defined by their powers and functions.

Land-reform issues within the Amathole area encompass a complex array of challenges and problems located within the spheres of land access, land tenure, and land administration.

A review analysis of the land-reform issues in the Amathole area has resulted in the following broad conclusions that:

- There is a general acceptance of the spatial planning framework as set out in the LRSP.
- Due to the improved DLA programme delivery, the pace of land reform in the Amathole area has increased substantially over the last five years; however, the pace is still a long way from addressing national land-reform targets set by DLA, nor is it significant enough to be considered successful by the communities within the ADM area.
- Many of the achievements in land reform are focused on certain geographic localities and on certain types of interventions, to the neglect of other areas and other components of the land reform set of issues.
- Land-redistribution planning needs, identified through the situation assessment, were mainly focussed in certain areas excluded from the central LRSP in 2000. These areas are situated in Ngqushwa and Nxuba.
- The implementation capacity remains a key constraint to the successful achievement of land-reform objectives in the area. The major concerns that have emerged regarding the plan relate to the level of communication around it and the rate of implementation. Implementation limitations have been exacerbated by the lack of practical experience in land reform by staff; shortage of staff; and lack of clarity over roles and functions.
- Critical issues needing attention within the land-administration system remain: the identification of the legislative and regulatory framework; the uncertainty

and tensions over municipal and traditional leader roles; a range of boundary issues; and commonage management.

- *Tenure insecurity* continues to be highlighted as an issue despite various interim protection mechanisms. It is clear that the promulgation of the Communal Land Rights Act in 2004 is intended to address some of this insecurity in communal land areas. However, the coming into effect may take a little longer due to logistical reasons. Under these circumstances the demand for `title', in whatever form, appears to have remained prevalent.
- Land reform is closely connected to the process of developing livelihoods<sup>12</sup> **and land productivity**. However this aspect appears to be somewhat weakly integrated into existing land reform and settlement initiatives. Projects appear to address beneficiary needs either in terms of housing or in terms of livelihoods, but seldom both.
- The fact that planning and implementation of land reform is complex has led to the conclusion that one of the fundamental challenges is a clear and workable *institutional framework* for the delivery of land reform in its various components throughout the district.
- In essence, the key question in response to the key land-reform issues within the Amathole area is: What can ADM and the municipalities achieve and what do they wish to try and address in terms of the LRSP? The context for this consideration is an assessment of the opportunities and constraints provided by the legal framework of powers and functions, the institutional capacity, and the political will-power to drive these strategies.

Related to this, are the following concerns arise from the District Spatial Development Framework:

- broad proposals on the spatial definition of areas or zones where project and programme support for land reform, land and settlement development, and related support interventions are prioritised;

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<sup>12</sup> Livelihood refers to forms of making a living. Examples are crop production and animal farming to generate income and support families by ensuring the availability of food.

- a description of the principles and criteria applied in identifying the prioritised zones for land reform and associated planning actions;
- spatial informants and inputs derived from, principally, the integrated Environmental Management Strategy for the Amathole District, the District Integrated Transport Plan, the District Local Economic Development Strategy, and the District Integrated Waste Management Strategy.

#### **4.8 The mechanisms of planning processes in communal areas**

The notion of wall-to-wall municipalities necessitates the implementation of development planning processes envisaged in the Municipal Systems Act<sup>13</sup>.

The key objective of the local planning process is to establish a framework for future development in order to facilitate livelihood developments and to provide for sustainable settlements. The second priority is to provide the basis for the development of effective local land administration and decision-making over appropriate titling options.

It is suggested that the process would follow the steps below:

- The surveying and mapping of local resources (development potential).
- The surveying (utilizing GPS technology) and mapping of local land uses and land rights claims (household sites, arable land, public-use sites, business sites, and communal grazing lands).
- The establishment of a developmental vision for the locality approved by all local role players.
- The identification of development needs and project opportunities for the village(s).

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<sup>13</sup> Municipal Systems Act No. 32 of 2000, s 16 (1) states that: "A municipality must develop a culture of municipal governance that complements formal representative governance with a system of participatory governance".

- The resolution of land rights' disputes within the framework of this development vision.
- The identification and demarcation of settlement land within the village(s), which will consolidate existing patterns for development purposes, and make provision for future growth. This land should be accepted as the only area in which settlement will be allowed or serviced.
- The identification and demarcation of sites for village services, community projects, private business and other public facilities needed.
- Where relevant, the identification and demarcation of village lands as agricultural to be used for communal grazing or productive agriculture.
- The drawing up of a commonage management (land administration) plan and the establishment of a commonage management (or land use management) committee (in terms of current commonage policy).
- Establishing a settlement and land development framework.

## **CHAPTER 5: THE ROLE OF TRADITIONAL LEADERSHIP IN THE IMPLEMENTATION OF THE LAND REFORM AND SETTLEMENT PLAN AND A DISCUSSION OF THE CO-OPEPARTIVE GOVERNANCE FRAMEWORK**

### **5.1 The role of traditional leaders**

#### **5.1.1 Overview**

In this chapter, the writer sees an important role for traditional leadership at all levels for the success of the Land Reform and Settlement Plan (LRSP) in the rural areas and also discusses that role in the light of constitutional imperatives and relevant legislation. This traditional leadership role is traced from the historical point of view.

#### **5.1.2 Brief historical perspective**

In the apartheid era, traditional leaders were used by that regime to promote homeland politics. Hendricks and Ntsebeza<sup>1</sup> correctly point out that colonialism had caused fundamental damage to the role of chiefs and has transformed them from being independent representatives of various people into government officials, appointed by colonial power and paid salaries.

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<sup>1</sup> F Hendricks and L Ntsebeza *“Chiefs and rural local government in post-apartheid South Africa”* (1999) 4 .1 *African Journal of Political Science* 99.

According to Beinart,<sup>2</sup> many of those who held power in the homelands or Bantustans were descendents from, or claimed descent from, old chiefly lineages. Yet, these areas have undergone far-reaching changes in the last century; their people became deeply dependent on wages even where they retained access to rural plots and stock. Chieftaincy, as a hereditary institution, hardly seems an appropriate institution to represent and govern a migrant labour force, much less those hundreds of thousands, now millions, of people who were resettled in rural towns. Laurence<sup>3</sup> outlines the historical perspective of resistance by the chiefs against colonialism by stating that, in the Transkei itself there was the defiance of colonial authority by the Gcaleka chief, Sarili, in the war of 1877-78 and the rebellion of the Mpondomise chiefs, Mhlontlo and Mditshwa in 1880.

Further afield there was resistance in the Transvaal from the Pedi chief, Sekukuni, and in Zululand from the Zulu chief, Cetshwayo. Again in Basutoland, there was another resistance from Basuto chiefs in the Gun War of 1880. The impact of these wars was to make the chiefs suspect in the eyes of the Cape government, the more so as the Cape has burnt its fingers badly in the Gun War. Chiefs were later to be seen in a different light as a means of prolonging white rule, but that was only after their power had been broken and their status reduced to that of government stipendiaries.

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<sup>2</sup> W Beinart *et al Segregation and Apartheid in the Twentieth-Century South Africa*(1995) 177 argue that critics of Bantustan policy viewed chieftaincy as an imposition. The apartheid government resurrected a spent institution as part of its attempt to extend self-government to the reserves. It is widely recognised that the current form of chieftaincy was entrenched in the early apartheid era of the 1950s when government officials, accompanied by anthropologists and black information officers, scoured the rural districts for remnants of chiefly lineages.

<sup>3</sup> P Laurence *The Transkei: South Africa's politics of partition*(1976).18 points out that after the annexation of Pondoland in 1894, the Transkei was divided into three chief magistracies of Thembuland, Griqualand East and Transkei, beneath the magistrates and directly responsible to them, were location headman, who were paid officials of the white governments of the Cape and, later South Africa. They were not seen by the Xhosa as part of the old chieftainship system but as paid government functionaries.

Bennett<sup>4</sup> states that the colonial tendency to describe all African rulers as “chiefs” obscured the diversity of political structures that actually existed in Southern Africa. What today might seem an alarming concentration of power in one person was, however, tempered by the fact that traditional leaders<sup>5</sup> were neither autocratic dictators nor faceless bureaucrats. According to Bennett, they were fathers of their nations and they were talked about in the idiom of kinship. The legitimacy of indigenous leaders, their efficiency and their integrity varies from individual to individual and from area to area, and so too, does the degree of control that the state exercises over them.

Many have a reputation as stooges of the apartheid regime, and many are said to be inefficient and corrupt. According to Vorster<sup>6</sup>, traditional government is grounded on the belief that the power of ruler was from time immemorial informed and maintained by the ancestors. Legitimacy to rule was thus, based on ‘sacred’ traditions.

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<sup>4</sup> T W Bennett *Human Rights and Customary Law* (1995). 67 states that “traditional leader’s rule was circumscribed only by a vague duty to act for the benefit of his people. The more significant limitation on his power was imposed by practical politics. Most African polities were poised halfway between being state and stateless societies, which meant that they were constantly subject to the tensions of both centripetal and centrifugal forces. Whoever currently wielded the power would invariably be challenged by rivals, who in turn will gain power and consolidate their strength, but would eventually lose control to new competitors. These tensions explain why the African ruler’s power was never in the past absolute”.

<sup>5</sup> Masika *Locating the institution of traditional leadership within the institutional framework of South Africa’s new democracy*, (MA Thesis Rhodes University 2001) 34 refers to traditional leadership as “authority that is based on the belief in sacred traditions in force since time immemorial and the legitimacy of those who are called to govern by said traditions. Tradition includes a whole range of inherited culture and way of life; a people’s history, moral and social values and the traditional institutions, which survive to serve those values. It can be said, therefore, that traditional leaders are leaders who rule and govern their societies based on traditional practises and values of their respective societies. These are the leaders who governed pre-colonial African polities”.

<sup>6</sup> L P Vorster *The institution of traditional leadership* (2002) 127 Vorster states that the idea of long history gave rise to perception of traditional government being static, unprogressive and incapable of development.” Traditions were mostly products of codification, petrification and coercion under colonial rule, missionary activity and post-colonial state formation. Traditional authority is legitimate because it is related to the traditions rooted in the ancestors”.

However, Lungisile Ntsebeza argues that a fundamental contradiction exists in the South African Constitution in its attempt to accommodate a role of the institution of traditional leadership and its incumbents in a liberal democracy, based on multi-party principles and representative government. He further points out that:

“notions of multi-party democracy and decentralisation are in direct contradiction to the operations of traditional authorities, as such institutions are made up of hereditary leaders, the possibility of people choosing or electing their representatives is automatically eliminated.”<sup>7</sup>

The current local government reform policy in rural areas is based on section 151(1) of the Constitution, which stipulates that:

“The local sphere of government consists of municipalities, which must be established for the whole of the territory of the Republic.”

The policy on rural local government is guided by the constitutional requirement that the local sphere of government should consist of municipalities. Over and above traditional service delivery and regulatory functions of municipalities, the Constitution enhances the powers and functions of local government by placing greater prominence on the role of local government in supporting socio-economic upliftment. Section 153 of the Constitution stipulates that a municipality must:

“Structure and manage its administration and budgeting and planning processes to give priority to the basic needs of the community, and to promote the social and economic development of the community.”

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<sup>7</sup> L Ntsebeza *Democracy Compromised: Chiefs and the politics of land in South Africa* (2005).22.

According to Ntsebeza<sup>8</sup>, prior to the first democratic elections in 1994, municipalities existed only in urban areas. There were no municipalities in rural areas and municipal functions, such as service delivery, were provided by unelected traditional authorities, who acted as representatives of relevant government departments. This is confirmed by Koyana<sup>9</sup> by referring to the Transkei Constitution Act, 1963,<sup>10</sup> which allowed chiefs to have 75% representation in the Transkei Legislative Assembly.

The Transkei Legislative Assembly passed the Transkei Authorities Act, 1965<sup>11</sup> whereby regional authorities consisting of chiefs and headmen and prominent members of the communities were entitled to make by-laws. If these by-laws were approved by the Prime Minister, under whose Department tribal and regional authority fell, they then had the force of law and were published in the *Government Gazette*.

In the post-1994 political dispensation, traditional leaders are recognised in section 211 of the Constitution of the Republic of South Africa<sup>12</sup>, which stipulates that the

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<sup>8</sup> L Ntsebeza *“Traditional authorities, local government and land rights”* (2000) PLAAS,.280.

At page 288 Ntsebeza states that “corruption and repression were features of traditional authority during the period after the 1951 Bantu Authorities Act up to the demise of apartheid in the late 1980s. One of the instruments traditional authorities had at their disposal was control of land allocation. Although not owners of land, traditional authorities have enormous power in its allocation. The Transkei and Ciskei Bantustans continued to issue PTOs in terms of the 1936 Land Act”.

<sup>9</sup> D S Koyana *Customary law in a changing society* (1980) 69, asserts that “in the Transkei area the chiefs and headmen played a leading role in the legislative process. The question arose as to whether the chiefs and headmen in their administrative capacities in their different administrative areas can impose a rule that has not gone to the Transkei National Assembly for approval”. In *Sigcau v Sigcau* 1944 AD 67 Watermeyer C J said at 77 “Presumably before the Pondo tribe came in contact with Europeans the Pondo Chief was a law unto himself. He ruled by force, and law and custom were what he decided it should be.”

<sup>10</sup> Act No.48 of 1963, stipulated that the Transkei Legislative Assembly would be composed of 75 chiefs and 25 elected members.

<sup>11</sup> Act No. 4 of 1965.

<sup>12</sup> Act No.108 of 1996, section 212 provides on the role of traditional leaders that:

- 1) National legislation may provide for a role for traditional leadership as an institution at local level on matters affecting local communities.

institution, status and role of traditional leadership, according to customary law, are recognised, subject to the Constitution. In 2003, the cabinet approved the White Paper on Traditional Leadership and Governance<sup>13</sup> whose central objective was to define the place and role of the institution within the new system of democratic governance, to transform it in accordance with constitutional imperatives and to restore the integrity and its legitimacy in accordance with customary law and practises.

According to Hendricks and Ntsebeza,<sup>14</sup> the constitutional recognition of chiefs' causes tension and inconsistency as the Constitution acknowledges the role of unelected traditional authorities in relation to local government matters.

### 5.1.3 The envisaged role of traditional leaders

Section 81 of the Municipal Structures Act, 1998<sup>15</sup> provides that:

“traditional authorities that traditionally observe a system of customary law in the area of a municipality, may participate through their leaders in the

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- 2) To deal with matters relating to traditional leadership, the role of traditional leaders, customary law and customs of communities observing system of customary law;
    - a) National or provincial legislation may provide for the establishment of houses of traditional leaders; and
    - b) National legislation may establish a council of traditional leaders.

<sup>13</sup> White Paper on Traditional Leadership and Governance, (Pretoria) 2003 p 25 provides a vision for institution of traditional leadership by stating that “South Africa’s transformation from undemocratic, unrepresentative and unaccountable system of government necessitated that all values, practices, institutions and structures of governance, be reviewed in the light of the new order. Broad transformation of society would include the institution of traditional leadership, precisely because this institution has a critical role to play, especially in rural areas. Traditional leadership has to function in a manner that embraces democracy and contributes to the entrenchment of a democratic culture, thus enhancing its own status and legitimacy amongst the people”.

<sup>14</sup> F Hendricks and L Ntsebeza *“Chiefs and rural local government in post-apartheid South Africa”* (1999) 4 .1 *African Journal of Political Science* 99.

<sup>15</sup> Act 117 of 1998.

proceedings of the council of that municipality and those traditional leaders must be allowed to attend and participate in any meeting of the council”.

Schedule 6 of the above Act provides the manner of identification of traditional leaders for purposes of section 81.<sup>16</sup> This clearly demonstrates that participation of traditional leadership in municipalities is fully recognised by legislation, though the author has noted that such participation has not been taking place because the administrative process for paying them still has to be implemented.

According to the White Paper on Traditional Leadership and Governance, the following are some of the roles that the institution can play:<sup>17</sup>

- promote socio-economic development;
- promote service delivery;
- contribute to nation-building; and etc.<sup>18</sup>

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<sup>16</sup> Act 117 of 1998.

<sup>17</sup> Ibid p.32.

<sup>18</sup> O Van Wyk *Rights and Constitutionalism* (1994) .621 states, “The social and economic restructuring of South Africa lies at the heart of transformation process. The extension of the political rights to participate in the democratic process may come to nothing if people do not experience an improvement in their welfare, education, employment, housing, and other areas where huge gaps have developed as a result of discriminatory policies and practices, South Africa as a developing country, may find it difficult to convince its millions of squatters and poverty-stricken people that the protection of civil and political rights is of value to them if they do not have the material, intellectual, and social ability and circumstances to make use of such rights.

Socio-economic rights were included as justiciable rights in the Bill of Rights after a heated public debate as to whether these rights deserved the same status as civil and political rights in a constitutional democracy. The main objections to their inclusion were that they would breach the doctrine of separation of powers and result in the courts usurping the role of the legislature and executive in making policy and allocating budgets. Though the constitutional court rejected these arguments in the certification judgment<sup>18</sup>, the role of the courts in the enforcement of socio-economic rights continue to be contested terrain. There is general agreement in South Africa that the State, acting on its own and in partnership with the private sector, has a responsibility in fields such as housing, welfare, education and employment. The question is whether the State could and should be placed under a legal obligation in terms of the Bill of Rights to undertake certain actions and develop assistance programmes or if it is purely a matter for legislative and political discretion to develop such programmes”.

#### 5.1.4 The role of traditional leaders in the formulation of the LRSP

As alluded to in the foregoing chapter, the LRSP is a sector plan or component of the Integrated Development Plan (IDP) and is drafted in terms of chapter 4 of the Municipal Systems Act.<sup>19</sup> An IDP Representatives Forum was formed so as to allow public institutions and members of the public to participate in the formulation of the IDP. In the ADM, traditional leaders are still viewed as public representatives like ward committees and other community-based organisations. Though the traditional leaders were invited to participate in the formulation of the plan as representatives of the public, no other status was granted to them. This is in conflict with the Traditional Leadership and Governance Framework Act,<sup>20</sup> which provides, *inter alia*, for the recognition of traditional leadership and the establishment of local houses of traditional leaders, whose role is to advise district municipalities on matters pertaining to development of planning frameworks that impact on traditional communities and to participate in programmes that have the development of rural areas as an object. The local houses of traditional leaders can only be established in accordance with provincial legislation.

#### 5.2 Co-operative governance framework

Van Wyk<sup>21</sup> points out that co-operative government as enshrined in the Constitution views government as being constituted as national, provincial and

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<sup>19</sup> Act No.32 of 2000.

<sup>20</sup> Act No. 41 of 2003 provides *inter alia*;

- for the recognition of traditional communities;
- establishment and recognition of traditional councils;
- a statutory framework for leadership positions within the institution of traditional leadership;
- for a house of traditional leaders;
- functions and roles of traditional leaders;
- dispute resolution and the establishment of the Commission on Traditional Leadership Disputes and Claims;
- code of conduct; and
- amendments to the Remuneration of Public Office Bearers Act, 1998.

<sup>21</sup> J Van Wyk *Planning law, principles and procedures of land use management*(1999) 43, states that the significance of co-operative governance is that every conceivable functionary in every sphere of government will have to be reminded continually of the principles it contains, not only for co-operation in general but also because they reinforce the values underlying an open, transparent and responsible government. In the field of planning, these principles are particularly relevant where each province can enact its own planning legislation and where structures and procedures can differ from those in other provinces.

local spheres of government, which are distinctive, interdependent and interrelated. Gordhan<sup>22</sup> asserts that the concept of co-operative governance and the principles underpinning it have their origins in the legacy of internal colonialism and apartheid. It is this history that resulted in the political, racial and economic fragmentation and divisions within the country as manifested in the homeland system and the tricameral system. Co-operative governance assumes the integrity of each sphere of government and also recognises the complex nature of government in modern society.

According to Van Wyk<sup>23</sup> the legislative competence of national government is demarcated with reference to provincial legislative competence. Matters relating to planning are indicated to be matters of both national and provincial competence.

According to the author, executive authority is exercised by preparing, initiating and implementing policy, co-ordinating the functions of state departments and administration and any other executive function. Provincial planning is a functional area of exclusive provincial legislative competence as set out in Schedule 5 Part A.<sup>24</sup>

It must be pointed out that the legislative power of provinces is divided into two categories, namely original legislative power and assigned legislative power. The former means the power of a province to legislate on its own authority, whereas the latter means that the power to administer a specific law was assigned to a specific province in terms of legislation. Where laws made by provincial legislature conflict

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<sup>22</sup> P Gordhan *Co-operative government: a new political culture for a new nation* (1998).200. According to the author, no country today can effectively meet its challenges unless the various parts of government:

- co-ordinate their activities to avoid wasteful competition and costly duplication;
- develop a multi-sectoral perspective on the interests of the country as a whole, and respect the discipline of national goals, policies and operating principles;
- settle disputes constructively without resorting to costly and time consuming legal actions; and to rationally and clearly, divide among themselves the roles and responsibilities of government, to minimise confusion and maximise effectiveness.

<sup>23</sup> Van Wyk *Planning law, principles and procedures of land use management*(1999) 44.

<sup>24</sup> Section 104 of the Constitution of the Republic of South Africa, Act, 108 of 1996, deals with legislative authority of provinces.

with those made by the national Parliament, the conflict must be resolved in terms of section 146 (2) - (6).<sup>25</sup>

In terms of the Constitution, a municipality has executive authority in respect of and the right to administer the local government matters listed in Part B of Schedule 4 and Part B of Schedule 5, as well as other matters assigned by national or provincial legislation.<sup>26</sup> Municipal planning is listed as Part B of Schedule 4. A municipality may adopt and administer by-laws for the effective administration of matters which it has a right to administer. A by-law that conflicts with national and provincial legislation is invalid.

In terms of section 156(4) of the Constitution, national government and provincial governments must assign to a municipality, by agreement and subject to any conditions, the administration of matters listed in Part A of Schedule 4 or Part A of Schedule 5, which necessarily relates to local government if that matter would most effectively be administered locally and the municipality has the capacity to administer it.

Regional planning and development is listed in Part A of Schedule 4 and provincial planning is listed in Part A of Schedule 5. In 2005, the national Parliament has passed the Intergovernmental Framework Act, 2005<sup>27</sup> so as to strengthen the relations among the spheres of government. This Act makes provision for the establishment of inter-governmental forums at all spheres of government.

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<sup>25</sup> Act No. 108 of 1996, section 146 applies to a conflict between national legislation and provincial legislation falling within a functional area listed in Schedule 4. Section 148 provides that if a dispute concerning conflict cannot be resolved by a court, the national legislation prevails over the provincial legislation.

<sup>26</sup> Section 156 of the Constitution deals with powers and functions of municipalities.

<sup>27</sup> Intergovernmental Relations Framework Act No.13 of 2005, has the following objectives:

- to establish a framework for national government, provincial governments and local governments to promote and facilitate intergovernmental relations;
- to provide for mechanisms and procedures to facilitate the settlement of intergovernmental disputes;
- and to provide for matters connected therewith.

Section 41 of the Constitution<sup>28</sup> lays down the principles of co-operative government and inter-governmental relations, which must inform and direct relationships between spheres. "Sphere of government" captures the idea that national, provincial and local government are each distinctive and of equal status and so must have constitutional leeway to define and express their own unique characters.

Co-operative governance further entails that the various spheres are inter-dependent within the overall structure of the state, and as such must work together to ensure effective governance in the whole country.<sup>29</sup> South Africa took a formidable step forward in the development of the constitutional position of local government. Nowhere in the world is local government assigned the status of a sphere of government or given original powers in the Constitution.

In most federal countries, local government is the creature of state/ provincial legislation.<sup>30</sup> The success of the land redistribution programme as well as the restitution programme depends largely on the cooperation of the other government

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<sup>28</sup> Constitution of the Republic of South Africa, Act No. 108 of 1996, states that, all spheres are obliged to:

- a) preserve the peace, the national unity and the indivisibility of the Republic;
- b) secure the well being of the people of the Republic;
- c) to provide effective, transparent, accountable and coherent government for the Republic as a whole;
- d) be loyal to the Constitution, the Republic and its people;
- e) respect the constitutional status, institutions, powers and functions of government in other spheres;
- f) not to assume any power or function except those conferred on them in terms of the Constitution;
- g) Exercise their powers and perform their functions in a manner that does not encroach on the geographical functional and institutional integrity of government in another sphere; and
- h) Co-operate with one another in mutual trust and good faith by:-
  - i. fostering friendly relations;
  - ii. assisting and supporting one another;
  - iii. informing one another of, and consulting one another on, matters of common interest;
  - iv. co-ordinating their actions and legislation with one another;
  - v. adhering to agreed procedures; and
  - vi. avoid legal proceedings against one another.

<sup>29</sup> Gordhan *Co-operative government: a new political culture for a new nation* .201.

<sup>30</sup> Gordhan *Co-operative government: a new political culture for a new nation* 203.

departments. Currently, there is a severe lack of coordination of the various programmes, policies and financial mechanisms amongst the different spheres of government. It should be a priority of Government to first obtain coordination via service-level agreements amongst the different spheres of government before a policy/programme is put in place. In this way, the communities that are being served will get the maximum benefit out of these inter-governmental relations and would not have to join another queue for different services.

Efficient and effective planning requires integrated and co-ordinated effort from the different spheres of government. This also suggests that planning should be a consensus-building exercise about what should be done, and how. This necessitates a clear definition of the roles and responsibilities of the different spheres of government, so as to avoid duplication, conflict and wastage of resources. The allocation of the roles of the different spheres of government should be informed by the Constitution. Land, like water, is a function of exclusive national legislative competence. The Minister of Land Affairs is responsible, not merely for land reform and administration, but also for the way that land is used and managed as a national resource.

The planning system being promoted by the White Paper on Land Policy<sup>31</sup> is a policy-led normative planning system. This means that the planning system rotates on key principles and norms and policies that will be prescribed by the Minister of Land Affairs. The forms of planning frameworks (forward plans), which local government will develop, should give further content to these principles and norms and policies. These planning frameworks should also be strategic in their nature and not merely seek to be comprehensive in appearance.

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<sup>31</sup> Department of Land Affairs *White Paper on Land Policy* (1998).

These principles and norms will also serve to guide the exercise of discretion and the decision-making by the Minister or someone delegated by him or her. In determining the roles of the different spheres, there are two principles, which will be the core of the planning system, namely incrementalism and minimalism.

The output from the White Paper<sup>32</sup> process will be a national law that replaces the current plethora of provincial and homeland planning laws, most of which were inherited from the apartheid government. There will no longer be a need for provincial legislation dealing with spatial planning, land-use management and land development. All three spheres have key roles to play in the envisaged system. Cooperative governance, as established in the Constitution, forms the cornerstone on which this new system is built.

The new system for spatial planning, land-use management and land development will form a solid foundation on which to establish integrated inter-governmental and inter-departmental development planning, programmes and projects. A key change introduced by this White Paper is the notion of a 'land-use regulator', a body which can be an organ of any one of the three spheres of government, depending on the particular circumstances of the land-use application to be decided. This chapter spells out the respective roles of each sphere of government in spatial planning, land-use management and land development. For matters listed in Part B of Schedule 4 and Part B of Schedule 5, the new Constitution shifts the responsibility for rural development from national and provincial spheres of government to local government level.

The effective performance by rural municipalities of these functions will require the establishment of a planning capacity, at least at district level. The purpose will be to

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<sup>32</sup> Department of Land Affairs *White Paper on Spatial Planning and Land Use Management* (2001).

provide information on the resources available and to assist elected councillors in identifying the most appropriate development options. The overall objective will be the productive and sustainable utilization of the resources available within the district: natural, human and financial. With the tighter fiscal environment, there will be a need for better informed resource allocation, based on accurate district-level M&E data.

National government expenditure will continue to be apportioned between provinces and departments which will reallocate funds to province-level activities. It must be assumed that implementing departments will wish to see these allocations used rationally in order to achieve their particular policy objectives (e.g., for DWAF, to facilitate the provision of water in sufficient quantity and quality for human needs; or for DoE, to provide equitable access to educational opportunities). Further, line departments must be prepared to consider constructive and well-formulated proposals coming up from local government level.

- It can also be assumed that revenues raised by the local authorities will be allocated to services selected by the elected Councillors. And, again, that efficiency of resource allocation can be improved by, for example, better coordination of the work of national and provincial government and local authorities.
- It is reasonable to assume that NGOs and other non-statutory service providers will agree to some coordination and direction by local government, provided that it is in the interests of the people they aim to serve and in line with the conditions imposed on them by their funders.
- Finally, community leaders can be assisted by officials of field departments in the improvement of living conditions, especially when they work together to solve particular problems at community level.

Given this framework, support for a limited amount of decentralized planning activity at district level in the rural areas of South Africa can be justified because:

- data on local areas needed by national and provincial government planners is often unavailable or unreliable;

- significant ecological, ethnographic, demographic and historical variations exist within regions and districts;
- local people have special knowledge about the development opportunities in their locality;
- local-level involvement in planning can generate increased support and commitment, stimulate self-help, and mobilise local resources.
- integration and overview are essential in development work.

The degree to which decentralized planning will be feasible at local government level (primary or secondary level) in rural areas is not yet clear. There is, in any case, expected to be a basic tension between the vertical organisation of line departments and local government attempts at horizontal coordination. Vertical loyalties are much more powerful, particularly when a local government's coordinating efforts are not buttressed by adequate discretionary funding, i.e., taxes, levies and duties as well as other sources, including subventions from provincial and national government. Indeed, the scope for local-level planning will be closely related to the discretionary resources available.

## CHAPTER 6: THE LAND REFORM AND SETTLEMENT PLAN AND CHALLENGES FOR THE FUTURE IN RELATION TO IMPLEMENTATION

Pienaar<sup>1</sup> has correctly pointed out that housing the nation is currently the major need, and in most cases, people want land to build houses rather than for agricultural purposes, especially in urban areas. According to the author, for land reform to be successful in the agricultural arena, it must promote sustainable development. What is needed is a balanced approach towards addressing the demand for land on the one hand and maintaining agricultural production on the other.

In instituting an adequate planning system through policy and legislative intervention, it is imperative to single out the critical need to recognise cities as engines of rural development in an environment of strong urban-rural linkages.

“Improved infrastructure between urban and rural areas increases rural productivity and enhances rural resident’s access to education, health care, markets, credit, information, and other services. On the other hand, enhanced urban-rural linkages benefit cities through increased rural demand for urban goods and services and added value derived from agricultural produce.”<sup>2</sup>

As pointed out by Pienaar,<sup>3</sup> the historical impact of pre-1994 planning framework, which was characterised by fragmentation across race groups, ethnic lines, provinces and jurisdictional boundaries, control-based zoning, which pre-determined the use of land parcels, and modernist, Western-style standards and approaches, will have to be abolished in favour of a comprehensive and integrative

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<sup>1</sup>. JM Pienaar “*Land reform and sustainable development- a marriage of necessity*” (2006) 25.2 *Obiter* 269 at 293.

<sup>2</sup> UN-HABITAT *State of the World Cities* 2006.

<sup>3</sup> Pienaar (2006) 281.

approach. Any proposed solution to be advanced must effectively uproot the implication of the Glen Grey Act. In the words of the late Govan Mbeki, “The Glen Grey Act provided for a system of attenuated individual land-ownership”.<sup>4</sup>

According to James, the insistence that rural and urban are separate worlds has remained, and since 1994, a focus in the policy arena has been about aims and intended outcomes of land reform and how to end rural impoverishment by providing employment in rural areas.<sup>5</sup> At the height of South Africa’s economic growth, when labour migrancy was at its most prevalent, has exposed in detail the consequences of interdependence between the rural and urban poles of the migrant world.

The 2006 State of the Cities Report<sup>6</sup> reveals that over the last five years South Africa’s urban population has increased faster than the national population. This suggests that cities need to develop a more nuanced understanding of migration patterns. Cities need a clearer picture of who is moving and why, and develop an understanding of migrants’ long-term plans. Cities need to target informal settlements, because these are areas where a majority of new urban residents are often accommodated on arrival.

One of the biggest challenges of the settlement plan will be the extent to which it will manage the migration from rural areas to the already overcrowded cities. The problems of the phenomenon of informal settlement, which is characterised by illegal land invasions, sub-standard and inhuman living conditions associated with squatting, are illustrated by the cases discussed in this chapter.

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<sup>4</sup> G Mbeki *The struggle for liberation in South Africa* Unpublished, available at [www.anc.org.za](http://www.anc.org.za).

<sup>5</sup> D James “*South Africa; conflicting images of Rural & Urban*”, (2001)19, *Journal of Contemporary African Studies* 97.

<sup>6</sup> South African Cities Network *State of the Cities Report* (2006).6

The cases below note that migration from rural areas to the cities can only be reversed by the creation of employment opportunities in the economically depressed areas. The cases also reveal that the state often fails in dealing with socio-economic issues affecting millions of indigent people. The *Diepsloot Residents and Land Owners Association and Another v. Administrator, Transvaal*,<sup>7</sup> is the only case so far in which the state has made use of the existing legislation to improve the lot of the landless citizens. In this case the former Administrator of the Transvaal made use of the Less Formal Township Establishment Act of 1991 to deal with the influx of homeless people.<sup>8</sup>

The court mentioned that the Act was enacted against the background of the repeal of discriminatory legislation, increased urbanisation and the resultant squatter problem. There was an urgent need to provide for the speedy and orderly settlement of homeless persons. The need having arisen in the urban areas, the solution had to be found there as well. The legislature must have contemplated the settlement of large numbers of homeless and impoverished persons in an informal manner within the urban areas as part of the urbanisation process and the resolution of the squatter problem.

After all, the persons in need of settlement were there to stay. Their urgent need could not be satisfied by allocating to them land distant from where such need existed. Nor could they be moved to where they could not reasonably be expected to move. Such persons would, therefore, have to be settled, to the extent that this was reasonably practicable, near to where they were, or wanted to be, and near to their work or where employment opportunities existed.

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<sup>7</sup> 1994 (3) SA 336 (A) at 339.

<sup>8</sup> Less Formal Township Establishment Act No, 113 of 1991.

The present writer concurs with the State of the Cities Report's<sup>9</sup> assertion that the policy instruments and financial frameworks are required for a coherent and implementable approach to integrated human settlements, which are currently undeveloped and require concerted inter-governmental attention. This will involve making public and other land available for settlement, adjustments to land-use and development regulation. This, too, can be achieved in terms of the Provision of Certain Land Assistance Act, 1993, noted in Note 24 on page 12 above.

According to Cross, migration consequences are likely to be large and rural communities are facing both in and out migration, which directly affects cost projections for infrastructure delivery. The spatial placement of infrastructure is the most effective tool available to government and planning to influence ground-level migration: delivery of infrastructure act as a powerful magnet for settlement. The author further indicates that past policy towards migration by the rural poor has been exclusively urban- rural.<sup>10</sup>

Another instance of ripple effects of unplanned settlement is illustrated by *Groengras Eiendomme (Pty) Ltd and Others v. Elandsfontein Unlawful Occupants and Others*,<sup>11</sup> a case dealing with a large-scale invasion of privately owned land when an urgent application in terms of section 5(1), of PIE<sup>12</sup> was invoked because unlawful occupation of land endangered crops on land and the lack of infrastructure posed a high risk of diseases and of contamination of a stream running through property. In addition, an unprotected railway line, high-voltage power cables and an underground fuel-transport pipeline all created real and imminent risks and even death to occupiers.

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<sup>9</sup> South African Cities Network *State of the Cities Report* (2006) .6.

<sup>10</sup> C Cross "Why does South Africa need a spatial policy? Population migration, infrastructure and development" *Journal of Contemporary African Studies*, (2001) 19 (1) 113.

<sup>11</sup> 2002 (1) SA 125 (T).

<sup>12</sup> Act No. 19 of 1998.

It was held that public interest required that the illegal land-grab by the occupiers be immediately halted, that the rule of law be upheld and that unlawful action of this nature would, in all likelihood, discourage investor confidence in the country, and also that the court could not close its eyes to the devastating effects of land-grabs on the economy and security of other countries.

The lack of implementation was felt in *Government of the Republic of South Africa and Others v. Grootboom and Others*.<sup>13</sup> This celebrated case indicated that the courts need to examine policy guidelines in dealing with the phenomenon of homelessness. The court further stated that the nationwide housing programme falls short of obligations imposed upon national government to the extent that it fails to recognise that the State must provide for relief for those in desperate need. It is hoped that in the implementation of the ADM settlement plan, the policy makers will learn from the experiences gained from the pronouncements of the courts of law.

In *Port Elizabeth v Various Occupiers*<sup>14</sup> Sachs J expressed the view that PISA<sup>15</sup> gave administrative *imprimatur* to the usurpation and forced removal of black people from land and forced them to settle in racially designated locations. The learned judge referred to the Native Urban Areas Consolidation Act,<sup>16</sup> which, in his view, was premised on the notion of Africans living in rural reserves and coming to the towns only as migrant workers on temporary sojourn. In the judge's view, the above Acts severely curtailed the right to live in urban areas.

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<sup>13</sup> 2001 (1) SA 46 (CC).

<sup>14</sup> 2005 (1) SA 217 (CC).

<sup>15</sup> Prevention of Illegal Squatting Act No.52 of 1951.

<sup>16</sup> Act 25 of 1945.

The observations made by Sachs J in the *Port Elizabeth* case were anchored by Langa ACJ in *President of the Republic of South Africa and Another v. Modderklip Boedery (Pty) Ltd (AGRI SA and Others, Amici Curiae)*.<sup>17</sup> This case also involved a large number of homeless people who invaded a private property. The owner of the property appealed for assistance to local police in vain.

In the case of *Minister of Public Works and Others v. Kyalami Ridge Environmental Association and Another*,<sup>18</sup> the Kyalami residents joined forces and resisted the settlement of the homeless in their neighbourhood, contending that the government acted beyond its powers in deciding to establish a transit camp at Leeuwkop. They argued that the government's action had not been authorised by legislation. If it wished to provide relief for flood victims then it should act in terms of legislation empowering it to do so. The Resident Association averred that the government's action was contrary to the rule of law. In the present case, government did not act in terms of any legislation. Its decision to establish a transit camp at Leeuwkop was, accordingly, unlawful.

It was held that the power of government to use its own land for the purpose of establishing a transit camp was not a power that in itself entitled it to eliminate or ignore the rights that the respondents might have under environmental, township or other legislation. As long as the decision was implemented lawfully, they had no right to object to the use of prison property as the site of the proposed development.

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<sup>17</sup> 2005 (5) SA 3 (CC).

<sup>18</sup> 2001 (3) SA 1152(T).

Again in *Port Elizabeth Municipality v Peoples Dialogue on Land and Shelter and Others*,<sup>19</sup> a group of landless people had unlawfully occupied land owned by the applicant and earmarked by it for development for housing. In this case, it was held that an eviction order should be granted in favour of the applicant, but made subject to the availability of alternative land or accommodation. The above case law demonstrates the difficulties that are being experienced by government in dealing with consequences of lack of comprehensive settlement planning and landlessness caused by population migration trends.

The urbanisation process in South Africa is often seen as an informal activity associated with poverty. Over the last two decades, the phenomenon of informal settlements has increased in South Africa, largely as a result of the freeing up of urban spaces after decades of apartheid. This process of informalisation has not been a peripheral event, but has increasingly become the norm, driven by hope of better livelihood in the cities.<sup>20</sup>

According to Cross<sup>21</sup> infrastructure delivery appears to be driving migration processes to a considerable extent, and migration needs to be seen against this background. The Land Reform and Settlement Plan (LRSP) of the Amathole District Municipality (ADM) has prioritised rural areas in the provision of land rights as part of land redistribution, but the element of agricultural development is lacking as part of generating livelihood.

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<sup>19</sup> 2000 (2) SA 1074.

<sup>20</sup> South African Cities Network *State of the Cities Report* (2006) .2.

<sup>21</sup> Cross "Why does South Africa need a spatial policy? Population migration, infrastructure and development" *Journal of Contemporary African Studies*, (2001) 19 (1) 113.

Pienaar has identified problems that are being experienced in the application of the Development Facilitation Act, 1995.<sup>22</sup> According to her, long-term solutions with regard to successful development planning impacting on the delivery of housing include urban sprawl, badly integrated city structure, loss of agricultural land and open spaces, the development of environmentally sensitive areas, and infrastructure planning are necessary. The author correctly points out that long-term solutions in these areas will enable movement in a consistent and constructive way towards redressing spatial inequalities on a sustainable development basis.<sup>23</sup>

In the author's own words,<sup>24</sup> slums and squatter settlements are the products of complex and inter-related factors:

“Not only do squatter areas comprise a large percentage of existing housing stock in cities, but these areas are also growing more rapidly than the cities themselves. Underlying this phenomenon is the fundamental urban land crisis. Lack of effective, proactive planning; domination of land market and of land-use patterns by private sector; emphasis by construction industry on high profit luxury housing; zoning and subdivision controls that do not reflect the needs of the whole population, amongst others, have led to a housing and land market that excludes the poor and forces them to resort to slum and squatter living”.

The ADM's LRSP has not been extended to cover this area, but given the urban problems and complications of urbanisation that have been raised above, the need to look at escalation of land costs in this area are a matter of great concern.

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<sup>22</sup> Act No. 67 of 1995.

<sup>23</sup> J M Pienaar “*Planning, informal settlement and housing in South Africa: the Development Facilitation Act in view of Latin America and African developments*” (2002) CILSA xxxv .2.

<sup>24</sup> Pienaar “*Planning, informal settlement and housing in South Africa: the Development Facilitation Act in view of Latin America and African developments*” (2002) 2.

The Duncan Village Township in East London in the Buffalo City Municipal area (see Annexure 5 Map) is a good example of the problem of urban squatting and escalating slum development in the cities. Another important challenge for the settlement plan is the identification of suitably located and less expensive land to provide for the housing needs of its communities. One fundamental challenge is the capacity<sup>25</sup> of the ADM to deal with land and planning challenges confronting the district.

The major challenge facing the plan is the identification of priorities in cases where there are no alignments between the district and local SDFs, to determine which is to take precedence. The present writer is in agreement with Pienaar's<sup>26</sup> observation regarding the role of planning system, namely;

"If the processes of formulating plans are too technical, complicated, expensive and too bureaucratic, there is a great risk that the end-users will simply ignore the whole process and follow their own shorter, illegal procedures of land invasion and subdivisions of land. It is, therefore, important for these plans to be simpler and easy to understand for better implementation". This, therefore, suggests that spatial plans should be made more user-friendly.

The Amathole District Spatial Development Framework (SDF) refers to local planning initiatives which will further refine the district SDF by identifying and demarcating and planning for *in-situ* upgrading in communal village areas. The challenge with the foregoing sentence is the suggestion that the district SDF can be changed by the local planning initiatives.<sup>27</sup> This poses a serious challenge in

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<sup>25</sup> By capacity, the author refers to the assignment of powers and functions between the district and local municipality as outlined in the s 84 of the Municipal Structures Act.<sup>25</sup> Town planning, land use and zoning functions are classified as local municipality rather than district municipality functions and this present some doubts in the authority of the Amathole to deal with these issues.

<sup>26</sup> Pienaar J M "*Planning, informal settlement and housing in South Africa: the Development Facilitation Act in view of Latin America and African developments*" (2002) 15.

<sup>27</sup> Amathole District SDF (2005) 172.

terms of what supersede the other between the local and district SDF, and the author asserts that the district should guide and inform the local SDF.

This brings forward a very important challenge of the authority and enforcement of these spatial and land-use plans, namely, extent to which the private sector and the public at large conform to the procedures and rules as set out in these plans. The government should seriously consider the need to gazette the IDPs to attach stricter measures for compliance, as is the case with the gazetted funds allocated in terms of the annual Division of Revenue Act.<sup>28</sup>

At the policy and overall legislative level, the present writer has established that the lack of legislation governing spatial planning and land-use management, which will give effect to the directive principles, which will bring about consistency in the development and implementation of spatial plans at all levels of government, is problematic. The Land Use Management Bill has been around since 2002, is long overdue and the present writer is of the opinion that failure to enact LUMB<sup>29</sup> into law is adversely impacting on the Physical Planning Act,<sup>30</sup> which has remained dormant and unrepealed, as government is preparing itself to implement the Land Use Management Bill. This does not augur well for the smooth administration of local government.

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<sup>28</sup> Division of Revenue Act is gazetted annually.

<sup>29</sup> Land Use Management Bill (2002).

<sup>30</sup> Act No. 125 of 1991 whose purpose as outlined in the long title is :

“To promote the orderly physical development of the Republic, and for that purpose to provide for the division of the Republic into regions, for the preparation of national development plans, regional development plans, regional structure plans and urban structure plans by the various authorities responsible for physical planning, and for matters connected therewith”.

One of the biggest challenges that the ADM is facing will be the implementation of the Municipal Property Rates Act<sup>31</sup> and Communal Land Rights Act, both of which require the surveying of land and the registration of rights in respect of land through the Deeds Office. If one takes into account the fact that areas falling under Ngqushwa, Mbashe, Mnquma, Nkonkobe, and Buffalo City remain unsurveyed, it is going to take a long time for these areas to comply fully with the above Acts, due to the vastness of the area.

According to Cousins:<sup>32</sup>

“a complex and regionally specific history of state intervention and local responses has left a legacy of diversity in relation to how communal land rights are held and in the nature of the problems experienced by rights holders. One possible mechanism for allowing this diversity to be expressed within the Act<sup>33</sup> is the land rights enquiry that must take place before a transfer of title can occur. This might allow investigation of a range of situations, needs and problems, and context-specific descriptions of existing and desired forms of land rights. The only option provided within the Act for securing these rights, however, is the transfer of title to communities, along with the establishment of land administration committees. It is, in effect, a ‘one size fits all’ approach that could result in disputes and uncertainty in situations where assumptions do not hold”.

Spatial integration must be a major objective of local and provincial planning to reduce service and infrastructure costs while at the same time improving access. Public investment decisions at district and provincial level will greatly affect local

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<sup>31</sup> Act No. 6 of 2004.

<sup>32</sup> B Cousins “*Embeddedness*” versus *titling: African land tenure systems and the potential impacts of the Communal Land Rights Act 11 of 2004*” (2005) 3 *Stell LR* 511.

<sup>33</sup> Communal Land Rights Act No. 11 of 2004.

communities. It is, therefore, critical that local councils not only mandate their district councillors to pursue their interests, but also that local and district councils maintain close links with provincial planning bodies. There must be close co-ordination between the locational decisions made by local, district and provincial bodies.

It is the responsibility of the national government to ensure a more equitable distribution of land, to support the work of the Commission on Restitution of Land Rights and to implement a programme of land tenure and land administration reform. On the other hand, it is the responsibility of provincial governments to provide complementary development support to those participating in the land-reform programme. For sustainable development, there must be close co-operation between national and provincial governments to ensure that beneficiaries enjoy services provided by the provinces, as envisaged in the Constitution.

After farm land has been transferred, provincial and local government both have the responsibility for providing assistance with farm credit, farm-inputs and marketing. Advice and assistance may be needed to ensure the productive use of the land, as well as the provision of infrastructure.

The success of the programme, thus, hinges on a high degree of co-operation between the different tiers of government and the extent to which there is a common vision of land reform and subsequent development.

Rural-settlement programmes place great demands on government to support organisation and planning at local level. The demand goes well beyond the staff capacity of the agencies concerned. Both the Department of Land Affairs and the Provincial Housing Departments make facilitation funds available with a view to

assisting groups to organise themselves and ensure that the needs of rural communities are being brought to the attention of funding institutions, and that settlement development takes place in a sustainable way.

The effective performance by municipalities of their functions will require the establishment of a planning capacity, at least at district level. The purpose will be to provide information on the resources available and to assist elected councillors to identify the most appropriate development options. The overall objective will be the full and productive utilization of the resources available within the district - natural, human and financial. With the tighter fiscal environment, there will be need for better informed resource allocation based on accurate district-level data.

National government expenditure will continue to be apportioned between provinces and departments, which will reallocate funds to province-level activities. Implementing departments will wish to see these allocations used rationally to achieve their particular policy objectives. Revenues raised by local authorities will be allocated to services decided by elected councillors. Efficiency of resource allocation will be improved by coordination of the work of national and provincial government and local authorities. A district-level planning capacity will, therefore, be essential. Local-level involvement in planning can generate increased support and commitment, stimulate self-help, and mobilise local resources. Integration and overview are essential in development work.

In apartheid South Africa, many areas defined as rural were, in reality, urban areas without services. As they had high concentrations of people who sought work in some distant city, such places were, in effect, displaced urban areas. These are also areas of relatively high-population density with no local economic base, whose inhabitants are sustained through pensions and/or remittances from migrant

workers. These are sometimes called rural clusters, the term 'rural' indicating the lack of economic support and services.

Rural development is the business of everyone in rural areas. This statement captures the multi-sectoral nature of the undertaking and the notion that, because rural development greatly affects the lives of the people, they should have a strong hand in setting the agenda and the priorities. A dynamic process of combined government action, with the participation of people in rural areas, must be set in motion to realise a rapid and sustained reduction in absolute poverty.

The level of services which can be provided by rural local government will depend on a number of factors, including technical and financial feasibility, population density and the location of the nearest bulk supplies (e.g., potable water, electricity). Service provision will also critically depend on the potential of the local tax base. A basic level of services will be made available as an entitlement; thereafter, any improvements must be paid by the local population through levies and rates. It is a requirement of the Constitution that municipal councils create a level of services that is affordable to the local population, and that they set up effective systems for obtaining payment for them. It will be necessary to set tariffs in a manner which will ensure cost recovery in the longer term.

Most of the constraints to rural development stem from the long period of apartheid with its discrimination, forced removals and neglect of the majority black population. Forced removals led to over-population of the so-called homelands and deprivation of basic needs. High-population growth put pressure on family income, social services and on natural resources.

Small rural towns should be a focus for development, providing input and output markets, mechanical and other workshops, financial services, and social services, such as schools and clinics, which will be of benefit to people in the surrounding area. For historical reasons, these functions and links to the rural hinterland often do not exist or are poorly developed. Inter-district transport routes serve migrant labour routes, not the needs of intra-regional trade. Output from the large farms passes through cooperatives to distant markets without serving the needs of small towns. Stores and supermarkets bring in food products over large distances rather than attempting to establish local suppliers. There is need to integrate economic activity in order to generate income from added value at a local level.

The LRSP deals with issues that can be described as ‘traditional’ local government responsibilities, such as provision of housing and services, but also with non-traditional activities, such as local economic development, and other issues related to land-based livelihoods in rural and semi-rural areas. It is this emphasis on rural livelihoods, and their integration into settlement planning, that makes the LRSP a major innovation for local government in South Africa, and a potentially important contribution to the process of land reform, and this constitutes the main concern of this thesis. What might be described as conventional aspects of township establishment and infrastructure are not addressed here in any detail.

Much of the LRSP is driven by conventional town and regional planning processes, particularly those associated with township development and the upgrading of existing settlements. Acquisition of new land plays a relatively minor role within the processes and, as has become apparent, issues related to land-based livelihoods generally tend to be given a low priority. Thus, a key challenge for this research was to establish to what extent the LRSP succeeds in transcending conventional town and regional planning models in order to address wider issues of land reform and rural livelihoods.

Attempting to understand the impact of the LRSP in the multiple ways in which it intersects with other developmental processes and local struggles over resources, many of them long-standing, is a challenge. Since 1994, the ADM and other municipalities in the area have consistently received requests for assistance with land-related needs. The provincial Department of Land Affairs has experienced a similar demand. This land-need was again confirmed during the Integrated Development Planning process which was undertaken in the late 1990s. During the situational analysis phase of this planning process, land issues, in particular tenure reform, and agriculture emerged as high priority needs for the central sub-region of the ADM area.

Lack of coordination between role-players, and lack of commitment on the part of certain government departments would appear to be a weakness of the implementation of land reform to date. While the DLA provided core funding for the LRSP, it appears not to have been actively involved in aspects of the implementation that required specific expertise that fall within its area of competence, namely release of state land, titles adjustment and acquisition of land from private owners. This appears to be in line with the delegation of powers from the DLA to the ADM, but it would appear that this delegation may, at times, have gone too far, and there is a strong argument for retaining an active role for the Provincial Land Rights Office of the DLA in the implementation phase.

A glaring concern which was evident in the course of this research concerns the role of the provincial Department of Agriculture and Land Affairs (DALA) is playing in the implementation of the plan. The LRSP relies heavily on the DALA in areas such as land-use planning, agricultural development and commonage management, but little progress has been made in drawing the department into the implementation process. Securing additional buy-in from DALA for the LRSP as a whole, and in the implementation of specific projects, should be a priority for the ADM.

A key issue here is the process by which land is acquired from existing owners and transferred to the hands of the municipality. Transfer of ownership from the municipality to individual homeowners follows conventional township-establishment processes, and does not appear to present any new or significant challenges for land reform. A second key issue is the identity of the beneficiaries of such development. In most cases, the 'core' beneficiaries were to be people resident on or adjacent to the land in question, and who had certain rights (be it formal or informal) over the land, but in a number of cases, matters have been complicated by the inclusion ('import') of people who had no historical connection to the land in question.

These projects also involve the replanning and 'upgrading' of existing residential areas, and may include land for arable and/or grazing purposes. The key issue of concern here is the provision made for agriculture and other livelihood-related activities, either in terms of adequate residential plot sizes or access to land outside the immediate area of settlement.

In ensuring secure tenure for thousands of homeless people and the upgrading of tenure rights for some, the ADM has acquired land from a variety of owners, including the state (in the form of the Minister of Land Affairs), from private owners (who are not themselves occupiers) and from churches, with a view to subsequently distribute land to the occupiers. In one case, it has involved attempts to upgrade titles from quitrent to freehold, without any change in ownership (or acquisition of the land by the ADM). Acquisition of title to this land has provided a number of challenges for the ADM, and not all have been successful. It is important to note that all of these cases involve the upgrading of existing settlements, rather than the creation of new settlements on green-field sites.

Beneficiaries, who have been in occupation of the land in question for a considerable period, enjoy strong rights to that land. Matters have been complicated in a number of cases, however, by the inclusion of 'outsiders' who do not share the same rights as current occupiers. Dealing with existing settlements

has been resolved by the simple exercise of selecting beneficiaries and identifying suitable land.

At Mgwali area in the Amahlathi Municipality (see Map attached as annexure 5), the LRSP proposed the acquisition of land that, historically, had been under the control of quitrent title holders in the area. Since the 1960s, this land has come under the control of the state, which has made some of it available for residential purposes and issued householders with PTO rights. It was envisaged that, under the LRSP, the commonage area would be replanned and developed, with PTO rights being upgraded to formal ownership and provision made for additional sites for landless people from outside the immediate Mgwali area.

This land was, however, the subject of land claims by the quitrent title-holders of Mgwali under the Restitution of Land Rights Act of 1994. At the time of the launch of the LRSP, this land claim was unresolved, and negotiations between the claimants and the Regional Land Claims Commission had broken down. Consequently, the quitrent title holders were able to stall the development process by various means, including lodging objections at the Eastern Cape Development Tribunal.

This is important because it implies that, while rights and service-levels may be enhanced, the actual area of land available to people in these areas has not been greatly enlarged and, in some cases, it has actually been decreased by the inward movement of 'outsiders'. It also implies that the challenge of acquiring land from private owners, who are actually using their land for other purposes, and of expanding the area of 'black' settlement into former 'white' areas, have been largely avoided. There is considerable irony in that much of the land targeted for land-reform purposes in this area is being acquired from the tiny minority of black land owners, while white land owners remain largely unaffected: the reason for this being the historical problems of apartheid land-ownership policies.

Thus, acquisition of privately-owned land in terms of the LRSP has tended to involve the replanning of existing settlements. The land in question has come from three main sources: private (white) owners, whose land has already been occupied by intended beneficiaries, quitrent (black) owners, whose land has already been occupied by intended beneficiaries, and churches. In all of these cases, current occupiers can be considered to have reasonably strong rights to the land, by strength of established practice and, in most cases, some degree of tacit or explicit permission from the owner (strongest in the case of the churches, less so in terms of privately-owned land).

## CHAPTER 7: CONCLUSION

It has been noted in this research that the existence of multiple and contradicting statutory provisions,<sup>34</sup> that predate the 1996 Constitution should be abolished or repealed and replaced by an overarching national land legislation, which is applicable to all members of the community, irrespective of the location. This will assist in dealing with the confusion caused by these differing laws. The Enactment of Land Use Management Bill will assist in bringing uniform systems to all areas in the Republic.

Secondly, on the issue of housing, an instrument must be developed that ensures that decent and reasonably priced housing structures are being built in the inner-cities. In the writer's view, this will go a long way in ensuring that people are located closer to work opportunities. The current housing policy needs some enhancement on the part dealing with norms and standards as the current size of structure (which is 40sqm) has to be increased. This also calls for the increase in the current quantum of subsidy, which is currently driving professionals away from housing.

Regarding spatial planning, the writer has established that no one within the Amathole District Municipality (ADM) is undertaking spatial planning according to an approved Spatial Development Framework (SDF). To avoid unnecessary conflicts in the planning process, it is suggested that all development projects be approved in line with the SDF, before any construction can commence. This would ensure compliance with the SDF. Municipalities' compliance with their own SDFs is very critical, as it is currently not clear what forces private individuals and businesses to undertake their investments in line with SDFs.

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<sup>34</sup> The writer has in mind old-order legislation inherited from the former homelands of Transkei and Ciskei.

The other aspect of the ADM Land Reform and Settlement Plan (LRSP), which is the cause for concern, is the integration of land reform with wider issues of livelihoods. In practice, this concept has been used in two slightly different ways among LRSP stakeholders. Firstly, it has been used as an integrated approach to land rights, housing developments and services, which might include the provision of new services and infrastructure, as well as the location of settlements in areas that provide reasonable access to transport, schools, clinics and employment opportunities – in other words, a holistic approach to settlement.

Secondly, it has been used as a specific focus on agriculture or other land-based economic activities, with strong connotations of subsistence agriculture – in other words, making specific provision within planning for the current agricultural activities (including livestock) of beneficiaries.

The objective of the LRSP was the comprehensive replanning of the existing settlement area, involving the allocation of substantial residential plots, with services, demarcation of cultivation lands and access to grazing on adjacent municipal commonage. The demand for large residential plots was revealed during the land-needs assessment conducted as part of the IDP process, based on a desire for land for both household expansion and for agricultural purposes.

The layout plans (prepared prior to the LRSP) for the settlement areas made provision for land for residential, agricultural, business, social and other uses. The funding provided by ADM, however, did not extend to agricultural development planning and more specifically, the formulation of the necessary farm plan.

Once again, the practical aspect of planning for the integration of settlement and livelihood issues appears to have been given low priority, and inadequate resources, within the LRSP. While the physical planning and other technical aspects of township development have progressed reasonably rapidly (after the matter of land-title adjustments was overcome), the matter of agricultural land has not been given the same degree of attention. This clearly calls for much greater

attention to this aspect of the LRSP, both at project planning and implementation phases, and specific allocation of resources (and ultimately for building of capacity within the ADM for these activities).

A similar picture is evident at areas like Gasela. While the terms of reference for the LRSP at Gasela stressed both residential settlement and access to livelihood opportunities (particularly agriculture), it would appear that virtually all the available resources have gone into 'traditional' settlement activities, and little or none to wider livelihoods issues.

In Gasela the mixed land-use model was implemented and came to be referred to as Model 2. Significant developments in this respect were the commitment to above-average residential plot sizes (1 000 sq.m.) and the acknowledgement that the ADM had a duty to provide services to rural settlements that did not conform to the standard township layout.

The lack of attention to livelihoods issues, and specifically to the agricultural activities of the Gasela community, are apparent in the range of service providers appointed to implement the LRSP, which contained the usual set of planners, surveyors, engineers and conveyancers but nobody with responsibility for livelihoods issues.

Overall, it is clear that so-called livelihood issues have not been adequately incorporated into the LRSP. Conventional township establishment activities have pushed ahead, including Model 2 projects, but wider issues of land-based livelihoods have been consistently neglected. This is evident in the failure to even include agricultural land in the tenure reform processes at Mgwali, and the lack of priority and resources allocated to agricultural development at areas such as Cenyulands and Gasela.

The acquisition of land for non-residential purposes has also experienced numerous delays. The explanation for this neglect of livelihood issues must be sought in the existing institutional arrangements for development in the Amathole area. Technical aspects of township establishment, housing development and provision of services are well established within the ADM and local municipalities.

By contrast, the structures and systems for development of land-based livelihoods are almost entirely absent, especially within local government. Livelihoods have not been a traditional responsibility of local government, and little or no dedicated capacity in this area has yet been developed – not least within the ADM. The legal and administrative framework, which guides activities such as township development, is almost entirely absent when it comes to acquisition or development of agricultural land, and there exist few experienced service providers that municipalities can draw upon. The detailed aspects of livelihood-oriented work are poorly understood, both within and outside the ADM, as are the risks involved.

Agricultural strategy of the Amathole needs to be aligned to the LRSP, thus to assist to curb landlessness and invasions associated with population migration or urbanisation issues. Though the ADM has established a Spatial Co-ordination Unit tasked with the responsibility to ensure the alignment of sector plans, the LRSP is not fully aligned with the agricultural strategy. The present writer is of the view that land and agricultural activities should be positioned in the same Administrative Unit so that when agricultural projects are being identified, that should be done in line with land-reform priorities in the district.

An accessible Surveyor-General's office will assist in averting some of the delays that are being experienced as result of hold-ups in approving applications relating to the formalisation of settlements.

Government must consider the creation of sustainable employment opportunities in the agricultural sector so as to deal with the phenomena of urbanisation and housing problem in the cities.

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## ANNEXURE 1

### Land Legislation in the Eastern Cape

Act Number and Date	Act Title	Responsibility
<b>Basis of freehold system</b>		
47/37	Deeds Registries Act	National DLA
8/97	Land Survey Act	National DLA
48/61	State Land Disposal Act	National DLA
70/70	Sub-division of Agricultural Land	National DLA
<b>Land Tenure Reform Legislation</b>		
108/91	Abolition of Racially Based Land Measures Act	National DLA
112/9	Upgrading of Land Tenure Rights Act	National DLA
2/95	Land Administration Act (delegations)	National DLA
3/96	Land Reform (Labour Tenants) Act	National DLA
31/96	Interim Protection of Informal Land Rights Act	National DLA
62/97	Extension of Security of Tenure Act	National DLA
28/96	Communal Property Associations Act	National DLA
113/93	Land Titles Adjustment Act	National DLA
Government Gazette No	Communal Land Rights Act 2004	National DLA
<b>Land Reform Programme</b>		
116/ amended by 26/93	Provision of Land and Assistance	National DLA
22/94	Restitution of Land Rights	National DLA

Source: Dept. of Land Affairs, East London, 2000 (adapted).

## ANNEXURE 2

### Legislation: Land Use

Act and Date	Title	Responsibility
<i>Rural</i>		
10/66	Transkei Agricultural Development	
14/89	Ciskei Agricultural Development	
73/89	Environmental Conservation (E.A).	Nat DEAT
43/83	Water, forests, roads, marine, etc	Nat DALA
Decree 9/1992	Environmental Decree (Transkei), 1992	
URBAN		
125/91	Physical Planning	LG&H
15/85	Land Use Planning Ordinance (ex-RSA)	LG&H
33/34	Townships Ordinance (ex-Transkei)	LG&H
15/87	Land Use Regulation Act (ex-Ciskei)	LG&H
67/95	Development Facilitation Act	LG&H
97/96	Local Government Transitional 2 <sup>nd</sup> Amendment	LG&H
293/62	Townships Proclamation, CPA areas (But repealed and replaced by a number of laws and proclamations issued 1988: Regulations Concerning Land Tenure in Towns, R290 of 1988, Regulations for Disposal of Trust Land in Towns, R402 of 1988)	LG&H
R293 of 1962	Ciskei Township Regulations: Proclamation Delegated.	

4/84	Black Communities Development Act (regulations) former RSA townships	LG&H
Government Notice No. R1886 of 1990	Township Development Regulations for Towns, 1990. Former RSA ( SADT areas) Assigned	
Government Notice No. R 402 of 1988	Regulations for the disposal of State Land in Towns, 1988. Former RSA (SADT areas) Assigned	
Proclamation No. R29 of 1988	Regulations Concerning Land Tenure In Towns, 1988. Former RSA (SADT areas) Assigned	
Government Notice R188 of 1990	Land Use Planning Regulations, 1990. Former RSA (SADT areas) Assigned	
113/1991	Less Formal Township Establishment. Whole assigned excluding sections 3(5), 9(2), and (3), 12(2A) and (3), 19(6A) and (7) and 26(2) and (3). Former RSA and SADT areas	
Government Notice No. R1897/1986	Regulations Relating to Township Establishment and Land Use, 1986. Former RSA Assigned	
Provincial Notice 733 of 22/9/1989	Regulations relating to the Establishment and Amendment of Town-planning Schemes for the Province of Cape of Good Hope, 1989. Former RSA. Assigned	
GENERAL		

Act No 21 of 1940	Advertising on Roads and Ribbon Development Act, 1940. Former RSA. Assigned	
Removal of Restrictions Act, 1967 (Act No 84 of 1967)	Assigned. Former RSA	

### ANNEXURE 3

#### Land tenure systems in respect of rural districts of the Amathole District Municipality where the freehold system does not apply on its own:

Area of application by pre-1994 administrative boundaries	Tenure	Legislation (proclamations unless otherwise indicated)
Former Transkei: Butterworth, Nqamakwe and Idutywa (3 of 8 surveyed districts in former Transkei).	Surveyed for Quitrent, later allowed for PTOs.	174 of 1921 (districts surveyed under Proc 227 of 1898) – regulations and control of land.
Former Transkei: Centane and Willowvale (2 of 21 unsurveyed districts in the former Transkei).	Unsurveyed: PTOs only.	26 of 1936 – regulations and control of unsurveyed districts. Unsurveyed areas in the Transkei i.t.o. 143 of 1919 amended by 18/20, 24/22, 198/26.
Ciskei: <u>Keiskammahoek district</u> : Burnshill, Mbems and a version of quitrent at Rabula; <u>King Williamstown district</u> : Izinyoka Valley, Masingata's Village, Pirie, Balasi, Peulton, Joseph Williams, Mount Coke, Dikidikana, Kwelerana and Upper Izeleni. <u>Peddie</u> : Bell or Bodiam. <u>Middledrift</u> : e.g. Koloni (northern third of the district).	Surveyed for Quitrent, later allowed for PTOs.	R188 of 1969 enacted as Act 14 of 1982. Formerly 117 of 1931.  Deeds Registry in King Williamstown established in terms of 119 of 1931.
Ciskei: <u>Keiskammahoek</u> : Upper and Lower Rabula, Gxulu, Lower Nqhumeya, Dontsa, Zanyokwe, Wolf River, Nqolo-Nqolo, Burnshill, Mbems.	"African" freehold.	Freehold – commonages require formalisation under group tenure.

<u>Peddie</u> : Bell or Bodiam.		
<p>Ciskei: <u>Keiskammahoek</u>: Upper Nqhumeya, Chatha, Gwili-Gwili, Mnyameni, Mthwaku, Gxulu, Lower Rabula, Zanyokwe, Wolf River, Nqolo-Nqolo, Burnshill.</p> <p><u>Middledrift</u>: two thirds of district (middle and south).</p> <p><u>King Williamstown</u>: several localities previously surveyed and not taken up.</p> <p><u>Peddie</u> e.g. Glenmore, Ndwayana, Ndlambe and Pikoli (former Tyefu Irrigation Scheme, Fish River).</p> <p><u>Victoria East</u>: Tyume Valley, e.g. Guquka.</p>	PTOs on unsurveyed land (including "trust" tenure previously) also PTOs on former surveyed land where surveys were not taken up.	R188 of 1969 enacted as Act 14 of 1982. Formerly 302 of 1928 amended by 398 of 1931.
Ciskei (SADT-purchased): <u>Mpofu</u> district, parts of <u>Peddie</u> district, parts of <u>Victoria East</u> district.	Leases (outdated unenforced), caretakerships freehold, informal – IPILRA (being formalized).	Becoming formalized after rights enquiries, using freehold individual and group tenures (CPAs).
SADT (RSA): Mgwali, Wartburg, Hekel, Goshen, Mooiplaas, Kwelera, Newlands, Peelton (part).	Quitrent and PTOs (Mooiplaas had one village unsurveyed).	R188 of 1969. Formerly 117 of 1931 and 302 of 1928.
SADT (RSA): Chalumna 8 villages.	Trust purchased land Tribal Trust title under Chief Jongilanga. Occupiers have PTOs.	Unclear how title was issued (in 1998). PTOs in terms of R188 of 1969.
RSA: Macleantown, Kubusi & Cenyu lands (Stutterheim).	Freehold.	Freehold (Macleantown freeholders removed and restituted).

## ANNEXURE 4

### Rural tenure according to present local municipal boundaries:

#### Mbashe Local Municipality:

<b>Idutywa.</b>	<b>Quitrent tenure</b> , with provision for <b>PTOs</b> , both regulated in terms of Proclamation 174 of 1921.
<b>Willowvale or Gatyana.</b>	<b>PTOs only</b> , that is, no surveyed residential or arable plots, only allocated plots under PTOs regulated in terms of Proclamation 26 of 1936.
<b>Part of Elliotdale in Mbashe.</b>	<b>only</b> , that is, no surveyed residential or arable plots, only allocated plots under PTOs regulated in terms of Proclamation 26 of 1936.

#### Mnquma Local Municipality:

<b>Butterworth.</b>	<b>Quitrent tenure</b> , with provision for <b>PTOs</b> , both regulated in terms of Proclamation 174 of 1921.
<b>Nqamakwe.</b>	<b>Quitrent tenure</b> , with provision for <b>PTOs</b> , both regulated in terms of Proclamation 174 of 1921.
<b>Centane.</b>	<b>PTOs only</b> , that is, no surveyed residential or arable plots, only allocated plots under PTOs regulated in terms of Proclamation 26 of 1936.

## Amahlati Local Municipality:

<b>Stutterheim, Kei Road, Cathcart.</b>	Majority area covered by surveyed farms, registered titles under freehold in national Deeds Registry.
<b>Kei Road:</b> Cobongo and Amabele.	New settlements, freehold intended.
<b>Stutterheim:</b> Kubusi, black owners.	Freehold.
<b>Stutterheim:</b> Cenyulands.	Quitrent, regulated by Proclamation R188 of 1969.
<b>Stutterheim:</b> Cenyulands lands.	Freehold (Adjustment of Titles).
<b>Stutterheim:</b> Mgwali.	Quitrent and PTOs (“trust”), regulated by Proclamation R188 of 1969. Betterment.
<b>Stutterheim:</b> Wartburg.	Quitrent and PTOs (“trust”), regulated by Proclamation R188 of 1969.
<b>Stutterheim:</b> Hekel.	PTOs (“trust”), regulated by Proclamation R188 of 1969.
<b>Stutterheim:</b> Gasela.	Formalising into CPA (agricultural land) and freehold (residential land).
<b>Cathcart:</b> Goshen.	Quitrent.
<b>Keiskammahoek:</b> Upper and Lower Rabula, Gxulu, Lower Ngqumeya, Dontsa, Zanyokwe, Wolf River, Nqolo-Nqolo, Burnshill, Mbems.	African freehold. Betterment.
<b>Keiskammahoek:</b> <i>Burnshill, Mbems and a version of quitrent at Rabula.</i>	Quitrent regulated by Proclamation R188 of 1969. Betterment (restitution under investigation).
<b>Keiskammahoek:</b> Upper Ngqumeya, Chatha, Gwili-Gwili, Mnyameni, Mthwaku, Gxulu (“communal”) Gxulu, Lower Rabula, Zanyokwe, Wolf River, Nqolo-Nqolo,	PTOs regulated by Proclamation R188 of 1969. Often distinction is made between “communal” and “trust” tenure in anthropological/historical studies. The former are typical PTOs that pre-dated the SADT, while the latter was a form of PTO right issued by the SADT on land acquired by the Trust

Burnshill (“trust”).	or as a result of betterment, but essentially these were PTOs issued under more stringent conditions. Betterment, restitution awards complete, implementation under way.
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### Great Kei Local Municipality:

<b>Komga.</b>	Surveyed farms, Freehold, titles in national Deeds Registry.
<b>Komga:</b> Draaibosch.	
<b>Komga:</b> New settlements.	
<b>Komga:</b> Joint venture/partnerships between owners and occupiers.	Von Platen.

### Buffalo City Local Municipality:

<b>East London, King Williamstown, Macleantown.</b>	Large areas are surveyed farms under freehold with titles registered in national Deeds Registry.
<b>East London:</b> Newlands, Kwelera, 7 villages in Mooiplaas.	<b>Quitrent tenure</b> , with provision for PTOs, regulated by Proclamation R188 of 1969, being upgraded to freehold. Formalising.
<b>East London:</b> 1 village in Mooiplaas.	<b>PTOs.</b>
<b>Macleantown.</b>	<b>Freehold</b> , black freeholders forcibly removed to Chalumna, restitution award. Freehold to be restored.
<b>King Williamstown:</b> Izinyoka Valley, Masingata's Village, Pirie, Balasi, Peelton, Joseph Williams, Mount Coke, Dikidikana, (the latter were mission stations when the surveys were done), Kwelerana and Upper Izeleni.	<b>Quitrent tenure</b> , with provision for PTOs, regulated by Proclamation R188 of 1969.
<b>King William's Town:</b> All other rural settlements.	<b>PTOs</b> regulated by Proclamation R188 of 1969, including previously surveyed areas.

<b>Chalumna:</b> 8 villages established by SADT under Chief Jingling.	PTOs for individuals, whole area under a “title” registered in the name of the TA.
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### **Mnqushwa Local Municipality:**

<b>Peddie:</b> Bell or Bodiam.	Freehold.
<b>Peddie:</b> Tyefu Irrigation scheme communities of Glenmore, Ndwayana, Pikoli-Kalekeni and Ndlambe. Glenmore established late 70s early 80s, resettlement area, PTOs in dense settlement. Others old nineteenth-century settlements. Ndwayana – PTOs under TA. Pikoli and Ndlambe.	New tenure arrangements introduced by Ulimocor/irrigation scheme, with foot plots, etc, but never with full community sanction, still contested.
<b>Peddie:</b> All other rural settlements.	PTOs.
<b>Peddie:</b> Surveyed farms, formerly white owned, purchased by SANT to consolidate former Ciskei.	Currently black owned or “leased” pending transfer to black farmers (conveyancing problems) or to be transferred to groups of occupiers with IPILRA rights – CPAs.
<b>Peddie:</b> Former Ulimocor Pineapple farms, same as above. Three separate blocks of land in the south east.	Tenure still under the state, Company (Pineco) running pineapple production, workers organised under Peddie Pineapple Development Trust – intention to investigate transfer of land to Trust over time.

### **Nkonkobe Local Municipality:**

<b>Victoria East/Alice.</b>	Quitrent.
<b>Victoria East/Alice:</b> Settlements in Tyume Valley, viz Guquka.	PTOs.
<b>Victoria East/Alice:</b> Former Tyume Citrus scheme (4 farms).	Battlesden and Thorndale: IPILRA holders in process of acquiring title –

		CPAs. Other 2 farms– leased, lessees want to purchase.
<b>Mpofu/Stockenstrom/Seymour:</b>	Kat	Converted to freehold during latter nineteenth/twentieth century, coloured owners removed to Ciskei consolidation, restitution under investigation. Freehold still predominates, some CPAs in formation or proposed.
<b>Fort Beaufort:</b>	Healdtown.	Quitrent.
<b>Middledrift:</b>	upper third of the district.	Quitrent regulated by Proc R188 of 1969.
<b>Middledrift:</b>	lower two thirds of the district.	PTOs regulated by Proc R188 of 1969.

**Nxuba Local Municipality:**

<b>Adelaide, Bedford and Post Retief.</b>	Surveyed farms under freehold with titles registered in national Deeds Registry.
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## ANNEXURE 5

### Map showing the study area

