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# **The urban land question:**

**Management and access for the urban poor in post apartheid  
South Africa**

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THESIS SUBMITTED FOR THE DEGREE OF DOCTOR OF PHILOSOPHY

SUPERVISOR: PROFESSOR SUSAN PARNELL

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## Preface and Acknowledgements

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When we write about or research world affairs and in my case, cities and urban land, we often remove ourselves as significant role-players in the urban arena as though we are the perfect observers and critics who do not in any way impact through our actions on the urban landscape. This dissertation is in a sense a declaration that as an urban planner I have for many years made decisions, taken actions, drawn spatial plans, made policies and space-defining policies in particular that have had major impacts on peoples' lives and society in general whether for the good or for the bad, I do not actually know. I do not know because I have not taken the time to find out through researching and asking the beneficiaries or users whether their lives have been marginally or significantly improved or deteriorated as a result of the spaces which they now occupy and that I had a hand in.

In part, this dissertation provided the opportunity to find out and test the relevance and success of some of my (urban) actions as most of the case study material and observations were collected over many years of planning practice where I was the principal investigator. However, one never really acts alone in the urban arena. There are many role-players: professional and technical, political, specialists, regulatory, community representatives, beneficiaries and so on, and collectively we challenge one another and come to decisions that ultimately culminate in the so-called urban plan which at a larger scale affects how the city performs and functions. Aside from the many role-players who collectively define the urban plan, all players are bound by regulatory tools and frameworks that govern how they should act and what they are permitted to do and not do. We claim as a collective that these powerful frameworks of the law make our actions legitimate and correct and we use it to make us all equal players in the plan making (and therefore city-making) process. However, most of these frameworks often work against a developmental agenda which is what the South African city needs to address in terms of the past inequities in social and spatial patterns promoted by the apartheid city and modernist planning practices which insisted on the separation of people, places and land uses and used quantitative measures to inform the urban plan. As a result we inherited a city that performs well for some (the wealthy minority) and poorly for others (the poor majority). How to address this imbalance through an alternative public land programme is therefore one of the key concerns of this dissertation.

Whether my actions as a planner as part of a collective have impacted well or poorly on the performance of the city is not as fundamental as whether: a) the built environment collective challenges the urban plan making process sufficiently to make it more relevant and developmental and b) whether the collective adheres to a set of values or intent that will at

least in part set the city straight in terms of achieving the accessible, integrated and sustainable city that performs well on all citizens' behalf.

The term *social justice* is what I use to underpin my own set of values that I would like to believe that however well or badly any plan or policy that I have been involved in impacts on society and the city, the planning process was entered with a heart and mind that is caring, that wants the best urban condition for all. In holistic terms, the process was intended to act in the interest of the greater public good and whatever the outcome that intent is what is important. If there is a critical mass of operators in the built and natural environment that begin to uphold sincerely, the principle of social justice and act in the interest of the greater public good, the city, however imperfect, may well heal and the citizens would begin to feel part of the land, the landscape and urban privilege of a healthy society.

Castells (1998: 359) wrote that theory and research 'should be considered as a means of understanding our world, and should be judged exclusively on their accuracy, rigor, and relevance. How these tools are used, and for what purpose, should be the exclusive prerogative of social actors themselves, in specific social contexts, and on behalf of their values and interests. No more meta-politics, no more *'maitres a penser'* and no more intellectuals pretending to be so.' In challenging Castells, Friedmann (2000: 460) argues that 'we cannot escape ideology' which refers in his article to 'deep sets of beliefs about how the world works'.

That we bring our own ideologies, ideas, egos, prejudices, professional and technical arrogance to planning processes, research and practice is an open secret. None of us are devoid of this. But there is still a place for us all, not just local social actors, in the making and shaping of urban land and landscapes that can be accurate, rigorous and relevant depending on how we adapt to the context that we are addressing and whether we are humble enough to learn from those social actors whose lives are directly influenced and shaped by what we and they as a collective aspire to achieve. The reality and equality check in the context of the South African city and local land debates lies in the values and common ground that we share rather than only in the judgment of the accuracy, rigor and relevance of our theory and research which Friedmann (2000: 461) goes on to call a *'prepackaged rationale'*. He cites a young law student, Tan Le's plea for a utopian vision which goes as follows.

*'....And it is not just in tertiary education courses that this lack of vision prevails. We lack it as a society. We have replaced it with what might be called a rationale. A rationale on the other hand, is limited and attainable, and the tighter and more compact the rationale is, the more attainable it is.'*

*And we do have a tight and compact rationale for our lives and for what we do. It is an economic rationale, and economic in a very narrow sense. It is solely interested in a certain type of efficiency and profit – efficiency and profit to the exclusion of, and in isolation from, everything else, particularly the future'*

Land planning by nature is about the future. Land in its current form is particularly vulnerable to the efficiency and profit debate that Tan Le is referring to. Land planning and land as a non-renewable resource should ideally be about sustainability which in turn is about sustaining / using resources so as to cater for future generations. I believe that if we do not address the question of urban land in South Africa within the framework of city planning in particular, it will just be a matter of time before the South African city and urban society will suffer the consequences dearly. It is in this context that I write the following chapters with a plea for reason and justice in the release, distribution, use, management and shaping of public land, in particular. Like Tan Le, I too would like to hold on to the dream of the good or utopian city. Perhaps the more we hold onto it, the closer we get to making it a reality!

To those who inspired me to reach this point, I thank you graciously namely: Professor Susan Parnell, my supervisor, who directed me and taught me to write for academic purposes; my colleagues at NM & Associates Planners and Designers, especially Masilo Mokhele and Jacqui Perrin who form part of the collective that I mentioned earlier; my dear family, especially my nieces: Nuraan, Saarah, Jihaan and Zulpha who as professionals or professionals in the making inspired me to keep my focus over the years; all those who gave me their valuable time to be interviewed and interrogated about the urban land question in South Africa and those who permitted me to have access to valuable information including the City of Cape Town and Provincial Government of the Western Cape departments and individuals some of whom are referenced and others who preferred not to be named in the following chapters, without which this work would have had limited value and substance.

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## Abstract

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The premise of the thesis is that the developmental use of urban land should be ethical, fair and promote social justice. Using multiple research approaches and mixed methods this thesis examines the urban land question in South Africa and particularly Cape Town where land distribution and ownership are inequitable. The thesis unpacks land redistribution, land tenure reform and land restitution within this context. It is argued that the South African Constitution commits government to protect the property rights of those who currently own property and at the same time redistribute land to those who have been dispossessed and explores what this tension means for urban land redistribution and reform using the freedoms approach developed by Amartya Sen as a conceptual framework and as alternative to the neo-classical model.

The main findings of the thesis can be summarized as follows.

- a) The thesis demonstrates that there is no logical reason why the freedoms approach cannot be extended to include urban land.
- b) The entitlements and endowments that urban land could bestow on the urban poor are shaped by how the State invests in land through the instruments of land planning and land use management which call for a significant role for the State as custodian of public land to not only make explicit the land asset register under public ownership but also instill trust in the poorer sectors of urban society.
- c) A two track system of land planning and land use management may be more appropriate in the post apartheid South African city, one stream for market driven land and one for targeted public land programmes that directly address urban poverty provided that the State is able to make strong connections between the philosophical and the technical aspects of land and land use management systems.
- d) As a two track system is suggested the land use management system requires to be reframed. To facilitate land redistribution and reform in urban areas of South Africa therefore, the thesis suggests that a deliberative and systemic planning approach needs to be adopted that is intervention focused. Only when the State assumes a more critical interventionist role in public land programmes would it be possible to obtain social justice and the principles of the good city in the South African urban context.
- e) Gaining access to and control over land resources beyond the market is possible but limiting for the majority of the urban poor when land and housing debates are conflated. This conflation results in other land debates being silenced yet these have the potential to offer alternatives to the neo-classical model of land and land use management as well as promote a wider role for public land than just housing.

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**Acronyms**


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ANC	African National Congress
BN	Biodiversity Network
BNG	Breaking New Ground
CBD	Central Business District
CMC	Cape Metropolitan Council
CMOSS	Cape Metropolitan Open Space System
CoCT	City of Cape Town
CDS	City Development Strategy
DFA	Development Facilitation Act
DLG	Developmental Local Government
DLGH	Department of Local Government and Housing (Western Cape)
Du’s/ha	Dwelling units per hectare
DUSP	Dignified Urban Spaces Program
GIS	Geographical Information System
GDP	Gross Domestic Product
GRP	Gross Regional Product
HDI	Human Development Index
HSL	Households Subsistence Level
IDP	Integrated Development Plan
IRT	Integrated Rapid Transport
ISLP	Integrated Serviced Land Project
IZS	Integrated Zoning Scheme
LUPO	Land Use Planning Ordinance
LUMB	Land Use Management Bill
MSDF	Metropolitan Spatial Development Framework

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Muni-SDF	Municipal Spatial Development Framework
MW	Mega Watt
NGO	Non-governmental Organization
NMT	Non-motorised transport
NTHS	National Household Travel Survey
OECD	Organization for Economic Co-operation and Development
PRASA	Passenger Rail Agency of South Africa
PT	Public Transport
RDP	Reconstruction and Development Programme
SAIRR	South African Institute of Race Relations
SACP	South African Communist Party
SDF	Spatial Development Framework
UISP	Upgrade of Informal Settlements Programme
V&AW	Victoria and Alfred Waterfront
WCSHSS	Western Cape Sustainable Human Settlement Strategy
WWTW	Wastewater Treatment Works
ZS	Zoning Scheme

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PART ONE:

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**1. CONCEPTUALISING THE URBAN LAND DEBATE**

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## Chapter 1: Introduction

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'Each one of us is intimately attached to the soil of this beautiful country. Each time one of us touches the soil of this land, we feel a sense of personal renewal' (Nelson Mandela, Speech at his inauguration as President of the Republic of South Africa, 12 May 1994).

Land is a significant yet contentious resource among and between nation states, within nations, urban communities, households and individuals. It is not uncommon for highly urbanized societies to have evolved post conflict land and land use management systems to serve the democratic objectives of those societies. However, difficulties in land and land use management arise when a society's values shift as was the case in communist states and also when urban conditions change dramatically for example, as a result of threats and vulnerabilities from climate change. In the case of South Africa, the last two decades have seen both a shift in the material circumstances of cities for various reasons including, dramatic population growth, growing inequality within the South African city as well as an increase in the number of poor people moving to cities. Importantly, difficulties also arise when there are fundamental shifts in the moral agenda of governments and society; yet as is demonstrated in this thesis, although significant attempts have been made, there has not yet been adequate reform in urban land and land use management to address either the shift in material conditions of South African cities, or the implementation of a values based land planning system.

In the first two decades of South Africa's growth and development as a new democratic nation there has been an expectation, particularly among previously deprived sectors of South African society, that land would play a special role in creating stability and contributing to social and economic growth. The question of land in South Africa, and in particular access to land for housing is enshrined in the country's Constitution (1996); although the debate as to whether land and housing should be thus conflated, is challenged in this dissertation, which explores the urban land and land use planning system as a whole, focusing particularly on public land and not just the residential component of (public) land allocation.

In a context where there are extreme gaps between the rich and poor and income inequality is widening urban land access becomes more and more important. In this regard South Africa is like many other places, especially the rapidly growing middle income countries such

as Brazil, Mexico and India (UN Habitat, 2009). South Africa's Gini-coefficient<sup>1</sup> increased from 0.68 in 1991 to 0.69 in 1996 and 0.77 in 2001 according to the Southern Africa Regional Poverty Network (2004) and inequality in South Africa is among the highest in the world followed by Brazil, Colombia, Argentina, Chile, Ecuador, Guatemala and Mexico (UN Habitat, 2008). One of the most poignant features of the urban land and poverty debate is the power relations that govern the distribution, use and access to land within urban land markets. The link between power and land has not really been openly debated in South Africa; southern Africa and Africa. Access to land in urban areas by the urban poor in particular has not been systematically understood in the land discourse, which has been largely focused on rural considerations.

The rural focus in the South African land debate (Cousins, 1998; Walker 2008; Ntsebeza and Hall, 2007) is largely associated with the plight of previously and presently under-provided Black agrarian communities, which while very important has not been sufficiently unpacked in terms of what it means for urbanization and the role of power relations over newly urbanized or migrant communities. Moyo (2007) alludes to the issue of power relations in southern Africa by his claim that current land conflicts result from struggles for access to land and natural resources by both the poor and emerging capitalist classes. These struggles reflect the deep roots of social polarization along racial and class lines. Claassens and Cousins (2008) also allude to land and power relations, albeit in an agrarian context in South Africa. Despite a recent flourishing of work on urban land (Urban Landmark, 2006; 2008) there has been little comparable analysis of the political economy of urban land in post apartheid South Africa.

One of the contentions of this thesis is that the urban land planning system in general and the land use management system in particular to a degree and among other considerations, provide the institutional framework of power in urban land - society relations (Watson, 2002). The link between power (over resources including land as a non-renewable resource), land and land planning has not been properly addressed in South African cities. This thesis makes a contribution in this regard when it unpacks the role of the current land use management system in determining the nature of power relations between the State, society and the poorer sectors of society in respect of land use regulation and public land particularly how such land is planned, used and distributed using Cape Town as a case study (chapters 5, 6 and 7) where the value of strategic planning as opposed to land use regulation is

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<sup>1</sup> The Gini coefficient is a summary statistic of income inequality that varies from 0 (perfect equality where all households earn equal income) to 1 (where one household earns all the income and other households earn nothing).

consistently undermined (chapter 5). The thesis argues that it is inappropriate to frame current day planning law within a neo-classical / liberal perspective through outdated legislation that emphasises government's role to protect rights to liberty (of choice) and private property (Bauer, 1957). Sen's view differs from Bauer in that Sen (1982) argues that the power and policies of government should be directed and used effectively to raise peoples' capabilities implying indirectly a restriction on choices (chapter 2) as far as collective landholdings are concerned and by implication an alternative way of considering land and land use regulation.

It is clear that in post apartheid South Africa there has been inadequate reform of land measures particularly urban land as a result of limited transformation in land use management systems governing urban land planning and development. It is the contention of this thesis that new ways be found of addressing the land management framework in general and the use of public land in particular to bridge the poverty and wealth gap, as well as promote an effective and fair land use management system that creates confidence and hope in the lower echelons of society. This thesis suggests that one way of creating a fair land use management system is to consider a two tier land planning system that on the one hand acknowledges the operation of the urban land market and on the other hand is also targeted specifically at urban poverty redress in a reframed public land programme and land use management system that are based on a new normal (an alternative urban public land planning regulatory system and framework to the current outdated one that embraces appropriate norms and standards based on the principles of the good and socially just city) for land and land use management. The purpose of a more progressive land use system, although still run on parallel tracks, would break with the repressive values of the previously dualist land use system that prevailed under apartheid and which, in the absence of appropriate reform, has largely remained in tact after 1994.

In modern cities, including most large and medium sized South African cities; the urban poor have been systematically alienated from the land through forced removals, displacement and economically induced relocation. Yet, land provides *terra firma* for rich and poor alike and without universal access (that is access for every person) to land there is little hope of survival as a society. A core argument presented in the thesis is that land-people relationships require conscious State interventions beyond that of a simple zoning system. How the State intervenes in land incorporates, but also extends beyond urban planning systems and practices. In a society like South Africa that is undergoing dramatic political

transformation especially in an urban context, one would anticipate major shifts in how land is regulated, managed and distributed.

The premise of this thesis is that there is a crucial role for the State, through legal facilitation and the use of State land assets, in particular, strategically located urban land, in facilitating access of the urban poor to land. One of the aims of this thesis is therefore to investigate the dynamics of land in urban transformation using the case of Cape Town to determine among other research objectives, the role of the State in urban land access and management with a view to addressing poverty alleviation by adopting a values-based perspective on land. The State is understood in this thesis as a democratically elected and governed institution that acts on behalf of and in the interests of the larger majority of the people it represents in a country. In the context of South Africa, the State is recognised as a nascent democratic State whose historical legacy of apartheid plays a significant role in how it directs policy and acts in terms of its legal mandate particularly its overarching mandate represented by the Constitution (1996).

The State's role relative to land includes the regulation, administration and allocation of land and property rights and within this, the management of land use from a regulatory perspective. This role is important in that it influences how legal institutions such as the State, the legislative frameworks within which the State and society operate and judicial decisions affect 'the social production of urban space' (Fernandes and Varley, 1998). This role also influences how urban land use planning and urban development functions are determined across the three tiers of government in South Africa: national, provincial and local government.

However, the cross-cutting roles of different tiers of government in respect of land and land use management are confused, as discussed in chapter 5. For example, in spite of the determination to prioritise the socio-spatial transformation of South African urban areas in 1994 through the introduction of Spatial Development Frameworks (SDF's) as a tool for strategic planning, the land and land use planning system has remained relatively technocratic through Integrated Development Planning at local government level (chapter 5). It was envisaged that SDF's would be given support through Integrated Development Planning by aligning departmental priorities in the same direction as determined by SDF's at a higher order city planning scale. Other planning aspects that fall within the legal domain of provincial or national government departments were intended to be guided by Integrated Development Planning processes at local level which have largely favoured the urban land

market as opposed to addressing local needs and in particular poverty alleviation goals, and is partly responsible for current inappropriate and undesirable spatial patterns of urban development in South African cities (Berrisford and Kihato, 2008; Mammon, 2008). In as far as public land management is concerned State ownership of land is problematic as there is no single public land asset register and an uncoordinated system of land management exists including a host of departments at all levels of government who own, administer and make decisions about public land (chapter 6).

### **1.1 Key questions and arguments**

The key questions explored by the thesis, directed by the literature reviewed in chapters 2 and 3 and mixed methods adopted and discussed in chapter 4, include the following.

- a) What policy directives drive the urban land agenda and what are the implications for public land relative to poverty reduction goals?
- b) What are the legal or institutional barriers that prevent access to land and under what legislation does the State currently operate with respect to land use management and controls?
- c) What impacts do the current patterns of asset disposal to the private sector and land ownership have on the urban poor and what are the formal and informal regulatory underpinnings of exclusion in an urban context?
- d) What does the Cape Town experience show us in regard to the position of land as potential entitlements and endowments of the urban poor?
- e) What is the State doing to achieve developmental and poverty reduction goals through facilitating urban land development and acquisition in appropriate locations by the poorer sectors of society?

A major contention of this thesis is that while the South African State has a mandate to approach urban land redistribution and reform in terms of the country's Constitution (1996), the State, by failing to take sufficient transformatory action, has fallen prey to the workings of the urban land market as promoted in a free market economy and supported by a neo-classical paradigm. Land use management practices therefore support the ongoing class and race based fragmentation in the spatial distribution of urban land as was the case during apartheid rule. The tension between the post apartheid concept of social justice and the ongoing operation of the urban land market that is focused mainly on economic success is apparent in the structure and form of the South African city. This tension derives from the persistence of a land and land use management system that is founded in a neo-classical

paradigm that dominated urban land debates before 1994 and remains in use because it offers a deeper and far more familiar understanding of urban land and land use management. Coupled to the neo-classical paradigm, contemporary urban planning systems have been shaped by 19<sup>th</sup> century Western European or modernist planning practices which in the South African city context was imported to give effect to the apartheid city. These older forms of planning still persist today throughout the developing world having major influences on urban land planning (UN Habitat, 2009).

One of the implications of the neo-classical model in the modernist paradigm is the promotion of home ownership which typically results in a large urban land budget allocated to residential land uses. Governments in world cities have supported the promotion of home ownership and many hold the view that capital acquisition by the poor fails in the developing world largely because of lack of (residential) property titles (De Soto, 2001). The promotion of home ownership across all class strata is therefore a familiar practice in free market economies across the world and deeply embedded in neo-classical thinking. In the South African case the major form of State land intervention has been to find sites for home ownership construction that is then allocated using a subsidy to the poor (Rust, 2008). Yet housing and land cannot be conflated in an urban context such as South Africa that is so diverse in terms of historical and inequitable land ownership and legacies of urban segregation. A major argument in this dissertation is that *the land and housing debate is conflated and confused* in South Africa, masking the wider dynamics of land allocation, distribution and management in determining the urban opportunities for the poor. This research unpacks this debate by focusing specifically on urban land; making a case to ensure that the asset register under public ownership is somewhat more explicit. It argues for public land to be more consciously managed and used to address urban poverty appropriately and to ensure that public land does not fall prey to the whims and fancies of private interests to the extent that land as a resource becomes completely unsustainable over time. This shift in practice is not possible when the value of public land is considered only from a housing and urban land economics point of view.

Another challenge in the South African land debate is the motivation for promoting *the protection of private property rights and interests* and the appropriateness of this motivation in the context of extreme urban poverty against the potential role of public land in poverty redress. Linked to this argument is the question of *a freedoms (urban land) management concept* as opposed to only protecting private property rights which focuses on the individual. The debate on the relationship between urban land and power alluded to earlier is expanded

and directed towards a collective view on public land. The question is raised as to whether a *Pareto Optimality effect* in using a *State interventionist model* in the urban land market can be obtained 'in which the utility (or welfare) of no one can be raised without reducing the utility (or welfare) of someone else' (Sen, 1999: 117).

A further thrust of this dissertation is that *the policies on the use and distribution of land to improve the entitlements of the urban poor* could potentially be prioritized as a land action particularly with respect to public land. In unpacking the entitlements (the set of alternative commodity bundles that a person can command in a society using the totality of rights and opportunities available to him/her) the thesis contends that in a market driven economy, the poorest of the poor and less well-off generally have very limited entitlements particularly with respect to adequate access to urban land and land markets. Linked to the use and distribution of urban land are legal mechanisms that assist to not only control land development but also stimulate the urban land market to perform against the needs and interests of the urban poor.

## 1.2 Conceptual Framework

The dissertation is framed by three key concepts that are discussed in detail in chapter 3 of the thesis. The first is social justice which forms the basis of a set of ethics or value system of land – people relationships. The second is that of urban sustainability linked directly to the question of land and environment in an urban context. The third is that of a deliberative planning intervention to achieve equitable access and balance in the systems that govern land – people relationships. The concepts find theoretical support in the work of Amartya Sen (1977; 1981; 1999) who reflects on the notion of “capabilities” i.e. persons should be able to lead the kinds of lives that they value and have reason to value. This theoretical foundation of a freedoms approach is further explored in Chapter 2.

Although the freedoms or capability approach is concerned with addressing poverty and the distribution of public goods and services, it has neither been directly applied to the question of land nor has it deviated substantially from a market-driven approach to developing freedom and capability. The thesis aims to make a contribution in this regard by attempting to understand the relationship between urban poverty and land within a freedoms framework and extending this framework to debate the influence of other approaches such as the neo-classical approach to land and land use management introduced in Chapters 2 and 3.

Moreover, in focusing on land the thesis shifts the focus on individual interests to those of the collective.

### 1.3 Dissertation format

The thesis is divided into four parts. Following this introductory chapter (Part One) part two sets out the theoretical framework and approach within which the thesis is considered. Part Two comprises chapters 2, 3 and 4 which cover respectively, a conceptual approach to poverty reduction, urban land debates and the methodological approach of the thesis. Chapter 2 draws on the work of various developmental theorists chiefly the work of Amartya Sen (1977, 1981 and 1999) as well as neo-classical paradigms that consider the questions of urban land and poverty from a development perspective and a neo-liberal or free market economic perspective. Although not an urbanist, Sen's work was particularly selected to reinforce the intellectual value base or moral standpoint of this dissertation, which rests on the idea of justice (Sen, 2009) in urban land and the city. The dissertation relies on the extensive work of Sen (1977, 1981; 1999) whose capability theories and freedoms approach have been interpreted and critiqued to inform a conceptual framework for urban land and land use management in the South African city context.

Sen's work is juxtaposed against the neo-classical approach to urban land and land markets which forms the familiar paradigm within which the urban land market and operators, including the State work within. Chapter 2 relies on Sen's work (1977; 1981; 1999; 2009) to understand the role of urban land and indeed of the State in re-establishing the relationships between people and land within a framework of socially just societies and cities. While his work is critiqued in the thesis, I nevertheless adopt the freedoms approach as the most appropriate framework within which urban land can be framed.

*Chapter 3* reviews the South African and international perspective/s on land and argues that both sets of literature largely focus either on rural debates, or in the urban context on specific or narrow issues such as informality, land tenure and housing. While land and land use management are considered critically and from a pro-poor agenda, the urban transformation or poverty reduction literature is generally scant on this subject. The thesis challenges the conflation of land and housing, arguing that there is a need for making a more central place for land in the context of the urban poverty debate. It also argues that while there are many different ways of gaining access to and control over resources beyond the urban land market, these are essentially limiting for the majority of the poor. Chapter 3 reinforces the

freedoms approach to urban land as means of urban poverty alleviation. The cases of Kerala in India and China are cited to highlight some lessons for the South African context.

Three concepts of social justice, urban sustainability and deliberative planning are introduced to support and ground the application of the freedoms approach to land. These three concepts – and their application to land planning provide theoretical support for the inquiry into the underlying political economy of post apartheid land use management in Cape Town. At the same time, the chapter on the freedoms approach highlights that this approach does not directly address the question of urban land as potential entitlement and endowments of the poor. It also does not pay attention to the weaknesses in respect of land use management being limited in respect of access to urban land for the poor in a free market system. The contribution that the dissertation makes is to broaden the freedoms approach in respect of these weaknesses by demonstrating that a better understanding is required of planning processes, technical city making instruments and policies on land to allow access for the urban poor.

*Chapter 4* outlines the multiple and mixed methodological approaches employed in this dissertation which relies on a combination of existing empirical data from primary sources, secondary data sources and materials as well as data developed from base or raw material to support the view that urban land and land use management in South Africa require review and adjustment through State intervention to be useful in allowing access to land for the urban poor. The diverse research questions and complexity of the subject matter require multiple research techniques and methods of inquiry so as to facilitate an interaction between theory and practice. The primary means of data collection is case study material in the practice of urban planning involving a number of publicly owned sites, theory and analysis of existing data as well as an interactive research between theory and policy questions which were raised in a series of interviews conducted towards the study. Chapter 4 also provides a theoretical and practical understanding of the methodological approach adopted in this dissertation. The geographic scope of the dissertation is introduced in this chapter (Figure 4.3) highlighting the jurisdiction of the City of Cape Town, the only metropolitan area in the Western Cape province of South Africa, as the case study whereupon the urban land and land use management instruments, practices and implications are examined and analysed.

Part Three of the thesis comprises chapters five, six and seven which are analytical and provide an analysis of existing legal and policy frameworks in post apartheid South Africa, using the experiences of Cape Town. *Chapter 5* discusses land legislation, policies and

institutional considerations that apply in all South African cities, including Cape Town. Based on land reform case studies and other case study material, this chapter also contextualises strategic planning and assesses the institutional status quo of urban land management and argues for a public land reform model that is fundamentally pro-poor. The analysis of land laws and policies in this chapter supports the premise of the dissertation that the current land policy, management and land use system is structurally unable to address the needs of the poor. The question of urban land redress in respect of the poor and on the basis of social justice principles in a liberalist or neo-liberalist paradigm cannot continue which calls for a complete review if the State desires to support reformist land models. An alternative paradigm such as the freedoms approach that begins to merge the principles of social (redistributive) justice in land with the market forces of the neo-classical paradigm may be more appropriate. This chapter also argues that land and land use management policies could potentially promote the capabilities of the urban poor and use land sustainably towards this end.

*Chapter 6* provides an analysis of Cape Town and contextualizes this city as the geographic case study of the dissertation in terms of prevailing patterns of poverty and inequality that derive in part from apartheid legacies. It notes the urban development patterns and profiles in the city with particular reference to residential and class structure, highlighting the inability of the poor to compete equally in the land market. It is argued in this chapter that land in the public domain as represented by an analysis of residential patterns, infrastructure, transport and public space has not significantly changed distribution patterns in Cape Town. One example is that the physical landscape of this city continues to reinforce race and class separation over inclusion. The chapter returns to Sen's motivation (1984: 497) that 'endowments serve to create entitlements that broaden one's power over commodities'. It recognizes that in terms of the urban poor's ability to access endowments in land where they are presently located, the foundational urban layers analysed suggest that in a market driven economy, the poorest of the poor have very limited endowments as a potential for entitlements.

Chapter 7 asks the question: what is meant by the (urban) land question(s) in South Africa? The question is set against the legal, policy, institutional and urban context of land sketched in Chapters 5 and 6. It explores what land entitlement requires as a means of class, racial and poverty redress. This chapter also considers the investments that the State made between 1994 and 2007 in public land for poorer citizens in Cape Town and juxtaposes this against the State's disposal of strategically located public land in Cape Town to private

interests. From this analysis it is clear that the asset value created for the poor is questionable in terms of where assets are located and what form they take. Through the analysis I take issue with De Soto (2001) who argues that freehold titling is a key step towards attaining wealth. The analysis in this chapter also shows that government has been the facilitator of using public land to encourage further the exclusion of the urban poor and dispose of public land against their needs while hints of corrupt practices in public land deals also emerged. The analysis in chapter 7 shows that sufficient legal and institutional arrangements have been put in place to secure the rights of access to land by the urban poor.

Part Four begins to consolidate the thesis starting with chapter 8 and concludes with the key findings of the thesis in chapter 9. Chapter 8 draws together the empirical findings from the Cape Town experience and explores these results to reflect on the characteristics and elements of a freedoms concept to public land asset management; with potentials for new thinking in terms of the roles that public land could play in its development and use to address urban poverty concerns. It is argued that in terms of the freedoms approach urban land is an important building block in addressing the question of poverty. As the alternative concept is based on a two track system of land management; one for the regular land market as we know it; and one to promote the potential of public land as a poverty alleviation instrument, it is vastly different to the present system of land management which excludes the latter component. This chapter begins to make explicit what a land entitlement means and concludes that to facilitate land redistribution and reform in urban areas of South Africa a sustainable and deliberative planning approach needs to be developed that is intervention based and which mandates the State to play an active role in reversing the urban land tide towards poverty reduction goals.

Chapter 9 concludes the dissertation with the key findings presented in terms of the freedoms approach.

#### **1.4 Limitations**

As a contextual study the research material is not sufficiently definitive. Some of the conceptual and land policy related analysis remains at a broad and general level although attempts were made to support the analysis empirically. For example, land tenure reform which is an essential consideration in the urban land question debate and the urban poor sector is insufficiently covered in the thesis given the complexity of the subject matter and the

fact that land tenure reform could well be a dissertation in its own right. Another area that is neglected but could potentially be an area for further study is what the public land agenda for the non-poor should be?

The research is constrained by the fact that information on public land especially public land disposed of by various tiers of government was not available despite many attempts to gain access to such information (see chapters 4, 6 and 7). It was therefore difficult and considered beyond the scope of this thesis to examine and analyse to what extent the proceeds of the disposal of public land have indeed been utilised to fund the provision of social facilities and poverty reduction programmes to the benefit of the urban poor.

University of Cape Town

PART TWO:

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**2. DELIBERATING THE URBAN LAND QUESTION**

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## Chapter 2: Sen's freedoms and the good city

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To act from a position of freedom which by nature yields a more universally-founded action on the part of an individual (or a poor person / household) when it exercises its right to entitlements and endowments is characteristic of a socially just society and city. It is therefore important for the State and its policies to protect these entitlements and endowments on behalf of society at large and the urban poor in particular, which can be had in access to urban land (Sen, 1999).

### 2.1 Introduction

There are a number of theoretical bases or bodies of knowledge that assisted to shape the argument and direction of this thesis. These theories informed the dissertation particularly in respect of the two salient issues being examined one, the return of a moral standpoint based on social justice; and two, the role of land management as an instrument of social justice practices to address urban poverty. The first set of theoretical concepts explored in this chapter is about understanding better and reinforcing the moral standpoint of this dissertation, which rests on the idea of justice (in land and the city). The dissertation relies primarily on the work of Amartya Sen (1977, 1981; 1999) whose capability theories and freedoms approach have been interpreted and critiqued to inform a conceptual framework for the urban land question in general and land use management in particular in the South African city context. The second body of literature, discussed in chapter 3, has to do with the traditional and emerging corpus of work on land and land use management. This latter body is more applied in practice and by implication it is suggested in the thesis that an alternative urban praxis necessitates both a clear values base and a considered way of operating. Moreover, the argument is made that a unified system of land planning is necessary but not sufficient to ensure that the entitlements of the poor are realized – and that specific mechanisms, especially public land, need to be put in place to give material expression to the values of a society.

In his early work Sen focused mainly on the development of the freedoms concept. More recently the author (2009) also explores the idea of justice and makes a case for 'reasoned scrutiny' (2009: 40), which is useful in exploring matters of achieving justice. The question he poses is whether reasoned scrutiny provides us with a guarantee of ultimately reaching the truth? Although not uncritical of the concept of reason, Sen (2009) argues that there is a place for emotion in supporting reason thus the two: reason and emotion can be regarded as two complementary terms. When contemplating, debating and questioning land matters in society and South African society in particular, one can argue that land matters are also matters of the heart because of the direct relationship between people and land. This is often evident in cases of restitution in South Africa where some role-players address the question of displacement and the fact of restitution in respect of land with absolutely no

emotion and others (those who were the victims of displacement and those non-victims who resonate with the pain of displacement) find it hard to approach the redress of displacement without emotion (see discussion in chapter 7, District Six Land Claim).

In understanding the nature of the forces that limit or inhibit access to urban land such as limited income, affordability levels of property, market know-how and so on, the ways and means that the urban poor build income, asset, and foster individual and societal value through land need to be established, otherwise this sector will remain unfree and excluded. Sen's work (1977; 1981; 1999; 2009) is very useful in understanding the role of land and indeed of the State in re-establishing the relationships between people and land because not only does it support a values base perspective in policy making but also urban land access and land policy can contribute significantly to the entitlements and endowments available to the urban poor. The values based perspective in Sen's work can also be closely linked to the utopian idea of society and the city which is not an uncommon approach in the urban planning and design disciplines. It is understood by supporters of the utopian idea of society and the city (Lynch, 1981; Friedmann, 1992) that the more we embrace this idea, the more we recognize (dys) utopia in urban action and the closer we hope to get to realizing the 'ideal' in practice.

## **2.2 Rights, capabilities, freedom, entitlements and endowments versus neo-classical approaches**

In his work, Sen (1999: 18) reflects on the notion of 'capabilities' - persons should be able to lead the kinds of lives that they value and have reason to value. These capabilities can be enhanced by public policy, but he also notes how the direction of public policy can be influenced by the effective use of participatory capabilities by the public. In order to understand better the role of land and public policy in respect thereof, Sen's work and other literature reviewed in this chapter are used and critiqued to analyze and interpret the question of land and land policy. Before one can unpack the question of land in any context, however, one also has to understand what policies or directives drive governments to influence how they address land matters. In other words what is the overall development agenda of government and how does this manifest in its land policy?

Sen argues that there are two key reasons for the crucial importance of individual freedom in the concept of development. The first is that substantive individual freedoms should form the basis of evaluation of a society's success; and the second is that substantive freedom is also a key determinant of individual initiative and social effectiveness. While Sen's emphasis is towards the individual and individual freedom, the question of land and the emphasis of this

dissertation tend towards the collective. It is, however, also important to distinguish between individual self-interest as contemplated by rational choice theorists (Sen, 2009) and substantive individual freedom where the former is about selfishness or acting in self-interest and the latter more about valuing the notion of self as part of a larger collective or society. In other words, the kind of life that one values to live is value-laden and based on values that are larger than self (interest); and therefore reflective of what will work for the collective as opposed to self-centeredness.

### 2.2.1 Sen's theories relative to urban land and poverty question/s

Sen's notion of individual rights and the notions of the good city discussed below are consistent with pro-poor urban land literature (Amis and Rakodi, 1995; Fernandes, 2002; Urban LandMark 2006; Parnell, 2007; Urban LandMark, 2008) and with section 25 of the South African Constitution which outlines the provisions of the State's mandate in respect of property. However, with respect to urban land, the rights of the poor have yet to be realized (Royston, 2008; Sachs, 2008). Far more attention has been paid in South Africa to the protection of private property rights. For example, Smith (1994: 236) confirms that any 'restitution of land from which people were removed by apartheid legislation would be restricted to land still in state hands and not developed or allocated for specific purposes. Thus the distribution of land established under apartheid would be legitimated, for the most part; private ownership relations would be extended to replace other for example, communal forms of tenure, and people of all race groups would be free to buy land provided they had the money to pay for it. The strategy was clearly designed to ensure security of White ownership, and to pre-empt redistribution under a future non-racial government.' Sixteen years on from the time of Smith's writing and the advent of democracy was redistribution achieved in the manner intended; and what happened to some of the State land set aside for this purpose? To what extent has there been an advance in individual freedoms with respect to urban land?

Extending the concept of freedom or 'human flourishing' to principles of the good city described by Amin (2006) as an urban order that might add value to the human experience and how the city should be promoting such value to the degree that this concept should be connected to a 'foundational value', John Friedmann (2000: 466); can be seen to be supportive of the notion of freedom and human capability promotion through arguing that: 'Every human being has the right, by nature, to the full development of their innate intellectual, physical and spiritual potentials in the context of wider communities.' (Friedmann, 2000: 466). In his further earlier and later explorations of the good city and assets-based approach, Friedmann recognizes the need to create human wealth, both spiritually and culturally, and to capture positive tangible assets, the basic fundamental needs (Friedmann,

1992), towards building sustainable and socially just cities, where people and their livelihoods are the central focus. Primary components focus on appropriate housing with secure tenure (including access to land opportunities) and essential services; educational institutions; access to good health; safe, efficient and reliable public transport; and employment opportunities (both formal and informal). 'The satisfaction of these tangible, material needs constitutes the foundation for our most fundamental right, the right to life' (Friedmann, 2006).

On a less utopian note, Amin (2006) argues that elements of the good city should embrace aspects of difference, emphasize and publicize the commons and crowd out the violence of an urbanism of exclusionary and privatized interests. He talks about actively expanding solidarity against continuous harm and want in urban society. In both Friedmann and Amin's notions of the good city, the collective is what counts most. Urban land and public investment programmes have an important responsibility to support the making and shaping of cities to begin to reflect these elements of the good city. The spatial expression of the good city is often supported in the compact city form (Irurah and Boshoff, 2003) which is discussed later in chapters 6 and 8.

If substantive individual freedoms form the basis of evaluation of a society's success, as suggested by Sen (1999: 18), how can access to land present an opportunity for freedom? It is the contention of this thesis that access to land is a fundamental right that, if honoured and respected, would go a long way in healing societal relations. It is the single most important resource in a country with an apartheid rule past that has meaning across many layers: cultural, identity, belonging, affinity, relatedness and memory. There is nothing more unjust than being displaced from or denied access to the lands of our birth, our ancestors, our city and our rights. For example, Gibson (2009) reports that although a substantial number of African, Coloured and Asian South Africans made no official claim in terms of the Restitution of Land Rights Act (Act No.22 of 1994) for restoration of their land rights lost, 69 percent of African, 81 percent of Coloured and 83 percent of Asian origin people in South Africa have an unclaimed land grievance and expressed deep unhappiness about having been forcibly removed. Interestingly but not surprisingly, very few whites asserted any land grievances at all presumably because this racial group always enjoyed the freedom of access to land in South Africa.

Sen's entitlement theory is well represented as a foundational theory to vulnerability analysis as expounded by Kasperson et.al (2002:10)<sup>2</sup>. In 1977, Sen introduced his theory of *entitlements*, which he expanded in *Poverty and Famines* (Sen, 1981). His work as ascribed to the question of famines is an analysis of the crucial roles of human endowment and exchange entitlements. 'Sen ascribed the causal roots of entitlement failures as far removed from food production, residing instead in the social and economic system that governs the rights of people to exercise command over food and other necessities of life' (Kasperson et.al, 2002:10). Although not directly stated by Sen, this dissertation argues that land lies at the heart of establishing the foundations of human entitlements and endowments.

The theory of entitlement includes production of one's own resources, as well as exchanges and transfers through labour and markets in an exchange economy. According to Sen (1977), in an exchange economy, whether a family will starve depends, on the one hand, on its *endowments*—what it has to sell (products, labour), on whether it can sell what it has (opportunities for exchange), and on the other hand at what prices (what the market will bear) (Kasperson et.al 2002). Exchange *entitlements* depend not only on rates of exchange but also on market imperfections and other institutional barriers and on the actual ability to sell or buy the commodities in question (Sen, 1981). Exchange entitlements also depend on various institutional arrangements, in any given social or economic system, that affect people's command over commodities. Such institutional arrangements are based on rules governing 'the rights that people ... have to exercise command over food and other necessities' (Sen, 1981: 375). Sen does not specifically discuss the way these rights extend to land, but there is no logical reason this cannot be done, especially in an urban context where land is transacted on the open urban land market.

'Entitlements represent "the set of alternative commodity bundles that a person can command in a society using the totality of rights and opportunities that he or she faces' (Sen 1984, 497). The rights and opportunities, including what one owns and what one earns, he terms "endowments." In Sen's theoretical framework, endowments serve to create entitlements that broaden one's power over commodities. Entitlement mapping is therefore a key way to outline and understand the relation between endowments and entitlements. It provides an analytical tool of how entitlements arise from endowments. (Kasperson et.al, 2002). Through an entitlement mapping exercise the thesis notes the limited entitlements the urban poor have in respect of urban land resources and the poor performance of the areas

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<sup>2</sup> This reference is a penultimate draft chapter for which permission was sought to cite / quote via the Environment and Geographical Sciences Department at the University of Cape Town given that the author/s could not be reached for permission. It was published in 2003 – see references.

that they live in from a good city perspective as reflected in the Cape Town experience (chapter 6).

While Kasperson et.al (2002) go on to say that various researchers have extended or expanded Sen's theory, as they find it too restrictive, it provides a useful frame within which the question of land as a means of addressing poverty reduction can be argued. This point is argued below against other approaches considered. Leach, Mearns, and Scoones (1999) for example, see Sen's original theory as too restrictive since it focuses primarily on the command over resources derived through market channels, reinforced by formal legal property rights. Instead, they argue, many ways of gaining access to and control over resources exist beyond the market. Leach, Mearns and Scoones (1997) further extend Sen's entitlement analysis to emphasize the role of social institutions in mediating environment-society relationships at various scales. They argue that a 'set of interacting and overlapping institutions, both formal and informal, which are embedded in the political and social life of an area, mediate access to and control over resources. In this context, social institutions act as social contracts and relationships, including government and legal institutions, informal social relations, and kinship networks.'

This thesis is of the view that while there are multiple ways (including land use facilitation and regulations, redirecting infrastructure spend towards meaningful land development objectives, among others) of gaining access to and control over resources beyond the market, these are essentially limiting for the majority of the urban poor. Often, the mediating agencies (warlords, aid agencies or non-government organizations) act on behalf of their own interests rather than fundamentally addressing the issues facing the poor with respect to land, a typical example of self-interest in action as opposed to serving the interests of the collective. What this suggests is that the entitlements that urban land could potentially bestow on the urban poor and society at large are shaped by the manner and extent to which the State invests and engages in land through the instruments of planning and management which has fundamental implications for how the State as custodian of public land approaches the planning and management thereof.

In a compelling article by Watson (2003) on the tension between the State's actions and community needs demonstrated by the State's engagement with a community occupying an informal settlement in Crossroads, Cape Town the author raises the issue of 'conflicting rationalities' as having broader implications for contemporary planning theory. It is argued in this article that when planning responds to circumstances such as diversity or difference, it fails to acknowledge the realities of different value systems. The same can be said for land planning and management systems that primarily operate in a neo-classical paradigm in

South African cities yet often appears to adopt a normative position that supports an alternative value system towards collectivism.

### 2.2.2 Neo-classical approaches to urban land markets

It is appropriate at this point to introduce as juxtaposition to the freedoms and / or assets / rights-based approach to land, the neo-classical approaches to the urban land market including the consideration of a capitalist or free-market property economy and the role of the State as protector of private property interests. Here, the work of neo-liberal economists who support a market driven approach to serving capital's property (self) interest is critiqued drawing on Sen (1999) who reviews various economic theories and models with respect to markets, the State and social opportunity; and others who contextualize the urban land market from an economic point of view (Dowall and Clarke, 1991; Bertaud (2004); Marx, 2006).

Generally in an urban context and from a classical economic perspective, land is the basis for economic activity (Dowall and Clarke, 1991). The argument goes that agglomeration economies in cities can only be achieved if land is used efficiently meaning that spatial patterns are generally supportive of productive cities, where the costs of production and service provision (social and other services) are generally affordable, and land uses are reasonably proximate to facilitate ease of access to raw materials, production sites, service providers and markets. According to Dowall and Clarke (1991:10) the opposite is also true. Poor spatial patterns can have the reverse effect on cities where 'diseconomies<sup>3</sup> of agglomeration costs cancel out the beneficial effects of agglomeration economies'. In the South African city and Cape Town in particular, poor spatial patterns which also happen to be patterns that support a divided city in terms of a neo-classical approach to urban land markets, have been reinforced by traditional and outdated planning and land use management instruments (chapter 5). Although land use management terminology has shifted substantially since democracy in 1994, old divisive patterns of planning continue to reinforce the notion of a race / class based society implying that instead of being facilitative of transformation and enhancing the right to the city (Harvey, 2008), land use instruments as applied in practice are largely exclusive of the majority of urban society as they were in the 1970s and 1980s (Mellor, 1982; Harvey, 1985; Keating and Krumholz, 1991 and Turok, 2001).

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<sup>3</sup> Diseconomies include factors such as traffic congestion, pollution, land degradation, land underutilization or disuse all of which impose external costs on enterprises that also bear the increased costs of production.

Conventionally, spatial form and structure are predominantly determined by travel patterns typically defined by daily trips between origin (home) and destination (work); land use regulation which not only regulates the vertical and horizontal shape of landscapes and the density profiles of their built up area but also influences land prices because, among other reasons, desirability which is the fundament of land use regulation, is based on the principle of highest and best use in market driven land economies such as South Africa. Bertaud (2004) argues that the more compact or mono-centric the landscape form and structure, the more easily accessible it becomes and the greater the opportunity for higher density human settlements to evolve. The impact on the poor of the compact landscape form must, however not be under-estimated. The poor would typically not be able to afford access to human settlements in the compact landscape form or would access very limited floor space should they be able to afford access. It stands to reason that the further away land is located from well established urban centres, the cheaper it becomes resulting in (urban) sprawling landscapes which is typical of the South African city form where the poor can only afford to live on the city's peripheries far away from urban opportunities.

In terms of this economic understanding of cities therefore, the framework within which we can begin to understand urban land is that of a free-market and fair value or price system concerned with land primarily as a commodity that can be transacted, exchanged and invested to enable efficient and profitable use of land as a resource base to an individual or corporation / enterprise. The question that arises is *where do the poor find their place in this notion of the land market?* Ordinarily the poor cannot hope to enter this land market without external assistance in South African cities and in particular, the inner city of Cape Town where land prices are exceptionally high. This reinforces the need for land as potential entitlements to be engaged in differently through the instruments of land planning and management, among other institutional considerations.

In reflecting on neo-classical approaches to urban land markets, the question of the promotion of self-interest needs to be interrogated. Sen (1999: 117-118) cites the Arrow-Debreu model which is premised on pursuing self-interest as an exclusive motivation to achieve efficiency in individual preference fulfilment rather than achieving individual or substantive freedoms, irrespective of the motivation. The Arrow-Debreu model is a classical economic model of general equilibrium to explain the 'merits of the market mechanism in achieving economic efficiency'. This is defined in terms of what economists call "*Pareto Optimality*": a situation in which the utility (or welfare) of no one can be raised without reducing the utility (or welfare) of someone else" (Sen, 1999: 117). Based on the achievement of '*Pareto Optimality*' the Arrow-Debreu model shows that under some conditions the 'results of the market mechanism are not improvable in ways that would

enhance everyone's utility' (or enhance the utility of some without reducing the utility of anyone else) (Sen, 1999: 117). When applied to the question of land and equitable access to land, this theoretical perspective highlights the contradictory roles facing the South African State in facilitating private self-interests in the urban land market on the one hand and harnessing developmental land opportunities for the urban poor from a promotion of freedoms and capabilities perspective, on the other.

It can be argued that should sufficient land be available to a society in an urban context and such land can be distributed to all those in need of land for whatever purpose to achieve a basic acceptable level of living and participation in society; then 'Pareto Optimality' would have been achieved. However, should the same quantum of land be distributed in a free-market system on a willing-seller; willing buyer transaction basis to pursue individual self-interests and preferences; then 'Pareto Optimality' is not possible because other factors notably the pursuit of profit, influence the transaction of land that begin to temper the principle of equitable access to land. These factors include among others: the location of land in proximity to markets, access to urban opportunities such as higher order public institutions and private sector operations. In other words, in classical economic terms land is shaped and defined by spatial patterns that are generally supportive of productive cities to achieve agglomeration economies and generate profits. This in turn, determines the value of land and property in a free market system. Other non-property related factors such as the resources, energy, confidence and capability to act and transact in land matters, know-how and expertise to participate in and understand the land and property market mechanisms must also be present for everyone to participate in urban land markets.

Thus for poorer people to develop their capabilities to the level where they can participate in land and property markets, the question of available options arises when assessed from a freedoms perspective. In Sen's view (1999: 117) 'the importance of substantive freedom has to be judged not just in terms of the number of options one has but with adequate sensitivity to the attractiveness of the available options. Freedom has different aspects: personal liberties as well as the liberty to transact'. Sen (1999: 118) continues to argue that for freedom to achieve what one wants to achieve, we have to consider the 'merits of the available options' in what he terms the 'freedom-efficiency' result.

On the basis of discretionary choice by an individual or individuals, efficiency in terms of individual utilities is by implication 'parasitic' on offering individuals opportunities for choice ad infinitum. He argues that these 'opportunities are not only relevant for what people choose (and the utility they achieve), but also for what useful options they have (and the substantive freedoms they enjoy)' Sen (1999: 118). In the Arrow-Debreu model it is assumed that

everyone must be pursuing their self-interest as their exclusive motivation which is a behavioural assumption that the market outcome will be 'Pareto optimal' defined in terms of individual interests alone; whereas the main concern of the freedoms approach is to promote substantive freedoms that people seek value from irrespective of their motivation.

By nature in a free-market system and urban context, options for the poor are extremely limited with respect to access to land and by implication the attractiveness of available land options would also be limited. Based on the principle of equitable access to land, it stands to reason that even though South Africa operates in a free market system where individual self-interests and private property rights are protected in the context of urban land, the majority of urban poor in South Africa require external assistance<sup>4</sup> to merely survive let alone transact and participate in the land market making it an obligation on the part of the State to act on their behalf so as to promote the concept of freedom. What is most crucial in this role is to develop mechanisms that allow for 'Pareto Optimality' to be achieved in urban land markets so as to mitigate the parasitic nature of individual self-interests to pervade their operations specifically when it comes to dealing in publicly-owned land matters.

The essence of Sen's view is that in defining 'liberal values as personal liberty over certain matters in which each person should be free to decide what should happen, no matter what others think, so that the choice of that person over that matter must be taken to be the better for the society as a whole.' (Nicita 2007: 84). In other words, there is an assumed 'universal' benefit in making a choice based on substantive freedoms irrespective of the motivation by an individual as opposed to the restrictive self-interested behaviour which forms the basis of the Arrow-Debreu model which is largely driven by motivations of individual self-interest. The choices in respect of the freedoms approach, although made by individuals to embrace the kinds of lives that they value to live, would ultimately benefit the collective because of their universal nature and presumably also enhance the individual and the collective's right to the good city.

Having examined the motivations of individuals from a neo-classical point of view, when one considers the policy frameworks and directives of governments and their associated behaviour patterns with respect to land, it is important to examine to what extent neo-classical approaches drive these practices. At present most governments set economic policy first in terms of being global market players; and then subjugate their specific sector policies for example, social development policies, to this overarching economic policy. Where

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<sup>4</sup> Already 13 832 400 people in South Africa are dependent on the State for social grants (South African Social Security Agency, 2010).

South Africa is concerned, the idea is not to categorize its economic policy into one set of ideologies against others but rather to understand where we as a nation place ourselves in terms of addressing the question of land, among other things. We can argue that South African economic policy is essentially neo-liberal in nature if one strictly follows the definition of neo-liberalism which embraces policy directives and behaviour that include 'fiscal restraint, privatization and commercialization, liberalization, inflation targeting, export-oriented growth, tight monetary policies, and very importantly, constitutional guarantees on property rights, and so on' (McDonald, 2008: 71–78).

At the same time, however, the country displays a strong welfarist type behaviour in areas such as dealing with the aged, indigent, unemployed and so on where strict neo-liberal behaviour is absent. In the area of welfare reform, even in the case of land for subsidized housing does the government show signs of 'new liberalism' or 'social democracy' rather than neo-liberalism in the strict sense of the term (Seekings, 2002). Where financial and trade markets are concerned, the government's behaviour has been far more Keynesian<sup>5</sup> at the best of times over the last number of years, especially towards the signalling of the world economic crisis in 2008. The most logical explanation for these competing interests and approaches of post apartheid South Africa is that government does not speak with one policy voice.

As far as land is concerned and urban land in particular, while there is a blur between a Keynesian and neo-liberal approach on the part of government, the tendency is towards neo-liberalism for three key reasons. Firstly, government's own role in facilitating the private sector's interests and access to highly valued publicly owned land to facilitate black economic empowerment<sup>6</sup>, among other matters and privatization / commercialization of land; secondly, using land as a commodity to exchange in the market place for the highest and best use value in order to use the funds for the benefit of investing in social infrastructure, as the argument goes; and thirdly, allowing the inner city areas to be developed according to the dictates of neo-liberal demands for example, the predominant presence of large finance houses, legal and accounting firms in the central business district of Cape Town that attract young professionals and others who choose to live close to their place of work and create demand for high rise urban accommodation and associated facilities which are generally

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<sup>5</sup> Keynesianism refers to high levels of state ownership and/or management of key sectors of the economy and a high degree of regulation, especially of financial, trade and labour markets.

<sup>6</sup> Black Economic Empowerment (BEE) is a program launched by the South African government to redress the inequalities of Apartheid by giving previously disadvantaged groups (black Africans, Coloureds, Indians and Chinese--declared as Black in June 2008 who are SA citizens) economic opportunities previously not available to them. It includes measures such as Employment Equity, skills development, ownership, management, socioeconomic development and preferential procurement. [http://en.wikipedia.org/wiki/Black\\_Economic\\_Empowerment](http://en.wikipedia.org/wiki/Black_Economic_Empowerment) accessed on 08 June 2010

expensive, push up land prices and have the effect of excluding ordinary, urban poor citizens.

A further consideration where the South African State shows signs of traditionalism with neo-liberal tendencies is the ignorance or lack of redress in tribal land ownership, tenure and access and their implications for economic development. While the literature is scant on this matter, a compelling paper by Adams, Cousins and Manona (2000) explains the legacy of severe land pressures and land-related conflicts in the former 'homelands' of South Africa which were established to reinforce old apartheid style and colonial policies of separate development. The important point of the 'homelands' according to Adams et.al (2000) is that the areas with large rural populations in the former homelands such as the provinces of Eastern Cape, Northern Province and KwaZulu Natal also happen to have the highest level of poverty implying a direct link between the land issues and pressures associated with these areas and the question of poverty.

This approach of government who is ostensibly committed to land redistribution and social justice is inherently weak in that:

- a) Facilitating access to publicly owned land to the private sector and a handful of black economic empowerment players de Havilland (2008) has no direct benefit for the urban poor and does not address the role of land in poverty reduction;
- b) One would hope that social infrastructure is financed by taxpayers' money as much as possible rather than having to rely on the sale or disposal of valuable public assets;
- c) The exclusive city as a result of neo-liberal dictates will bring other challenges to bear such as misappropriation of land through illegal occupation, which is already beginning to happen in small but not insignificant ways; and
- d) The concern in respect of tribal land has major implications for migration to the cities where opportunities are perceived to be more apparent.

But using categories and definitions to describe the economic framework within which the South African government operates, is not very helpful from an analytical point of view. From a land perspective as can be seen throughout the thesis, the South African policies are multi-pronged veering somewhere between welfarist and neo-liberal. This is evident in the changes to land reform policy which was largely demand led and market driven in line with its economic policy. In support of this view, de Havilland (2008: 8) claims that the South African government's 'land reform policy is premised on three pillars: restitution which attempts to undo dispossession through restoring land ownership to or compensating those forced off land since 19 June 1913; redistribution which aims to redress the discriminatory policies by

facilitating access to land for previously disadvantaged and poor persons; and land tenure which seeks to secure tenure for all South Africans, especially the more vulnerable such as farm labour tenants.' The author (2008: 8) continues that in marked contrast to Zimbabwe, the South African Government chose not to use expropriation without compensation in its entirety as the main vehicle for land reform. Instead the government adopted a reform programme that served to increase business confidence, both domestically and internationally, which in turn, enabled it to meet its economic goals. Later on, government embarked on a few considerations of policy shifts including setting targets for black ownership of land and the threat of the Expropriation Bill which was conveniently shelved a few months before the April 2009 elections.

It is therefore fair to conclude that government's approach has been multi-levelled, ad hoc, reactionary, clearly indicating that on the one hand it is trying to find its feet yet on the other, never really moving away from the economic imperatives that ensure South Africa's position and role in domestic and global markets. The challenge is clearly to bring government to the point of pursuing the freedoms approach in line with the notion of raising individuals' capabilities and how to engage public land assets in this pursuit as it is clear that urban land (redistribution) has received little attention in the last sixteen years of democracy.

Although Sen (1999) does not directly address the question of access to urban land from a land or land use management perspective, his emphasis on raising capabilities broadens the notion of entitlements as a means of addressing poverty which can include access to land. It is important at this stage to introduce to the debate the potential link/s between poverty and urban land access as the discussion thus far makes strong connections between wealth and land markets on the one hand, and poverty and land on the other. Against the specific objectives of post-apartheid South Africa to reduce poverty and improve the lives of the poor, it is worth exploring other approaches on urban poverty.

### **2.3 Other urban poverty approaches**

The commonly known *Urban Livelihoods* or *Sustainable Livelihoods* approach (Rakodi and Lloyd-Jones, 2002) is complementary to Sen's freedoms approach. It is about the '*notion that the relative poverty or economic well being of poor people should be understood from the point of view of the people themselves*' (Samuels, 2005: 62). In other words, poor people or individuals have livelihood assets and can use these to produce wealth. The livelihood assets which are based on five capitals (financial, human, natural including land, physical and social) can and should be enhanced by urban development policies and must be protected from vulnerabilities according to Samuels (2005). In understanding the idea of

*livelihoods*, the central concept that concerns extreme poverty of the urban poor, is based on a *people-centred approach* (Rakodi, 2002; Beall et al. 2002). This approach recognises that people are fundamental players in urban strategies. Rakodi (2002) identifies that sustainable livelihoods is an approach that aims to put people and their households in which they live at the centre of the development process, starting with their capabilities and assets, rather than with their problems. The livelihoods approach concentrates on the local urban context in which public land could potentially form a significant basis to set in place a freedoms concept to sustainable urban development and poverty reduction.

Another approach is the *Rights or Rights-based approach*. Like the livelihoods and freedoms approach this too places people at the centre of its concerns. 'Each individual has inalienable human rights...which define these as being born free and equal in dignity and rights'. These rights cover economic, social, cultural and political concerns (Samuels, 2005: 64). This approach assumes that fundamental rights exist somewhere in the domain that poor people find themselves and that they need to be claimed back from those who hold power who are traditionally the State. This is where the rights based approach differs from the freedoms approach. The latter focuses on policy imperatives that are enabling to the individual as a member of society. The former relies on someone else presumably the State to give to the poor which is a less (self) empowering approach. This is not to deny the merits of a rights - based approach specifically when applied to the South African city context (Parnell and Pieterse, 2010).

The last approach is that of the *Habitat Agenda* which uses an internationally agreed policy framework to address the issues of poverty. UN-member states signed this Agenda in Istanbul in 1996. It is recognized as a common urban agenda for the twenty-first century and introduced 'Urbanisation and Sustainable Urban Development' as a theme to evaluate the continuing deterioration in shelter and human settlements (Samuels, 2005: 65). This approach is concerned with rapid urbanization and the concentration of people in cities as one of the major challenges of governments across the world and particularly in developing countries. The *Habitat Agenda* sets out seven commitments which include: sustainable human settlement development, financing (shelter and human settlements), good urban governance, gender equality, assessing progress, international cooperation, and adequate shelter for all which includes access to land and secure tenure (Samuels, 2005: 65). This approach is very much the path that South African policy is presently pursuing; but has generally failed to achieve in reality and implementation.

Sen's freedoms approach is critiqued as providing 'only a framework but no political means to realize the freedom' (Samuels, 2005: 71). However, it is short sighted to think that one can

influence greatly the political arena of countries, particularly developing countries; and set out political pathways to achieve the freedom that Sen talks about especially when dealing with the question of land. It is sufficient to provide a framework only as this can be adapted and interpreted to the policies and context of the country adopting the framework as a basis for action. Wagenaar and Cook (2003: 141) state that 'it is not so much that a frame provides an individual with a prescription for action, but rather that once we have a prescription for action, we can discover the implicit frame organizing the action and integrating theory, activities, interests, purposes, facts, and values.' So let it be with Sen's freedoms approach.

While some of the elements of all the approaches outlined above provide a useful framework for understanding and examining the question of land relative to poverty alleviation, Sen's freedoms approach including entitlements and endowments, provides a useful overarching analytical and conceptual framework because it focuses on raising the capabilities of the poor, embraces a system of values that is inherently universal, supports social justice and is fundamentally developmental in nature while at the same time also recognizes the workings of a free market economy.

## **2.4 Exploring the link between poverty and land**

There are a number of ways to define poverty the most common of which is poverty as income poverty. 'A person is poor only if his/her income level is below the defined poverty line, or if consumption falls below a stipulated minimum' (Farrington, Carney, Ashley and Turton: 1999:1 cited in Fourie, 2002: 3). Poverty is also defined in terms of inequity, human (under) development, denial of human rights, in social exclusion terms and lacking basic needs and so on (Fourie, 2002: 4). Returning to Sen's view on poverty, the emphasis in his work is clearly to distinguish conceptually poverty as lowness of income from 'the notion of poverty as capability inadequacy', (Sen, 1999: 90) although he emphasizes that the two are related as income is an important means of attaining capabilities. He argues that an enhanced level of income would enhance capability improvement and that the converse also holds true. In other words, having a reasonable income would enable persons (society) to lead the kinds of lives that they value and have reason to value and at the same time, when capability is improved, people would be more inspired to improve their income levels and opportunities through individual efforts and aspirations rather than being recipients of hand-outs or state grants / subsidies. Land could potentially play an important role in directing these efforts and aspirations with facilitation from the State.

Against this brief insight into poverty, Sen (1999: 90-92) argues that the fundamentals to achieve capability are basic health and education which can act as a spring board for the

poor to engage in economic activities that, in turn, improve capability. However, the capability of the poor would be sufficiently sustained should it be supported with the social systems and facilities that are provided within targeted communities. Sen states: 'first Japan, and then South Korea, Taiwan, Hong Kong, and Singapore, and later post-reform China and Thailand and other countries in East Asia and Southeast Asia – have done remarkably well in spreading the economic opportunities through an adequately supportive social background, including high levels of literacy, numeracy, and basic education; good general health care; completed land reforms; and so on.' .... Kerala in particular 'has relied a great deal on expansion of basic education, health care and equitable land distribution for its success in reducing penury' (Sen, 1999: 91). From this account, it is apparent that Kerala has had a significant rate of income poverty reduction on the back of deliberate land access programmes as demonstrated later in chapter 3.

To challenge the critics of Sen (Leach, Mearns, and Scoones, 1999) it is important to emphasize that Sen's notion that once capability has been developed and improved, the poor can have the confidence to participate in society alongside their wealthier counterparts. In other words, when a citizen has a decent level of health, education and a means to upkeep their daily lives coupled with social support, there is the willingness and confidence to participate in society and the institutions that run that society. In comparing developmental local government (DLG) in South Africa, Brazil and Kerala, Heller (2008: 157) makes 'the case that while in comparative terms the efficiency side of the equation is highly developed in South Africa, the participation side of the equation remains poorly developed, and has in fact suffered from many of the conventional zero-sum assumptions that pervade the literature on decentralization. In contrast, the efficiency<sup>7</sup> of local developmental government remains highly problematic in both Kerala and Brazil, but the participatory institutions that have been built are quite effective and have directly addressed many of the obstacles to participation that are often singled out in South Africa as intractable. Most notably, institutional reforms in Kerala and Brazil have had a direct impact on building civil society capacities and providing subordinate groups with meaningful and consequential opportunities for shaping local development.'

One of the implications of what Heller (2008) is arguing is that South Africa has been focused more on building institutional resources and power bases rather than focusing on strengthening civil society in general and urban social movements in particular in the post apartheid developmental process. Poverty in South Africa has worsened (Southern Africa Regional Poverty Network, 2004; UN Habitat, 2008) as a result (and for many other reasons)

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<sup>7</sup> Implies the ability on the part of government to collect taxes, service fees and also have a powerful political and constitutional mandate for redistribution, including land redistribution (author's emphasis).

and the poor have also been further disempowered in the process as a follow on from the apartheid era. In line with the international research and literature there is growing evidence that there is a clear link between landlessness, insecure tenure and poverty. In a study conducted in Bangladesh for example, the researchers indicated that 'land was found to be positively correlated with literacy' (Fourie 2002: 3); again reinforcing Sen's view of basic education as a foundation of capability.

Relying on conventional methods of measuring poverty such as living means standards, head count index and poverty gap measures, Bhorat and Kanbur (2006) confirm that in South Africa income poverty has increased with the headcount index increasing from 32 to 34 percent between 1995 and 2000. Although mindful of the fact that some data sets have been problematic and data availability has prevented an analysis of trends that can be used to describe the full poverty condition within the first ten years of South Africa becoming a democracy since 1994, the authors confirm the importance of the poverty data sets in terms of defining the spatial dimensions of poverty. The proportion of urban (rural) households classified as poor increased from 13 to 16 percent, on a \$2-a-day poverty line, between 1996 and 2001. However, the share of the rural poor in overall poverty is declining implying that while the rural poor accounted for 62 percent of the of all poor households in 1996, five years later this figure reduced to 56 percent suggesting a rapid process of urban migration (Bhorat and Kanbur, 2006) which has already and will continue to have major implications for the spatial nature of poverty in the country.

The results of the South African government's focus at all levels on building power bases (Oldfield and Stokke, 2004) are that inappropriate low income housing programmes are rolled out for the urban poor at a massive scale in poor locations and without consideration for the quality of the environment that is being created. Titling, ownership and insecure tenure are not always directly addressed and some people are left in a worse condition than before in terms of their ability to afford their new house (Zweig, 2006). At the same time, post apartheid progress in addressing poverty continues to be measured in conventional economic terms leaving little room for testing whether environmental quality, belonging, urban engagement and other non-material quality of life elements improve peoples' lives in spite of urban poverty.

## 2.5 Summary

This chapter presented the theoretical framework as a foundational basis for the urban land question in South Africa in particular drawing on the work of Sen and others who support the freedoms approach which is juxtaposed against neo-classical approaches. While Sen's

Freedom's approach does not propose an alternative to the free market system, it takes a developmental view within a free-market system arguing against individual self-interest and in favour of being capable to act from a position of freedom which by nature yields a more universally-founded action on the part of an individual or household when it exercises its right to entitlements and endowments. It is therefore important for the State and its policies to protect these entitlements and endowments which can be had in urban land access.

The entitlements that urban land could potentially bestow on the urban poor and society at large can be shaped by the manner and extent to which the State invests and engages in land through the instruments of planning and management which has fundamental implications for the role of the State as custodian of public land. Presently the State operates largely within a neo-classical paradigm to the urban land market where its role is more of a protector of private property interests. The notion of equitable access to land highlights the need to address the contradictory roles presently played by the South African State in facilitating private self-interests in the urban land market on the one hand and harnessing developmental land opportunities for the urban poor on the other. The question of land as potential entitlements and endowments of the urban poor therefore needs to be engaged in differently through the instruments of land planning and management and redefining a more enabling role for the State.

The freedoms approach regards people and poor or deprived people in particular, as agents of change. However, for people to be promoted as agents of change they need to have the freedom to choose the kinds of lives that they value to live and to do this in turn, they need to have a reasonable level of education, health, social and economic well-being in order to participate in and co-create the society that they live in. In a democratic society with a free market system, urban policies must encourage the endowments and entitlements of agents of change to facilitate access to resources of which land is a key component (author's emphasis). This thesis adopts the freedoms approach as the most appropriate framework within which urban land can be framed and highlights the following substantiating reasons.

- a) Firstly, to understand the role that land access and land policy can play in enhancing the entitlements and endowments available to the urban poor.
- b) Secondly, while it is argued that the freedoms approach focuses too closely on command over resources which are derived through market channels and reinforced by formal legal property rights, it is appropriate to assume that in a market driven economy all players, rich and poor alike need to find their level of operation / cooperation in a society that competes for scarce resources such as land (as a finite commodity) to be able to lead the kind of lives that they value to lead.

- c) Thirdly, Sen's capability theory can be extended to include the role of publicly owned land in the poor's endowments and command over resources.
- d) Fourthly, there is a very sound theoretical basis in Sen's freedoms approach which is based in development economics and an implicit set of values that support social justice and argues for State assistance and facilitation of poor people in terms of ensuring a reasonable level of education, health, social and economic well-being in order to participate in the society that they live in and access the resources necessary to exercise their entitlements.

The freedoms approach is strongly concerned with the alleviation of poverty and raising the capabilities of the poor. It is argued that by the adoption of this approach the link between poverty and urban land or landlessness can be understood better and assist to reconceptualise the State's policies and role in access to urban land from a developmental point of view which the following chapter debates further by focusing on current urban land debates.

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## Chapter 3: Current urban land debates

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'However one looks at it, the surface area of South Africa is limited and not even the advent of non-racial democracy will make it larger. You cannot extend land rights in the way you can extend the vote, you cannot adopt the policy of taking land away from none and giving to all as you can with opening up the franchise. The land is not only finite, it is fixed; there is no way of physically redistributing and re-locating it the way you can with money or cattle or bags of maize. The land is the land. You can fly over it, tunnel under it, wash its surface away, put up buildings on it, degrade it, beautify it, live on it, abandon it, and in the end it is just as big or just as small as it was in the beginning' (Sachs, 1990: 1).

### 3.1 Introduction

Whereas chapter 2 focused on theoretical concepts that assisted to understand better and reinforce the moral standpoint of the dissertation, which rests on the idea of justice (Sen, 2009), the literature reviewed in this chapter takes into account the imperative of operationalising a moral system through a practice of government – in this case the government of land. The chapter focuses on both the general international trend towards a more deliberative planning practice in urban land management and more specifically at the poorly articulated South African and international perspective/s on urban land management. This weak understanding of urban land in middle income contexts is ascribed to the focus on rural land debates or on specific aspects of urban land such as informality, land tenure and housing rather than an overall or holistic land use management perspective (Kihato and Berrisford, 2006; Marx and Rubin, 2008; Fernandes, 2002; Gar-On Yeh, 2005). The chapter highlights in particular the conflation of land and housing and argues that there is a need to have an overt and specialized place for land policy in the context of urban poverty. It also argues that while there are multiple ways of gaining access to and control over land resources beyond the market, these are essentially limiting for the majority of the urban poor when land and housing are conflated as they tend to be in the current literature on cities of the global south.

At the end of the chapter the freedoms approach is returned to and it is argued that by engaging this approach, the conflation of land and housing deflects attention away from the substantive question of how the State can enhance or enrich the land-based entitlements and endowments of the urban poor by playing a more active and improved role in public land and land use management. The conflation of land with housing debates result in other land debates having been silenced yet these debates have the potential to offer alternatives that challenge the neo-classical model. One of the contributions of the thesis is that it helps to offer such an alternative paradigm where the State has to play a deeper and more meaningful role in facilitating access to land for the urban poor.

### 3.2 South Africa perspective on land

The South Africa work on land, land reform and land rights has been dominated by rural debates, urban informality, tenure and housing (Hall 2009; Hall and Ntsebeza 2007; Royston 2006; Cross, 2002, Cousins, 1998;), and while there are case studies on urban land rights, land reform and tenure arrangements (Walker 2008; James, 2007; Barry, 1998) there is little systematic attention to the issue of access to urban land particularly in respect of public land assets and land use management in South Africa. Only recently has Urban LandMark (2006; 2008) embarked on a series of research papers and conferences that, along with publications from other independent researchers, is beginning to interrogate the question of access to urban land by the South African poor (Sachs, 2009; Parnell and Pieterse, 2010).

While the work reviewed will feature throughout the thesis, it is worth reviewing some of the contributions made by various authors in the Urban LandMark (2006) seminal work on the question of access to urban land for the poor. Drawing on the synthesis paper presented by Sarah Charlton (2006), the Urban LandMark initiative acknowledges two approaches to the urban land question: one, the enabling markets view; and two, the right to land view. The work draws from both these approaches in moving towards 'a mediated position on what it means for urban land markets to work better for the poor in South Africa' (Urban Landmark 2006a cited in Charlton (2006). This position is embedded in a range of suggestions as to what is required to make urban land markets work for the poor including the following (Charlton, 2006):

- a) Instant, dirt-cheap housing options in a range of good city locations coupled with a strategy that secures the asset value of state-provided houses;
- b) Redistributing the value derived from a soaring property and land market more equally, and at the same time protect and secure the right of the poor in the city through strategic interventions in the market to ensure that the poor benefit from government's investment in the market;
- c) Engaging activities that reconceptualise dominant understandings of the economy and especially the process of economic growth;
- d) Embracing a revised set of planning laws applicable at a national level to permit a range of pro-poor policy intentions to become reality;
- e) Recognizing the nature of local institutions and how they work and then identifying opportunities for integration between formal systems and local practices. Both city-wide and localized approaches are promoted;
- f) Leveraging market forces with earmarked public funds yielded partly through taxing middle to higher end developments without penalizing the market; and

- g) Intervening in current urban spatial practices that essentially exclude the poor and promoting inclusive planning and design practices.

The work of Marx (2006) on making urban land markets work for the poor suggests that it is necessary to rethink the way we understand the economy and particularly economic growth. He argues that policy makers miss the point in the way that they presently perceive urban poverty relative to urban land markets and that this in itself is restrictive to reducing urban poverty. The author suggests that land markets be placed in the broader framework of the economy and economic growth in particular. Since the 1960s researchers in the global South have recognized the failure of formal urban land markets and the benefits of informal land markets in improving access to land and housing for the urban poor in developing countries. Although this active informal market resembles more and more the formal market in terms of transactions, the distinction between informal / formal land markets are at opposite ends in the minds of policy makers. Attempts to make urban land markets work for the poor have traditionally addressed issues related to the supply of serviced land, adequacy and applicability of land use regulations and the ability of people to demand land.

Royston's (2006) paper takes the position that informality is an expression in space of both market and state failure in respect of the urban poor who are increasingly marginalized and impoverished in developing contexts. The poor nevertheless transfer land in spite of market and state failure. Over a period of five years, 63 percent of households living in informal settlements had transacted in the secondary market by purchasing a house from someone else. The author states that in the same period it was estimated that 14 percent of households in site and service settlements and 12 percent in RDP housing settlements had transacted informally. The author comments on a very active informal urban 'land' market; yet the evidence is essentially on the transaction of the purchase of a 'house' and presumably a structure of sorts when referring to site and service transactions – generally referring to land in respect of housing.

Marx's conceptualization of placing the land market in a broad economic or economic growth framework comes closest to this dissertation in terms of using development economics to understand the meaning of urban land markets relative to the urban land and poverty questions. His work is relied upon in this dissertation to support the freedoms approach to urban land access and management as opposed to a neo-liberal approach. However, the authors' work focuses on both informal and formal land markets whereas the dissertation leans more towards formal markets and away from housing as a single transaction tool for the poor.

Kihato and Berrisford (2006) argue that urban land in South Africa is highly regulated, however, disjointed the regulatory system might be. The highest degree of formal regulation is in areas with very high land values. As land values drop, the less regulated land and land use becomes. The authors argue and agree with the position of this dissertation that since transformation in 1994, very little has been done to revise the regulations in urban areas of South Africa and as at today, the old regulatory framework from the apartheid era still remains in tact.

The role of regulatory frameworks in the management of urban land is therefore a crucial aspect of the authors' work. The potential role of urban land in poverty alleviation and economic growth necessitates regulatory reform in terms of urban land management and land use. The key point the authors make is that these laws are critical in shaping the social, financial and political components of urban land; and in turn, urban land has significant influences on urban poverty in terms of its potential to reduce poverty and secure peoples' rights to the city.

Parnell (2007) who writes independently of the Urban Landmark (2006; 2008) work states that there has been limited understanding of how the existing regulatory system such as zoning schemes, have impeded universal access to the city and in fact, reinforced race discrimination despite the removal of formal race segregation in geographical terms. It can be argued that the same can be said for the reinforcement of class segregation. This author argues that the ideological basis of the existing regulatory system is based on the notion of an ordered city where the social, financial and political values of urban land shape the manner in which the investment value of land is protected, and also determine what land uses are considered permissible. This way of conceiving of land and the city, may not be aligned with perspectives of the urban poor on the use and importance of urban land (Kihato and Berrisford in Charlton, 2006).

The Kihato and Berrisford (2006) and Parnell (2007) work is refreshing and aligned with the thinking of this dissertation. While their work is advisory and research based this thesis examines land use regulation from a planning practice point of view. These authors' work is particularly informative from an interventionist and deliberative policy perspective in that they recognize the need to acknowledge contextually specific differences to those of middle class citizens that the urban poor demonstrate in their daily lives when engaging the city and do not neatly fit into a one size fits all land use planning system. In other words, the need for coordinated rather than conflicting rationalities (Watson, 2003) emerges which does not necessarily only rely on scientific and technical understandings of the urban poor but also takes a values based approach that has more to do with human meaning making.

In support of access to land for the urban poor, Brown-Luthango (2006) explores the instruments that government can employ to capture value from government investments so as to provide infrastructure and services including affordable housing to the poor. The author argues that these instruments should not only be used to finance infrastructure but also to address the apartheid city through equity, inclusiveness and sustainability measures. The paper suggests that because the land market is prohibitive in terms of allowing the poor to participate therein, the market is unreliable for this sector of the population. Bold strategic measures such as land value taxation which is tax on land alone, not on improvements on land are suggested as a more equitable means of land taxation.

While Brown-Luthango promotes the poor's participation in the market, McCarthy (2006) on the other hand, encourages the reader to accept that land markets exist and behave in a particular way. For this author, making urban land markets work for the poor involves re-establishing an existing pattern of urban development in South Africa. The author refers to public revenue that can be had from up-market developments to subsidize better located low income housing. The Urban LandMark work on land and housing is supported in some instances by research work conducted by Rust (2008) on behalf of the FinMark Trust which focuses on the housing finance sector and making housing finance affordable and available to the poor at a micro lending scale. The author's work is not only confined to South Africa but spans other parts of Africa and southern Africa.

While the UrbanLandmark work addresses urban land markets at a broader level taking account of economic growth, legal and land use matters and the importance of public space (Landman and Ntombela, 2006) as well as land value capture; there appears to be a strong emphasis on land for housing and addressing urban development in terms of the housing crisis (Cross, 2006). The most positive aspect of this work is initiating the debate on making urban land markets work for the poor however, it rarely moves away from informality and housing as key focus areas in the commissioned papers. Since Todes (2003) noted that in South Africa the focus on city restructuring and urban integration has been to facilitate low income people to acquire housing in well-located areas, the focus had not shifted very far away from this notion of linking city restructuring with housing for the poor.

The conference convened by Urban Landmark in 2008 focused again on making land markets work for the urban poor which in turn, focused on housing as the object of exchange in an urban land market. However, interesting local case studies conducted on Doornfontein, Thokoza and Diepkloof in Gauteng Province by Marx and Rubin (2008) started to understand that there a number of land use management systems in operation of a formal and informal nature ranging from anarchy where there is a high level of disorder in understanding what

instruments or who controls land use to the very formal land use management systems that promote exclusion among residents of the same area, are familiar and predictable to users and protects 'insiders' property rights.

By using the freedoms approach, this dissertation argues that the conflation of land and housing deflects attention away from the substantive question of how the State can enhance or enrich the land-based entitlements and endowments of the urban poor. The unintended consequence is that all other land debates have been silenced but it is in these debates that alternatives can be found that oppose the neo-classical model. This thesis helps to offer such an alternative paradigm where the State can facilitate access to land for the urban poor for a multitude of purposes as a means of raising their capabilities rather than only for housing.

### **3.3 International perspective on urban land**

As claimed above, the South Africa work on land rights has been dominated by rural debates, urban informality, tenure and housing. Similar debates pertain to cities in India, South America and Africa (Amis and Rakodi, 1995; Fernandes, 2002; International Development Department, 2005; Roy, 2005). The issue of land is also not an abstract one of land rights or tenure alone, but also not one of just land management and housing. It appears that the general problem of defining a progressive system or approach to urban land in the global South is only a nascent issue in the literature.

Sen introduces the concept of 'transparency guarantees' and likens this concept to building trust in society (Samuels, 2005: 58). With this as well as the concept of social justice as a foundation, he proposes a bottom up or inductive approach which can be used to enhance an urban public land and management framework. The principles of building trust and social justice in the use, development and management of public land, among others, are rooted in theories on the 'Commons' or better still, the 'Local Commons'. In an interesting debate between economists and anthropologists, the reasons for re-focusing on the Local Commons include the following. 'First, the pressures of population growth, migration, uneven market integration, social inequality, and competing claims on the same resource have gradually degraded much of the natural resource base upon which millions of poor people depend (such as forests, fisheries, grazing lands, and irrigation water). The sustainable and equitable management of such resources remains a central problem for the field of development and environment (Bardhan and Ray, 2008: 3-4). When comparing public or common resources to urban-based public land, the same can be said in terms of well located or strategic land which is being depleted and competed by different interests; with the urban poor relegated to the least desirable public land resources as indicated later on in the Cape Town experience.

Second, 'the working assumption among economists and political scientists was that self-interested individuals, without external coercion, would not act collectively to provide common goods or to protect common resources.' This links directly to the individual self-interest, private corporate and state interests in particular, in playing global economic roles and using major public land and state enterprises to support the global economic market and international role-players. As demonstrated by the Cape Town case in chapter 7, examples include the 'disneyfication' (Marks, 2001) of land assets that attract global players and focus on large capital and land uses such as casinos and large retail centres that the urban poor can by all means also use, work at and support with their limited disposable income but can never 'own' or use to raise their capabilities and remove their unfreedoms. What is interesting about 'Commons' literature which may have positive implications for urban land reform is that it has demonstrated especially among anthropologists that 'poor countries were strewn with examples of what certainly looked like collective protection and collective use of local common resources. It was shown, theoretically and empirically, that norms of cooperation and trust could emerge and be sustained in local communities with a history of repeated and interlocking interactions (Ostrom 1990; Seabright, 1993 cited in Bardhan and Ray, 2008: 4).

Finally, the reason for re-focusing on the Local Commons includes the understanding that 'relentless narratives of decline and degradation of traditional common-pool resources conceal the emergence of new common resources and new avenues for local collective action'. (Bardhan and Ray, 2008: 4). Although useful for the potential of public land for urban development and public land rehabilitation programmes that embrace the principles of sustainable development in the long term, common pool resources are generally rural-based. Their occurrence in and transferability to urban areas or large cities have not been assessed in the literature.

Amis and Rakodi (1995) largely support Sen's (1981; 1999) capabilities and entitlements theories in their case work on urban poverty and informal systems of land arrangements. In the *International Development Planning Review* (2006), Rakodi published a special issue on a series of informal land delivery processes in African cities highlighting, among others, the relationship between informal and formal land administrations, the failure of the formal land delivery administration systems to respond to the needs of the poor, 'urbanizing' rural lands and the restrictions on access to land occupied informally. Rakodi (2006) asserts that, "between half and three quarters of all new housing in sub-Saharan African cities is built on land that has been supplied through processes that, in one way or another, do not comply with formal legal requirements related to subdivision, transfer and development control." It is

interesting to note that although this research shows that these informal channels of land supply are highly successful in some African cities, they have very few conflicts and provide a reasonable degree of security of tenure yet governments continue to disregard these processes as undesirable and insist on formalising land and housing delivery processes. This 2006 research concludes that while informal delivery systems are playing a significant role in urban residential land delivery there are also some serious shortcomings that need to be addressed. Central to these debates is the issue of land tenure which warrants some discussion.

Gilbert (2002) contends that many governments around the world are following the argument put forward by Hernando De Soto (2000) that capitalism fails in the third world because of lack of property titles (discussed further in chapter 7 relative to Cape Town). Research work mentioned earlier and completed by Barry (1998) begins to demonstrate that many of these informal tenure arrangements exist in informal areas in Cape Town (see also chapter 6). The interesting question is whether informality in Cape Town is as serious as we think it is compared with Peru, where most urban centres are surrounded by informal settlements (Payne, 2002) and whether the drivers of informality are the same in South African cities as they are in Latin America. What is observed is the fact that as the apartheid government created two systems of land law, one for whites and one for Blacks (Sachs, 1990: 5), the new system very spontaneously created two systems of land law as well; one formal and one informal which to a large degree resembles the apartheid system of land law and administration.

Challenging this dual system from a freedoms perspective is important as it begins to recognize the universal nature of the good city and the right of access thereto by the urban poor who are associated with the notion of informal in the minds of policy makers. There is the notion among policy makers that the informal will in time embrace the ordered nature of the geometrically constructed formal city (Parnell, 2007) and until such time, the informal sector citizen base will remain unfree in terms of urban opportunities and access to urban land. Writing from a rights-based perspective, Parnell and Pieterse (2010) recognize the deprivation of the poor in being denied universal rights to the city and the State's failure to facilitate 'full urban citizenship' precisely because of the persistence of a dual land management system.

The question of tenure is further explored particularly citing cases in the developing world by Payne (2004) and Durand-Lasserve and Royston (2001). While dealing with very different contexts to that of South Africa the international literature highlights the importance of both land ownership (tenure) and land management or regulation. Fernandes (2002) discusses

the role of the law and legal institutions in the process of urban development of which 'the exclusionary pattern of urban development in Brazil has been largely due to the nature of state intervention in urban development through its overall economic policies, among others.' This author's earlier work (Fernandes and Varley, 1998) also covers the area of illegal occupation of cities in developing countries which is considered against land and land law and in particular, the role of law in the making and shaping of cities. This work also argues that urbanization gives rise to specific spatial patterns that support the creation of 'social relations necessary to the reproduction of capital' (Fernandes and Varley, 1998: 6). Furthermore, the authors realize that land law generally influences the nature of the city and state action through the central theme that it regulates that of property rights.

Land and land administration in post conflict areas is another area of international interest. Public land in particular plays a key role in this body of work published on cases such as Kosovo, post-war Croatia and Bosnia (Van der Molen and Lemmen, 2004). The work focuses primarily on appropriate legal and registration systems that had to be re-established and the problems associated therewith. The debates are somewhat equivalent to problems associated with South Africa in respect of resettling people back onto the land after displacement as a result of group areas legislation although the literature focuses on land registration and administration linked to tenure reform.

Literature reviewed on Asian countries reveals that State ownership of land is emphasized and land use planning instruments are conceptualized to promote economic gain mainly on behalf of the State. In the case of Vietnam for example, all land is owned by the State. The Law on Land (LOL) promulgated in 2004 is Vietnam's comprehensive framework law on allocation and use of land (Butler, 2003: 137). The author continues to say that Vietnam is one of a handful of emerging markets that maintains exclusive State ownership of land. A main objective of the LOL was to duplicate the dynamics and efficiency of a real land market within the constraint of state ownership. The idea was to facilitate access to and turnover of land, maximize its use and value, and enhance economic development. The author suggests that purposeless landholdings are not permitted and speculation is left mainly to the State.

Property rights is another area of international interest which has been around for a long time and is not necessarily linked to conflict-ridden areas but is often linked to tenure arrangements in respect of state-owned land in particular (Cornia and Riddell, 2008). In a neo-liberal environment or free market system across the world, property rights are very much associated with private property rights based on the understanding that the 'existence of a right by one party (individual, family, organized group, or government) to sell all of the rights to some other party' (Ostrom, 2009: 27) is the manner in which property transactions

are concluded. This implies that although public land vests with the State, how the rights of those (urban poor) who access the land from the State are secured remains uncertain. Writing in the context of economic development, growth and poverty reduction, Deininger and Feder (2009: 259) put forward three justifications to secure property rights. Firstly, 'the public good nature of property rights enforcement' secondly, 'the cost savings from having reliable information on land ownership available publicly'; and thirdly the scope for providing other public goods and infrastructure at least cost'.

The work of Dowall and Clarke (1991: 1996) used throughout this thesis is most articulate in terms of not only defining universal urban land policy problems in developing countries which include land use planning and regulation crises as well as a call for investment in the public domain but also considering urban land policy reforms and giving guidelines towards this end. Land market assessments play a key role in redefining urban land policy reforms according to this work. While the authors argue that a universal problem in urban land use management policies in the developing world is over-regulation on the part of governments, they also argue that there is too little support for private sector institutions in respect of urban development. This is not necessarily the case in South Africa where the main problem in land and land use planning is not so much over-regulation but outdated regulation that is more supportive of private sector development and fragmentation of the city than facilitating the urban poor's access to urban land as is demonstrated later in chapters 6 and 7.

While the international work is very useful in terms of understanding and assisting a contextually based conceptual framework to assist the State to manage land, land tenure reform and land administration in terms of cadastre reform, and also explore further the role of informality and generally to promote access for the urban poor to land; one fails to understand on what basis the question of land is only about tenure, housing, the rural poor and informality. Save for Dowall and Clarke (1996) and Fernandes (1998; 2002), discussions on land and land use regulation in terms of urban land policy reforms is generally limited unless they are directly related to aspects of land tenure, housing, rural reform and informality or illegal occupation. By the same token, while the South Africa perspective on land takes the debate of access to land for the urban poor a bit further and would definitely assist in reconceptualising how we address the question of land, the models put forward are still couched in debates on housing for the poor with limited interrogation of the impact of land use management on access to land for the urban poor.

The literature on alternatives to the notion of private property rights is based in common resource-use industries or common-pool resources such as forestry and fishing which are often located in relatively remote places (Ostrom, 2009: 29). According to Ostrom (2009: 28)

a number of 'established resource systems that had survived for long periods of time in which the users did not have the right to sell their holdings' were discovered in the author's research. It is important to point out that while the literature refers primarily to rights, emphasis must also be placed on responsibilities if land is to be viewed from a freedoms perspective. If freedom is focused on raising capabilities, it has to assume a degree of responsibility on the part of the individual and the collective to live the kind of lives that they value. Thus a system that refers to a bundle of rights and responsibilities in respect of access to public land could be explored in the promotion of the freedoms approach to urban land.

The question of land as entitlement from a freedoms perspective to enable access to urban land and the impact of urban land problems experienced by the urban poor on the values of land administration and land use management are somewhat reflected in the emerging body of work on land in cities of the global South. In so far as the international literature is more advanced than the South African debates in respect of land use management, it is worth understanding how concepts of entitlements and land value have been applied in cities characterized by high levels of poverty and what other instruments have been employed to transform land markets for the poor to be able to participate in them. The cases of Kerala and China are presented below to deepen the understanding of the potentials of the freedoms approach in urban land and land use management reform. Even though there are urban based case studies other than China on land and land use management reform that may be useful to deepen the understanding of the urban land question such as Curitiba in Brazil (Minter, 1997), the restructuring of urban transportation not urban land policy was the primary urban growth tool used to transform urban land. The difficulty of getting land reform right through whatever means or mechanisms is however, acknowledged.

### **3.4 The case of Kerala**

Although rural based, this case study is significant in that it demonstrates the elements of a freedoms approach in respect of a land redistribution programme in Kerala. Franke and Chasin (1995) entitle their paper 'Kerala State: A Social Justice Model'. They argue that 'Third World people can make their lives better in the absence of industrialization or large scale economic growth. The key ingredients: active grassroots organizations, redistribution of wealth and democratic participation' (Franke and Chasin, 1995: 1) that is, some of the elements of a freedoms approach applied in a highly stratified society. Kerala had a population of 31 million people as at 1991 (Franke and Chasin, 1995: 1) Table 3.1 reproduced from Franke and Chasin (1995: 5) indicates that during the reign of the leftist communist-led government periodically between 1957 and 1991 but specifically between

1970 and 1980 radical reformist programmes resulted in successful development in Kerala although (and this is important) per capita incomes still remain relatively low. However, the state of basic education and health improved remarkably.

**TABLE 3.1: COMPARATIVE QUALITY OF LIFE INDICATORS, 1991**

(Source: Franke and Chasin, 1995: 5).

Indicator	Kerala	India	Low-Income Countries	United States	South Africa
Per capita GNP (\$)	298	330	350	22,240	4959 <sup>8</sup>
Adult literacy rate (%)	91	52	55	96	82 <sup>9</sup>
Life expectancy (years)	71	60	55	76	63 <sup>10</sup>
Infant mortality (per 1,000)	17	85	91	9	45 <sup>11</sup>
Birth rate (per 1,000)	20	31	38	16	20 <sup>12</sup>

Note: South Africa was added for comparative purposes.

In the authors' book, Franke and Chasin (1994: 54 – 63) outline the land reform that has taken place in Kerala albeit in a primarily agricultural context. However, the lessons and consequences for Kerala society are important to record for our situation here. The agricultural land reform programme comprised of two actions: one, the redistribution of rice land; and two, the distribution of house-compound land (the garden sites on which tenants and farm labourers built their houses) through the abolition of tenancy. According to the authors just before the 1969 land reform legislation, '8.1 percent of land-owning households controlled 44.4 percent of all rented land and 61.8 percent of irrigated rental lands.' Land was generally owned by the Brahmin caste who owned and controlled the land but did not cultivate it. Below this landlord class was a superior tenants group who leased from the landlords, then subleased part or all of the land to a group of inferior tenants who in actual fact cultivated the land. Under the land reform programme in terms of rice land, approximately 1.5 million families benefited from the land redistribution programme.

The same Brahmin landlords also owned the garden sites which according to the authors had great economic value. Different fruits and vegetable crops are grown on these sites. The threat of eviction from these sites was the most 'powerful weapon in the hands of landlords in getting exorbitant rents for paddy fields' (Franke and Chasin, 1994: 57). These sites yielded a vast amount of produce. The end of garden tenancy meant a major shift in power towards the poor or labour tenants as well as improving their economic position; however, some of their living conditions remained below an acceptable standard of living.

<sup>8</sup> www.studentoftheworld.info (2005 estimate)

<sup>9</sup> www.statssa.gov.za. Human Development Index, 1996: Key Findings (1991 estimate)

<sup>10</sup> www.statssa.gov.za. Human Development Index, 1996: Key Findings (1991 estimate)

<sup>11</sup> Department of Health, Medical Research Council, OrcMacro, 2007 (1988 to 1997 estimate)

<sup>12</sup> www.cia.gov/library/publications (2009 estimate)

Franke and Chasin (1994: 58) report that Kerala's 'land to tiller' land reform is one of the most thorough and well implemented in South Asia.' On the one hand, landlords suffered as a result of the programme but are said to have adjusted and now contribute to Kerala's economy. They also received compensation as determined by a government committee in the case of rice land. In terms of house-compound or garden land, landlords were paid 25% of the market value with half paid to the former landlord by government and the other half by the new owner (or former tenant); spread over 12 yearly installments. Unpaid installments became regarded as debts to the government and could not be seen as grounds for repossession by the landlord.

On the other hand, however, similar to our situation here among beneficiaries of agricultural restitution land, some of the new land owners are not necessarily doing that well. Many have suffered from the declining price of rice relative to other products such as coconuts or rubber. They lack the necessary capital to change products to respond to the market. The resultant effect is that direct economic benefits of the land reform programmes have been less successful than expected in terms of incomes not rising as a result of the unpredictability of market forces and price. Other aspects such as conflicts between new farm owners and their labourers are also of note as interests shift towards profit against loss of wages in trying market circumstances.

Despite the ups and downs of the abolition of tenancy, 'land reform has improved the lives of the vast majority of people in Kerala's countryside.' (Franke and Chasin, 1994: 59) Furthermore, the land reform laws passed in 1969 came about as a result of years of continuous 'organising, petition signing, marching, meetings, strikes, battles with police and landlord goose squads, election campaigns and parliamentary debates. ... In twentieth-century Kerala no issue drew out the passions of the people as did land and tenancy' (Franke and Chasin, 1994: 60).

To appreciate fully how Kerala started to transform its society in terms of basic education, improved health and address the question of poverty generally, it is important to consult the literature on this country. In respect of land, it can be concluded that although Kerala's case is agriculturally based, as most developing countries are, the lessons to inform this dissertation's subject matter include the following.

- a) Centuries of leftist land struggles and conflicts brought about the transformation in land practices in Kerala implying that if we do not begin to address the land questions in our country and especially in cities, the conflicts in respect of land will continue to intensify;

- b) It was only when the leftist government of Kerala served a longer term in government for roughly twenty years from about 1969 when the land reform legislation was promulgated until about 1990 (the main period being between 1970 and 1980) when radical transformation in land could be consistently implemented;
- c) While the reformist impact on the wealthy landlord class was severe and some changed their political allegiances, they nevertheless remained in the country and are contributing to building the economy; and
- d) While economic growth has been moderate Kerala seems to have had a faster rate of reduction in income poverty than any other state in India by relying on the expansion of basic education, health care and equitable land redistribution although it must be emphasized that income poverty alone should not be the only goal of anti-poverty policies (Sen, 1999: 91).

### 3.5 The case of China

The case of China demonstrates attempts to transform urban land and land use policies in a different way than demonstrated by the case of Kerala from a freedoms perspective. The key ingredients of the Chinese case: increased State control and ownership of land resources; the establishment of progressive land use rights; the commercialisation of housing and a restructuring of the urban development process which are discussed in more detail below. In November 2000, China's population was approximately 1.3 billion; by 2050 it is expected to have grown to 1.6 billion. In 2000, unlike other world cities, only 36% of the Chinese population lived in urban areas and no single metropolitan area dominated the urban hierarchy. However, 36 percent of urban dwellers in a country like China translate into 430 million people (Friedmann, 2005) and this upward trend is likely to continue. Between 1978 and 1997 GDP grew at an annual rate of 17 percent and since then at a steady 7 to 8 percent (Ding and Knaap, 2003).

Before 1949 land in China could be privately owned and legally transferred through mutual willing buyer willing seller agreements. However, since 1949 when the Peoples' Republic of China was founded land in China is largely but not exclusively state owned. A dual land market has been established comprising both leased and administratively allocated land which has 'three main types of ownership: the first is collective ownership (by farmers) of rural land; and mainly by the poor whose collective ownership was facilitated by the Communist government in China. The second is 'titular state ownership of urban land' that is occupied by various state work units. The land used by these work units can be described as administratively allocated land. The third type is urban land owned by the State, which can transfer land rights to users in exchange for payment. This can be referred to as leased land

(Gar-On Yeh, 2005: 39). This model largely informs the conceptualization of land management, allocation and regulation for public land in China. In the 1980s the Chinese government introduced radical reforms in the institutional structures that govern land and housing allocations. In 1990, China officially adopted land leasing as the basis for assigning land use rights to urban land users.

#### *Land use rights*

The trading of land use rights in respect of leased land owned by the State in urban areas is a creative way of ensuring that land ownership is retained by the State but use rights can be acquired for specified lease periods of between 40 and 70 years by anyone, locals and foreigners alike, at a determined fee to trade or live or manufacture in China. The fees are determined by the location, type and density of the proposed development. The separation of ownership of land from acquisition of use rights allowed the State to a) rely on market mechanisms to determine the allocation of land resources in other words, employing the principle of highest and best use; b) create a new source of revenue through land use fees; and c) reduce political and social conflict by retaining ownership of land. However, according to Friedmann (2005) the urbanization of China over a relatively short period compared to other world cities is not as cut and dried as the Chinese government would like to think their policies make it out to be. For example the demand on social infrastructure increases substantially with rapid urbanization often outstripping governments' ability to provide adequately for increased urban populations which in turn can lead to undesirable social conditions and have implications for land use planning and management.

#### *Commercialisation of housing*

By the end of the cultural revolution in 1976 virtually all privately owned housing disappeared (Ding and Knaap, 2003). Ding and Knaap (2003) continue that shelter became part of the social transformation developed by the State although housing was not provided directly by the State but through work units or danweis as known in China. The key characteristic of a danwei is its multifunctional purpose as a place of employment, residence, education and commerce. A danwei worker accesses housing according to his work, a primary socialist allocation principle where housing is allocated by social status and length of employment; not prices and incomes. The financial package of the danwei housing system was integrally planned into China's centrally planned economy where financial resources towards its creation was contributed to by all sectors for example, industrial sector, health care, education and so on.

The state-controlled danwei system was de-emphasised when a new leader came into power in 1978. A new housing reform came into being that introduced market forces into housing

policy in China. Privatisation and commercialisation of housing became important as a result of market-led housing policy. However, between the danwei system of housing provision and the commercialisation of housing later on, a fair number of housing stock was provided in China and although the State's share of housing had fallen by at least 10 percent (Ding and Knaap, 2003), per capita living space increased from 4.2 square meters in 1978 to 7.9 in 1995. The situation today reveals that many Chinese still live in inadequate housing conditions according to Western standards. Housing for the wealthy is overabundant while housing for the urban poor is still in short supply.

It is important to point out that the danwei system became the basic spatial building block of the regimented city through the hukou or registration system discussed below. The danwei or work unit with its walled or compound-like nature turned its back onto the street as public space (Friedmann, 2005) resulting in spatially inward city-making concepts rather than building blocks that reinforce collective and public activities and spaces. Thus while there was an intention to deal with work-live and socio-economic opportunities through mixing housing with the work environment from a land use perspective the urban environment and the quality of the public domain were neglected.

#### *Restructuring urban development*

Interestingly, as stated earlier the fact that only 36 percent of the Chinese population is urbanised is not only but largely directly a result of rural to urban migration controls implemented by the Chinese government in the form of a hukou or household registration system. In terms of this system every Chinese resident is designated rural or urban status. By limiting access to the benefits offered by urbanised areas through the application of the hukou system, the majority of Chinese cannot live in cities making this system one of the most effective urban growth management instruments. However, with population growth and land / housing markets merging and unfolding as part of the market driven policies in China, urban and rural land have grown closer together and some rural land has been forced into converting to urban land uses which has weakened the hukou system and the control thereof.

The resultant effect of the hukou system together with market and urban growth policies gave rise to many rural peasants being urbanised by default and urban sprawl has no doubt taken place resulting in turn in the loss of cultivated agricultural land and threats to food security. To address these issues, the 1999 New Land Administration Law was promulgated to protect farmland, manage urban growth, encourage citizen participation in the legislative process and protect property rights at the same time. The main aspects of the Chinese land and land use model can be summarized as follows.

- a) The first innovation in China's land laws is the retention of State ownership of land and using leasehold land agreements as a means of trading land use rights, not land. This means that land vests in the State ad infinitum and the State becomes the custodian of land on behalf of the Chinese population.
- b) The second innovation in respect of land is that rural or cultivated land was used chiefly to address the question of poverty. However, as most opportunities for knowledge, health, growth and so on remain in urban areas, the rural residents had limited choice in terms of the hukou system of migration control. Movement and therefore freedom (of movement) was restricted in terms of this system.
- c) The third innovation is the allocation of State owned land for a combination of land uses within a single 'work unit' as opposed to just the provision of housing. However, this changed with the onset of commercialisation of the housing process which unsurprisingly improved the land market and economic growth but resulted in the urban poor being inadequately accommodated and public or collective life being eroded.
- d) The demand for urban land in China is likely to increase with increases in population over time. Given that the land surface area is finite and fixed, land prices are likely to rise with increased demand making it more difficult for the urban poor to access urban land in Chinese cities and also questions the sustainability of land use allocations for mixed use purposes that only address economic and residential considerations. No where is there mention of policies that begin to ensure that the public domain is protected in terms of adequate public space, social and public infrastructure.

Arguing from an historical and socio-cultural perspective, Friedmann (2005) is of the view that Chinese rapid urbanization, economic growth and phenomenal city transition are endogenous and not necessarily fundamentally influenced by globalization although he also acknowledges that it is difficult to determine in the Chinese urban context what comes from inside and what comes from outside. The same can be said of Kerala that there was very limited external influence on the 'land to tiller' policy implementation. An interesting lesson for South Africa is that given the relatively insignificant scale of urbanization compared with China in sheer number terms, one would think that there can be a fair degree of confidence that urban poverty can be addressed relatively easily given South Africa's progressive land policies (chapter 5). A second lesson for South Africa is that there is merit in considering rural-urban land policies and strategies synergistically rather than separately as is presently the case. China's urban transition according to Friedmann (2005) is a story without a predictable ending that one must wait for to see how it unfolds over time whereas South Africa's urban management transition could be relatively manageable and less uncertain if

the government here begins to focus inwardly and place less emphasis on urban globalization which demands an open and free market approach to land and land use management.

### 3.6 Concepts framing the thesis

From the literature reviewed in chapters 2 and this chapter, and as stated in chapter 1, the dissertation is framed by three key concepts that reinforce the freedoms approach. These three concepts in turn, find theoretical support in the work of Armatya Sen (1977; 1981; 1999). The first concept is *social justice* which forms the basis of a set of ethics or value system that land – people relationships must be governed by. The second is that of *urban sustainability* linked directly to the question of land and environment in an urban context. The third is a *deliberative planning intervention* to achieve equitable access and balance in the systems that govern land – people relationships. Before invoking these ideas in a series of case studies of Cape Town, it is worth rehearsing exactly what is meant by each concept when applied to urban land.

#### 3.6.1 Social justice

Social justice as expressed in space through urban renewal and development programmes, the provision of decent dwellings and healthy conditions for urban society can only be achieved if land is used in the interests of society as a whole (Augustinus, 2003). This implies that the underlying philosophy of healthy land-people relationships should be underpinned by the desire to direct, develop, use and manage land in the interest of society and the greater public good. 'Justice in general and social justice in particular involve the distribution of benefits and burdens, but distributive justice has come to be synonymous with economic justice, that is, with the distribution of *economic* benefits and burdens. Social justice includes but is not identical to economic justice, although both are concerned in part with how to distribute things that people care about' (Smith 1994:25).

Arguing for empirical contributions to social justice or 'social justice from below' Visser (2000: 34) cites three liberalists' views on the notion of social justice. The first is that of Rawls' theory of social justice which 'argues for a distribution of resources that would place the least well-off in society in the best off position relative to all other distributive possibilities, and subject to a just savings principle (i.e. it has to be sustainable)'. The second is the Nozkanian view which 'suggests that we identify an initial state of affairs which can be accepted as just and to argue that any outcome will also be just providing it arises from a just process of property transfers' (Visser 2000: 34). The third introduced by Visser (2000: 34) is Hayek's view of social justice which argues that 'its meaning is multiple and diverse, located and

bounded to multiple interpretations of the human condition'. Hence, according to Visser, Hayek poses the question as to whether there can be a theory of social justice that captures this diversity.

Contributing to the debate in 1990 on the land question and the imminent need for not only its transformation but also to recognize the need for justice with respect to land Sachs (1990:1) recognizes that 'the land question seems to be yet another of South Africa's many allegedly insoluble problems, perhaps the most difficult one of all'. He claimed at the time that either we condone the 'original unjust dispossession of the land and recognize it as a legal fact or we accept that there is a new form of dispossession which would unjustly deprive the present owners of what they have legally bought or inherited and developed with their own resources. 'What would be transferred would not be land but resentment, and the only issue would be who should bear the anger: the original possessors, currently dispossessed, or the current possessors, about to be dispossessed' (Sachs 1990: 1). This approach is neither sustainable nor constitutes a 'just process of property transfers' (Visser 2000: 34).

### 3.6.2 Urban sustainability supported by unified urban systems theory

The next concept, unified urban systems theory is relevant in terms of framing the land question in an urban context. It is contended that over 50 percent of the global population live in cities, with over 75 percent expected by 2050 (Burdett & Sudjic, 2007). An important consideration that this brings to bear on the urban landscape is what the impact on urban systems and cities would be should this become a reality. In other words, how sustainable are cities of the global South and South Africa currently and how sustainable will they be in time to come? An important aspect of urban systems theory is how urban populations will live; what land they will occupy, how much energy and water they will use, how will they cope with limited resources that will become more and more competitive over time and how will they afford access to these resources particularly in a market-driven economy? At a national scale, the question that arises for city land and landscapes is to what extent government needs to anticipate the impacts of (rapid) urbanisation and how government-society should begin to prepare and manage itself for this urban onslaught?

Coehlo and Ruth (2006) make an argument towards a unified urban systems theory which is in essence about *the interaction of cities with the environment* and the implications locally and globally. They argue that this approach 'requires integration of insights from the natural, engineering, social and health sciences as well as active dialog between scientists and policy makers. Research in the growing fields of industrial ecology, urban metabolism and urban ecology – as well as complex systems theory – is actively making the necessary

connections.’ These connections are what the authors refer to as a unified urban systems approach.

Coehlo and Ruth (2006) also argue that the ‘extent and nature of a city’s impact on the local and global environment are defined by spatial arrangements as well as cultural characteristics that govern patterns of production and consumption. As a result, urban policies have direct and indirect impacts on the amount and quality of energy and material extracted from, and returned to, the earth system....much of the predicted stress on future water supply comes from population growth and changes in demand related to intensity of use directly...’ This approach not only highlights the need for understanding systems as inter-dependent but also raises caution with respect to ‘ultimate physical limits placed on socioeconomic systems by the natural ecosystem’ (Coehlo and Ruth, 2006).

The unified urban systems theory informs the methodological approach of the thesis in two ways. Firstly, it is useful in considering urban land and land policy from a sustainable development or sustainability perspective; and secondly, it begins to inform the question of land as a non-renewable resource against the demand for urban land in response to rapid urbanization and the rapid growth of cities, as a result and very importantly addressing the question of urban poverty on the back of public land programmes, among other city development strategies. Where this thesis makes a contribution to the unified systems approach in turn, is that it views land and landscape as a mat of systems for example, natural systems. Land and landscape is where larger urban systems play themselves out for example, water and energy systems which are key fundamentals in the biophysical environment that cities find themselves in. One can therefore argue that the city of the future has to be approached systemically in order for sustainability to be achieved which in turn has direct implications for appropriate city forms.

### 3.6.3 A deliberative policy analysis approach

Hajer and Wagenaar (2003: 7) argue that ‘*Deliberative Policy Analysis* explores ways in which interpretative and deliberative methods of policy analysis help us to come to grips with the political phenomena of our time’. It differs from its positivist counterpart in that the latter ‘is an attempt to erect a firewall between scientific procedure and political organization’ (Hajer and Wagenaar, 2003: 13). Deliberative policy analysis is relevant here not because it is so radically different epistemologically and methodologically from mainstream approaches but because it demonstrates its analytic value and ‘practical usefulness’ (Hajer and Wagenaar, 2003: 13) in the context of a changing (conflict ridden) society and world that is essentially fluid, uncertain and influenced by an emerging network society.

What is appropriate about this interpretative or deliberative approach to this dissertation is not only a shift of emphasis from scientific proof to discourse and dialogue but also a search for a 'value-critical' policy science capable of generating 'usable knowledge' (Fischer 2003:210). Furthermore, it is important to recognize the implications of this approach to professional practice as it is often argued that it lacks reliability and validity as opposed to its quantitative-based positivist counterpart (Yanow, 2003: 241). Other critiques of the deliberative approach include that a) the approach is based in human meaning making; b) it is based in symbolic politics rather than real politics; and c) "if methods based on positivist ontology and epistemology also entail interpretive acts, why call the alternative described here 'interpretative', rather than 'qualitative' (Yanow, 2003: 241).

The concern of this dissertation is mainly with the first critique that deliberative or interpretative policy analysis is based in human meaning making. In support of the deliberative approach and specifically with respect to professional practice, one has to ask why any approach should not be based in human meaning making and that one can argue that positivist approaches are also subject to interpretation and often times in favour of human meaning. However, how one arrives at the findings to have human meaning between positivist and deliberative approaches is very different. To illustrate the point, in evaluating institutional capacity, a relational view is taken of institutional capacity rather than a stock of assets thus 'maintaining an analytical distinction between the qualities of social relations (the nature of bonds of trust and norms in the networks which link people together) and the knowledge resources which flow around and are developed through these relations. This draws on a distinction between three forms of capital which may be deployed in interactive governance contexts: intellectual capital (knowledge resources), social capital (trust and social understanding) which builds up through face-to-face encounter and political capital (the capacity to act collectively to develop local qualities and capture external attention and resources)' (Healey et.al, 2003: 63).

The value of this approach is evident in the method employed in this dissertation when the research on policy analysis and case studies related thereto are presented later on in the thesis. It links directly to the search for a value-laden foundation for public land management based on fairness, ethics and social justice where the developmental role of land can act as a basis for human freedom and capability. The three concepts underpin the freedoms approach from the point of view that they search for trust, integrity, reason and value in government-society relations that is not just based on economic feasibility or growth but also on knowledge and depth of social understanding which has implications for public participation and how people begin to influence government policies.

### 3.7 Summary

The literature reviewed on land takes into account the South African and international perspective/s which largely focuses on rural debates, informality, land tenure and housing although the implications of land use management are acknowledged. The thesis challenges the conflation of land and housing and argues that there is a different place for land in the context of urban poverty. It also argues that while there are multiple ways of gaining access to and control over resources beyond the market, these are essentially limiting for the majority of the poor. A collective and reformist view on land can be informed by the commons literature, State ownership as in the cases of Vietnam and China and radical reformism as in the case of Kerala. For instance, the lessons from Vietnam and China for cities in South Africa are firstly, that urban land markets can be tempered through a reformist approach to public land while transactions in privately owned land in the open market can continue. Secondly, land models that are more accessible encourage usage of land that would otherwise lie fallow and be purposeless. Thirdly, State owned land is used for multiple land use activities, not only housing.

This chapter also makes the case for a freedoms approach to urban land as the building blocks of urban poverty alleviation particularly the participation of the poor in urban (economic) life and governance as demonstrated by the case of Kerala which highlighted some lessons for the South African context. The three concepts of social justice, urban sustainability and deliberative planning underpin the freedoms approach which in turn, provides theoretical support for these concepts to begin to restore a values-based society-State relationship in land. At the same time, it must be recognized that the freedoms approach does not directly address the question of urban land as entitlement and potential endowments of the poor. It also does not address the weaknesses in respect of land use management being prohibitive in respect of access to urban land for the poor in a free market system as is the case in South African cities. The freedoms approach can, however, draw on and learn from the commons literature as opposed to the private property rights literature, which begins to give perspective on how land can be planned, used and managed with the collective in mind. This dissertation broadens the freedoms approach to highlight these weaknesses and demonstrates that a better understanding is required in terms of process, technical city making instruments and policies on land to facilitate access for the urban poor and focus attention on the collective. Given the complexity of these multiple layers of urban land the following chapter explains why mixed methods were employed to collect the materials and data necessary to support its theoretical and conceptual framework relying primarily on case study methodology.

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## Chapter 4: Approach and Methodology

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'Do case studies, but do them with the understanding that your methods will be challenged from rational (and irrational) perspectives and that the insights resulting from your case studies may be underappreciated' (Yin, 2003a: xiii).

### 4.1 Introduction

This thesis relies on a combination of existing empirical data from primary sources, secondary data sources of information as well as data developed from base or raw material to support its foundation. The diverse research questions and complexity of the subject matter demand multiple research approaches and mixed methods of inquiry as outlined below. The methodology employed therefore facilitates an interaction between theory and practice primarily through the collection of case study material in the practice of urban planning involving a number of publicly owned sites, theory and analysis of existing data collected and an interactive research between theory and policy questions raised in a series of interviews conducted towards the study. This is deemed an acceptable approach by case study methodology authors such as Yin (2003a).

At the same time, mixed methods as a means of social inquiry are expounded by Greene (2007) which the author defines as a mix of 'mental models' (Greene, 2007: 11). Mental models, in turn refer to the assumptions, theoretical bases, experiences and values that a researcher employs to conduct her work. The author supports the view that when the research purpose is complex as in the case of the research contained in the following chapters, it is often necessary to have multiple questions which most often necessitate the use of mixed methods (Greene, 2007: 96). It is also true that the hypotheses of the research may be complex and not just informed by a literature search but also as in the case of this dissertation, by the writer's experience in the field of urban planning in respect of public land as well as the value system employed by the writer while engaging public planning projects where I was the primary investigator.

The key research questions outlined in chapter 1 as well as the three key research techniques (empirical or primary data collection from official sources, interviews and case studies) form the basis of the research. These research questions are restated below for ease of reference.

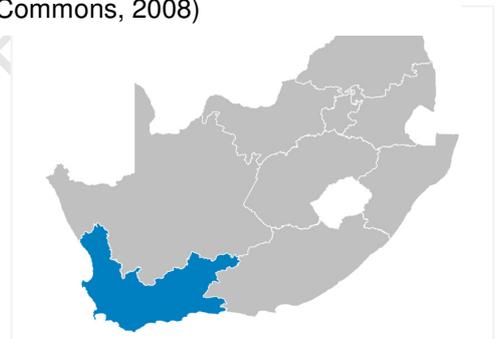
- a) What policy directives drive the urban land agenda?
- b) What are the legal or institutional barriers that prevent access to land?
- c) What impacts do the current patterns of asset acquisition and land ownership have on the urban poor?
- d) What are the formal and informal regulatory underpinnings of exclusion?
- e) What is the State doing to achieve developmental and poverty reduction goals using public land as a basis?

A profile of Cape Town together with a short analysis of its poverty context is reflected below.

#### 4.1.1 Cape Town regional context

With a land surface area of approximately 129,307 km<sup>2</sup>, and an estimated 2007 population of 5,278,585 (Ravayi et.al, 2008: 7) as well as an economic output of \$23 615,07 million in 2007, the Western Cape can be described as one of the most productive regions in Africa. On the back of a strong performance by the Province's capital, the City of Cape Town, the Western Cape has made reasonable economic progress over the past decade in conventional economic terms. However, it has a long way to go in terms of bridging the poverty gap between rich and poor.

Figure 4.1: The Western Cape in South Africa (Source: Wikipedia Commons, 2008)



Although the province has the lowest percentage of population in South Africa living in poverty compared with its other provincial counterparts, poor households have sunk deeper into poverty. In 2007, 10 percent of the Western Cape population lived on less than R250.00 per month poverty line measure. In 1996, 0.8 percent lived on less than \$1 a day, 1.8 percent in 2001 and 0.9 percent in 2006 (South African Institute of Race Relations Survey, 2007). According to the South African Regional Poverty Network (2004) the Western Cape's share of the poverty gap<sup>13</sup> is 5 percent. Unemployment in the province has risen from 17.6 percent in 2005 to 23.9 percent in 2007 (SAIRR, 2007) indicating that the poorest people are not directly benefiting from the prosperity of the Western Cape.

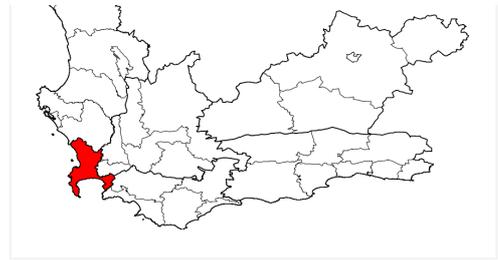
<sup>13</sup> The poverty gap measures the required annual income transfer to all poor households to bring them out of poverty according to the South African Regional Poverty Network (2004).

Covering a land surface area of approximately 2,479km<sup>2</sup> and a 2007 population of 3 497 097 (Statistics South Africa, 2007), Cape Town is the only metropolitan area in the Western Cape Province. Since the first democratic elections of 1994, Cape Town has reflected the 'national challenge of creating new economic opportunity while eroding past inequities' (Wesgro website accessed September 2008). In 2007, the Cape Town municipality generated a GDP of \$18 387, 95 million<sup>14</sup>, some 89.1 percent of the total output of the Cape Town city-region, which itself accounted for 87, 4 percent of the output of the entire Western Cape (Quantec Research, 2007). Between 1996 and 2006, the economy grew steadily to a rate of 4, 1 percent per annum in 2006 – a rate higher than the regional average of 3, 8 percent and the national average of 3, 2 percent (Cape Town Partnership website, accessed September 2008). This growth was accompanied by the modernization of the city's 'traditional strengths in port logistics and trans-shipment functions while at the same time developing innovative sectors in tourism, agri-food processing, viticulture and finance.' (OECD, 2008) By 2005, the city's economy had transformed to such an extent that the service sector contributed 69,5 percent to the total regional GDP with financial and business services more than 30 percent, wholesale and retail trade, catering and accommodation 17,7 percent, transport and communication 11,6 percent and government services 9,2 percent (OECD, 2008). These indicators suggest that the city's mainstream economic sectors rely primarily on high to semi-skilled employment which essentially excludes a large unskilled labour force with poor education.

As stated earlier, Sen (1999) argues that the fundamentals to achieve capability are basic health and education which can act as a spring board for the poor to engage in economic activities that, in turn, improve capability. In effect, good health and very importantly, a reasonable educational level to participate and negotiate in society can reinforce the ability of the poor to engage mainstream urban land and land use matters. Conversely, a record of poor educational levels undermines this ability.

The City of Cape Town (2005: 24) reports while skill levels in the city improved between 1996 and 2001 they still remain very low. 'The proportion of adults (aged 20+) with a highest educational level below matric dropped from 67, 8 percent in

Figure 4.2: Cape Town in the Western Cape (Source: Wikipedia Commons, 2008)



<sup>14</sup> One US dollar was approximately R7.34 in South African currency at the time of writing.

1996 to 62 percent in 2001. The proportion with a matric qualification increased from 20, 7 percent to 25, 4 percent while there was only a slight increase in the proportion of adults (aged 20+) having a post matric diploma or degree. The result of a relatively low economic growth rate and the concentration of this growth in the more skilled sectors of the economy means that unemployment levels in the city have continued to increase, rising from 16.5 percent in 1999 to 23.2 percent in 2003' (City of Cape Town 2005: 23). A recently emerging trend is that world cities also require people to be technologically literate to the degree that they can participate in the information and global networks that provide greater opportunities to earn a decent living. Barriers to this type of literacy can place ordinary citizens at a great disadvantage.

After Johannesburg, Cape Town has seen the highest rates of domestic in-migration and immigration in South Africa. In conjunction with natural increases, this process of migration, which is driven by the movement of young black South Africans, has increased the city's population by around 3 percent per annum totalling 3 239 768 in 2006, 64.9 percent of the total Western Cape population (Quantec Research, 2007). These high migration rates over the past decade are a symptom of the opportunities available in Cape Town, although there are strong barriers to entry for immigrants who are relatively poor. According to a report by the City of Cape Town (2005: 8), 'continuing population growth impacts not only on the size of the population but also on the characteristics of the population, which has important implications for the increased growth in poverty. Due to the nature of both natural population growth and migration, population growth in Cape Town will largely take place among the poorest parts of the population.'

A worldwide trend is a growing number of poor people living in cities (Parnell, 2002b). The author argues that the growing urbanization of poverty is due to the natural growth of the poor population in cities, growing inequality within cities and the increase in the number of poor people moving to cities. The demographic and economic trends in Cape Town reveal that all three are contributors to growth among the urban poor. According to the City of Cape Town (2005a: 27 – 30) the causes of poverty include: the high level of unemployment in the city; the fact of the HIV/AIDS pandemic and demographics particularly given that the city has a relatively young population and therefore high dependency ratios.

This introduction to Cape Town highlights the trajectory of the city as following the worldwide trend of the growing urbanization of poverty. The geographic scope of the study is represented by Figure 4.3: Metropolitan Cape Town as defined by the City of Cape Town's official municipal boundary.

## **4.2 Methodological approach and research questions**

The relevance of theoretical frames that inform the methodologies employed and the interpretation of the research findings is expressed in this chapter. As I muddled through the research questions and the different methods engaged to give meaning to the spirit of what underpins the premise of the thesis: *'the developmental use of urban land should be ethical, fair and promote social justice'*, three key approaches were selected to ground the dissertation's methodology. The first is the relevance of empirical inquiry framed by a positivist / neo-positivist approach in respect of empirical data collection and analysis; the second is the need and relevance of mixed methods as a means of social inquiry as explained above; and the third is the collection of case study material as a means of collecting evidence to reinforce the dissertation.

The three (mixed) methods utilized in this dissertation include the following. The first is qualitative research using the in-depth interview technique. Second, empirical data sourced from base, raw or primary materials from official sources including the City of Cape Town (2007; 2008; 2009) and the Provincial Government of the Western Cape (2007a; 2007b) that were analyzed and mapped for the purposes of this dissertation. Thirdly, case study material on public land that was collected while I was personally involved as the principal professional planning practitioner and primary investigator or researcher on public commissions such as Farm Bardale and District Six, case studies introduced later on in the thesis.

**FIGURE 4.3: GEOGRAPHICAL SCOPE OF THE STUDY - CAPE TOWN MUNICIPAL AREA LOCALITY PLAN (2008)**



Source: City of Cape Town Strategic Development Information and GIS Department, GIS Data, 2008.  
 Redrawn by author from original source, 2010.

#### 4.2.1 Qualitative interviews

To augment both the case studies and the more general assessment of urban land through map work, land markets and land use management, the views of urban planners, city officials and other role-players are considered important. In particular, with respect to public land which is either earmarked for low income housing purposes, other urban development or vulnerable to privatization, seventeen (17) one hour (or longer) qualitative interviews were conducted with a range of role players active in implementing and shaping land policy in South Africa, and Cape Town in particular. The interviewees were selected on the basis that they either shaped urban public land policy or administered / made decisions on public land distribution for housing, privatisation, urban development in general to address urbanisation - all of which have major implications for the structure and form of a city.

The purpose of conducting the interviews was to elicit to what degree stakeholders who are influential in shaping the city through the administration of public land policy believe that government has a key role to play in land redistribution to address poverty alleviation generally not just through housing provision. The emphasis of the interviews was on whether interviewees thought that the use, distribution and allocation of public land were fair, sustainable, skewed towards private interests and aligned with land policy directives. For purposes of consistency the philosophical concepts of fairness, social justice and human meaning making were explained to each and every respondent from the perspective of the thesis which is embedded in a freedoms perspective. As these concepts have similar definitions and / or meanings when reflected in current urban land laws and policies (chapter 5), the respondents generally understood these terms in a similar manner.

The interviewees included the following persons.

- Interviewee 1: Member of parliament representing the African National Congress / South African Communist Party Alliance (ANC/SACP Alliance).
- Interviewee 2: Member of parliament representing the Independent Democrats (ID).
- Interviewee 3: The Managing Director of a Black Economic Empowerment Asset Management and Development Company working for government, parastatals and the private sector on vacant land and buildings.

- Interviewee 4: A Developmental Land Specialist Consultant.
- Interviewee 5: A representative of an active non-government organization who deals in land matters and research on behalf of the poor.
- Interviewee 6: A founder member of the South African Constitutional Property Rights Foundation (SACPRF).
- Interviewee 7: A lead property economist in South Africa.
- Interviewee 8: A lead representative of the Congress of South African Trade Unions.
- Interviewee 9: A Principal planning official employed at the City of Cape Town.
- Interviewee 10: The Chief Executive Officer of the Cape Town Partnership.
- Interviewee 11: A judge serving in the Constitutional Court of South Africa who rules on land matters, among other legal cases.
- Interviewee 12: The chairperson of the Spatial Planning, Environment and Land Management Committee of the City of Cape Town who is also a member of the Democratic Alliance.
- Interviewee 13: A chief officer in property investment and asset management of the Public Investment Corporation (PIC).
- Interviewee 14: The Acting Chief Property Manager in the Western Cape Provincial Government's Department of Transport and Public Works.
- Interviewee 15: A land use policy consultant who advises national, provincial and local governments across South Africa.
- Interviewee 16: A Director in National Government's Land Redistribution Unit, Department of Land Affairs.
- Interviewee 17: The Western Cape Regional Land Claims Commissioner and Chief officer based in the Department of Rural Development and Land Reform (formerly known as the Department of Land Affairs).

Attempts to reach the chief executives of leading estate agents were unsuccessful. Their personal assistants responded by saying that their only concern was with the private property market and not the workings of government landholdings. Generally, interviewees were approached telephonically or via email communication inviting their participation in the study by responding to the questions outlined below. A letter of introduction from the Department of Environmental and Geographical Sciences, University of Cape Town was presented to the interviewees.

Of the seventeen interviewees, only five persons gave permission to be cited by name. The majority preferred to remain anonymous for the following reasons. One, fear of victimization in respect of those who work for or represent government organizations and two, those who provide professional services for government on a consultancy basis did not want their identities to be revealed for fear of not being able to access public contracts should they appear to be too critical. Thirdly, some State officials were radically opposed to the manner in which their organizations addressed the concern of land relative to poverty alleviation and could not defend their land policies and / or actions even though they acknowledged that the policies were intrinsically in favour of the urban poor.

The following questions were generally used as a basis for discussion and engaging the land question with specific emphasis on land policy directives and imperatives.

- a) How would you see the role of public land with respect to poverty alleviation and poverty reduction goals?
- b) Do you think that the land – housing question is one and the same thing and if so, by addressing the question of housing, are we addressing the question of access to land?
- c) What forms the basis of public land governance in Cape Town? Is this underpinned by a system of ethics or value system that genuinely promotes healthy land-people relationships?
- d) Do you think that at this stage of our development and democratization, public land has made an impact on racial integration, wealth creation and asset formation in Cape Town?
- e) How in your view should public land be directed and used to achieve fairness and social justice in land distribution and access in Cape Town?
- f) Do you think that the policies currently governing public land access and development are appropriate to achieve fairness and social justice in land distribution and access in Cape Town? If not, how should they be made more appropriate?
- g) Do you think that the policies / legislation currently governing public land access and development are sustainable? How in your view is sustainability defined with respect to land?
- h) What are the possibilities and limitations of current policies / legislation that inhibit / promote access to public land from a developmental perspective?

- i) One can argue that the current policies and systems in place are not very successful in having achieved equitable access to land; land redistribution and land reform in a sustainable manner or without great difficulty. If current policies and systems in place are not working, what approach should government adopt to achieve equitable access and balance in the systems that govern land and access to public land in particular?
- j) Would you like to say or add anything of a general nature to the land question in Cape Town?

Having tested the above questions on five interviewees namely: the member of the ANC / SACP Alliance, the Managing Director of a Black Economic Empowerment Asset Management Company, A Developmental Land Specialist Consultant, the NGO, SACPRF and property economist, it became apparent mainly through advice from the Developmental Land Specialist and property economist that the questionnaire is too long and that before asking government officials to participate there needs to be a revision and simplification of the questions asked. In response to this, the following questions which were added were not dissimilar to the previous questionnaire but were simplified and shortened for ease of communication. It was therefore necessary to use discretion as to when which questions were appropriate to ask of the remaining (mainly government-related) interviewees.

- k) What is your role / policy with respect to inner city land development?
- l) How would you view the use of and development of land with respect to poverty alleviation?
- m) Do urban land markets in Cape Town work for the poor? If not, what can government do to integrate the poor into the market and the city without allowing urban land markets to get in the way?
- n) Could you talk a bit about the reasons for land prices being so high in Cape Town's urban areas? Against this reality, would strategically located public land (close to urban opportunities and in good locations) ever be available to the poor?
- o) What success can be recorded in terms of making land available for the urban poor in the area within which your Department / government owns and operates land / buildings?

Not all respondents were asked all the questions as they are listed for various reasons including lack of time; lack of understanding of the depth of the question, reasons of privacy or holding back as a result of fear of being reprimanded. Ten of the seventeen interviewees gave permission to record the discussion using a voice data recording instrument which is transferable to a file on a personal computer. Some interviewees gave permission to be cited in the research with some requesting that their quotes be endorsed before publication of the thesis. The analysis of the responses to these questions is presented in some of the following chapters where appropriate. The responses were recorded in an excel spreadsheet as a useful tool to assess and compare interpretations relevant to the research questions. Once recorded, the responses were analysed by applying a combination of principles adopted by the deliberative policy and the freedoms approach. The deliberative policy approach is useful in analytical terms to determine to what extent the fluidity and change in post-apartheid conflict societies such as South African society is acknowledged and recognised by key policy makers and implementers. The freedoms approach is appropriate to determine to what degree human meaning making and poverty reduction is important and embedded in the institutional and individuals' minds responsible for policy implementation.

#### 4.2.2 Empirical inquiry and mapping land profiles in Cape Town

In essence the positivist / neo-positivist approach is what we commonly understand as an empirical inquiry into an aspect or aspects of our milieu. Fischer (2003: 211) recognizes positivism as a theory or body of knowledge put forward to explain the concepts and methods of the physical and natural sciences. This author argues further (2003: 212) that neo-positivism was designed to recognize various reforms and correctives in the theory and practice of positivism. It reinforces the contemporary pursuit in the social sciences for a body of knowledge which is empirically organized as 'replicable causal generalizations'. The emphasis of this approach is on empirical research designs where techniques are primarily 'quantitative measurements' and based on 'causal models with predictive power' (Fischer, 2003: 212). The outcomes and findings of research based on a neo-positivist approach become the basis of both theoretical development as well as the formulation of policy interventions.

This approach is often critiqued for separating the collection of facts and figures from a normative or values based position that the researcher might be adopting.

However, there is certainly a place for this approach in the analysis and interpretation of the data collected specifically to understand patterns of current land distribution, land values and broad public land distribution patterns in the case of Cape Town (chapters 6 and 7) which have been developed from the collection of raw or primary data from various official sources such as the City of Cape Town and the Provincial Government of the Western Cape. The overarching purpose of the spatial data analysis is to engage entitlement mapping as a tool for determining locationally where and from an endowments point of view, what citizens in Cape Town and the urban poor in particular have access to in terms of land resources, assets and urban opportunities. This allows the exploration between endowments and entitlements (Kasperson et.al, 2002) at a city wide scale.

In the context of the dissertation, the strength and value of quantitative analysis of raw land data as depicted later on lie in the consolidation of information that is often depicted publicly in a single case by case basis only and hardly in an explicit consolidated format for public scrutiny. Thus the cumulative effect for example, of what happens to public land over time is not understood by the public as a whole. Empirical analysis of land data is also useful as facts about land are often distorted or manipulated for ulterior purposes. In chapter 7 for example, it is clear from the calculation or measurement of land invested in by the state for low income subsidized housing purposes that the extent of land to this end is enormous when compared with the extent of known public land sold to private interests. However, the monetary value of the extent of land for the former is significantly lower than that of the latter, which if not made apparent to society could be significantly misleading.

The type of analysis presented in chapter 7 can only be illustrated by combining a positivist approach with the values based freedoms approach. The former shows scientifically the extent of impact or lack of impact of policy interventions by government through a series of analytical maps drawn from empirical data sets and the latter indicates the lack of achievement of poverty reduction goals as a result of the humanist principles being lost in translating policy into implementation for a various reasons one of which includes the fact that government competes with the urban poor to derive economic benefit from well located public land as illustrated in chapters 6 and 7.

The raw, base and primary data collected was analysed and interpreted through map work. The first task was to understand what the pattern of land occupation and distribution is that operated in Cape Town primarily between approximately 1991 and 2007 focusing specifically on land patterns in four categories: publicly owned land, parastatal owned land, serviced public land for state subsidized habitation or public land for state subsidized housing. Land occupied or acquired informally is also depicted although not considered in any great detail.

It must be noted that attempts to track information on public land as at 1994 were unsuccessful although a considerable amount of time was spent pursuing officials at the City of Cape Town's Strategic Development Information and GIS Department (where the GIS for the entire city is administered), Spatial Planning, Housing Departments and Municipal Property Departments. The reason for this is that all historic data is replaced with current information implying that as public land is transferred to non-public entities, the history of the land having been in public ownership at a certain point in time is destroyed and not kept live for record purposes. Attempts to source the information from the Western Cape provincial government met with similar disappointment for similar reasons.

The approach to the Western Cape Government's Department of Public Works and Transport to obtain land sold by government between 1990 and 2007 was first made to this department's Acting Chief Property Manager in September 2008 to access records of the Provincial Cabinet's Committee on the disposal of public land. The request was followed up regularly but unsuccessfully. Another attempt was made between April and July 2010 and to date has had no response although also followed up with the relevant contact people within this department. The only records therefore of public land changing hands during this period are held in the Deeds Office in Cape Town where transfers of land are legally concluded. The study of records or land information systems held by the City of Cape Town, the Provincial Government of the Western Cape and the Surveyor General's or Deeds office and their respective archives together assisted to develop the material on strategic public land disposal (chapter 7).

Sub-categories have been developed during the mapping process including:

- a) Some significant transactions or transfer of public land between the public and private sectors which land was used for development by private developers who operate in the open urban land / property market.
- b) The valuation of land / property linked to locational patterns of different income groupings in Cape Town to determine land value against advantaged locations and class-based land occupation / allocations. In this instance, 2007 base material was obtained from the City of Cape Town Municipal Properties (Valuations) Department (2007) in GIS shapefile format. This implied that the raw data needed to be sorted, categorized and mapped using Arcview GIS 3.2 to arrive at a spatial depiction of land values in Cape Town based on 2007 data.
- c) The degree of racial and income integration of society in Cape Town since becoming a democracy in 1994 was obtained from the City of Cape Town's Strategic Information Department and integrated onto a single map.
- d) The socio-economic status index of Cape Town which was readily available from the City of Cape Town's Strategic Information Department; and
- e) The population density of Cape Town; among other significant natural and urban systems information was also obtained from the City of Cape Town between the Departments of Spatial Planning and Strategic Development Information and GIS.

A further research task involves what can be termed entitlement mapping in vulnerability analysis but the term really refers to Amartya Sen's 'entitlement' theory as a foundational concept in vulnerability analysis where entitlements represent 'the set of alternative commodity bundles that a person can command in a society using the totality of rights and opportunities that he or she faces' (Sen, 1984: 497). The commodity bundles include access or the right of access to land. The concept of entitlements is defined and debated in chapter 2.

The same series of map profiles described above as well as resource maps such as access to urban opportunities including transport, services, public space and so on (chapter 6) were developed on land information to produce foundational layers that support the analysis of current land patterns in Cape Town to determine what 'entitlements' in respect of land the urban poor have direct access to. In addition, other overlays such as land values as per the City of Cape Town's valuation roll were

obtained and analysed using Geographic Information Systems (GIS) to help understand exclusionary forces on the basis of affordability and the role of (public land) location in poverty alleviation. GIS is not utilized here as a method but rather as an analytical tool to interpret layers of information collected as either raw data in spread sheet data format or in shapefiles that contain land information in different layers. The debate as to whether GIS is a method or a tool is explored at length in Fontaine (2005).

The last task associated with land profiles was to map the public land potential in Cape Town (chapter 7). Various sources were used to formulate an integrated map of vacant land in Cape Town and may still have some shortcomings but can be regarded as having a 95 percent level of accuracy in the graphic depiction of the data (Figure 6.12). Broadly, the methodology for land identification was that the land rationalization study (Provincial Government of the Western Cape, 2007) which identified state / municipal owned vacant and underutilised land as at 2005 for the Western Cape Provincial Government was used as a base GIS layer against which land identified in the Cape Metropolitan Area from other sources was tested and added to, to fill gaps in this rationalization study. These other sources of information obtained in addition to the land rationalization study include excel spread sheets and GIS shapefiles obtained from the Provincial Government Western Cape Directorates: Human Settlement Planning and Housing Property Planning (2007a; 2007b) which indicated state / municipal owned vacant land and sites that are improved. Permission was obtained to use this data for research purposes. Only vacant land is depicted as potentials for public land programmes in chapter 7. Where there were overlaps or contradictions in the land identification data sets, the Provincial Government Western Cape Directorates: Human Settlement Planning and Housing Property Planning (2007b) was used above any other source.

#### 4.2.3 Case studies to facilitate policy and empirical data analysis

In order to evaluate the methods of State intervention into the urban land market and its impact on the urban poor relative to land access, a number of case studies were investigated. The methodological tools for these case studies included the following.

- a) The study of the sale or potential sale of strategically located state or parastatal land in Cape Town that is vulnerable to privatisation but with potential to contribute to poverty reduction, for example the Victoria and Alfred Waterfront site located in Green Point and Grand West Casino located

in Goodwood (chapter 7, Figure 4.3). This work was considered against serviced land and state assisted housing programmes to respond to the housing needs of the poor in an attempt to juxtapose public investment on behalf of the urban poor against strategic public land disposed of in the interest of private development.

- b) A qualitative study of resettlement in terms of urban land restitution to analyse the potential impact of resettlement in strategic locations on returning claimants and the implications for urban development. Different aspects of District Six were investigated in this instance. The study of this area located in the inner city of Cape Town to understand the question of sustainability in terms of land and land value was also undertaken. This case is also pertinent in terms of a deliberative planning intervention by state authorities to address the question of land from a housing or mixed use perspective but not to equate land with housing.
- c) Other cases are used throughout the thesis for their appropriateness and analytical value with respect to the potential of public land to either address the question of poverty directly or to bring about fairness and social justice in society on the back of state land programmes.

It is very important to hold onto the idea of social justice and fairness in land redistribution policy as these concepts can often be forgotten because of inappropriate interpretation, implementation and administration. Although based on educational reforms that lead to (further) social inequalities and not on land reform or redistribution per se, Imber (1997) demonstrates through the use of a case study whose needs and interests are served through a top-down functionalist planning approach. He argues that power and knowledge are concentrated at the top of the pyramid in Weberian terms, and that those at the top who hold power and knowledge often act from a co-opted or politically partisan approach when engaging or participating the poor because their ways of thinking are essentially moulded by the interests of a typical 'administrative group'. The author is referring to the implementers or administrators of educational reform policy that can go terribly awry and even lead to (further) inequalities as a result of the inappropriate nature or make up of the policy administrator.

It can be said that this research is based on multiple case studies to support different aspects of the land question as opposed to relying on a single case only; although

the most pertinent case used most often in the dissertation is District Six. A second case that is frequently mentioned and relied upon in the dissertation is Farm Bardale 451 located on the periphery of Cape Town which demonstrates the inadequacy of land use regulation to address the fundamental land requirements of the urban poor. The profiles of both will become apparent as these cases are presented later on. Both cases also demonstrate the elements of the dreams, hopes, memories and fears that I have as a planner of what Cape Town as a city should or should not be or become. They question directly issues of diversity and sustainability as written about in Sandercock (2003:143 – 164) where she relies on urban reconciliation and regeneration stories (as case studies) that can act as a means of healing divided cities or neighbourhoods. District Six, a long ‘story’ told by many ordinary and exceptional people, in particular offers this hope and potential.

According to Yin (2003b: 4), the ‘case study is the method of choice when the phenomenon under study is not readily distinguishable from its context. Such a phenomenon may be a project or program in an evaluation study.’ In the case of this dissertation the project/s referred to above are largely ongoing or *without a definite end* or *stop-start* for whatever reason which will become apparent in the description of the case in the context of the relevant content that it supports. They are therefore longitudinal in that they have been studied for many years by other authors and me between the period 1994 and 2007 (or up to the present time) and have reflected different aspects of urban land patterns over this period.

The dissertation therefore relies on various articles or materials that the author has published singly or with other authors over this period that pertains to what the cases and importantly, theories informed at a particular moment in time. In a sense, the case study investigations pre-ceded the intention to prepare a dissertation; and continued on their own trajectory whilst the dissertation was being constructed. What gives substance and strength to the case studies used in the dissertation is the theoretical basis which is founded on social justice, development economics and urban development theories that are deeply value laden and supports the greater common good. This aspect is the constant that underpins the analysis of the cases. This is acceptable in research terms as reflected by Yin (2003b: 5) who states that ‘Theory and theoretical constructs are useful in all kinds of case studies, when case studies are used for research and not teaching or dissemination purposes’ which is the case in this dissertation as can be seen later on when the case studies are

introduced. In any case, while the case study as a method is generally well used in research, planners are particularly known to use case studies extensively as their work is generally case or project related and occurs over a considerable period of time.

If research is defined as the creation or generation of purposive knowledge as suggested by Pitts and Smith (2007: 4), then this dissertation can be seen to rely predominantly on case study material to create an evidence base and thereby contribute knowledge to the question of urban land management and land reform as a particular challenge in the South African urban poverty context. Furthermore, cases allow one to make 'reasonable assumptions' or assumptions based on reason and are selected for particular intellectual purposes (Ragin and Becker, 1992: 41 - 42) to support an argument. The cases represented in this dissertation do exactly that, they support an argument for greater responsibility on the part of the State towards the urban poor in respect of facilitating access to land and articulates how such responsibility can be promoted through appropriate interventionist strategies; based on a measure of reason as discussed in chapter 2 and supported by Sen (2009).

#### **4.3 Land information and registration systems or records, including legal references**

The premise of the thesis is that the current land planning and urban land use management system is structurally unable to address the needs of the poor. In this regard a thorough assessment of the legal and institutional framework of urban land planning and management was undertaken examining published works or interpreting directly from the original source (chapters 5, 6 and 7).

Methods included firstly, the perusal, analysis and interpretation of various pieces of legislation and policies that govern land acquisition, urban development and land development rights (for example, zoning) and transfer of land or property. Examples include, among others the following legislation.

- a) Constitution of the Republic of South Africa Act (Act 108 of 1996);
- b) Development Facilitation Act (Act No. 67 of 1995);
- c) Land Use Planning Ordinance (Ordinance 15 of 1985);
- d) Less Formal Township Establishment Act (Act 113 of 1991);
- e) National Environmental Management Act (Act No. 107 of 1998);
- f) Restitution of Land Rights Act (Act No.22 of 1994); and

- g) Western Cape Planning and Development Act (Act No. 7 of 1999).

Furthermore, any policies that have delaying or exclusionary implications or conversely, facilitate urban development for the urban poor, in particular access to land are also analyzed. An example includes the Breaking New Ground Housing Policy Plan (2004). Secondly, the review of the law reform process currently underway in Cape Town to understand the transition in land regulation between 1994 and presently, for example, the formulation of the Integrated Zoning Scheme (City of Cape Town, 2006a) and the integration of laws and regulations governing the development of urban land, have also been examined (chapter 5). In addition, the institutional and administrative confusion surrounding land use planning has been highlighted and interpreted in the thesis.

#### **4.4 Secondary data and other sources of information**

Official policy documents were drawn from the City of Cape Town, the Provincial Government of the Western Cape and National Government as referenced. In addition, field notes, newspaper clippings and media reports as referenced, secondary research and information from libraries and the internet as well as aerial photography and map interpretation, formed key sources of gathering information and data as will become apparent in the following chapters.

#### **4.5 Summary**

As stated at the outset of this chapter, the diverse research questions and complexity of the subject matter required multiple research approaches and mixed methods. The methodology employed therefore facilitates an interaction between theory and practice through utilizing mixed methods including: qualitative research which relied on research conducted through a series of interviews with various public land role players, empirical or raw data collection from various sources and mapping as well as case study material involving a number of publicly owned sites studied over time. In some of the local Cape Town based case studies I had personal involvement in as a primary investigator and principal professional planner whose company of employment was commissioned to establish the land for urban development purposes.

It is important to highlight the difficulty that was experienced in accessing information on public land disposed of by various tiers of government. As a result limited strategically located sites were identified and researched at the Cape Town Deeds Office (2010) to verify the sale of certain known portions of public land. One of the limitations in the research is therefore access to information on the disposal of public urban land that could have given more substance to the research. Some information on vacant publicly owned land was, however, available and permission was granted for this information to be utilized in the dissertation to understand the degree to which the State still owns land in Cape Town.

University of Cape Town

PART THREE:

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**3. ANALYSIS AND CONTEXTUAL REVIEW**

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## Chapter 5: Urban land laws and policies

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'Anyone who lives in South Africa for extended periods of time, as I have, cannot help but be impressed with how pervasive issues of land are. Virtually everyday, the newspapers report a land story, be it one about the evictions of squatters from public property, the efforts of disposed peoples to regain their land and their treasure, or the plight of farmer workers and their efforts to establish tenure on their living places. Land issues are everywhere, nearly all the time. And there is no shortage of policy attention to the problems of land' (Gibson, 2009: xv).

### 5.1 Introduction

This chapter explores the legal and policy context of urban land and land use management in South Africa at all levels of governance. It attempts to unpack one of the key research questions: *what policy directives drive the urban land agenda and what are the implications for publicly-owned land relative to poverty reduction goals?*

The chapter further contextualizes the land question in South Africa by tracing the historical and political response between 1913 and presently from the current government. It argues that from about 1990, the question(s) around urban land may have shifted but similar patterns of responding to the land question still remain as was the case in the early 1900s when the Land Act of 1913 came into effect. At the same time, it examines whether land and land use laws in particular, have made any changes in land redistribution patterns since 1994, or in fact may have exacerbated the simplistic notion of land as a resource that can address the urban poverty question through the provision of housing alone. The conflation of land with housing debates is demonstrated. A further research question is addressed in this chapter: *what are the legal or institutional barriers that prevent access to land and under what legislation does the State currently operate with respect to land management and controls?* To assist addressing this latter question, the strategic framework for planning and land use regulation is outlined as a preamble to examining the implications of urban land laws and policies.

#### 5.1.1 The (political) historical 'state of (land) affairs'

In a country where the struggle for land goes back as far as more than three centuries taking many different forms and among many different groupings, it is important to address the land question appropriately now that *democracy* reigns. The 1913 Land Act was one of the most important pieces of legislation in South Africa's history. Under the terms of this legislation, only 7.3 percent of the total land surface area in the country was set aside for African occupation. This matter was one of the most important issues that needed to be addressed by the African National Congress (ANC) at the time, among other important issues, because

it 'threatened the livelihood of all Africans' (Gumede 2005:6). Unsurprisingly, land was one of the most significant issues negotiated by the ANC during the transition period in South Africa from apartheid to democracy between 1990 and 1994 (Ntsebeza 2007:109). History repeated itself over almost an entire century in terms of the ANC's approach to the land question during negotiations with the National Party between 1990 and 1994. As was the case in 1913, there was a split in the ANC as to whether radical land reforms and shifts had to be embraced in the new democratic government to remedy inequities in land distribution or whether a moderate negotiated view on land is taken.

In response to the promulgation of the 1913 Land Act there were two schools of thought in the ANC with respect to how this Act needed to be approached at the time of the promulgation of the act. The one was the radical approach which aimed to employ militant action against the implications of the Act. The other was the moderate or negotiated approach which relied on persuasion and appeal to the British colonial power to reconsider the Act and its direct implications for African people in South Africa. The moderate school won the day in an ANC Congress vote at the time. When the ANC sent a delegation to Britain in 1914 (when the party was only two years old) with a mandate to negotiate the land question on the basis of equality for Africans with respect to land, its delegates were met with hostility from the British government and their efforts were unsuccessful (Gumede, 2005: 6). In fact, a host of legislation was passed after 1913 to ensure that land title or ownership was denied blacks between 1913 and 1994 and even prior to 1913 during colonial rule. These include, among others: *The Native Location Act of 1876*; *The Glen Grey Act of 1894*; *The Natives (Urban Areas) Act of 1923*<sup>15</sup>, *The Slums Act of 1934*, *The Native Trust and Land Act of 1936* and *The Group Areas Act of 1950 (as amended)* (Gibson, 2009: 13 -14).

Despite increasing the size of land for African occupation later on in terms of the Land Laws of 1936 (Native Trust and Land Act), there was still a chronic shortage of land in the reserves which the 1913 Land Act confined African indigenous people to (Ntsebeza, 2007: 108). Whites owned 87 percent of the surface area of South Africa when apartheid rule came to an end in 1994 (Sachs, 1990: 3). According to Claassens (1991), in the early 1990s, 10 percent

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<sup>15</sup> The government set up the Stallard Commission to look into the occupation of Black people of urban areas. The result was the Urban Areas Act of 1923. This allowed local councils to segregate housing in towns into 'black' and 'white' areas and to build new Black townships on the outer ring or periphery of the town or city. Inside these urban areas, the more desirable areas were allocated for 'whites only' living. The intention of the Urban Areas Act was to enable urban reform of the conditions of the African working class through public housing provision as an alternative to slums and at the same time it was also an instrument for ensuring forced removals of Africans to achieve racial segregation as part of the apartheid project (Parnell, 2002).

of the South African population owned 122 million hectares<sup>16</sup> of (rural and urban) land in use in South Africa.

In the 1990s the ANC found itself in a similar position when negotiating the issue of land, among other significant matters, between 1990 and 1994. It was clear from certain commentators on land that transformation of property rights and addressing imbalances caused by apartheid and colonial rule would be undermined if property rights were entrenched. Already in 1988, Judge Didcott reflecting on the acceptability of a Bill of Rights in the context of the land question expressed the following (Ntsebeza, 2007: 111).

*'What a Bill of Rights cannot afford to do here...is to protect private property with such zeal that it entrenches privilege. A major problem which any future South African government is bound to face will be the problem of poverty, of its alleviation and of the need for the country's wealth to be shared equitably.'*

Again, the ANC settled for a moderate position on the question of property rights, with land reform as a fall back to address the imbalances of the past. The National Party (NP) convinced the ANC of the inclusion of the property clause in the Constitution, and the protection of existing property rights. While mindful of the relationship between land and poverty (as pointed out by Judge Didcott) the ANC could be seen to have directly compromised the position of the poor against the cautious approach to land policy and legislation.<sup>17</sup>

What is also important to note is the context of fear and uncertainty that pervaded the nationalist government's thinking around land at the time of transformation in South Africa. A headline report<sup>18</sup> in the media paid testimony to extraordinarily long lease periods having been granted to farmers in the period 1991 to 1993 in the Western Cape Boland area in anticipation of political change. The report states that 'An explosive secret report on land leases granted by the Stellenbosch municipality in the run-up to the 1994 democratic elections reveals highly irregular allocations, with some farmers given unprecedented 50 - year tenures on council property'. It goes on to say that a letter found on file claims that the municipality made a proposal 'to rather give the land to the farmers as the council would in any case not own the land in the new South Africa'. While there is an understanding that the nationalist government resigned itself to radical change; there is equally an indication that it

<sup>16</sup> 1 hectare (ha) is equal to 10 000 square meters

<sup>17</sup> Refer also to Payze, 1994 for an account of the main political parties' policies on land at the time when transformation in South Africa was imminent.

<sup>18</sup> The Cape Argus August 08, 2007

fought tooth and nail for the protection of property rights of the (White) elite in the negotiations period between 1991 and 1994. At the same time, the intention of the ANC may have been to promote and entrench private property for the majority of the Black population as well as a compromised position to the protection of White minority property rights. This is evident in the State's land reform efforts in rural areas in transfers of agricultural land and its low-income / affordable housing delivery record of settling more than 2 million people in a government subsidized house in urban areas (Rust, 2008)<sup>19</sup>. According to the Land Research Action Network (2003) land redistribution efforts by the State resulted in transfers of less than half a million (480, 400) hectares of agricultural land to 45, 454 households by 31 March, 1999. Once the ANC recognized that they had lost the debate, their two main objectives were, first, to ensure that the property clause would not 'frustrate a programme of restitution of land to the victims of forced removals under apartheid' and, second, to see to it that the future democratic state had 'the power to regulate property without incurring an obligation to compensate owners whose property rights were infringed in the process' (Chaskalson, 1995: 229). Linking the ANC's position (and current policy and practice) on the land question it is important to examine what this means by reviewing the mandate of the Ruling Party in terms of the Constitution in respect of land (Box 5.1).

**BOX 5.1: THE CHALLENGE OF THE AFRICAN NATIONAL CONGRESS'S MANDATE ON LAND IN TERMS OF THE CONSTITUTION OF THE REPUBLIC OF SOUTH AFRICA ACT (NO. 108 OF 1996)**

On the one hand, the African National Congress government-in-waiting needed to fulfil its 1955 Freedom Charter promise to reverse the apartheid landscape which had put 87 percent of land in the hands of 60,000 White farmers and the State, while millions of black people eked out a living in overcrowded conditions on the remaining 13 percent. On the other hand, transforming the rural landscape and the racially-separated urban settlement patterns while ensuring continued food self-sufficiency, creating an investor-friendly environment, promoting economic growth and fostering national racial reconciliation presented a number of challenges. The balance of forces at the time of the negotiations nevertheless ensured that the Constitution that emerged from the multiparty talks contained a series of State commitments to the country's landless (Land Research Action Network, 2003). These included three fundamental rights clauses on land reform, as follows (South African Constitution, 1996):

*Section 25 (5): "The state must take reasonable legislative and other measures, within its available resources, to foster conditions which enable citizens to gain access to land on an equitable basis;*

*Section 25 (6): "A person or community whose tenure of land is legally insecure as a result of past racially discriminatory laws or practices is entitled, to the extent provided by an Act of Parliament, either to tenure which is legally secure or to comparable redress; and*

*Section 25 (7): "A person or community disposed of property after 19 June 1913 as result of past racially discriminatory laws or practices is entitled, to the extent provided by an Act of Parliament, either to restitution of that property or to equitable redress."*

While the enforceability of Section 25 (5) on land redistribution would be open to challenges on the basis of 'available resources' determination, Sections 25 (6 and 7) granted secure legal entitlements to the intended beneficiaries of the remaining two legs of the government's land reform programme, namely land restitution and land tenure reform. In respect of traditional land and land holdings as part of the former homelands as defined by the apartheid government of South Africa, the Constitution is silent on the particularities of land redistribution in these areas. Section 25 or the property clause<sup>20</sup> therefore assumes a general approach to all categories of land in South Africa.

### 5.1.2 Strategic planning context

A strategic approach to spatial planning, land use regulation and public or private investment became the forward planning tool in South Africa in the 1990s (Mabin, 2002). While strategic planning was already dominant in the 1960s in European systems of planning, it waned in the 1980s and became prevalent again in the 1990s in Europe and in fact generally in world city planning practice (Healey et.al, 1997). To contextualise spatial planning within a strategic planning framework, spatial planning 'is about setting frameworks and principles to guide the location of development and physical infrastructure' (Healey et.al, 1997: 3). These strategic frameworks comprise of a set of governance practices for developing and implementing strategies, plans, policies and projects and also for regulating the location, timing and form of urban settlement (Healey et.al, 1997).

South Africa's adoption of strategic planning in the mid 1990s coincided roughly with it becoming a democracy in 1994 (Harrison, 2001). No doubt in the context of South African city planning practice strategic planning was determined by the dynamics of social, economic and political change which influenced the response to the demands for space, location and the nature and quality of settlement. These demands were and still are today negotiated and mediated through local government structures that administer land use practice and are strongly influenced by national and provincial level government politics and land laws.

One of the first strategic plans formulated in Cape Town around 1996 is the Metropolitan Spatial Development Framework which was a strategic spatial plan that never obtained legal status because of the challenges to the spatial planners as authors of the plan by their own colleagues within local government particularly their engineering and economic planning counterparts because of among other reasons, the power relations that emerged among politicians and functionaries within local government (Watson, 2002). I would argue that this

<sup>20</sup> Section 25 of the Constitution refers to 'Property', not 'Land' which implies possession or ownership rather than 'Land' which has a more 'common' or 'public' connotation.

plan was also not created in terms of any progressive legal framework thus obtaining legal status therefor in spite of the challenges was very difficult. Presently, strategic spatial plans take the form of Spatial Development Frameworks (SDFs) that are indicative land use planning instruments to guide a city's urban development. SDFs are the spatial representations of Integrated Development Plans (IDPs) which according to section 25 of the Municipal Systems Act (MSA), Act No. 32 of 2000 is a strategic plan for the development of a municipality and its municipal area of jurisdiction (Berrisford and Kihato, 2008).

The uniqueness of strategic plans such as IDPs and SDFs and district plans that provide further details to SDFs in the South African and Cape Town context is that even though they are enacted and mandated in terms of an act of parliament namely the MSA, they are overshadowed by the historic legislation that governed and still governs land use planning in South African cities. This is the case for many reasons, the two most relevant of which are firstly that the land use laws and regulations that governed urban development prior to the advent of democracy cannot simply be erased as a major part of the city's land use planning occurred within the framework of this law and any new law would therefore have to embrace the norms, standards and technical requirements contained within these historic laws as the determined law at a certain stage of the city's development. Secondly, even though strategic planning and spatial plans can be regarded as excellent land use management tools, they neither confer nor take away development rights and certainly do not protect private property rights as is required by the South African Constitution (1996).

The current planning regulatory framework that the Western Cape and Cape Town urban area works within (save for some areas still subject to old legislation as discussed later on in this chapter), the Land Use Planning Ordinance (LUPO) No. 15 of 1985 is the official law within which urban development on public and private land may be permitted yet it is inappropriate and outdated against the values based strategic planning principles and guidelines. For this reason this thesis inquires to what extent this regulatory framework is appropriate and relevant in the post apartheid city. In terms of LUPO, 'an application shall be refused solely on the basis of a lack of desirability of the contemplated use of land concerned, including the guideline proposals forming part of a relevant structure plan insofar as it relates to desirability, or on the basis of its effect on existing rights concerned (except any alleged right to protection against trade competition)'. In urban planning terms, desirability refers to the optimal use of land or highest and best use of land which in turn refers to 'the most probable use of a property, which is physically possible, appropriately justified, legally permissible, financially feasible, and which results in the highest value of the property being valued' (International Valuation Standards, 2005). Clearly, this outdated

regulatory framework will not effectively deal with the demands of the city in respect of the urban poor and the urban land question as demonstrated in chapters 6 and 7 even though the LUPO is the only legal mechanism in the Western Cape through which development rights can presently be conferred.

It is important to note that between 1995 and presently there have been consistent attempts by national government to provide for the uniform regulation of land use throughout South Africa. The Development Facilitation Act (DFA), No. 67 of 1995 and the Land Use Management Bill (LUMB), No. 11 of 2007 discussed in detail below pay testimony to this. Together the MSA and its mandatory IDPs and SDFs, the DFA, the LUMB and other provincial level attempts at land use regulation reform as described later on in this chapter in addition to the outdated LUPO have resulted in land use planning being confused and by implication, ineffective to address the question of land relative to poverty alleviation. This confusion is not only brought on by power struggles among different tiers of government but also by administrative confusion in respect of public land administration among and within departments within government structures as is demonstrated in chapter 6. Often omitted in the South African literature on strategic planning (Harrison, 2001; Adam and Oranje, 2002) is the interrelatedness of strategic planning and land use management / regulation. This thesis argues that unless there is strong integration between strategic planning and land use regulation that is clear and unambiguous and which together can become the day to day decision making instruments to govern land use and property rights in the interests of society as a whole, and not just frameworks and principles to guide the location of development and physical infrastructure, strategic planning will not be an effective planning instrument to guide forward and land use planning in the South African city context.

### 5.1.3 Review of land, land use and other incidental legislation

Later policy documents and statutory laws drafted by the new government, including the 1994 Reconstruction and Development Programme and the 1997 White Paper on South African Land Policy, further committed the government to redistribute 30 percent of agricultural land and complete the adjudication process on land restitution claims in the first five years of South Africa's democracy (1994 –1999), and to a land reform programme that would address 'the injustices of racially-based land dispossession of the past; the need for land reform to reduce poverty and contribute to economic growth; security of tenure for all; and a system of land management which will support sustainable land use patterns and rapid land release for development,' according to the Land Research Action Network (2003), thus creating a major opportunity for significant legislative change in land and land use management in rural and urban contexts in the country. The tables below (5.1 A and 5.1B)

review land and land use legislation and regulations at different levels of government to determine whether this opportunity was indeed taken.

**TABLE 5.1A: LAND LEGISLATION IN SOUTH AFRICA AT DIFFERENT LEVELS OF GOVERNMENT**

National legislation		
Date	ACT	INTENT
1993	Provision of Land and Assistance Act (No. 126)	This legislation provides for the designation of certain land; to regulate the subdivision of such land and the settlement of persons thereon; to provide for the rendering of financial assistance for the acquisition of land and to secure tenure rights; and to provide for matters connected therewith.
1994	Restitution of Land Rights Act (No.22)	The Restitution of Land Rights Act (Act 22 of 1994) was enacted to restore or compensate people for their land rights lost as a result of racially discriminatory laws or practices, after 19 June 1913. The Western Cape Regional Land Claims Commission (WC: RLCC) with the assistance of other authorities is responsible for administering the provisions of this Act in the Western Cape and therefore in the study area. Where resettlement is selected above financial compensation, land earmarked for this purpose has to be prepared in a similar manner as regular urban developments. Funding and subsidisation in terms of the Act is particular to restitution claimants whose access to other grant funding, in terms of other legislation, may be limited.
1996	Constitution of the Republic of South Africa Act (No. 108)	The Constitution Act made provision for the protection of property rights of all citizens, not only of the wealthy who own the majority of the land surface area in South Africa.
1997	Extension of Security of Tenure Act (No.62)	According to Gibson (2009: 15) this Act 'provides for measures, with state assistance, to facilitate long term security of land tenure, regulates the conditions of residence on certain land (the conditions on and under which the rights of persons to reside on land may be terminated), and regulates the conditions and circumstances under which persons whose right of residence has been terminated may be evicted from land'
1998	Prevention of Illegal Evictions from and Unlawful Occupation of Land Act (No. 19)	According to Gibson (2009: 15) this Act 'provides that an unlawful occupier of land may not be evicted without a court order and establishes procedures for the eviction of unlawful occupiers, except for those who are subject to the Extension of Security of Tenure Act.'
2003	Restitution of Land Rights Amendment Act (No.48)	According to Gibson (2009: 15) this Act 'allows the minister of land affairs and agriculture to expropriate land for purposes of restitution without a court order'
2003	Local Government: Municipal Finance Management Act (No. 56)	According to The Local Government: Municipal Finance Management Act, 2003, a municipality may not transfer ownership as a result of a sale or other transaction or otherwise permanently dispose of a capital asset needed to provide the minimum level of basic municipal services.

		The Act notes that a municipality may transfer ownership or otherwise dispose of a capital asset other than one contemplated above, but only after the municipal council, in a meeting open to the public has: (a) decided on reasonable grounds that the asset is not needed to provide the minimum level of basic municipal services; and (b) considered the fair market value of the asset and the economic and community value to be received in exchange for the asset.
2004	Communal Land Rights Act (No.11)	According to Gibson (2009: 15) this Act 'recognizes and formalizes the African communal land tenure system, provides security of tenure to those within this tenure system, and provides for the administration of communal land. It also provides for compensating people who hold old, insecure land rights in communal land areas, which the state is unable to legally secure.
2007	Government Immoveable Asset Management Act (No.19)	This legislation serves to provide for a uniform framework for the management of an immoveable asset that is held or used by a national or provincial department; to ensure the coordination of the use of an immoveable asset with the service delivery objectives of a national or provincial department; to provide for issuing of guidelines and minimum standards in respect of immoveable asset management by a national or provincial department; and to provide for matters incidental thereto.
<b>Provincial legislation</b>		
1998	Western Cape Land Administration Act (No.6)	The Western Cape Land Administration Act serves to provide for the acquisition of immovable property and the disposal of land which vests in it by the Western Cape Provincial Government and for matters incidental thereto. According to the Act, the term dispose "includes the sale, exchange, donation or letting of provincial state land (including the allocation of land free of charge for a period of time)..." The Act indicates that unless otherwise provided for in any other law, the premier may dispose of provincial state land on such conditions as are deemed fit; provided that if provincial state land is disposed of at less than that land's market-related value, it must be a condition of the disposal that if the person who acquired that land no longer wishes to utilize it for the purposes for which it was acquired, that provincial state land must revert to the Western Cape Provincial Government.

For various reasons there have been limited changes in land distribution patterns in South Africa, and Cape Town in particular since 1994 as will become apparent in Chapter 6; as a result firstly, of the limitations that transformed land legislation face when applied in an urban land market context. Secondly, this is largely also due to the remnants of numerous pieces of racist and outdated land planning legislation implemented since 1913 as outlined above. The purpose of such legislation was either to control how the majority of South Africans access, appropriate, own and use land or blatantly ensure that they were kept out of the land equation in the country altogether. Assessing the impact of legislation and policy imperatives

associated with forced removals in the country's urban areas in the apartheid era, the Centre for Intergroup Studies (1983:19), concludes 'that one of the major policy concerns of all governments since the early part of this century has been to ensure the preservation of the towns as places of undisputed white hegemony'. The Urban Areas Act of 1923 for example, grappled with the need for Black labour in urban areas and the desire to keep Blacks out of these areas at the same time which had implications for the relationships between urban land provision and local government functions (Parnell, 2002). It can be argued that while legislation has been developed and promulgated to transform deliberately urban land practices in South Africa as outlined in Table 5.1A above; the lack of systematic attention to the transformation of land legislation in practice since the early 1990s have had limited impact on land redistribution and subsequently on the lives of the urban poor.

To provide background to *land use regulation*, it is pertinent to periodise broadly significant land use regulations and their intentions relative to town planning practice in South African local government since the 1980s (see Table 5.1B) and still used today to regulate urban development and property rights.

**TABLE 5.1B: PERIODISATION OF SIGNIFICANT SOUTH AFRICAN LAND USE / PLANNING REGULATIONS SINCE THE 1980'S AT ALL LEVELS OF GOVERNMENT**

Period	Planning or Land Use Regulations	Intention of the Regulations
1967 (first promulgated)	The Physical Planning Act, Act No. 125, as amended	Permitted the formulation of Structure Plans to reinforce modernist / comprehensive planning
1984	The Black Communities Development Act, Act No. 4	Made provision for the establishment of 'Black' Development Areas where Blacks were permitted to have access to land in urban areas through a leasehold form of tenure
1985	The Land Use Planning Ordinance, Ordinance 15 of 1985 (LUPO) and equivalent ordinances in other provinces	To protect the impact of development on property rights and to demonstrate the desirability of land use in an area
1991	The Less Formal Township Establishment Act, Act No. 113	To provide for shortened procedures for the development of land for less formal forms of residential settlement
1995	Development Facilitation Act, Act No. 67	To speed up reconstruction and development programmes and projects and set out principles for land development, among others such as providing for a Development Planning Commission, measure local government performance, provide nationally uniform procedures for the subdivision and development of land in urban and rural areas; and to promote security of tenure and the provision of subsidies and loans in the land development process.
2004	City of Cape Town: Draft Integrated Zoning Scheme (IZS)	The Draft IZS a legal document that identifies development rights and obligations in respect of land or property. These rights and obligations are

		generally stated in the form of 'development rules'.
2007	Land Use Management Bill, No.11	To provide for the uniform regulation of land use management in the Republic; to establish principles for land development and land use management in the Republic; to provide for land use schemes; to establish land use tribunals and appeal tribunals; to repeal certain laws; and to provide for matters connected therewith.

The Physical Planning Act and the Land Use Planning Ordinance (LUPO) provided for comprehensive or blueprint planning practice influenced by modernist planning and finding expression in British new towns (for example, Milton Keynes) in the 1970s. The 'realisation of the 'blueprint' was conceived as the technical manipulation of existing social, demographic and transport trends' (Chipkin, 2002: 63). In other words, planners were tasked to spatially fix the urban environment according to a set of ideal rules and standards.

The Less Formal Township Establishment Act on the other hand, accepted a faster but *lesser* form of settlement for the majority of urban households. This sentiment was probably founded on the expectation that when transformation to democracy occurred, the need to cater reasonably quickly for those who would be flocking to the urban areas could be satisfied by *site* and *service*. Freedom of movement by implication meant freedom of access to urban land. However, there was no regard for the form of settlement being promoted through 'interim' measures such as this act.

It is important to note that while the Black Communities Development Act was repealed in 1991 by section 72(1) of the Abolition of Racially Based Land Measures Act, Act No. 108 of 1991, section 72(2) of this Act stipulated that Chapters VI and VIIA of Act No. 4 of 1984, and any regulation made thereunder, will remain in full force until further repealed. These chapters and regulations made provision for the granting of leaseholds in Black Development Areas (Department of Land Affairs, 1999). Such provisions had to be retained while township registers were being opened to phase out leaseholds in favour of full ownership which was denied Blacks in urban areas prior to 1991.

Between the 1960s and 1980s, 'the contents and object' according to Mabin (2002: 40) of local government planning were focused on land use and development control measures that emphasised separation of land uses in support of modernist planning and at the same time reinforced the intent of the Group Areas Act to separate citizens into racially defined 'group areas'. In the early to mid 1990s there was an intention to shift local government planning to 'wider meanings' (Mabin 2002: 40), that is city spatial development frameworks linked to

integrated development plans and / or city development strategies resulting from the introduction of the Development Facilitation Act (DFA), and other pieces of legislation and policies across various sectors that attempted to facilitate transformation in South African cities and city planning in particular (Mabin 2002; Chipkin 2002; Dewar and Todeschini 2004; Mammon, 2005).

Mabin (2002: 42-43) outlines the global shifts and local government roles between the 1970's and 1990s that begin to define how local government started shaping and shifting as South Africa tended towards democracy in 1994. He states that in 'the period following the first Habitat conference in Vancouver in 1976, the joint attempt of the new United Nations Centre for Human Settlements (UNCHS), the UN Development Programme (UNDP) and the World Bank to improve the performance of local government, particularly in developing-world cities, provided fuel for a rapid change in thinking about planning.' The Urban Management Programme (UMP) generated ideas on local management that steered away from the traditional role of local government in planning and managing land development to more burning strategic, budgetary and (infrastructure) management issues. 'The point of planning became its contribution to the effective functioning of local governments, in particular their financial performance and effective delivery of services to rapidly growing poorer populations' (Mabin 2002: 43). By 1994, the UMP idea started to take effect in local government, albeit very slowly and unevenly among different local governments across the country, with the result that however powerful a planning idea was put forward, 'its adoption depended on legal, institutional, political and other developments' (Mabin 2002: 43).

What emerged as far as local government planning was concerned was a 'fragmentary and contested nature of change in planning' (Mabin 2002:48) complicated further by the introductions of provincial level planning legislation. The Western Cape Provincial Government opted to introduce the Western Cape Planning and Development Act, Act No. 7 of 1999 with the intention of replacing the LUPO. Regulations were not gazetted and this was never consummated. Until today, local government planning practice lies somewhere between land use regulation and development control. There is still a heavy reliance on the old legislation, listed in Table 5.1b, and 'transformational' city planning practices expressed by spatial frameworks based on urban ideas. Furthermore the South African literature is scant on the urban land and land use regulatory questions save for Mabin (2002), Chipkin (2002), Parnell (2007), Berrisford and Kihato (2008) giving limited recognition among the planning fraternity of the constraints and debates associated with land use regulation especially at local government level; and the implications for the principles of the good city.

The impact of the 1980s and early 1990s legislation and the inability to fully embrace the transformational planning intent effectively resulted in a shift from a *divide and rule* scenario to a *control and divide* scenario. This was given effect through outdated land and land use legislation, on the one hand, and the entrenched *psyche of separation* on the part of the officials responsible for land planning and land use regulation particularly at local government level, on the other hand, whether it was separation of geographical areas, land use or different classes. As a result, the urban land market or private sector is still largely the driver of urban land development processes and programmes that shape land distribution and use patterns in South African cities. Separate laws and standards that are administered by the public sector at local and provincial government level are applied to regulate the development of settlements for the poor and for the wealthy. It can therefore be argued that land use regulation plays a key role in retaining apartheid in race and class terms. The following case study demonstrates the impact of land use regulation on the lives of the urban poor.

University of Cape Town

**BOX 5.2 CASE STUDY: THE IMPACT OF LAND USE REGULATION ON THE LIVES OF THE URBAN POOR - FARM BARDALE 451, CAPE TOWN**

Farm Bardale is located on the periphery of Cape Town, approximately 12km south east of the established central business district of Bellville (Figure 4.3). Phase 1 (Figure 5.1) is the subject of an emergency settlement scheme. The site measures some 112ha in extent and is earmarked to accommodate approximately 5500 erven or plots with associated public facilities, amenities, formal and informal business rights, and so on. The beneficiaries of Phase 1 of the project include the South African National Roads Agency Limited (SANRAL) emergency housing project where communities were occupying the Khayelitsha rail line reserve, owned by the South African Rail Commuter Corporation (SARCC), between Nolungile and Nonqubela Railway Stations in Khayelitsha. The majority of households earn less than R1, 000.00 a month. The location of the settlement posed a serious danger to the people living in the vicinity of the rail reserve, especially young children. The communities had no access to service provision apart from sporadic refuse collection.

In 2003 the SARCC (now termed the Passenger Rail Agency of South Africa or PRASA) made an application to the High Court for an eviction order against the informal dwellers living in the rail reserve. On behalf of the informal dwellers, the respondents invited the Minister of Housing of the Provincial Government of the Western Cape and the City of Cape Town as third parties to the case. In response to this, the Western Cape Provincial Minister of Housing requested that an alternative solution be pursued, outside of the pending legal process. An 'in principle' agreement was reached that the SARCC would consider the withdrawal of the Court application, pending investigations to resettle the informal dwellers on suitable alternative land that is, Farm Bardale, as a matter of priority. The City of Cape Town was responsible for the preparation of the development framework and the procedural applications necessary in terms of the relevant planning legislation.

The planning of this site demonstrates three concerns with respect to land use regulation.

- a) The notion of emergency and what it means for the urban poor.
- b) The use of different legislation to manage and control land use on the same property for two different categories of users: poor low-income and lower-middle income.
- c) The use of standards that present contradictions between planning ideas, appropriate planning responses and standardization.

The agreement to relocate the rail reserve community on alternate land, out of danger, was made in 2003. Approvals for the application for township establishment in terms of Act 113 of 1991 were granted in 2007 and amended in 2008. This renders the term 'emergency' meaningless, given that negotiations and approvals in terms of an Act established specifically to provide for shortened procedures for the development of land for less formal forms of residential settlement, particularly in emergency circumstances, were still underway five years later. The processing of these applications involved local and provincial levels of government and required to be unpacked in more detail to demonstrate the other two concerns.

The second concern in this case study is the use of two pieces of legislation on the same property. The first, LUPO, had to be used to rezone and subdivide the northern portion (Phase 4C, Figure 5.1) of the site because it formed part of a previously approved structure plan that bestowed a sub-divisional area zoning on this portion of the property but remained undeveloped. This meant that the undeveloped portion had to be planned in accordance with the area already established for low-middle income people who would be offended by the establishment of a township in accordance with less formal development standards.

Hence, the standards applied on this portion were different to those applied for the portion of the property established in terms of Act 113 of 1991 on the southern side of the property. Moreover, the northern portion was granted approval and was ready for development long before the emergency scheme but could not take on the role of the emergency scheme as it was *not* suitable or appropriate for less formal 'emergency' urban settlement.

The third concern has to do with the role of standards in land use regulation and plan making. Chipkin (2002: 62) points out that it was common practice for town planning to be appended to the town / city engineer's department: 'This meant that spatial design was usually subordinate to the perceived technical requirements of urban infrastructure.' In the case of Farm Bardale there were serious contradictions in appropriate planning ideas and standardised engineering approaches.

Among others, it is significant that civil and transport infrastructure engineering standards that are more appropriate in formal urban environments were in part the drivers of the spatial structuring of the site. Examples include the need for roads and frontages of erven to be wide enough to accommodate vehicles, including large refuse trucks, rather than: (a) using the opportunity to promote non-motorised and public transport as a fundamental layer of urban ordering; and, (b) creating refuse removal linked to recycling opportunities on a small scale that can begin to create employment and engender a more appropriate attitude to solid waste removal and treatment at a local level. At the same time, given the nature and scale of the proposed development, there was talk around temporary top structures with partial servicing and shared ablutions based on a standard of 1:5 households translating into approximately 20 persons per ablution, until such time that full services are possible – yet, another interim measure!

**FIGURE 5.1: FARM BARDALE APPROVED PLAN OF SUBDIVISION IN 2008**





Photograph 5.3: Farm Bardale public participation, Phase 5.

Source: NM & Associates Planners and Designers (2009)

#### 5.1.4 Towards transition in land use regulation

Towns and cities in South Africa have embarked on Integrated Zoning Schemes (IZS's) with a view to establishing 'a zoning by-law which forms part of a municipality's land use management system' (City of Cape Town, 2004). A Zoning Scheme (ZS) is a legal document that identifies development rights and obligations in respect of land or property. These rights and obligations are generally stated in the form of 'development rules'. In the case of Cape Town some twenty seven different ZS's have to be integrated into a single IZS for the purpose of creating a unified ZS 'that does not reflect past discrimination and that responds to current realities' (City of Cape Town, 2005c). (See also chapter 6).

There are distinct differences in the manner and form of the development rules in the draft IZS for Cape Town with respect to different categories of development and, by implication, people. Under the guise of job creation and other such opportunities, the draft IZS has different rules for conventional, affordable and incremental housing, defined respectively as conventional housing, single housing with economic challenges and informal housing that will one day be upgraded to formal housing. At the scale of the site, these rules essentially translate into apartheid in economic and class terms. Nowhere do they insist on urban restructuring and integrating the city on the basis of appropriate location, access, urban opportunity and so on that a good city<sup>21</sup> should be promoting. Nowhere does the IZS stipulate that the public realm has to perform in a manner that addresses the characteristics of making a good city for all.

<sup>21</sup> The good city is based on a vision and urban ideas that consider the whole as the sum of its parts. This should translate into a positive context where people experience humanely-performing environments that add value to society at all levels: the region, the city, the neighbourhood and the household. The good city is synonymous with the 'sustainable city' which can form the basis for a good society. For the fundamental characteristics of the good city refer to Rogers 1997; Friedmann, 2000 and Pieterse, 2005.

The thesis argues that it is not IZS's, but spatial development frameworks associated with forward planning, that need to promote the public realm as the driver of integration and restructured environments. Based on the principles of the good city, it is the SDF's that can set the tone for the future of a place or city under the current dispensation. However, the power lies in land use regulation or development rules as they are presently known, not in spatial frameworks that are open to interpretation and that in essence do not represent property rights and obligations. Standardisation of IZS rules cannot achieve qualities of the good city if it does not represent spatial restructuring and promote a public realm that begins to deal with integration. These qualities can only be achieved through careful participatory planning and design within a legal framework that employs rules that cater for urban development at the human scale. In the meanwhile the outdated land use regulations continue to frame (inappropriate) spatial development in Cape Town as was demonstrated by the case study in Box 5.2.

At national level, the Land Use Management Bill or LUMB (No. 11 of 2007) provides for the uniform regulation of land use management in South Africa. Like the DFA discussed earlier, there was again an attempt to nationalize land use law. The Bill provides for land use schemes to supersede existing town planning schemes which were 'created and adopted by local government' (Berrisford and Kihato, 2008: 377). The proposed Schedule 2 of the Bill proposes to repeal the following pieces of legislation implying a consolidation towards nationalizing land use law and a consistent land regulation format.

**TABLE 5.2: SCHEDULE 2 OF THE LAND USE MANAGEMENT BILL (NO. 11 OF 2007)**

<b>No. and Year of legislation</b>	<b>Short Title</b>	<b>Extent of repeal</b>
Act No. 84 of 1967	Removal of Restrictions Act	The whole
Act No. 55 of 1977	Removal of Restrictions Amendment Act	The whole
Act No. 18 of 1984	Removal of Restrictions Amendment Act	The whole
Act No. 88 of 1967	Physical Planning Act	The whole
Act No. 87 of 1983	Physical Planning Amendment Act	The whole
Act No. 104 of 1984	Physical Planning Amendment Act	The whole
Act No. 92 of 1985	Physical Planning Amendment Act	The whole
Act No. 125 of 1991	Physical Planning Act	The whole
Act No. 67 of 1995	Development Facilitation Act	The whole

However, as Berrisford and Kihato (2008) contend land use regulatory proposals in terms of LUMB are more confusing than conciliatory in respect of roles and functions of regulatory authorities at different levels of government. The Bill will not necessarily resolve the current

difficulties in respect of the separation and over-lapping nature of current land use law and administration of land-use management, environmental management and heritage resource management (Townsend, 2009). As these stand they already have conflicting aims and purposes the most important of which has to do with the fact that planning and environmental management and law should be a local responsibility as far as possible yet all three tiers of government have a role in their law making, administration and execution processes.

It is clear that the transformation in terms of land and land use regulation has advanced only in as far as the State recognizes that shifts are necessary to effect changes in land development and land use control. The DFA and LUMB have been promoted to begin to implement these shifts albeit not without their unique problems. In fact, the DFA has never been adopted in the Western Cape as a land use management instrument and the LUMB has not only remained on the back burner since the early 2000s but when it re-emerged later on its inappropriateness for real urban land use transformation in practice; is highly questionable.

In the meanwhile, the use of inappropriate and outdated land use regulation at local levels of urban planning continues while the Cape Town IZS is still not finalized. The State and local government in particular, can play a much more active role in addressing the question of land within and outside its own legal frameworks to impact more positively on land redistribution, land tenure reform and restitution. Zoning Schemes are very powerful land use regulatory instruments that can be employed to realign land towards a more equitable city structure. Rather than act as agent of capital and continuing to behave in support of a neo-classical urban land market approach, the State could potentially become a more powerful player in the urban land debate in terms of an alternative paradigm to land and land use management which argues for a more efficient and visible redistributive and inclusionary land system.

## **5.2 Review of policies and legislation in respect of human settlement development and housing**

A number of policies and pieces of legislation came about since the early 1990s to deal with the provision of housing to the urban poor or previously disadvantaged people in response to the housing backlog and need in the country. In fact there was such an obsession on the part of all tiers of government to get this right that at times, there was confusion about the clarity of roles and responsibilities in respect of the different tiers of government. Furthermore, it can be argued and demonstrated in the analysis of the policies and legislation below that the land and housing question is undeniably conflated.

### ***2004: Breaking New Ground Policy***

The new housing vision, “Breaking New Ground” (South Africa: National Department of Housing, 2004), reinforces the vision of the National Department of Housing to promote the achievement of an integrated society through the development of sustainable human settlements and quality housing. Within this vision, one of the objectives of “Breaking New Ground” is to utilize housing as an instrument for the development of sustainable human settlements, in support of spatial restructuring.

#### *Enhancing the location of new housing projects*

According to the Breaking New Ground (BNG) policy, the objective of spatial restructuring demands a very decisive intervention in land markets. The human settlements plan envisages the following criteria, among others:

- a) Accessing well-located state-owned and parastatal land.
- b) Acquisition of well located private land for housing development only where there is no appropriate state owned land.
- c) Funding for land acquisition: the acquisition of land to enhance the location of human settlements constitutes a fundamental and decisive intervention. This cost should not be borne by the poor, but should be treated as a broader social cost.
- d) Fiscal incentives: the National Department of Housing will engage with the South African Revenue Services (SARS) and Treasury to investigate the introduction of fiscal incentives (and disincentives) to support the development of well located land.

#### *Existing and new housing instruments*

A range of housing instruments were developed to respond to the policy imperatives. These existing instruments will be supplemented by additional instruments to provide flexible solutions to demand side needs. The new instruments focus attention on sectors which have been previously neglected including the urban poor. One of the new instruments proposed by the Breaking New Ground policy is the social housing instrument which is important for the key government imperative of enhancing the mobility of people and promoting an integrated society. The emphasis of the social housing instrument is based on the need to deliver housing products that provide adequate shelter to households whilst simultaneously enhancing mechanisms to hold housing as a public asset over a period of time. The direct objective of the social housing instrument is accordingly to facilitate the production of effectively managed institutional housing in the areas where demand for institutional or managed housing, of all types, exists.

The main implication of the Breaking New Ground policy is that attempts at spatial restructuring should be based on using well located public land as well as underutilised public buildings, to facilitate urban integration, including the urban poor into the South African city fabric. However, it will become apparent in chapter 6 that the Cape Town experience shows that improvements in urban integration and the location of the urban poor are negligible despite the intentions of BNG.

#### **2004: White Paper on the Management of Western Cape Provincial Property**

The White Paper on the Management of Provincial Property in the Western Cape (7 April 2004) outlines an agreed policy and implementation framework to guide the activities relating to the fixed properties of the Western Cape Provincial Government's and other properties utilised and owned by the province. The cabinet of the Western Cape consequently adopted several policy objectives because it sees public land and its appropriate management as being the key elements to stimulate economic growth both in the traditional and emerging sectors with appropriate infrastructure development and to the benefit of all through, amongst other things, procurement reform.

The policy proposes that the following be focused on:

- a) Contributing towards the eradication of income poverty;
- b) Eradicating asset property; and
- c) Stimulating the local economy

#### **2008: Land Acquisition for Sustainable Settlements (LASS) Policy**

In 2004, the Department of Land Affairs and the Department of Housing agreed that there should be alignment of legislation and programmes so as to ensure that people have access to both productive land and housing. The land acquisition for sustainable settlements was formulated after realisation that for urban renewal, slum clearance and squatter policies to be in line with the Breaking New Ground (BNG) strategy, it needs to go hand in hand with rapid land acquisition and release policies (Van der Merwe, 2009).

According to the Department of Land Affairs, the objective of the Land Acquisition Sustainable Settlements (LASS): Urban Settlements is two-fold:

- a) To enable municipalities to acquire land to extend or create a commonage for the purpose of establishing schemes involving the productive use of the land resources; and
- b) To enable municipalities to acquire land for residential development but within the confines of the resources allocated to the Department of Land Affairs and conditions set by the Department.

The LASS grant can be made available to municipalities that have a dire need for land for settlement purposes. The document further outlines the roles and responsibilities of the different spheres of government in this regard. This approach calls for municipalities to actively identify the settlement needs in their communities before approaching the Department of Land Affairs for land acquisition. The LASS grant will only be available for the following project types:

- a) Land acquisition (and associated costs) for residential development
- b) Mixed land use projects that can be defined as projects that contain moderate land uses such as schools, recreational facilities, business and community development amenities that service a residential area.

***2008: Housing Development Agency Act (No. 23)***

The Housing Development Agency (HDA) Act serves to establish the Housing Development Agency; to provide for its functions and powers; and to provide for matters connected therewith. The Act indicates that the HDA may, after consultation with a land owner, identify, acquire and hold the following land for residential or community development purposes:

- a) Land registered or vested in the State or any organ of state and which it is prepared to dispose of;
- b) Privately-owned land; or
- c) Communal land.

Furthermore, the Act notes that subject to section 25 of the Constitution of the Republic of South Africa, the Minister may expropriate land for the purposes of creating sustainable human settlements. Any consultation between organs of state in terms of this Act must be done in terms of Chapter 3 of the Intergovernmental Relations Framework Act, 2005.

The formation of the national Housing Development Agency (HDA) attempts to encourage public and private partnerships and to attract private investment in low income housing. The HDA will support government in its attempts to create integrated, sustainable developments near work opportunities, close to schools, clinics and other economic nodes. A key player in the housing delivery value chain, the HDA will focus on the acquisition, management and release of well located land for human settlement development. It will assist government in realising its housing targets set out in the Millennium Development Goals for 2014.

In an interview with an official from the Western Cape Provincial Housing Property Department on 11 June 2009, it was confirmed that the former MEC for Transport and Public Works (when the Western Cape province was under ANC control) concluded an agreement

with the national Housing Development Agency to transfer approximately 1000 hectares of land located in the Cape Metropolitan Area (CMA) to it. The land is located across the Cape Town metropolitan area in areas such as Philippi, Oude Molen, Constantia, Parow and Plumstead, among others (Figure 4.3). Copies of the agreement could not be obtained but it was confirmed that no less than 100 000 residential units can be developed on this land mainly for housing purposes, the timeframe of which could not be confirmed by the HDA at this stage. It must also be pointed out that the Provincial Government of the Western Cape's Rental Housing unit indicated that the current Western Cape Provincial Premier is disputing the legality of this agreement which was confirmed in the media<sup>22</sup>.

As stated earlier, the above analysis of very progressive and well intentioned government policies demonstrates three important observations. One that government's policies have genuinely taken the philosophical standpoint of the good city and pro-poor agenda on board. Two, that whilst principles of social justice permeate every law and policy that government has created to address the damage in urban land remaining from apartheid rule, there is very little evidence that these principles have been practiced in their application to land and land use management. Three, the view that the land and housing question is undeniably conflated is demonstrated in the policy analysis. For example, the Housing Development Agency Act bestows significant powers on the HDA in respect of the identification, acquisition and reservation of land (for residential or community development purposes). Great emphasis is placed on land for housing. Even the name of the entity is Housing Development Agency; not land development agency which undoubtedly demonstrates the conflation of land with housing. This point is further illustrated by the responses from the local government representatives interviewed who could not separate the urban land and housing questions.

*'Land should have an economic development focus, in other words, do not house people who cannot afford the house. For example, the N2 gateway development is successful in its form but appears to be the right houses for the wrong people; it does not manage uncontrolled urbanisation in terms of the very poor where serviced land is needed which can be transferred and self-constructed / maintained housing over time.'* (Interviewee No.12, 2008).

*'The potential exists for poverty alleviation in public land but then reality kicks in which is chiefly around the opportunity cost with respect to land for housing. Land prices are very high in good locations such as the inner city; this especially stifles land reform which can be seen as synonymous with housing delivery at a certain level. The other constraint is the structure of the housing subsidy. It is cheaper to locate on well-located land relative to costs therefore it is wrong to consider cost of land / price of land alone. Currently Council pays an average of R1 million per hectare for housing subsidy land with no services. These are the costs that the City is negotiating with two landowners in the northern part of the city to purchase land for housing the poor, in a mixed income scenario. Expropriation is the last resort.'* (Interviewee No. 9, 2008)

<sup>22</sup> Mail & Guardian June 26 to July 2, 2009.

More creative responses as indicated below were from interviewees who represented organizations outside of government who did not see land in the same way as they viewed housing.

*'Land is an asset for development; housing is not always the best use for such land. Local Government resists ring fencing land for specific purposes e.g. integration which undermines or retards integration in urban areas. The Central City Development Strategy is a robust framework to open up access; and more systematically, through public transport for example, doing urban development along public transport corridors; and using public land assets for this purpose but then we need a single asset register to combine public assets and ease decision-making and administration within a single entity. Some legislation prevents certain government practices such as being a developer; thus the top price is still required for public land when it is sold. Government's target is also Black Economic Empowerment or its own core business. Who holds the mandate for the poor is the question? The green and housing agenda is also necessary for public land assets. So, who pushes mandate in terms of integration and poverty alleviation? (Interviewee No. 10, 2008)*

Clearly, there is a tendency to conflate the land-housing questions. Particularly from the local government comments recorded above, it is apparent that not much thought in respect of the multiple roles of public land in poverty alleviation has been given by people who manage and administer public land and at the same time have great influence on deciding how public land is determined from an urban development point of view. The worrying factor is that land (as a finite non-renewable resource) is not considered from a sustainable management perspective across all urban development layers.

The important policy in respect of the concept of social justice and the good city are the principles of BNG. It is undoubtedly one of the most forward looking policies in urban settlement making and provides for qualitative urban environments for the poor along with the other associated policies discussed above. However, together these policies cannot hope to be supported by current land use regulations unless the standards associated with these regulations are completely overhauled. It is therefore important to hold onto the notion of nationalising land law and land use regulation but to the extent that each city and town have their unique local zoning schemes that are in principle supportive of equitable access to land and in particular, public land. This may imply a different way of addressing land use management in respect of public and private land as discussed later on in the thesis.

It is argued in this thesis that a freedoms approach to urban land and land use management should be taken that is based on commensurability not extraction (of land value) as is the case in the neo-classical paradigm. Investment and public investment in land in particular, must be viewed as commensurate with the level of development required by citizens in South African society to promote the principles of equity and sustainability in land and land use management. Land approaches cannot be extractive in the sense that resources earmarked

for participants at a lower level of development seeking access to urban opportunities, are drained under the guise of (developmental) urban development; and the provision of housing with limited asset value potential as demonstrated in chapter 6. It must be recognised that the development of housing is but one limited role that land can play.

Furthermore, the State has to improve its role in achieving equity in land distribution and use land use management instruments and policies more effectively towards this end. The State can play a much more active role in addressing the question of land within and outside its own frameworks of land redistribution, land tenure reform and restitution. Rather than act as agent of capital, the State can become a more powerful player in the land debate which is possible in a market-driven economy through the following.

- a) Firstly, there are success stories in other countries for example, India and south East Asia, where democracy and market-driven economies have handled their land questions more satisfactorily. The case of Kerala and China introduced in chapter 3 had some lessons that South Africa can learn in this respect.
- b) Secondly, in the context of urban land redistribution, the State is a major land owner that can rely on its landholdings to be used wisely to contribute to land redistribution with poverty alleviation as integrated objectives (chapter 6).
- c) Thirdly, the state can equally challenge the urban land market by becoming a fundamental player and/or competitor therein through adopting a freedoms approach to public land and land use management.

### 5.3 Summary

When transformation to a democracy was conceived in the early 1990s (rural and urban) land was a particular point of discussion and negotiation between the Nationalist Government of the time and the impending majority ruling party. With respect to shifting land consumption and distribution patterns to better reflect the demographic profile of the country in the new democratic State, serious notions of redistribution, reform and restitution of land rights were put on the table in the early to mid 1990s (Sachs, 1990; Smith, 1994). Sachs (1990: 7) argued for nationalising land law to 'defend equally the rights of everybody'. By implication, land use regulation could have been the first to be repealed to ensure the envisaged transformation with respect to the redistribution of land.

Between 1991 and 2005 the Abolition of Racially Based Land Measures Act, Act No. 108 of 1991 was passed to repeal the racially based land acts from the apartheid era, such as the Group Areas Act. At the same time, the Constitution Act No. 108 of 1996 made provision for

the protection of property rights of all citizens. In addition, the Restitution of Land Rights Act, Act No.22 of 1994, provided for the restitution of land rights to those dispossessed of land in terms of racially based policies of the past. Although not presently formally in place attempts at land use regulation reform have also taken place even though fairly late in the development of the post-apartheid city and clearly absent in the practice of planning. Despite these attempts to begin to tackle the land question in South Africa, existing land and land use regulatory reform, although discussed at length and earmarked for change by government at all levels in post apartheid South Africa, remains intact as the governing legislation until the present day for a number of reasons. Firstly, the familiar neo-classical urban land market is structurally unable to operate within a legislative framework that promotes anti-market mechanisms in land development processes. Secondly, public land that is strategically located is also subject to the operations of the urban land market in as much as it has considerably high land values and cannot be justifiably developed only on social justice grounds in terms of the good intentions of forward looking policies and legislation. Thirdly, public funds are stretched and have to cater for a range of competing needs against public land development such as health care, education and so on which means that land is better used as a cross-subsidising commodity to provide other essential services for the urban poor against the objectives of land development imperatives as outlined by policies and legislation (chapter 6).

The premise of the dissertation is that the current land policy, management and land use system is structurally unable to address the needs of the urban poor even though these are underpinned by a philosophical standpoint and focus on the urban poor and reparation of past land practices. The question of land cannot necessarily be redressed on behalf of the urban poor and on the basis of social justice principles in a neo-classical paradigm. A reformist approach is required to address meaningfully this most significant urban land question in the country if political and economic stability are not to be undermined by a citizenry waiting to be included in the workings of land. One could argue that spatial frameworks as a planning tool could set the tone for the economic, social and physical vision of the city. However, as argued previously the power to transform the city lies in land use regulation not in spatial frameworks that are not only conceptual and separate from land use regulation but also open to interpretation and do not represent property rights and obligations. Integration between strategic planning and land use regulation could potentially resolve the planning muddle that is currently typical of South African cities.

An alternative paradigm such as the freedoms approach is necessary but may result in a two track structure for land and land use management that begins to merge the principles of

social (redistributive) justice in land with the market forces of the neo-classical paradigm. From the perspective of a freedoms approach, land and land use management could potentially promote the capabilities of the urban poor and use land wisely to enable the urban poor and society in general to live the kinds of lives that they value. This implies a broadening of Sen's freedoms approach to include the value of urban land in building entitlements and endowments in respect of the urban poor. Even though the urban 'land and housing' debate is conflated the policy merger between land and housing may be helpful in understanding better the poor's entitlements and endowments from a land and land use management perspective. This policy merger could potentially result in an institutional arrangement that empowers the State to respond directly to urban poverty in respect of public land generally rather than only through the provision of housing to the urban poor. It appears from the analysis presented above that State and parastatal housing agencies are better equipped in terms of access to public land and other resources, legal empowerment and funding to embrace forward planning in an integrated manner. Planning agencies are functionally restricted by outdated planning law and procedures that have a barrier effect on appropriate urban development for the poor.

It can be concluded that to maintain political and economic stability the ruling party needed to take a moderate approach to the question of land and land redistribution. However, the issues of social justice and redress have become equally important. If the land question is not addressed in practice as a matter of extreme priority, it may well be the case that political and economic stability would be further undermined. The following chapter presents and analyses the application of some of these laws and policies in Cape Town, the only metropolitan area in the Western Cape which was introduced in chapter 4, and examines what happens in practice.

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## Chapter 6: Contextualizing the urban land question – An analysis of Cape Town

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In his explorations of the good city and assets-based approach, John Friedmann recognizes the need to create human wealth, both spiritually and culturally, and to capture positive tangible assets, the basic fundamental needs towards building sustainable and socially just cities, where people and their livelihoods are the central focus. Primary components focus on appropriate housing with secure tenure (including access to land opportunities) and essential services; educational institutions; access to good health; safe, efficient and reliable public transport; and employment opportunities (both formal and informal). 'The satisfaction of these tangible, material needs constitutes the foundation for our most fundamental right, the right to life' (Friedmann, 1992; 2006).

### 6.1 Introduction

Whereas the previous chapter noted the limited transformation brought about in respect of land law, land use regulation and the constraints that exist with respect to the urban land (and housing) policy environment in South Africa, this chapter has to do with the detail of land in Cape Town. The chapter contextualizes Cape Town introduced in chapter 4 as the geographic case study of the dissertation in terms of poverty and inequality among the wealthy and poor citizens.

It also notes the urban development patterns and profiles in the city with particular reference to residential and class structure. A series of maps are presented that depict the urban land profile as potential entitlements for the urban poor. Land development patterns are also depicted with a view to demonstrating the degree of inequality in the city and the nature of the urban environment. The maps also depict land distribution from 1991 to date to determine to what extent the urban poor have a reasonable level of entitlements and endowments as espoused by Sen (1977; 1981) and discussed in chapter 2. Further important urban layers such as the residential structure, infrastructure, transportation and public space in Cape Town are described and analysed to indicate how they have been influenced by the operations of the urban land market yet they are the most significant elements of the public domain. A land use and institutional analysis is presented towards the conclusion of this chapter and discusses the current administration of land and land use in Cape Town with a particular emphasis on public land.

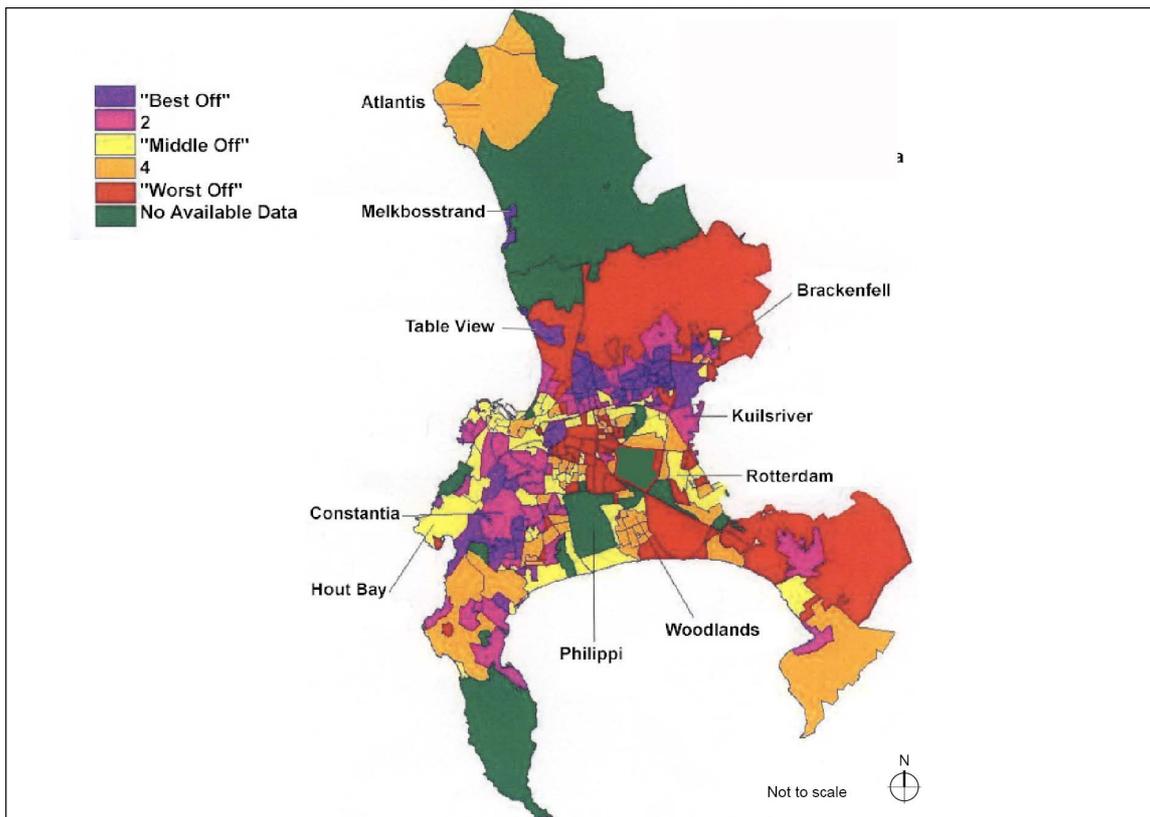
#### 6.1.1 Urban poverty and inequity in Cape Town

In chapter 2, it was mentioned that there are various ways of defining poverty including income poverty and capability inadequacy as purported by Sen (1999). Measuring poverty as an indicator can also be reflected in different ways. Fontaine (2005) defines and maps human deprivation in the City of Cape Town in terms of 'absolute poverty, relative poverty,

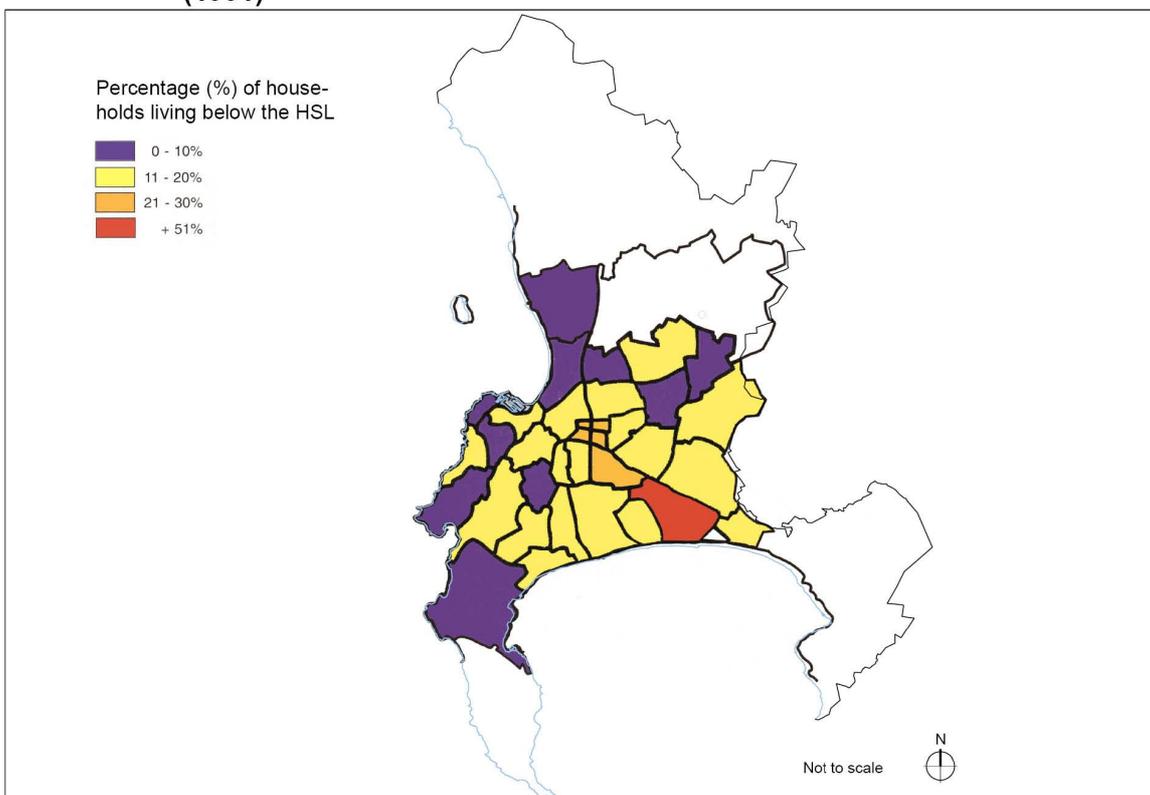
chronic poverty and vulnerability'. Absolute poverty is measured on the basis of income or household income. 'Relative poverty advocates that poverty is about being poor compared to the standard of living of others, and about being unable to do the things that are generally accepted as part of the way of life' (Fontaine, 2005: 128). This author (2005: 131) cites Rakodi (1995) and states that 'the third element of human deprivation highlighted by the concept of 'poverty' is multiple human needs. No longer is it acceptable to equate human needs with money (an income) only; instead, human needs must be recognised as comprising multiple variables such as access to education, housing, a sense of respect and dignity, and the ability to create and sustain livelihoods.' This view is in line with Sen's freedoms approach which also argues that income poverty alone is not an appropriate measure of absolute poverty in a society (Sen, 1999). Fontaine (2005) continues to state that chronic poverty also recognizes the multi-dimensionality of poverty but in this concept (chronic) poverty persists over extended periods or even for an entire lifetime (Fontaine 2005: 134) (Figure 6.1).

The areas depicted as worst off on Figure 6.1 have indeed persisted over a long period implying that elements of chronic poverty exist in the Cape Town context. Figure 6.2 depicts poverty in Cape Town in 1991 in terms of the percentage of households living below the household subsistence level. Although measured only in terms of income relative to household subsistence level, it can be seen very clearly that over a fourteen year period, these areas coincide with the worst off areas depicted on Figure 6.1 and are presently still the most deprived and poorest areas in Cape Town which is indicative of chronic poverty as defined by Fontaine (2005).

When considering human needs as comprising 'multiple variables' (Fontaine 2005) and the basic fundamental needs of building sustainable and socially just cities (Friedmann, 2006), it is important to examine the context and profile of the city and its people, including urban land. Both Fontaine and Friedmann do not consider land although Friedmann focuses on some of the fundamental elements of urban land in constructing the socially just or good city. In this instance, how do the citizens of Cape Town occupy and use land and how is the city's land administered and managed? A number of important urban layers are contextualized and analyzed to this end.

**FIGURE 6.1: CHRONIC POVERTY, CAPE METROPOLITAN AREA (2005)**

Source: Fontaine, 2005

**FIGURE 6.2: URBAN POVERTY AS DEFINED BY HOUSEHOLD SUBSISTENCE LEVELS (1991)**

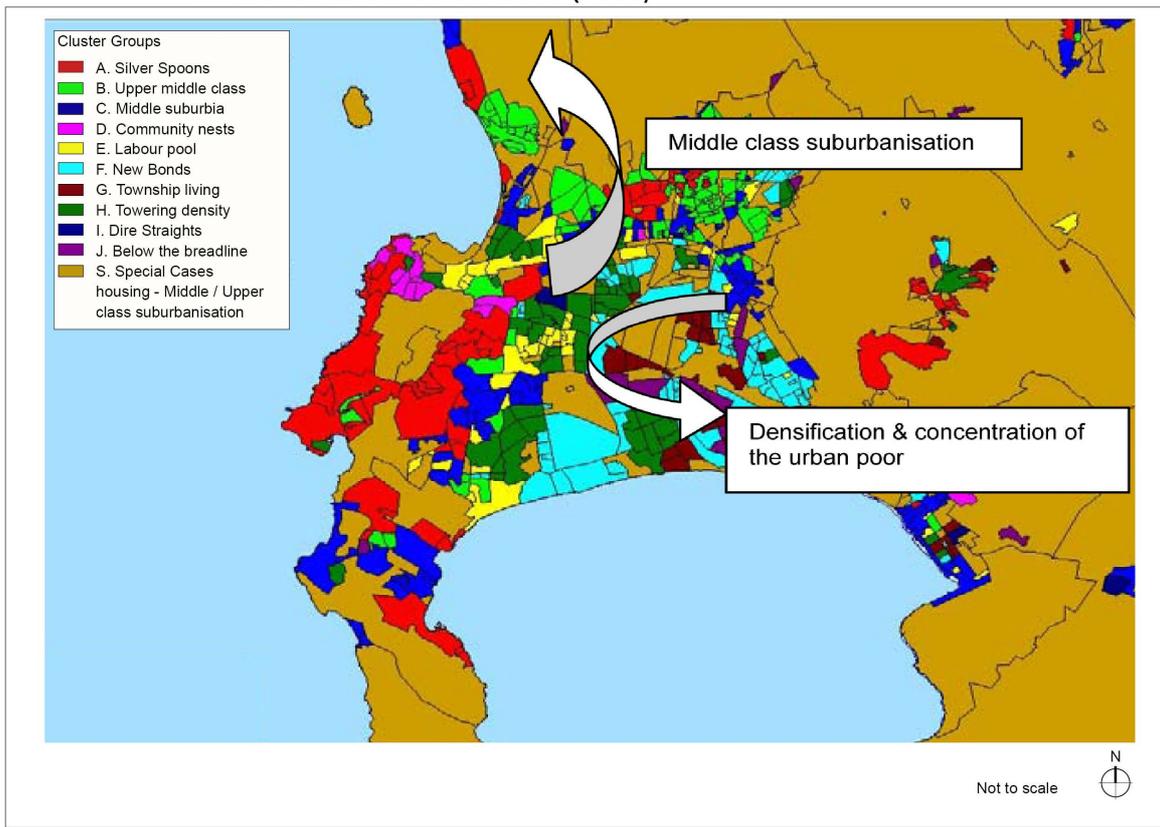
Source: Metropolitan Spatial Development Framework, Cape Regional Council, 1996. Drawing based 1996 municipal boundary. Schematic redrawn by author from original source based on 1991 Statistics South Africa Census data. Colours selected to match rendering of Figure 6.1.

The first layer comprises the distribution of households in Cape Town according to their class structure (Figures 6.3 and 6.4). Figure 6.3 reveals a city of immense inequity. Categories A and B, the upper crust of Cape Town society in terms of income profile and class structure, are clearly in their own elitist league and comprise 16 percent of a total of 800 000 households in Cape Town (Swilling, 2006). Categories C to F make up 31 percent of total households and are a combination of persons holding mid level jobs living in suburbia and younger or new South African families (new bonds) who are targeted by developers for smaller / dense residential dwellings (community nests). The majority (Categories G to J) comprises 51 percent of the total number of households in Cape Town and are generally described as the vulnerable with few options, high hopes, high unemployment and in a desperate economic condition (Swilling, 2006).

Figure 6.4 depicts Cape Town schematically in 1991 as a result of the apartheid legacy where the largely black and coloured communities resided. Figure 6.5 shows that as at 2001, an average of only 15 percent integration occurred in Cape Town even though the Abolition of Racially Based Land Measures Act, Act No. 108 of 1991 came into effect to repeal most racially based land legislation ten years prior to 2001 shifting the city spatially slightly towards a class based urban society but largely remaining race based. Furthermore, despite progressive urban integration policies such as Breaking New Ground discussed in chapter 5, average integration rates have remained relatively static since 2001 (City of Cape Town, 2006b). The majority of households living in absolute poverty are still clustered in the Metropolitan South-East area of Cape Town which unsurprisingly also experiences the highest growth rates (Swilling, 2006). Since 1991, low-income settlements are generally still inappropriately located, poorly adapted to local needs and badly planned. In addition, there is an increasing pattern of low-income housing being developed on the far periphery of the city on green field sites far away from urban opportunities. Formal housing in these low-income areas is largely based on standardized concepts and formulae obsessed with quantity and not quality of the home or the public environment. Informal housing is relatively dense and deprived of adequate water supply, sanitation, solid waste management, education and healthcare (Swilling, 2006).

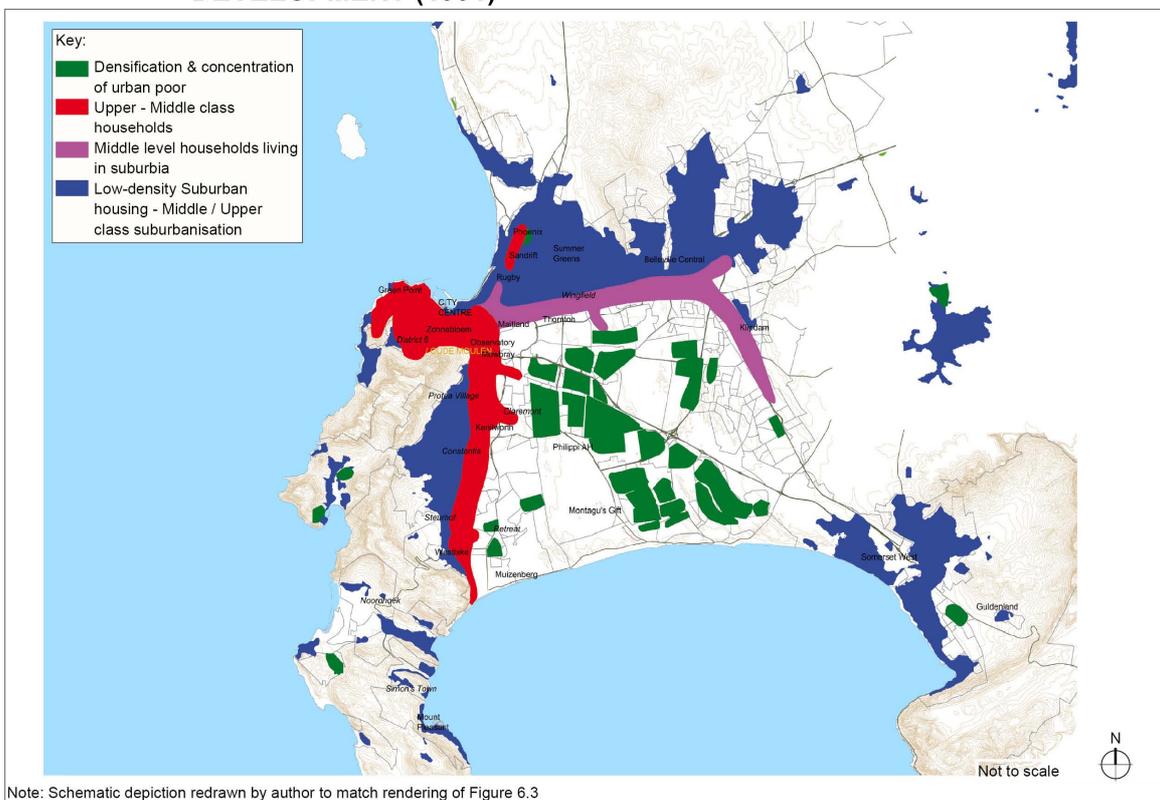
Up-market housing for categories A and B depicted on Figure 6.3 is also being developed in some of the best resourced parts of the city, for example, in the urban cores in the form of middle and high income apartments. This appears in response to a market-led 'need' for security, privacy and private investment. In Cape Town, 20 percent of the richest residential property owners occupy 40 percent of the residential land area (City of Cape Town, 2006f).

**FIGURE 6.3: RESIDENTIAL CLASS STRUCTURE OF CAPE TOWN AND SPATIAL DEVELOPMENT PATTERNS (2006)**



Source: Swilling, 2006

**FIGURE 6.4: RESIDENTIAL CLASS STRUCTURE OF CAPE TOWN AND SPATIAL DEVELOPMENT (1991)**



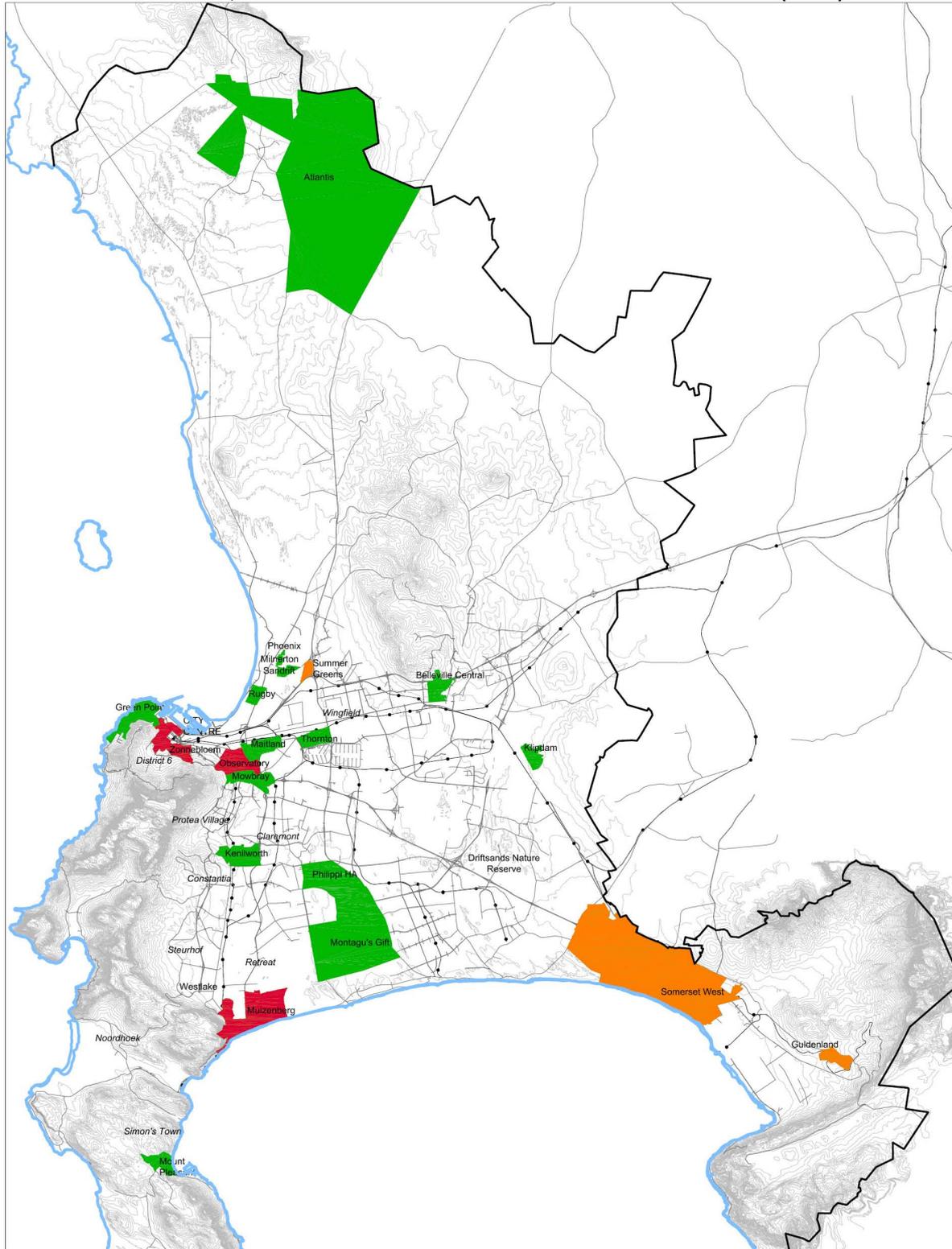
Note: Schematic depiction redrawn by author to match rendering of Figure 6.3

Source: Metropolitan Spatial Development Framework, Cape Regional Council, 1996. Redrawn by author from original source based on 1991 Statistics South Africa Census data.

Extreme conditions between the wealthy and the urban poor are spatially, financially and ecologically flawed in terms of long term sustainability (Swilling, 2006). Associated with these patterns is the predominance to develop separate, internalized shopping malls, accessible mainly by expensive motorized transport.

Following a typical land market and neo-classical urban development model, Cape Town's residential class and race structure has largely remained in tact since 1991. In fact, public land has often been used to reinforce this urban development model to the detriment of the urban environment and the exclusion of the urban poor (chapter 7). At the same time, while the racially based land laws were already repealed in 1991 and policies put in place to address the question of urban integration as well as poverty and access to opportunity for all citizens, Cape Town's pattern of land distribution and take-up remains similar to what it was in the early 1990s when South Africa prepared to become a democratic state in 1994.

University of Cape Town

**FIGURE 6.5: CAPE TOWN SUBURBS WITH AT LEAST 10%, 15% AND 20% FROM BLACK, COLOURED AND WHITE POPULATION GROUPS (2006)****Note:**

As at 2001 an average of only 15% integration occurred in Cape Town in middle income areas even though the Abolition of Racially Based Land Measures Act. No. 108 of 1991 sought to repeal most racially based land legislation.

Scale 1: 400 000  
0 4km 8km 12km

**Key:**

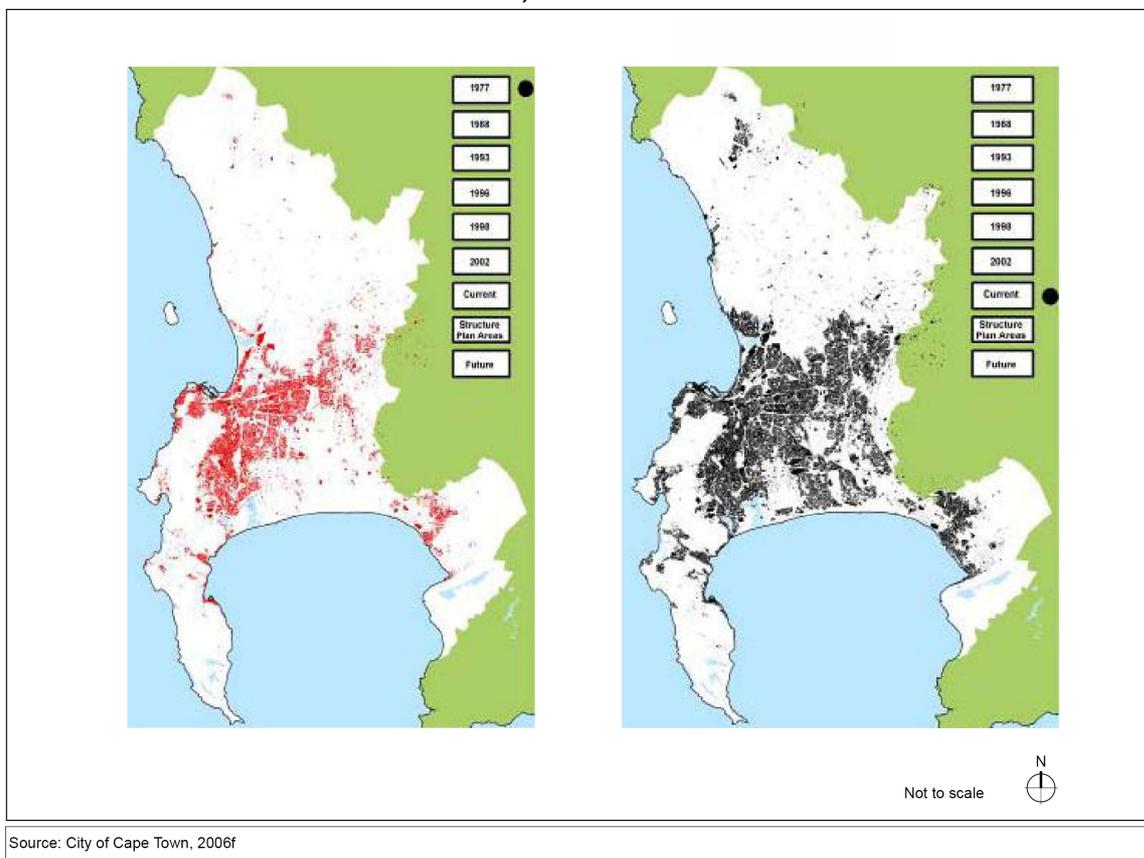
- 2001 Census 10% Integration - 3 Groups
- 2001 Census 15% Integration - 3 Groups
- 2001 Census 20% Integration - 3 Groups
- Coastline
- Municipal Boundary

Source: City of Cape Town, Strategic Development Information and GIS Department, GIS Data, 2007-2008. Statistics South Africa Census, 2001. Redrawn by author from original source, 2010.

## 6.2 Growth of Cape Town

The second urban layer considers the growth of Cape Town relative to the intensity of living patterns. Figure 6.6 shows Cape Town's growth between 1977 and 2006. Between the years 1985 to 2005, Cape Town has increased by 40 percent in land area<sup>23</sup> implying that most growth has taken place in the last 20 years. This growth has, however been lacking in coordinated direction, management or alignment with infrastructure provision and capacity and appropriate spatial planning (City of Cape Town, 2006f). The result for Cape Town has been severe impacts on the natural and spatial environment with negative social and economic conditions for the urban poor.

**FIGURE 6.6: CAPE TOWN'S GROWTH, 1977 - 2006**



The current growth and form of urban development in Cape Town is grossly unsustainable as a result of modernist (apartheid) reactive urban planning and design practice.

<sup>23</sup> From 1977 to 1988 Cape Town developed by an average of 701ha per year. In 2005, the city was developing at a rate of 1 232ha per year (City of Cape Town, 2006f: 25).

An alarming aspect is although national, provincial and municipal policies support and encourage sustainable human settlements,<sup>24</sup> both the public and private sector continue to roll out inappropriate urban form resulting in a sprawling city that utilizes land very unsustainably. The most significant reason for inappropriate urban form in Cape Town is the provision of mass low income government subsidised housing on cheap public land (Figure 7.1) which has limited funding and is largely shaped by the provision of a single house on a single plot. This form of housing provision is explained in more detail in chapter 7. It can be seen from Figure 6.5 above when compared with Figure 7.2 (chapter 7) that integration in Cape Town has mainly occurred on land that is more expensive and located in well serviced areas. Figure 6.5 also shows that Integration has occurred by peoples' own volition and private transactions in the urban land market rather than facilitation by government policies, legislation and the will to integrate the city through the strategic use of public land.

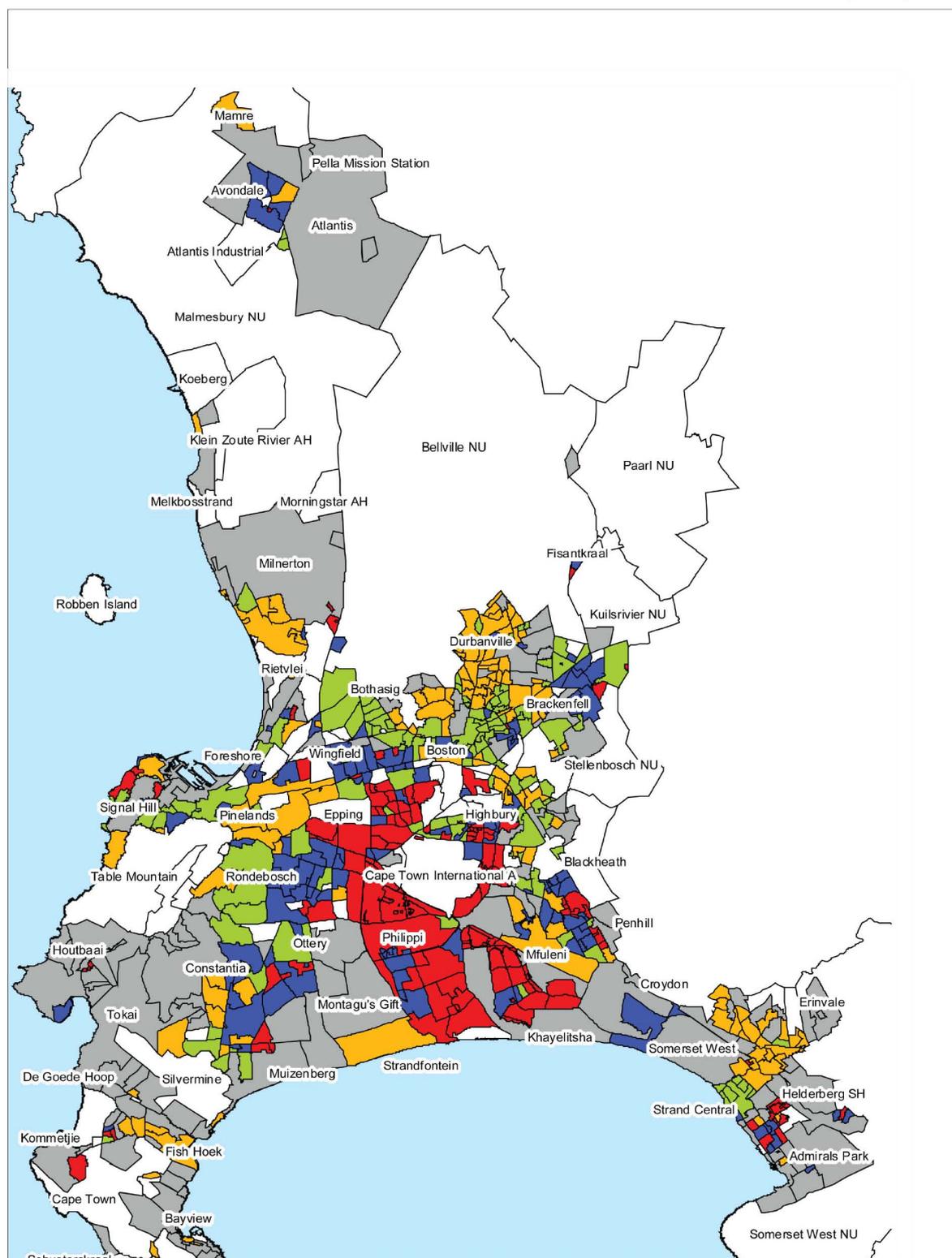
As a measure of growth and intensity of land use in a city, densification can contribute to the creation of good quality, efficient and sustainable urban environments in a number of different ways if correctly pursued and spatially directed. For example, it can reduce the demand on land and infrastructure costs as well as travel distances and associated costs. However, as considered in the Cape Town Spatial Framework, there is too much of an emphasis on dwelling unit densities than on persons per hectare. As argued by Turok and Sinclair-Smith<sup>25</sup>, 'putting people first shifts the centre of gravity and produces a striking new perspective.' Figure 6.7 indicates an 'overwhelming concentration of people on the Cape Flats<sup>26</sup> in the south east sector of the city. Residential densities in Cape Town rise from the city centre towards the south-east, to a peak in Khayelitsha' implying that the south-east sector of the city is not only in dire need of land management strategies that begin to address the question of the proportional split between land and people but also the fact that competition for land in this sector of the city reduces the ability of land as potential entitlement and endowments for the poor to raise their capabilities from a freedoms perspective.

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<sup>24</sup> Sustainability principles are encapsulated in policies such as municipal level Integrated Development Plans (IDPs), at provincial level in the form of the Western Cape Sustainable Human Settlement Strategy (WCSHSS) (Western Cape DLGH, 2007) and Breaking New Ground (BNG) (South Africa, 2004) at national level. The Breaking New Ground approach to housing delivery seeks to address the fundamental mismatch between delivery and development in the urban environment. However, as stated by Mchunu (2006), South Africa is producing new forms of fragmentation, exclusion and conflict based on wealth rather than along racial lines (e.g. gated communities, road closures, business parks, shopping malls) with little regard for culture and public space, which is far from developing sustainable human settlements.

<sup>25</sup> Cape Times, Monday October 26, 2009

<sup>26</sup> For the purpose of this thesis, the Cape Flats can be regarded as equivalent to the metro south east area (Figure 4.3)

**FIGURE 6.7: POPULATION DENSITY PER km<sup>2</sup> BY SUBURB IN CAPE TOWN (2001)****Note:**

High population densities are concentrated in the south east area of Cape Town where the majority of the urban poor are located.

**Key:**

2001 Census Suburbs

Population Density per km<sup>2</sup>

12 - 1034

1035 - 2165

2166 - 3509

3510 - 6917

6918 - 46510

Scale 1: 400 000



Source: City of Cape Town, Strategic Development Information and GIS Department, data extracted from 2001 Census, Statistics South Africa, March 2006

Should growth continue to be directed to large sites such as Cape Town International Airport as suggested by the Cape Town Spatial Development Framework for example, the south-east sector will be vastly over-populated with residential development and very limited opportunities for large scale industrial and commercial land uses as is presently typical of this area. The large industrial type land uses and areas of Boquinar Industrial, the emerging Airport City Industrial and Cape Town International Airport (Figure 4.3) thrive on the operations of an active international airport which if it falls away as a result of stifling growth in loco, will lead to the demise of these activities. The resultant effect will be that many of the urban poor will have access to low income housing but no real access to substantial work and other urban opportunities. According to a study by Gross (2001), the airport has direct or secondary influence on almost one third of the gross regional product (GRP) within the Cape Town region or R39,2 billion per annum. The costs and benefits of swapping the airport for the future growth of the city is therefore questionable from a land use planning point of view.

Furthermore, Cape Town has a relatively low urban density (measured in people per km<sup>2</sup>) compared to other world cities. Densities recorded for world cities include New York (9,610) Shanghai (2,590), London (4,800), Mexico City (3,700), Johannesburg (1,960) and Berlin which has 3,810 people per km<sup>2</sup> (Burdett and Rode, 2007: 246-248). In 2005 Cape Town's density was 1,252 people per km<sup>2</sup> on the basis of 3.1 million people, measured against built and non built areas (NM & Associates Planners and Designers, 2008). The city's gross base density measured against urban built area only is 10 – 13 dwelling units per hectare (City of Cape Town, 2009a). Based on these densities, one can argue that the problems in Cape Town are relatively manageable compared to cities such as Bombay (Mumbai) which in 1990 already had a density of 45 000 people per km<sup>2</sup> (Mehta, 2005: 17); massive overcrowding and a rate of informality and lack of infrastructure and degenerate bureaucratic practices that are second to none which questions whether the situation in Cape Town is at all unmanageable.

While significant residential and commercial-retail development has occurred in the Cape Town inner city area, urban densities and residential densities in particular, are still relatively low as land development planning and design standards require high parking ratios, large road reserve areas and public spaces in terms of current inappropriate planning legislation and technical land use requirements which result in land being used inefficiently. Furthermore, this residential market has targeted middle to upper income professionals, yuppies, and foreign owners whilst excluding local families and middle to lower income households that can assist to build urban thresholds for sustainable urban development. It can therefore be argued that densification is happening in reverse mode in Cape Town. Areas such as Kensington and Rosebank that are well-located and

resourced local areas in Cape Town and where land values are higher than the south east sector, have gross dwelling unit densities (du's) of approximately 11 and 44 per hectare respectively (City of Cape Town, 2009a: 10), whereas areas such as Mfuleni on the periphery of the city has a gross density of approximately 55du's per hectare. The recently completed housing in Joe Slovo<sup>27</sup> which one can argue has limited proximity to urban opportunities and is not as well resourced as a local area when compared with Rosebank, has a gross density of 120du's per hectare. Average dwelling unit densities for Cape Town's informal settlement largely located in the metropolitan south east area of the city, are 100du's per hectare according to the City of Cape Town (2009a: 10) (Figure 6.8). This figure also indicates a high concentration of informal settlements in the metropolitan south east sector, the majority of whom are poor.

Instead of densifying areas where urban resources are abundant and easily accessible for example, around key urban nodes and along major corridors or axes in the city in a compact city form (Irurah and Boshoff, 2003; Kenworthy, 2006) densification currently happens mainly on the outer edges of the city where land values are relatively low, different technical standards are applied to public housing schemes than those applied to schemes that are privately developed and typically but not always located in more accessible parts of Cape Town and household splitting occurs rapidly and/or backyard shacks are established for additional income generation resulting in increased densities at a rapid rate in peripheral areas. Strategies of de-densification which should be considered in parts of the south east sector of Cape Town such as Kosovo, an informal settlement in Philippi where densities are extraordinarily high (Goven, 2010) do not feature in current spatial and growth directives for Cape Town. The advantages of the compact city are promoted by Irurah and Boshoff (2003: 248) and include high density in low rise buildings, high levels of mixed use, enhanced quality of urban space, socio-cultural cohesion, walkable environments and so on.

In a paper by Bierman (2009) the author argues that while the compact city has been the concept of urban form promoted in South African urban policy to promote sustainability and accessibility particularly for the urban poor in better locations to the peripheral area of the South African city; in a national household survey conducted in 1997 by the Centre for Development and Enterprise; it was found that 'almost half of the households interviewed would prefer to remain in their present

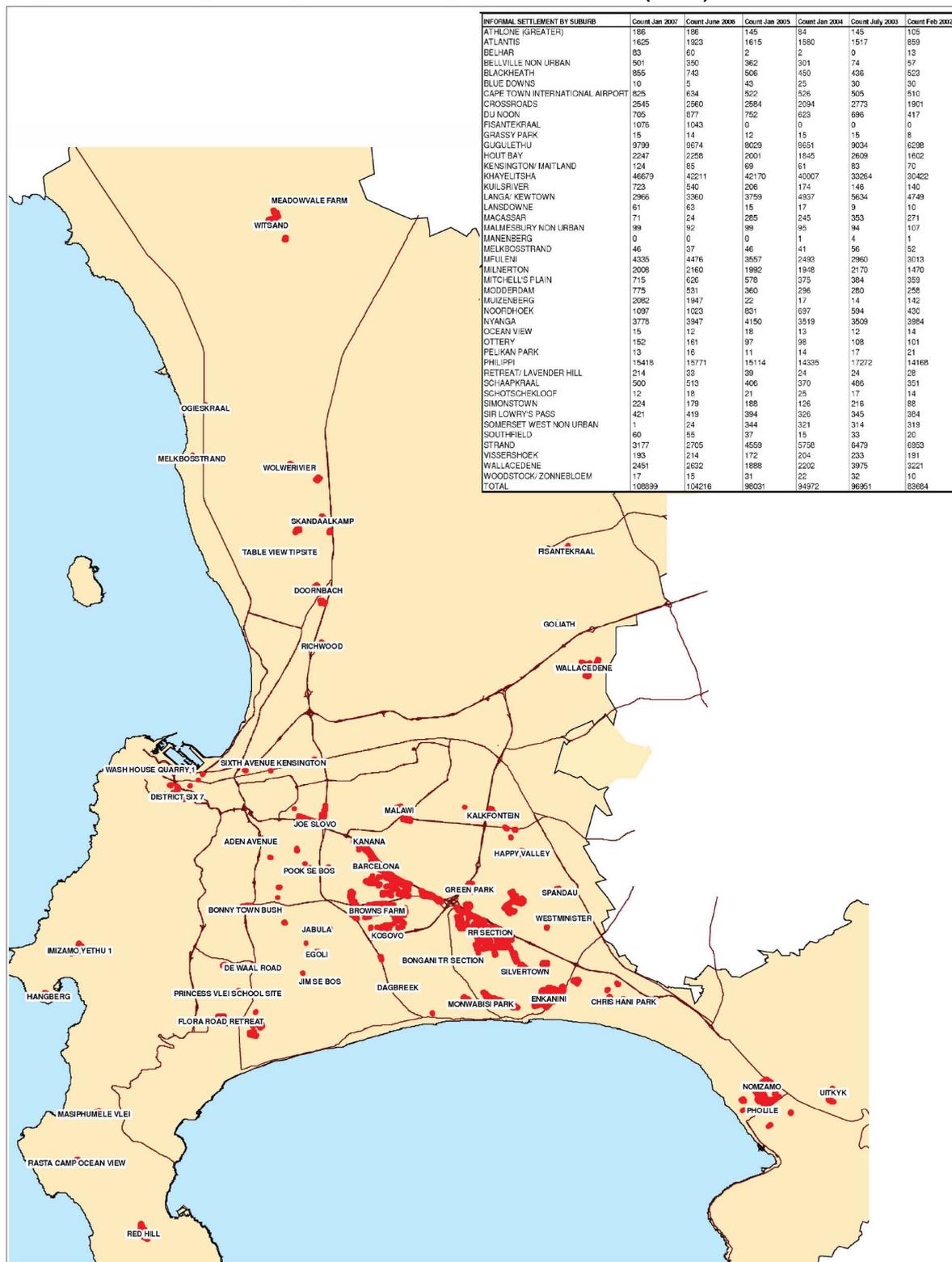
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<sup>27</sup> The N2 Gateway human settlement programme intends to enable approximately 20,000 to 22,000 households to be housed/re-housed where about 18,000 people (3,600 households) of this total will be accommodated on approximately 29ha of land (to be serviced) in Joe Slovo, Langa, located approximately 14km from the Cape Town CBD. The population size in 2003 of Upper Table Valley (comprising Vredehoek, Gardens, Tamboerskloof and Oranjezicht), a wealthy area in Cape Town's inner city located within walking distance of the Cape Town Central Business District (CBD) and covering a land surface area of approximately 114ha, was approximately 23,857. Therefore Joe Slovo will cover 25 percent of the land surface area of Upper Table Valley to accommodate the equivalent of approximately 75 percent of the Upper Table Valley population (Mammon et al., 2008: 26).

location due to, amongst others, local family networks. As far back as 1998, Tomlinson warned that the preoccupation with compact cities was misdirected and would not work because urban policy is being contradicted by economic reality' (Tomlinson, 1998). Bierman (2009) supports her argument on the basis of empirical data that tests the study's hypothesis 'that low income housing in peripheral localities is more costly and less beneficial to society than the same housing provided in more central localities' and finds that 'more central localities do not necessarily perform better overall than more peripheral localities' on the scores measured of which the main 'variables were transportation costs, travel times, fuel consumption and accessibility to employment and other urban opportunities and amenities' (Bierman 2009: 97). In the context of densification in Cape Town in areas such as Philippi, Bierman's argument is weak and discussed later in chapter 8 in terms of a deliberative planning argument and freedoms perspective.

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**FIGURE 6.8: INFORMAL SETTLEMENTS IN CAPE TOWN (2008)**



Note:  
A high concentration of informal settlements are located predominantly in the metro south east area of Cape Town which coincides with the highest levels of poverty in the city.

- Key:
- 2007 Informal Settlements
  - Main Routes
  - City of Cape Town
  - Municipal Boundary



Source: City of Cape Town: Strategic Development Information and GIS Department, data extracted from January 2007 Aerial Photography.

The reverse mode densification in Cape Town has resulted in a spatial pattern and urban form that does very little to improve Cape Town's sustainability in terms of the quality of life of the majority of its citizens. In fact, latest attempts at metropolitan planning can be seen to encourage sprawling patterns towards the north of Cape Town arguing against spatial compaction (City of Cape Town, 2009b). Furthermore, directing growth to where Cape Town International Airport is presently located (Figure 4.3) has major implications for the direct and indirect impact on the urban economy should this land be considered only for lower to middle income housing. The intention of promoting these new spatial patterns is to obviate the eccentric nature that currently characterises Cape Town, which goes against the fundamentals of the compact city that encourages sustainable urban form across the city land surface despite land values determined by the urban land market.

### 6.3 Cape Town's Infrastructure Context

The third layer is an overview of Cape Town's infrastructure context including services and transportation to illustrate further the inequity between the wealthy and the poor. It is also demonstrated that there is a significant drive towards sustainable service provision on the part of the City of Cape Town with respect to water, waste water, solid waste efficiency, storm water and energy supply. To this end a number of policies, services master plans and by-laws are being considered to entrench a more sustainable use of non-renewable resources (City of Cape Town, 2006e). Making the transition to sustainable development is on the urban agenda; yet there is no direct relationship drawn in government policies and spatial directives between land and associated resources such as water and energy; and resource infrastructure to service urban development over time. From a land management perspective, each service and its associated land servitudes are administered by a functionally departmentalized administration taking responsibility for the respective services even though the City of Cape Town is the parent owner of the land and accompanying services. There is a department in local government that administers municipal property separately from individual departments that administer roads and storm water, transportation routes, public space and city parks respectively. Sustainable and coordinated service provision is largely dependent on an integrated city administrative structure which is clearly lacking in the City of Cape Town and largely responsible for effective land and service coordination as described in the composition of the City of Cape Town as a local government which is comprised of the administrative hierarchy and structured according functional departments within this hierarchy (Diagram 6.1). Public land and land use management are influenced by at least six line departments within the City of Cape Town namely: the Departments of Service Delivery Integration; Economic and Social Development; Strategy and Planning; Transport, Roads and Storm Water; Housing and Community Services.

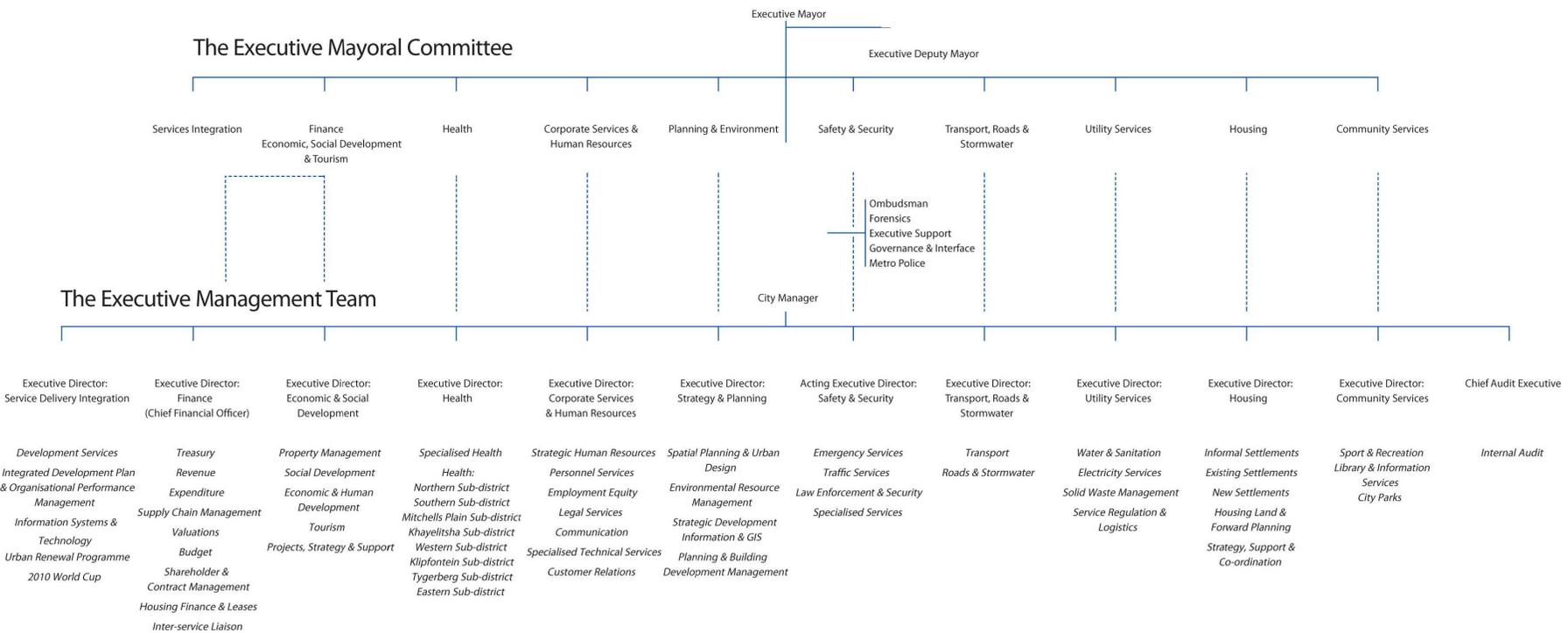


Diagram 6.1 : Administrative Structure of the City of Cape Town  
 Source: www.capetown.gov.za/en/Management/Documents/CoCT\_Structure, 2010  
 Adapted by author from original source, 2010

### 6.3.1 Resource Infrastructure

It is understood that approximately 90 percent of the 800 000 households in Cape Town have access to basic services (piped water on site, electricity and a flush toilet) Swilling (2006: 33). However, the level of water / waste water service provided to informal settlements, differ. The City of Cape Town subscribes to the 'water ladder' concept in terms of the Department of Water Affairs: Strategic Framework for Water Services which was published in September 2003 (Amanzi Obom Consulting, 2008). In terms of this, residents are provided with an emergency level of service (below the basic level for example, a black bucket service), a basic level of service (shared service for example, one toilet / standpipe per five units) and a full level of service for water and sanitation (full connection to sewer / water supply). In addition, there is also a need to eradicate the backlog of approximately 267 000 informal / backyard units in terms of service provision for a full water and sanitation service which is to take place over 20 years at an annual cost of approximately R143 million. This programme is funded through the City's Housing programme.

According to the City of Cape Town Water Services Development Plan Draft 2 (2008), existing infrastructure is stressed significantly especially during peak periods. The need for new infrastructure as a result of growth is also necessary. It is a great challenge for the City of Cape Town to maintain its existing infrastructure and to provide for new developments / growth that are coming on stream. Wastewater Treatment Works (WWTW) are generally overloaded and occur in areas considered in the Spatial Framework for Cape Town to accommodate the city's future growth for example, areas located to the north and south east of Cape Town that are earmarked for future urban development.

It is important to reflect on water as a significant base resource upon which life in general is very reliant and also to highlight the relationship between water and land. Water and land, an inseparable combination, are not only indispensable to human survival but intrinsic to human and other living species' quality of existence. How those who manage natural and built landscapes make water and land work together is a key consideration in the conceptualization of how one approaches the water and land systems in Cape Town. In the public participation of the Spatial Framework for Cape Town conducted in September / October 2009, it was pointed out by the City of Cape Town that by 2013 we can no longer expect to be water secure (Stone, 2009). Swilling (2006: 35) records that by 2025 existing

water supply capacity in Cape Town would have reached its limit; yet the city distributes water in an inequitable manner.<sup>28</sup>

Cape Town has one of the largest aquifers in the southern hemisphere known as the Cape Flats Aquifer Unit and systems such as the Camissa have been rediscovered where 2 million litres of water are available per day which simply flows into the storm water channels underground and into Table Bay (Von Zeil, 2009). As citizens, it is important to use water sparingly and wisely but is it not also important to manage water for its intrinsic value rather than subjecting it to hard engineering techniques that emphasize the infrastructural component of water rather than the integrity of the resource? Following the hard engineering approach is likely to deprive the urban poor of yet another resource (Swilling, 2006) and could result in a situation where not only the proportion of people to land becomes unbearable but the systems such as water that support people and land would become unreasonably pressurized. At the same time, the take up of land for services, although buried underground for the most part, is an important consideration in land planning and land use management.

According to a report compiled by the Sustainability Institute (2007) Cape Town had a 4300MW peak load demand for electricity and a total generation capacity of 4929MW which leaves a reserve margin of under 15 percent. Each of Koeberg's reactors<sup>29</sup> has a generation capacity of 18 percent. If one reactor fails, load shedding has to occur. It is common knowledge across South Africa that unless a more energy efficient approach to energy use generally and buildings<sup>30</sup> in particular, is taken by both suppliers and consumers, electricity will be severely under pressure presently and in years to come. Housing as well as urban development in general will only add to this pressure. At the same time, sustainable development approaches to urban development carry higher upfront development costs than conventional approaches and would have to be borne either by the developer, the State or the end user which raises questions around affordability for the urban poor. These costs would be passed onto the end user from whom development costs, land costs and in addition, sustainable mechanisms' costs would have to be recovered, making it more and more difficult for the urban poor to access well located land where land values are high.

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<sup>28</sup> Swilling (2006: 35) indicates that 'while in 1998, the highest income bracket used nearly 60 percent of all domestic water, in 2000, 20 percent of all Capetonians had no piped water supply'.

<sup>29</sup> Nuclear power station operated by the electricity utility, Eskom.

<sup>30</sup> Cities consume about 75 percent (50 percent buildings – construction, lighting, heating, air-conditioning, electricity based appliances; 25 percent transport; and 25 percent industry) of world energy (of which 79 percent is from fossil fuels (Ward, 2008: 4)).

The best strategic direction with respect to service provision lies in the promotion of a resource use conscious society and to promote urban systems thinking (Coehlo and Ruth, 2006) among built environment professionals in the public and private sectors. This would require considerable education and training of citizens and government and specifically the technical planning and engineering professions who would need to be re-educated in systemic thinking with respect to land, landscape and human settlement design; which in turn would require that the intrinsic nature of landscapes remain intact and are reinforced by planning interventions that recognise the economic but also public sense of planning and designing with land and people. For example, storm water and water management could be a lot less expensive when natural flows are undisturbed, ground water is recharged and carefully treated and hard infrastructure, including urban development responds and reinforces these patterns rather than changing and wasting them. These are important considerations for the future land use management of the city yet do not feature in the impending Integrated Zoning Scheme for Cape Town potentially because managing land systems will require more resource intensive management responsibility and land use controls would have to be monitored and enforced more extensively.

### *6.3.2 Transportation*

Despite the continued reliance on the private car given the dysfunctional nature of Cape Town's urban structure for the majority of its citizens, public transport is available albeit inadequate in terms of meeting growing need. Over a typical working day period the public – private transport split is 67/33 in favour of private transport. Both the subsidized rail and bus modes have lost patronage to unscheduled mini-bus taxi transport. Approximately 601 940 (54 percent) passenger trips are made by rail, 332 407 (29 percent) by mini-bus taxi and 197 444 (17 percent) by bus (City of Cape Town, 2006d). Rail is still the most affordable transport mode for the majority of citizens even though its present state of repair is poor and requires major investment to upgrade. The rail lines also played a central role in dividing communities along racial lines in the apartheid era. However, instead of investing in rail upgrade, plans are afoot to introduce an Integrated Rapid Transit (IRT) System in Cape Town introducing an additional form of public transportation. The first Phase 1A of the IRT comprises an extensive inner city network with trunk services to Cape Town International Airport, Atlantis, the Bayside, Du Noon and Century City and costs in the order of R4 billion (Wright, 2009). The inner city and airport link were implemented by 2010 in time for the 2010 FIFA World Cup. The expected time of implementation of the entire system across Cape Town is 2018; with

Phase 1A already completed by the time the World Cup commenced in June 2010 at a road infrastructure cost of R1.5 billion<sup>31</sup>.

Current analysis on transportation patterns in Cape Town show that the focus predominantly remains on prioritising the private vehicle with large investment in 'roadways for movement' which the IRT reinforces (Schalekamp, 2010) as opposed to promoting public and non-motorised transport (NMT).<sup>32</sup> The reasons for this include among others, the fact that the rates base of Cape Town is sustained by the wealthy who generally rely on private vehicles for their daily mobility thus it is important to provide and maintain road infrastructure to appease this sector of the population. A second reason is that although South African transport laws and policies for example the National Transport Policy (SA Government, 1996) encourage the public to achieve a ratio of 80:20 between public transport and private vehicle use, they do not acknowledge the necessity to deal with spatial patterns that exacerbate urban poverty. Moreover, the implementers of these policies neither see them as an integral part of the broader forward thinking planning initiatives nor the larger housing and services rollout programmes which typically happen outside of any coherent and coordinated spatial framework.

In South African cities, the choice of modal split is generally based on income, with the urban poor dependent on NMT<sup>33</sup> and affordable public transport such as rail. The lessons learnt from the IRT programme and Phase 1A investment relative to land are that firstly, together with private cars and mini-bus taxis, the IRT is yet another space extensive land user. Secondly, the institutional responsibility for rail and road-based public transport vests in two different State organisations at two different levels of government. The IRT planning and operations fall within the ambit of the City of Cape Town at local government level; and rail infrastructure planning and operations fall within the ambit of Metrorail which is a subsidiary of the Passenger Rail Agency of South Africa (PRASA) both of whom are major land owners of public land assets in the form of roads and rail reserves but also in the form of large land parcels (chapter 7).

<sup>31</sup> Cape Times 31 December 2009

<sup>32</sup> *Non-motorised transport (NMT)* is defined as any form of movement that does not rely on battery and/or fuel combustion driven mechanisms to be propelled. Examples include walking, cycling, perambulating, using donkey, horse or human-drawn carts/trolleys, rickshaws and so on.

<sup>33</sup> Approximately 23 percent of South Africans walk to work (Department of Transport, 2005). Approximately 12 million or 76 percent (of total) of learners across the country walk to their place of learning, of which approximately 550 000 children spend more than two hours a day walking to and from school (Futerman, 2006). This is generally due to the expense and/or lack of PT.

Thirdly and very importantly, from a good city perspective land development is optimised when it reinforces and promotes public transport (PT) and vice versa particularly in the poorer sectors of Cape Town. It stands to reason that land parcels that are vacant and available for development should occur along urban transport corridor bands or axes at densities that would help to make PT viable and at the same time improve accessibility for all citizens (Kenworthy, 2006). Yet the first phase of the IRT is implemented in a sector of Cape Town where car reliance by employed persons and affordability is greater than the south east sector (Figure 4.3) where not only the worst 20 percent socio-economic status index is apparent (City of Cape Town, 2006f) but there is a greater reliance on public transport by employed persons. While land development potential to the north-west of Cape Town exists to support the viability of this Phase 1A investment; the potential of the existing population in the south east sector of Cape Town as support thresholds as well as the vacant (public) land development potential is far more significant as will become apparent in chapter 7. Yet, there is no direct reference in any transport plans, programmes and modelling in Cape Town between transport, urban land and the direct needs of the urban poor.

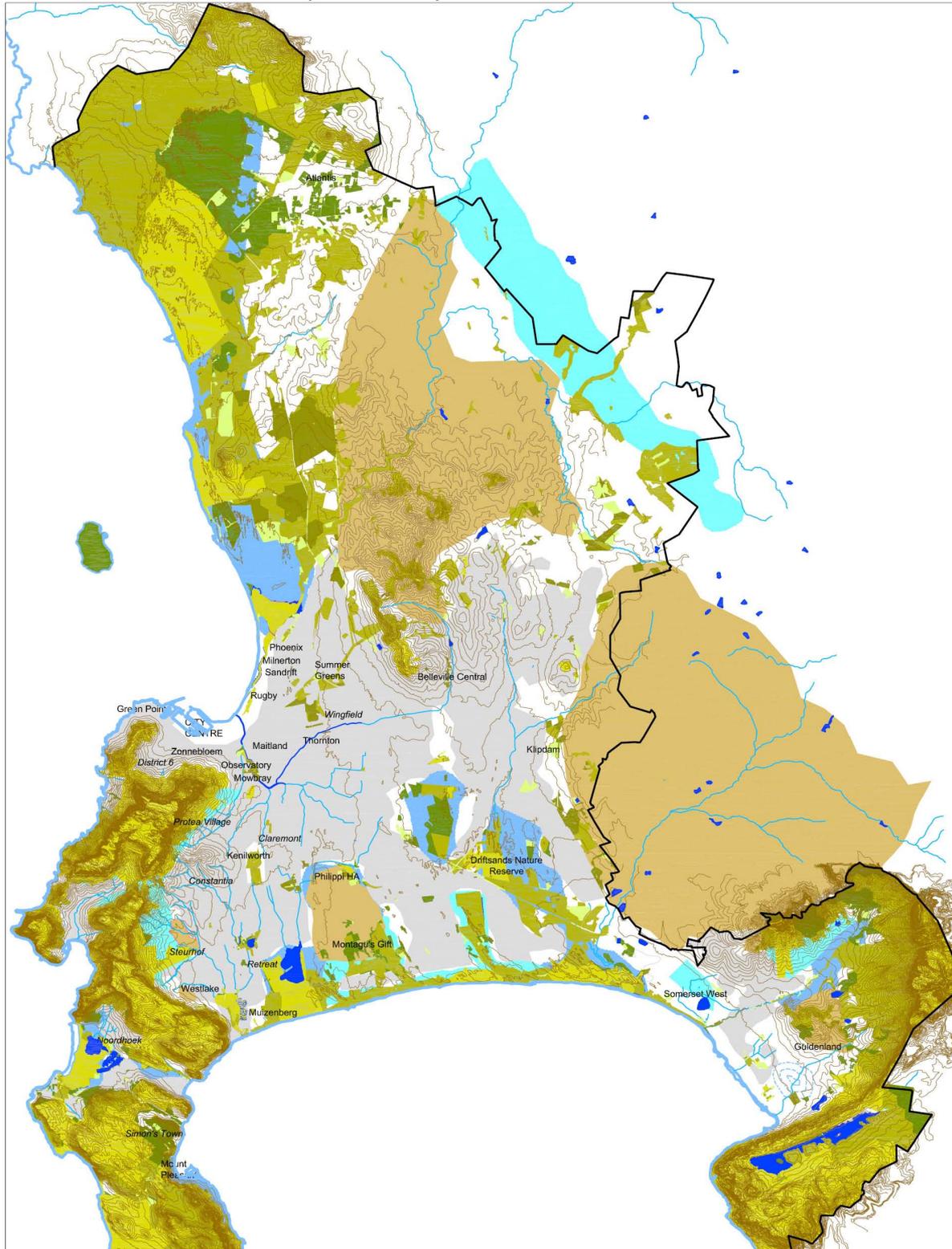
### *6.3.3 Public Space*

Linked to PT and NMT as fundamental elements of humanly scaled cities, is the importance of public space as urban and social space. There are a number of concerns and issues associated with the existing provision and management of public places and spaces in Cape Town. These are discussed at two scales: the larger city scale and the local human settlement scale. At the city scale there are two key concerns that require discussion. The first is the Cape Metropolitan Open Space System (CMOSS) and the Biodiversity Network (BN). The City of Cape Town adopted its Biodiversity Strategy in October 2003. It created a Biodiversity Network for implementation and sustainable management in partnership with other public and private landowners on the basis of CMOSS. The CMOSS and the BN are premised on sound ecological and conservation intentions and form the backbone of urban development planning.

The CMOSS and BN used as their starting point the identification of vacant land, nature reserves, wetlands and river systems which were assessed for their intrinsic ecological value instead of restoring eco-systems to their natural state through identifying what area of the urban surface needs to be reclaimed and restored, and working backwards from this as would be typical of a good city perspective. At a certain level therefore, they are reactive and fragmented in their constitution on plan and potentially compete with more developmentally driven urban development imperatives. Often the only opportunities for reversing apartheid style planning with large investments in urban development of a mixed use and job creation

nature occur on land set aside for CMOSS – BN forcing trade-offs between healing the city's dysfunctionality for the majority of the urban poor and conserving valuable land for future generations. Furthermore, it is questionable whether the CMOSS – BN approach would ensure and reinforce the systemic role nature has to play in a rapidly urbanising context (Figure 6.9) as promoted by urban systems thinking (Coehlo and Ruth, 2006; Henderson, 1990). This role has to do with the natural courses or continuities nature follows at a larger city scale which ideally only nature should shape over time; yet the CMOSS-BN system remains fragmented (Figure 6.9).

Associated with the CMOSS-BN conservation is the issue of who becomes the custodian of this land? Some of this land is in private ownership and only considered by public authorities once an application for a change in land use or development rights are applied for. On consideration and approval of such applications, public authorities have the power and obligation to ensure that CMOSS-BN is protected and make the rules on how the management of such land is effected. However, given the authorities lack of human and financial resources, they do not necessarily see their role as custodians of these assets. In other words, they make the rules, exercise the power to direct control over land management but have no responsibility or resources to manage, monitor, maintain and secure the land as potentially key public assets for future generations. The second concern at the city scale is the ownership and threat of development of significant public open spaces and natural systems; in favour of other demands and interests. The only remaining open space and biodiversity systems are the national parks which are protected areas that constitute the majority of public land in Cape Town (Figures 6.9 and 7.2). The potential threat of development and privatization of some of the CMOSS-BN public assets public are best illustrated by example. The Driftsands Nature Reserve (Figure 6.9), one of the few potential urban parks in Cape Town with high ecological and environmental asset value, is presently under threat of being developed for mass low-income housing which will directly undermine this potential as well as the ecological integrity of the park (Provincial Government of the Western Cape, 2005). Once any urban development is undertaken on public land whether low income development or not or whether publicly provided or not and such development is transferred as freehold title, the land begins to vest with an individual title holder whose private property rights would be protected in terms of the Constitution (1996). The public land holding becomes fragmented and predominantly privatised as a result setting up a tension between the requirements for larger public asset value against the demand for low income housing provision.

**FIGURE 6.9: METROPOLITAN OPEN SPACE SYSTEM AND BIODIVERSITY AREAS IN CAPE TOWN (2007 - 2008)****Notes:**

The Cape Metropolitan Open Space (CMOSS) and Biodiversity Network (BN) form the back bone of urban development; yet the network is fragmented by uncoordinated planning. CMOSS/BN is based on vacant land, nature reserves, wetlands, river systems etc.

Scale 1: 400 000  
0 4km 8km 12km

**Key:**

- |                               |           |
|-------------------------------|-----------|
| High Aquifer Productivity     | Coastline |
| Moderate Aquifer Productivity | Rivers    |
| CMOSS / BN                    |           |
| Major Water Bodies            |           |
| Diminishing Agricultural Land |           |
| Municipal Boundary            |           |

Source: City of Cape Town, Strategic Development Information and GIS Department, GIS Data, 2007-2008. Redrawn by author from original source, 2010.

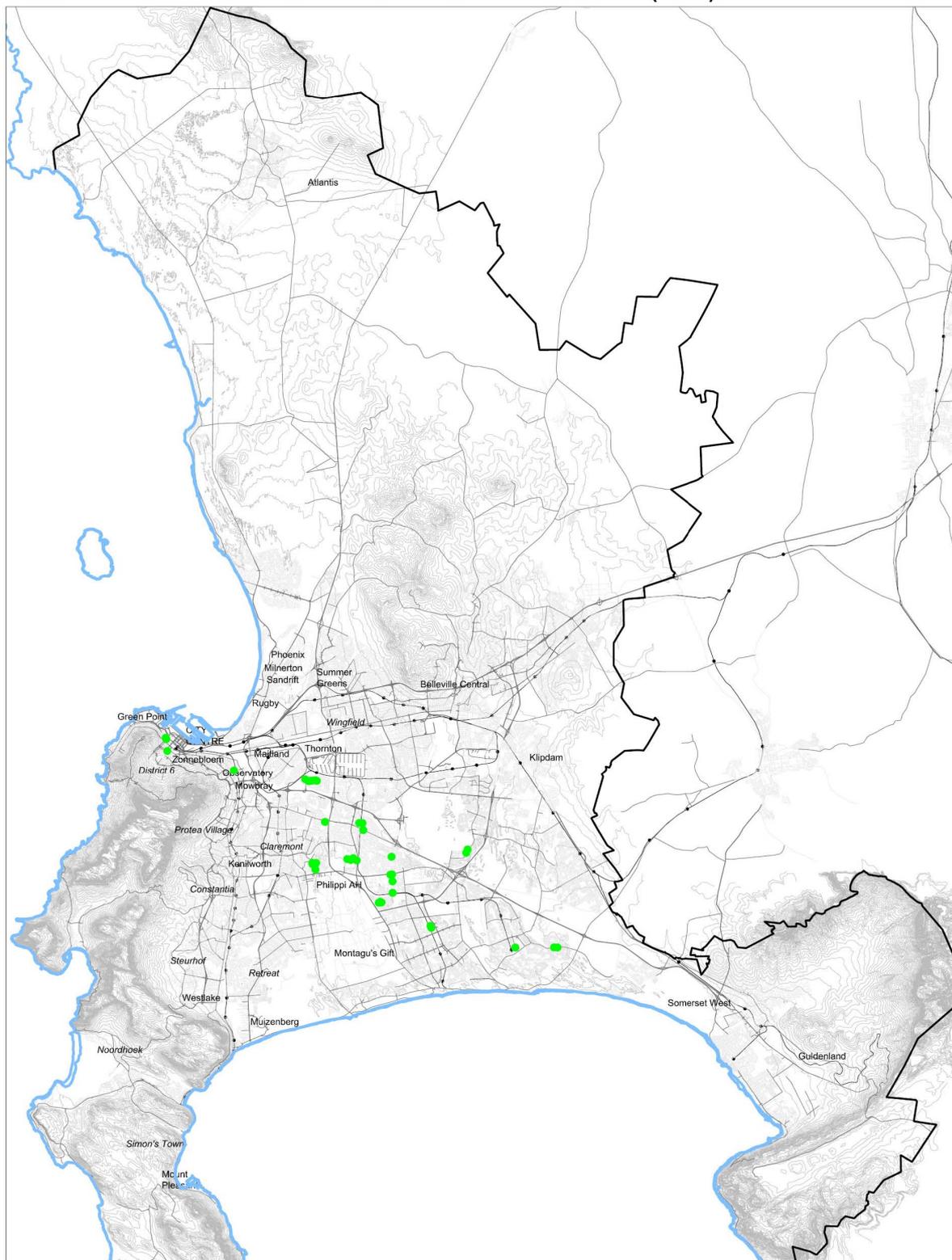
Another example of public land being undermined by private interests is demonstrated later in chapter 7 when the urban land restitution case of District Six is discussed.

At the human settlement scale, a key concern is the ongoing struggle for public space as structuring urban form and reinforcing other urban activities. The City of Cape Town's Dignified Urban Spaces Programme (DUSP) initiated in 1999 was a healthy attempt to begin to address this issue (Figure 6.10). The programme created an opportunity for public space provision to have better meaning and value to urban form and structure in areas where urban dysfunctionality was greatest (Southworth, 2010). The programme's intervention ranged from the upgrade of large transport interchanges to creating public walkways, public squares / forecourts and spaces where other activities such as trade and work from home could clip on (Southworth, 2003). However, because it was a retrospective or retrofit attempt at healing local urban dysfunctionality, some interventions were unsuccessful and require additional efforts to make them work (City of Cape Town, 2010). There were three key reasons for this.

The first is that the spaces happened without an affiliated management framework that would kick in after completion of their construction and ensure that they are properly functional, maintained and managed. The second is that the spaces became victims of fragmented planning and management within the City of Cape Town, where one department creates spaces without another taking their function into the spaces as a complimentary and reinforcing layer of successful 'public space making'. The third is the lack of local participation and therefore local ownership and identity associated with some of the DUSP's projects.

Although public space is a key element of the city and society's collective life and although attempts have been made at putting public space on the developmental agenda of local government particularly at a human scale in Cape Town given that over R100 million has been spent on investment in over 70 public spaces in the city (Southworth, 2010), the absence of an integrated management framework as with infrastructure in the city is apparent and can be attributed to the functional departmentalization within local government which diminishes the role of public space as container of collective life.

The freedom's approach neglects to embrace the concept of public space for public life either because it focuses on raising individuals' capabilities to lead the kinds of lives that they value or because it motivates for a society to first have a reasonable level of education, good health and some economic well being to be able to participate in (the collective life of) society.

**FIGURE 6.10: DIGNIFIED URBAN SPACES IN CAPE TOWN (2009)**

**Note:**  
The Dignified Urban Spaces Programme was initiated in 1999 to address urban dysfunctionality primarily in the poorer areas of Cape Town.

**Key:**  
● Location of Public Open Space  
— Coastline  
 Municipal Boundary

Scale 1: 400 000  
 0 4km 8km 12km N

Source: Own map work and analysis generated from City of Cape Town, Strategic Development Information and GIS Department, GIS data, 2009 and redrawn by NM & Associates Planners and Designers for the Quality Public Spaces: Programme Evaluation Project

Either way, there is evidence in Cape Town that as a result of the fact that densities are high in areas in the south-east sector of the city and private living spaces are limited or absent, public space is highly valued in these areas to serve as relief spaces (City of Cape Town, 2010). The freedoms approach is therefore limited in understanding the meaning of urban elements such as public space in contexts of extreme living conditions even though its case material is often based on cities such as Calcutta and other Indian contexts (Sen, 1999) where urban living conditions are more extreme and the competition for urban space more desperate.

## 6.4 Public land in Cape Town

Having analysed certain urban foundational layers through entitlement mapping and elements of a predominantly public nature in Cape Town, it is prudent to define what we mean by public land and land use distribution and how it is institutionally organized. Public land is defined as land that resides in the public domain and includes a number of categories of land: hard and soft public spaces; road reserves; rivers, mountains and forests; green open spaces; water bodies; land that public buildings are developed on and the spaces between and around them; conservation worthy land such as reserves; public parks land and so on. Strategically located (public) land can be defined as large land parcels located in influential locations that can be used to restructure the city and the urban environment to address citizens' most important needs (Interviewee No. 9, 2008). It is useful to add to this definition that restructuring the city also includes spatial, economic and social restructuring including addressing the urban land and poverty questions.

### 6.4.1 Public land and land use

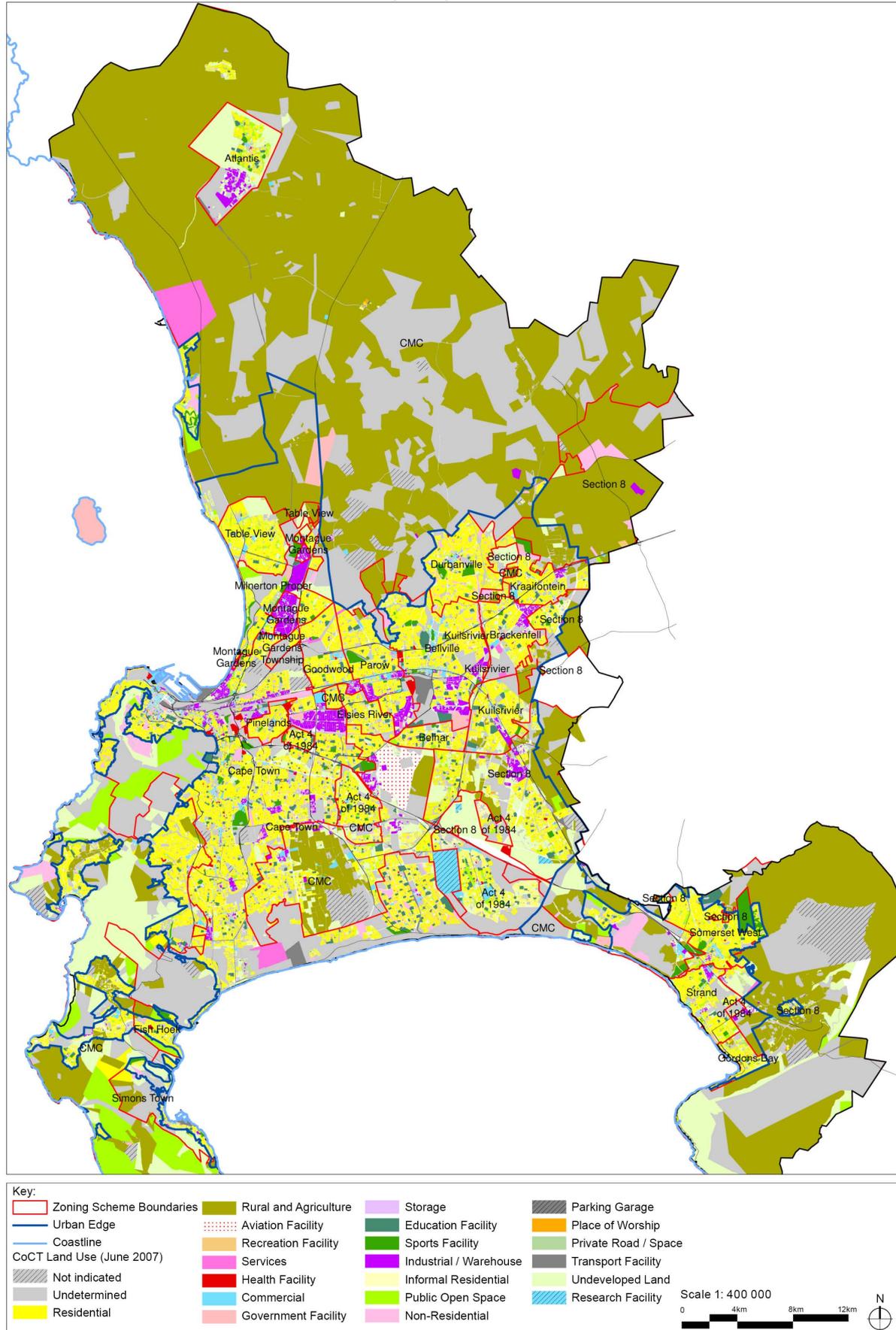
Figure 6.11 depicts the City of Cape Town's twenty seven administrative areas by Zoning Scheme and also indicates broad land use distribution as at 2007. In chapter 4 it was stated that the land surface area of Cape Town measures some 2,479km<sup>2</sup>. Of this land surface area comprising built and unbuilt areas, approximately 774km<sup>2</sup> was located within the Cape Town urban edge in 2000, approximately 808km<sup>2</sup> in 2005<sup>34</sup> and 833km<sup>2</sup> in 2007<sup>35</sup>.

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<sup>34</sup> Own calculations based on 774km<sup>2</sup> of developed footprint in 2000 (City of Cape Town, 2009a) and additional urban growth of 1 232ha (12.32km<sup>2</sup>) per annum (City of Cape Town, 2006f) between 2000 and 2005.

<sup>35</sup> This figure is based on the assumption that the growth of 1 232ha per annum in Cape Town continued up to 2007.

**FIGURE 6.11: CAPE TOWN ADMINISTRATIVE AREAS BY ZONING SCHEME AND BROAD LAND USE DEPICTION (2010)**



Source: City of Cape Town, Strategic Development Information and GIS Department, GIS Data, 2007-2008.

Based on the assumption that all land within the urban edge designated for certain categories of land use remained in the ownership of the State as explained in the technical footnote below<sup>36</sup>, it can be estimated that of the total area of the Cape Town metropolitan area within the urban edge<sup>37</sup> of 833km<sup>2</sup>, only 48 percent (approximately 396km<sup>2</sup>) remained in public ownership by 2007. This indicates on the one hand that public land available for development and for a targeted pro poor land programme is disappearing at a rapid rate; yet on the other hand, the State is still a crucial role-player in land in Cape Town given that it still owns a fairly large vacant public land asset base as demonstrated by Figure 6.12 and discussed below. Ideally the total built area in public ownership should also have been calculated for 1991 however sufficient public land information was neither readily available nor accessible to compute this figure for comparative purposes.

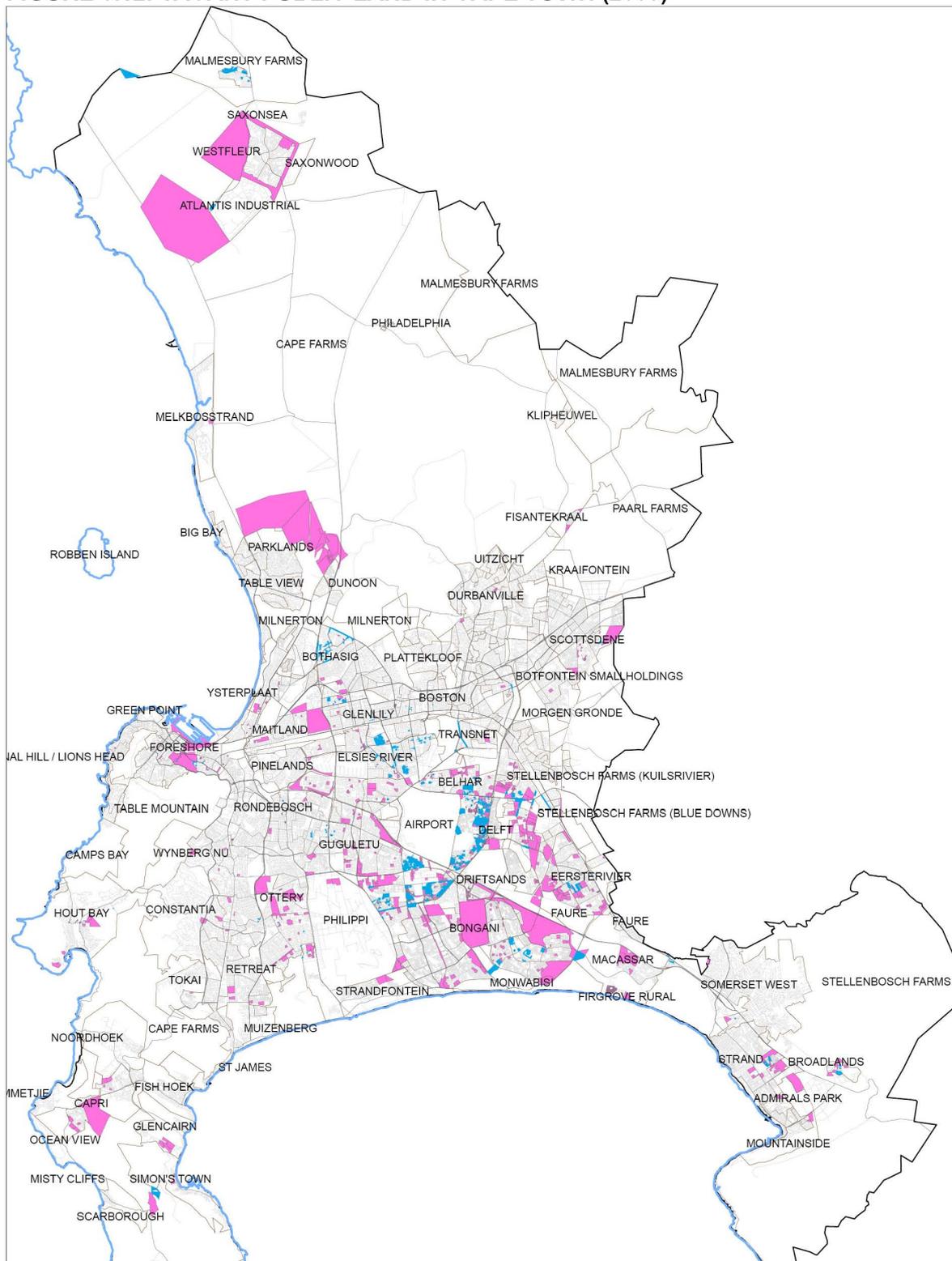
Figure 6.11 also indicates that the institutional arrangements in present circumstances are not only administratively cumbersome and fragmented given that twenty seven different sets of development rules and standards apply across the metropolitan area but also inappropriate to facilitate the necessary transformation in land. Broad land uses depicted across the city promote discrete pockets of development and fragmentation in the landscape making it difficult to consolidate and compact Cape Town into a good city form.

The fact of land rights displaced as a result of apartheid rule; the fact of poverty and the fact of the urbanization of poverty in the South African city and Cape Town in particular, necessitate a degree of land reparation and reform that begins to address these facts at it is doubtful whether the Integrated Zoning Scheme will mitigate such disarray unless there is regard for integration based on the principles of the good city and urban land use management is systematically addressed at all levels (chapter 5) including the philosophical and technical levels.

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<sup>36</sup> Categories of land use identified based on 2007 valuation land use data to determine vacant and developed public land ownership in the 2007 urban edge area of Cape Town measuring approximately a total of 833 km<sup>2</sup> include mainly institutional uses namely: undetermined land uses, asylums, cemeteries, civic facilities, medical facilities or clinics, educational facilities, fallow land, emergency services facilities, golf courses, community facilities, leased land, military camps, municipal facilities, public facilities, nature reserves, non-residential, prisons, public parks and open spaces, municipal services, sports and recreation, and public transport facilities. This figure excludes road and rail reserves and undeveloped parastatal land parcels which were assumed to be unavailable for urban development purposes.

<sup>37</sup> An urban edge is a line drawn around an urban area, for example, Cape Town as a determined growth boundary and denotes the outer limit of the urban areas. This line marks the transition between urban and rural land use (Provincial Government of the Western Cape, 2005a). In the case of Cape Town the urban edge is defined by planning guidelines that typically consider ecological, spatial and technical planning criteria including hard and soft edges and land use suitability between the rural and urban landscapes.

**FIGURE 6.12: VACANT PUBLIC LAND IN CAPE TOWN (2009)****Note:**

Approximately 11 697 hectares of publicly owned vacant land in Cape Town has been identified.

**Key:**

- Vacant Public Land
- Status - Not known
- Coastline
- Municipal Boundary

Scale 1: 400 000

0 4km 8km 12km



Source: Western Cape Provincial Government Departments of Human Settlement Planning and Housing Property and Planning in excel spreadsheets and GIS shapefiles, 2007. Own map work and analysis, 2009

Attempts by the City of Cape Town to replace the Peninsula Urban Structure Plan (1988) with the latest Spatial Framework and District Plans as discussed earlier in this chapter (City of Cape Town, 2009b), will also not necessarily mitigate this institutional land use management disorder as higher order legislation such as the Land Use Planning Ordinance (chapter 5) and other national level legislation including the DFA and LUMB (chapter 5) will still be the overarching legal frameworks governing land use management.

It is therefore important to consider a shift towards land use management that embraces the concept of social justice and the principles of the good city. Does this mean that land use regulation shifts to the facilitation and development control of the public and private domains in as far as both promote an active, democratic public realm in terms of the freedoms approach to improve the performance of the city for rich and poor alike; or does it mean that we continue on a free market fragmented land use management trajectory as is presently in operation? The focus on public land is specifically on land within the urban edge of Cape Town that is either large or strategically located so as to absorb urban development that will facilitate the restructuring of the city and simultaneously address the question of urban poverty.

The land identified on Figure 6.12 is based on a registered cadastrally defined boundary with an allocated erf<sup>38</sup> number registered in the name of a State or parastatal entity. The total extent of publicly owned vacant land in Cape Town that can be available for urban development in a pro-poor urban agenda amounts to approximately 11 697ha<sup>39</sup> (Figure 6.12) which is limited considering the rapid growth of Cape Town (section 6.2, footnote 23). The majority of this extent is situated in the eastern part of Cape Town; and in particular, the south-eastern sector. However, some land is also located in the inner city of Cape Town, close to established nodes such as Wynberg in the southern suburbs and along mature urban corridors such as Wingfield in the northern suburbs (Figure 4.3); making it possible for land opportunities to be enhanced for the urban poor in strategic locations.

Without considering the conditions of the land for suitable human habitation, at an average conservatively calculated gross dwelling unit density of 45 dwelling units per hectare (the minimum to support public transport viability as discussed in chapter 5)<sup>40</sup> this extent would result in development in the order of 526 365 units. The nett residential dwelling unit density

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<sup>38</sup> An erf can also be referred to as a lot, plot or portion of land that is defined by a cadastral boundary, has a discreet identity and is registered in the Deeds Registry against a particular land owner or holder.

<sup>39</sup> Calculated on Arcview GIS 3.2 where each cadastrally defined land portion was measured.

<sup>40</sup> City of Cape Town (2009a)

yield would be 584 850 units using at least 50 percent of the total of 11 697ha for the residential component among other land uses such as institutions, public facilities, roads and open spaces that make up an integrated environment, and based on an urban nett average density of 100 dwelling units per hectare. This calculation shows that the available land can easily address the housing backlog in Cape Town of approximately 400 000 units in single storey form if the State:

- a) continues to reinforce the conflation of housing with land and base its response to the urban poverty question on a quantitative basis only;
- b) does not acknowledge land as a non-renewable resource that must be cared for and used responsibly for the sustainability of urban communities;
- c) ignores the role of land in ensuring genuine development (as freedom) for the urban poor to occur;
- d) ignores land values, as suggested by the Spatial Framework for Cape Town, which emphasises that affordable land be a key criterion in selecting sites for the development of subsidized, rental, social and gap housing programmes (City of Cape Town 2009b: 14).
- e) has the funds to enable and develop the land on the basis of the current housing subsidization programmes alone.

This trajectory would clearly be an unsustainable and an unwise use of land against time raising the question as to how the State can through more appropriate public land programmes and enabling land use management begin to raise the capabilities of the urban through improvement of access to public urban land.

#### 6.4.2 Custodianship of public land

Apart from the disarray in the administration of land and land use management which are fragmented and functionally departmentalized, there is a host of other public or quasi-public land owners and administrators who influence the manner and form within which Cape Town's land is spatially organized and distributed to perform its land use functions. Public land ownership presently vests in the hands of a number of government departments or parastatal organisations either having ownership or direct custodianship over public land holdings. Comprehensive decision making with respect to land development and use for poverty reduction purposes, among other things, is therefore very difficult. In urban Cape Town, the following, among others, hold / own / administer public land (Box 6.1).

**BOX 6.1: PUBLIC OR SEMI-PUBLIC (PARASTATAL) LAND OWNERS IN CAPE TOWN**

- a) Republic of South Africa. The National Department of Public Works who administers and manages public land and buildings on behalf of national government.
- b) South African National Roads Agency Limited administers and manages land in the interests of national roads in South Africa.
- c) South African National Parks administers and manages land in respect of natural assets and national parks / forests.
- d) Portnet administers and manages land in respect of harbours and port authority activities.
- e) Transnet administers and manages land in respect of rail ways and harbours.
- f) Telkom administers and manages land for telecommunications purposes.
- g) Airports Company of South Africa administers and manages land within and around airports
- h) Denel is the manufacturer of military equipment in South Africa and operates in military aerospace activities. It holds large landholdings where these activities take place. However, some of their activities such as a site in Cape Town known as Swartklip, has been scaled down substantially thus unlocking land for potential urban development.
- i) AECI is a group of companies with government as shareholder in the science and technology industry with a focus on mining and manufacturing. The company owns land throughout South Africa, including Cape Town.
- j) Eskom is an energy utility who owns and transacts in respect of land for electricity supply, distribution and generation.
- k) The Western Cape Provincial Government: Department of Transport and Public Works administers and manages land for provincial government purposes including land and buildings for education, health, government offices etc.
- l) The Western Cape Provincial Government: Department of Local Government and Housing holds and owns land chiefly for housing purposes.
- m) Intersite Property Management (on behalf of the South African Rail Commuter Corporation recently renamed Passenger Rail Agency of South Africa or PRASA, the custodian of commuter rail assets) administers and manages land in respect of commuter railway stations and associated landholdings.
- n) The Western Cape Provincial Government: Provincial Housing Development Board falls under the jurisdiction of the Western Cape Provincial Government: Department of Local Government and Housing who has a housing mandate.
- o) The City of Cape Town owns, administers and holds land and buildings for general local government administration purposes; public housing, land transactions etc.

## 6.5 Summary

Urban sprawl is still the spatial pattern of Cape Town's development which has resulted in an urban form that is characterized by a population that is widely dispersed and spatially disproportionate in terms of social development planning and economic possibilities: the urban poor are pushed away from the central business districts (CBDs) and employment areas; the wealthy occupy key valuable sites adjacent to the mountain and sea; with suburbia 'in-between' which has a low-density, single-dwelling residential pattern. This reveals a critical lack of integration of different income-groups and clear separation of spaces for living, working and shopping, with limited facilities within acceptable walking distance in both the wealthy and poor areas of the city. Cape Town therefore continues to reinforce inequitable spatial patterns as a result of the government's approach to strategic public land and associated private investment patterns which typically follow the neo-classical urban development paradigm.

The richness of a city and its people is directly related to the quality of its public domain. The role of public land as represented by the urban layers discussed above, in democratizing the city and supporting collective life is a crucial one. As a principal service provider, the State is able to direct public investment significantly to improve the condition of the urban poor and in turn, also improve the potential entitlements and endowments that the poor could access from a freedoms perspective even though it is recognized that this approach is not very mindful of collective public space and therefore, public land. However, the analysis shows that some well meaning laws and policies on land and land use management that emerged after Cape Town entered the period of democracy in 1994 did not quite take effect on the ground. For example, transportation planning still prioritizes the wealthier classes supporting and entrenching the operations of the urban land market. Ownership and administration of land is confused and fragmented among different tiers of government as well as within local government. While the departmental coordination among and between public role-players of public land and land use administration or lack thereof is not analysed in the thesis, the relevance and importance thereof should not be under-estimated.

Land in the public domain as represented by the urban layers that were analyzed namely, residential patterns, infrastructure, transport and public space has neither significantly changed distribution patterns in Cape Town nor has it recognized the relationship between critical life supporting urban layers and urban land. Even insightful authors on Cape Town such as Swilling have not made this connection. It is therefore unsurprising that the physical landscape continues to reinforce separation over inclusion, in which critical public space fails

to play a democratic role. The State and local government in particular, through land planning and management has reinforced the trend of fragmented enclaves that promote a discontinuous urban spatial structure creating environments that are unsustainable, socially disabling and counter-productive to building the elements of a good city.

As explained in Chapter 2 (Sen, 1984: 497) motivates that endowments serve to create entitlements that broaden one's power over commodities. In terms of the urban poor's ability to access endowments in land where they are presently located, the foundational urban layers discussed above suggest that in a market driven economy, the poorest of the poor and/or less well-off generally have very limited endowments as a potential for entitlements. Land patterns in Cape Town indicate that the most usable, developable and best located land resides in the hands of the very wealthy. The least suitable and poorly located land is what poorer residents compete for. In addition, the analysis shows that very limited integration has occurred in Cape Town over the past 16 years of democracy. However, there is still a significant extent of public land available in strategic locations in Cape Town which can be employed to begin to address the question of urban poverty through appropriate urban land redistribution and comprehensive land use management reform.

The following chapter considers the urban land question from the point of view of the State's role in strategic public land, public investment in land towards poverty alleviation and land reform initiatives.

## Chapter 7: The Urban Land Question

'The apartheid legacy is one of seemingly intractable problems, and we must surely empathize with government in its struggle to confront these in a way that balances many conflicting demands. However, there is a real and growing concern that the government's 'neo-liberal turn' may be exacerbating social and class divides, and may be prioritizing South Africa's standing in the global economy above the needs of its poorest citizens.'  
(Harrison, Huchzermeyer and Mayekiso, 2003: 1-2).

### 7.1 Introduction

Against the urban, legal and policy context of land sketched in Chapters 5 and 6 what do we mean by the (urban) land question(s) in South Africa? What does land as entitlement mean as a way of class, racial and poverty redress? It can be argued that the analysis in the previous two chapters indicate that land is one of the most significant challenges facing our country since 1913 and even before then and now particularly in post-apartheid South Africa. Have we sufficiently and adequately addressed and/or reversed 'the racial inequalities in land resulting from colonial conquest and the violent dispossession of indigenous people of their land' (Hall and Ntsebeza, 2007: 3). In other words, have the issues of land redistribution and reform been afforded the energy and will that they deserve?

To understand the land question from a political economy point of view, the question of land has to be considered in political or institutional terms as well as the economic framework that underpins the relationship between people and land. Strictly speaking the political or institutional framework of South African land and land policy should be democracy. The economic framework is that of a free-market and fair value or price system concerned with land primarily as a commodity that can be transacted and invested to enable profitable use of land as a resource base to an individual or corporation. The question that arises relative to urban poverty is *where do the poor (the majority of whom are Black) find a place in this way of viewing land; and what is the role of government in facilitating the poor's access to urban land?*

The content that follows is a combination of some empirically-grounded understanding of government's track record on urban land redistribution and reform in South Africa and Cape Town in particular as well as secondary materials sourced to comment on the question of land tenure reform. It investigates the so-called property clause relative to the concept of social justice with a view to understanding what paradigm is the most possible, suitable or appropriate to address the land question in this country. Ntsebeza (2007: 117-118) analyses the implications of the property clause in the Constitution of South Africa as one of which is

to 'implore the state to take *reasonable legislative and other measures within its available resources* to create conducive conditions for *citizens to gain access to land on an equitable basis*...All in all the South African Constitution provides the framework for land policy in South Africa. The policy is based on three components of the government's land reform programme: *land redistribution* (to enable equitable access to land), *land tenure reform* (to eliminate tenure insecurity) and *land restitution* (to compensate for land dispossession). The Constitution commits government to protect the property rights of those who currently possess / own property and at the same time redistribute land to those who have been dispossessed.

The best way of measuring government's success or track record in fulfilling the three components: *land redistribution, tenure reform and restitution*, is to consider firstly, to what degree public land has indeed been redistributed and to whom? Secondly, the degree to which ownership of public land has shifted since 1994 and how public land has been distributed in Cape Town; and thirdly has urban land reform been adequately addressed to respond to the question of urban land dispossession?

South Africa's policies and legal frameworks on the land question as espoused by the property clause in the South African Constitution, is grounded in a liberalist / neo-liberalist view of social justice. This was discussed in chapter 3 of the dissertation which stated the Nozickian view suggesting that we 'identify an initial state of affairs which can be accepted as just' and then 'argue that any outcome will also be just providing it arises from a just process of property transfers' (Visser, 2000: 34). It can be argued that the Property Clause in the South African Constitution (1996) is a mandate to deal justly in land redistribution and that the Restitution of Land Rights Act (No.22 of 1994) supports the restoration of rights lost as a result of displacement in terms of unjust laws that existed in the past.

However, there is still an urban land market actively supported by the private and public sectors jointly and severally, that influences the workings of social justice in practical terms as will become apparent later on in this chapter. Viewed in this way, the realities of the land question particularly with respect to the urban poor and dispossessed become more blurred and misunderstood in a society that on the one hand, supports and operates in a strong market-based urban land economy and on the other, has also committed to restore land access and rights to the dispossessed. Against a background of reform and restoration of land access and rights and in the interest of a healthy democracy and society at large, this dissertation argues that it is more appropriate to find a concept on the land question that

takes a *less liberalist* and *more reformist* view on social justice embedded in the freedoms approach.

#### 7.1.1 Urban land redistribution

It stands to reason that if the Constitution protects private property rights, public land should form the basis of urban land redistribution and reform. In the previous chapter, it became apparent, however, that the ownership, control and administration of public land in Cape Town are unclear and that the asset register under public ownership is not explicit. This does not change the fact that in Cape Town substantial public land holdings were made available for redistribution to poorer citizens. For example, substantial investment has been made in public land mainly located in the metropolitan south east sector (Figure 4.3) under a number of State subsidy regimes such as the Integrated Serviced Land Project (ISLP) which was set aside in the late 1990's for development to accommodate some 40 thousand families in low income, state – subsidized accommodation. A budget of R1.4 billion was earmarked for the ISLP which was driven by the Western Cape Provincial Government with support from the (then) Cape Metropolitan Council (CMC) and City of Cape Town, City and Tygerberg Administrations (City of Cape Town: Tygerberg Administration, 1999).

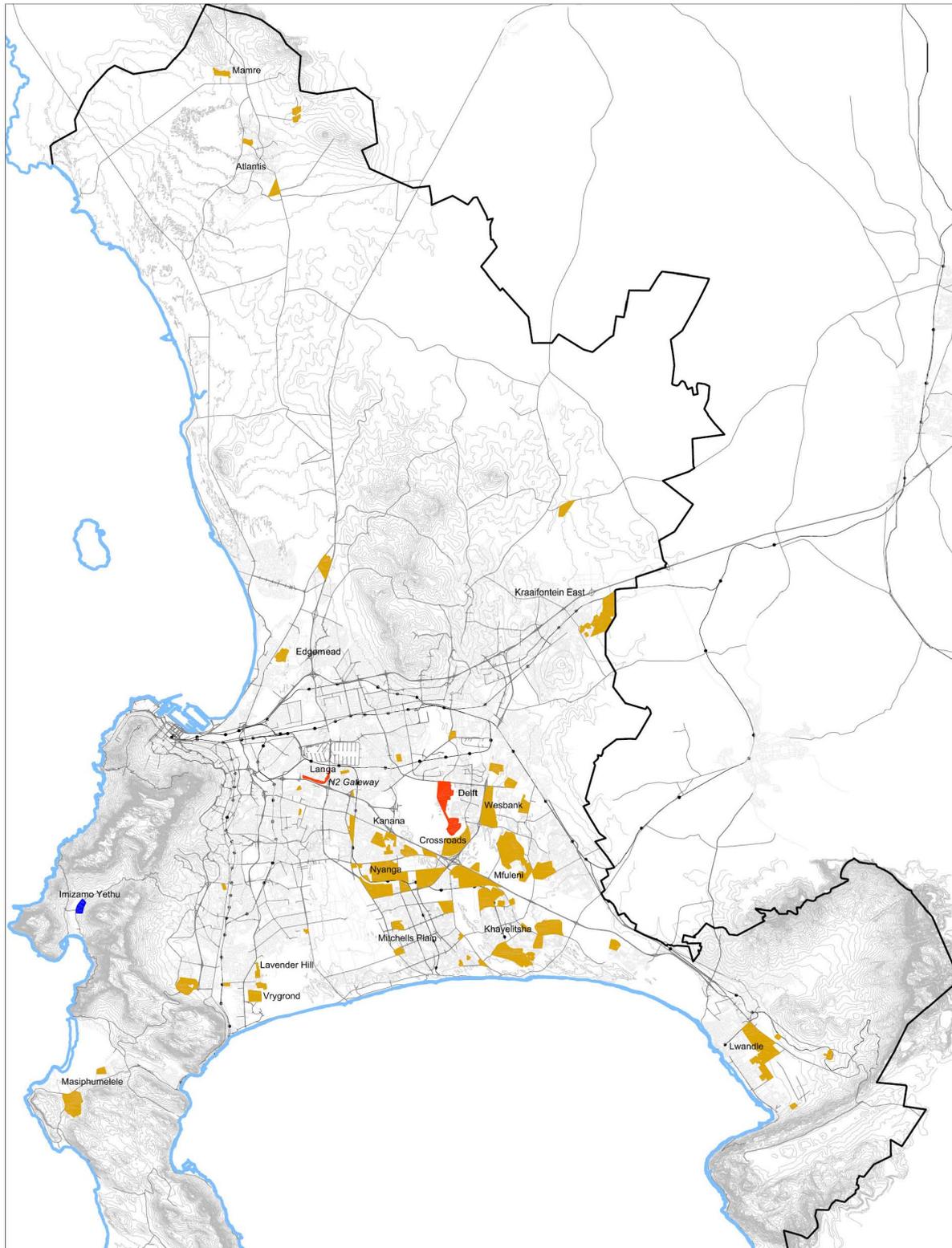
The areas where these developments took place are indicated on Figure 7.1 and include public land development set aside for further developments taken up by poorer citizens through the provision of the reconstruction and development (RDP)<sup>41</sup> programme or RDP (<http://www.anc.org.za/rdp/rdp1.html>) serviced land and housing. The term RDP house is named after this programme which is presently a 40m<sup>2</sup> top structure on a minimum plot size of 100m<sup>2</sup>. A land – housing programme known as the Upgrade of Informal Settlements Programme (UISP)<sup>42</sup> is a further instrument used to provide serviced land to the poor occupying informal settlements. Figure 7.1 also indicates the location of all subsidy-linked serviced land and or housing areas. In terms of these programmes, land is serviced, regularized, sub-divided and registered whereupon individual households who qualify for subsidized serviced land portions are granted freehold title with the promise of a top structure or permanent residential structure in time. These programmes would ensure 'adequate housing' in terms of the Housing White Paper of 1994<sup>43</sup>.

<sup>41</sup> The RDP is a socio-economic policy framework announced by the ANC-led alliance in 1994. The five key programmes of the RDP include: meeting basic needs; developing the country's human resources; building the economy; democratising the state and society; and implementing the RDP. The RDP was enshrined in the 1996 Constitution (Republic of South Africa, 1996).

<sup>42</sup> UISP seeks to upgrade the living conditions of poor people by providing secure tenure and access to basic services and housing. (<http://www.services.gov.za>)

<sup>43</sup> The concept of adequate housing is discussed by Huchzermeyer (2001: 305).

**FIGURE 7.1: STATE ASSISTED SERVICED LAND / HOUSING IN CAPE TOWN (2009)**



**Note:**  
Substantial public land holdings in the order of 4368 hectares were made available by the State primarily for residential occupation and ownership by poorer citizens.

- Key:**
- State Assisted Serviced Land / Housing
  - N2 Gateway Project
  - State Assisted / Non-Government Land / Housing
  - Coastline
  - Municipal Boundary



Original Source: City of Cape Town, Department of Human Settlements, 2009 in GIS shapefile format.  
Own map work and analysis, 2010

It can be argued that between 1994 and 2007, the state had serviced and set aside significant parcels of land in the order of approximately 4368ha (14 times the extent in area of Central Park, New York City measuring 770 acres<sup>44</sup> or 311ha in extent) for occupation and ownership by poorer citizens in Cape Town. Can one, however, refer to this as wise use of land in the interest of public land redistribution and improving asset formation or providing adequate housing for the poor; as well as access to urban opportunities within the Cape Town metropolitan area? In other words, to what degree does this investment in land for the urban poor improve their access to land entitlements and assist to raise their capabilities from a freedoms approach given that the public land – housing investments made are all concentrated in the south-east area where it was found in chapter 6, that very few opportunities for entitlements of the urban poor are apparent. However, there is great opportunity in the fact that a fair area of vacant public land (chapter 6, Figure 6.12) is still available in the south east sector of the city implying that opportunities exist for large scale public investment and the promotion of mixed use developments that can begin to address urban poverty and the dormitory nature of this predominantly residential / informal settlement area. In this way, location and economic opportunity could be enhanced and asset value improved for the urban poor.

Hernando De Soto (2001: 48-49) argues that ‘Capital is born by representing in writing – in a title, a security, a contract and other such records – the most economically and socially useful qualities *about* the asset, as opposed to the visually more striking aspects *of* the asset.’ In this way, the author continues to argue, ‘potential value is first described and registered. The moment you focus your attention on the title of a house, for example, and not on the house itself, you have automatically stepped from the material world into the conceptual universe where capital lives. .... It invites you to go beyond viewing the house as mere shelter – and thus a dead asset – and to see it as live capital.’

The freedoms perspective challenges this narrow view that De Soto takes on asset value being equated only with a house which enables a property title. The value of an asset in a market based economy is far more complex and dependant on many considerations in the context of urban poverty. Asset value in a market based system is directly linked to location which can be interpreted in two ways.

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<sup>44</sup> 1 acre is equal to approximately 2.47 hectares (ha)

Firstly, relative to traditional land uses (in the form of large investments) that assist cities to be the generators of economic growth; and secondly, proximate to the natural assets of a place that have inherent value for example, viable coastal zones<sup>45</sup> and are therefore considered to have high economic value. The latter is particularly applicable to Cape Town, with its rich natural assets such as the mountain and Atlantic and Indian oceans.

Thus, in a competitive urban land market location plays a key role in determining asset value. The land market 'encourages developers to develop sites to their highest economic potential, picking that use and building at that density that will yield the highest residual land value. Any bid to buy land to be used for a lower intensity use will lose out to bidders who will be able to make a higher offer.' (Dowall cited in Marx, 2006: 5). It can therefore be concluded that the best located land with the greatest land and asset value in terms of the urban land market operations, is by definition reserved for the non-poor. It must be emphasised that market forces by implication expel the poor from certain desirable locations. Land values depicted on the Figure 7.2 indicate that the majority of the urban poor reside on cheaper land in the city of Cape Town in locations that are poorly serviced, densely populated and in less desirable parts of the city as discussed in chapter 6. This results in the reduction of the urban poor's ability to improve their endowments. The wealthy, however, occupy the most desirably located land close to the natural assets and urban opportunities of Cape Town emphasizing the point that social justice is absent in responding to the urban poor in a liberalist / neo-liberalist paradigm by continuously locating the poor away from the urban opportunities in Cape Town..

The investments made by government in ISLP and UISP and similar programmes on behalf of the urban poor, are in the majority of instances, dead assets or assets with negative equity – in other words, the so-called asset which is owned by freehold title can make the urban poor even poorer if focused only on the house. With ownership and holding title comes the responsibility of paying for infrastructure and services; maintaining a property (top structure) which for a low or no income household can be seriously regressive. Gilbert (2002) contends that many governments around the world are following the argument put forward by Hernando De Soto (2001). By default, the South African government has also followed this world trend.

Aside from the locational considerations discussed above, there are land use regulations and spatial constraints (chapter 5, Box 5.2), among other things, most often brought on by

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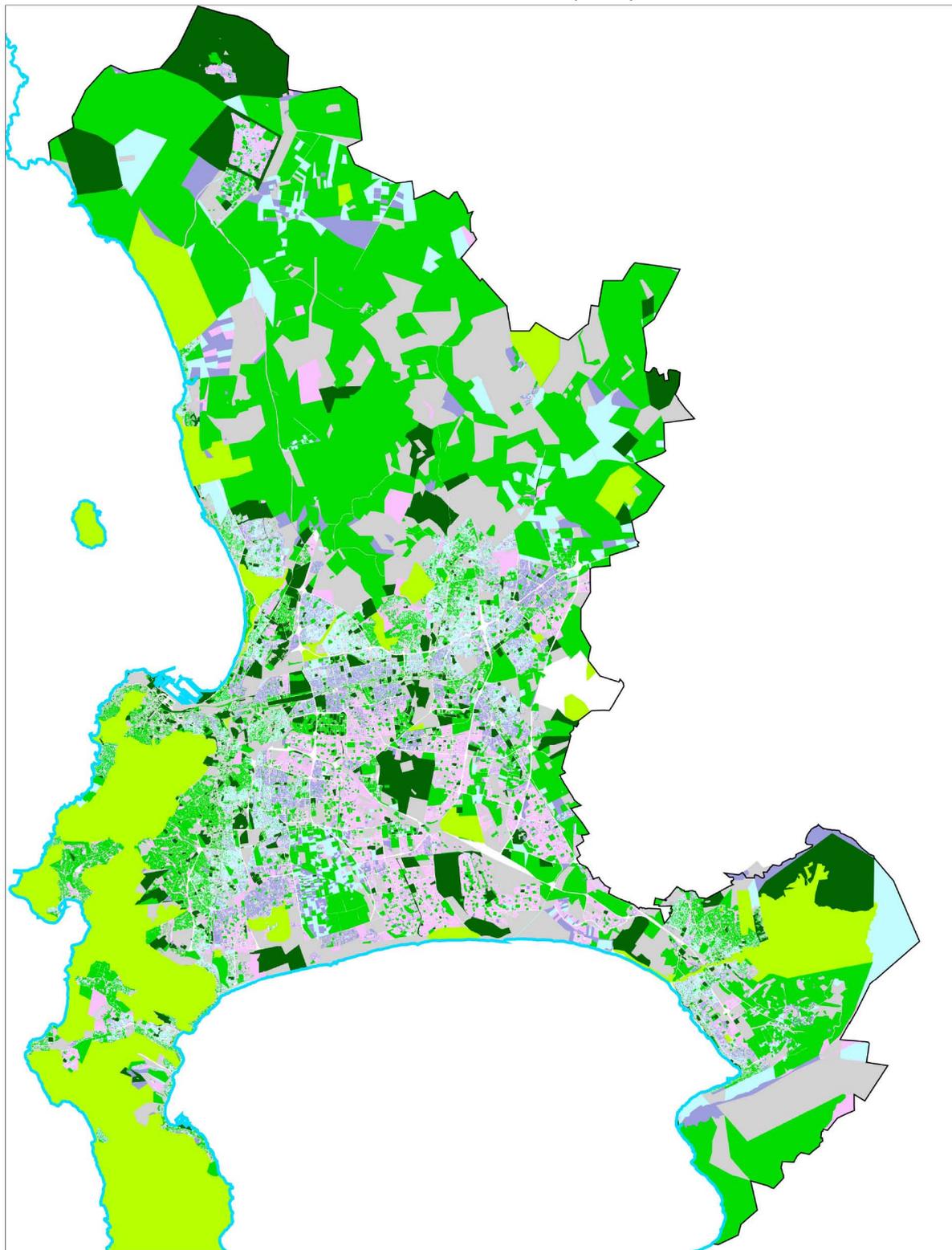
<sup>45</sup> It may be argued that the metropolitan south east area is also located close to the south east coast of Cape Town. However, this part of Cape Town's coast line is least developed, less usable and often perceived as treacherous and dangerous from a user's perspective.

officialdom who still plan in a neo-classical paradigm (as driver of a free market system), that deter or prevent people from improving their 'asset' value. The space norms required for infrastructure including services and roads required by local authority officials prevent households from getting larger land portions and the insistence on the permanent residential structure in the middle of the land portion or plot does not leave much room for ingenuity in terms of the design of the house over time as and when funds and resources become available. The emphasis is too much on the end product rather than on urban development processes as promoted by a deliberative planning approach which promotes dialogue, engagement of people with place-making and raises the potential ingenuity of urban communities to build asset value over time.

De Soto's work reinforces the conflation of land with housing which is a dangerous direction that governments in developing countries and South Africa in particular, have been following (Gilbert, 2002). The lessons here are firstly; that land does not only hold potential for housing or housing ownership; no, it also has the potential to address society's needs at large so a broader view on land is absolutely necessary particularly in an urban context if a sustainable, urban systems and a deliberative planning approach is taken. Secondly, land is a non-renewable resource and therefore has to be thought of in a sustainable manner rather than just a house and a title to individuals who (if they have the wherewithal to think beyond the physical house) would begin to enter the workings of capital and therefore emerge from poverty. Land does not work in this simplistic way!

The De Soto view to drive home ownership (supported by the behavior of the South African government to deliver housing to the urban poor) is an emotional appeasement that will not go a very long way to address the question of urban poverty. The key question to consider here is whether the land question in terms of redistribution can be managed on the basis of social justice in a market-based economy if one only focuses on the house? To contribute to this debate one has to be mindful of two key aspects. Firstly, the direction that the South African government thought it needed to pursue to address the question of the type of economy in general for the new democracy as discussed in chapter 5; and secondly, the most appropriate policy for public land relative to urban poverty alleviation rather than housing per se. The best alternative to a housing policy is an excellent overarching urban land policy within which all land uses should be considered including housing and public space and clearly the role of government could be to facilitate access to land with a view to alleviating poverty.

**FIGURE 7.2: CITY OF CAPE TOWN LAND VALUES (2007)**



**Note:**  
Land values indicate that the majority of the urban poor reside on cheaper land located in the metropolitan south east area of Cape Town.



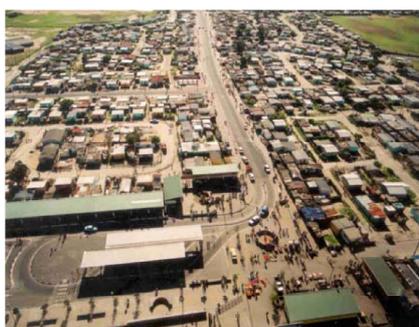
Key	Land Value(s)	Area (ha)	% of total
	No Value Available	42077.08	22%
	R1 -R250 000	13814.99	7%
	R250 001 - R750 000	11678.26	6%
	R750 001 - R1 500 000	18884.91	10%
	R1 500 001 - R25 000 000	81649.78	43%
	R25 000 000 +	20370.04	11%
	<b>Total</b>	<b>188475.06</b>	<b>100%</b>

Protected Areas  
 Coastline  
 Municipal Boundary

Original Source: City of Cape Town, Municipal Properties (Valuations) Department, 2007 GIS shapefile format.  
Own map work and analysis, 2010

*7.1.1.1 What happened to strategically located public land since the 1990s?*

At the same time as setting up ISLP and UISP, between the late 1980s / early 1990s (when change from apartheid to democracy was impending) and 2007, some key portions of strategically located publicly owned land in Cape Town, were disposed of or intending to be disposed of (Figure 7.3) and / or developed through government-led urban development in public-private partnership arrangements (Table 7.1). In the absence of repeated attempts to obtain a record of land disposed of by the City of Cape Town and the Western Cape Provincial Government, the account of publicly or quasi - publicly owned land of strategic importance disposed of by the State in Box 6.1 was obtained from the Cape Town deeds office in a search undertaken specifically for this dissertation by the author in conjunction with a conveyancing attorney in January 2010. Results of the deeds office search are recorded in Table 7.1 and based purely on personal knowledge of what land was disposed of or considered for disposal in Cape Town by the State.



Photograph 7.1: View of Browns Farm, ISLP housing scheme, Philippi (2003).



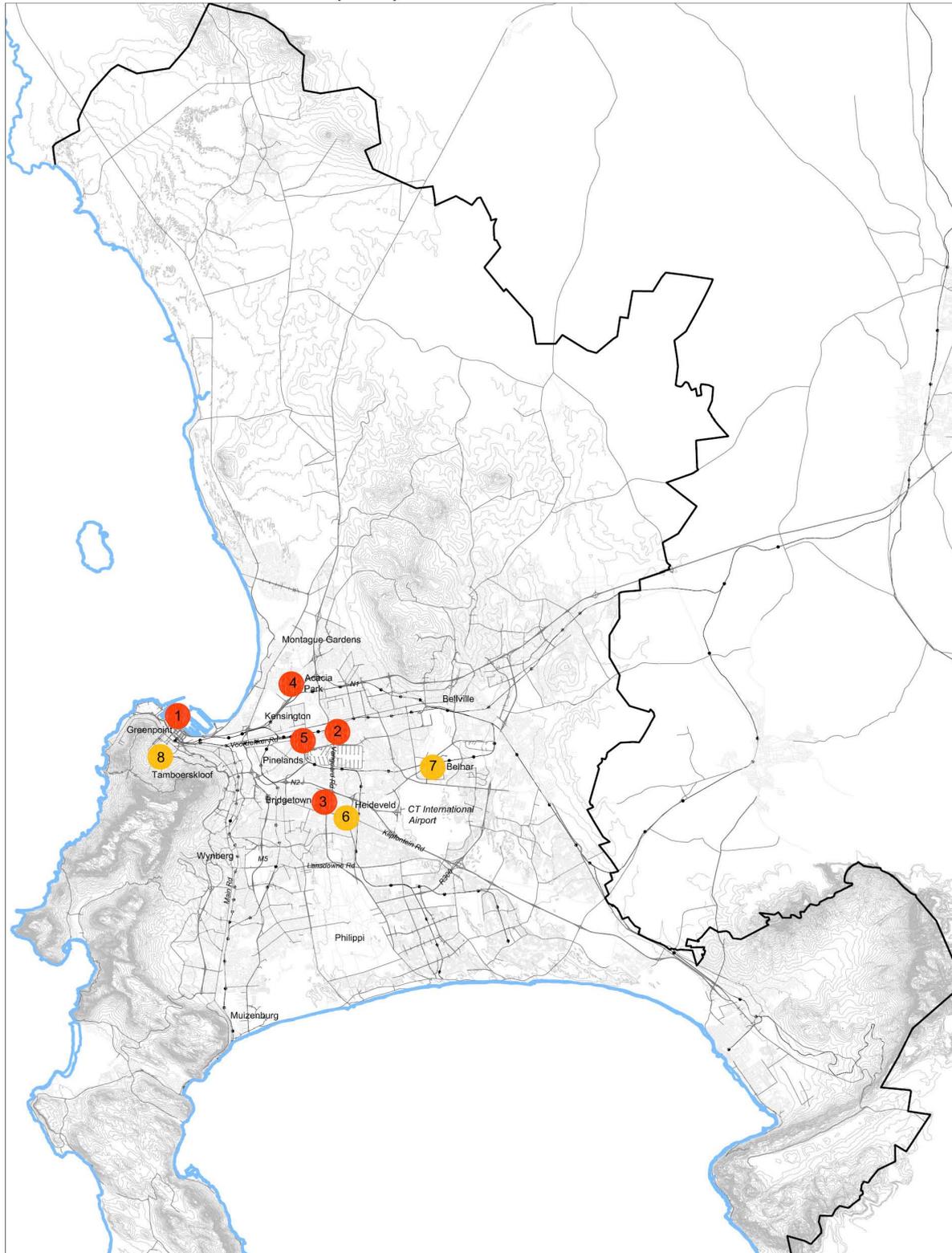
Photograph 7.2: View of informal settlement on Lansdowne Road, Khayelitsha (2008).

Source: City of Cape Town & NM & Associates Planners and Designers

**TABLE 7.1: DISPOSAL OF STRATEGIC PUBLIC LAND – RESULTS OF CAPE TOWN DEEDS OFFICE SEARCH (JANUARY 2010)**

Property Description & approximate land area in hectares	Public or Quasi Land Owner (Seller)	Private Land Owner (Purchaser)	Transaction value at time of disposal (Rand)	Date of sale
1.) Erf 149294, Cape Town Erf 158576, Cape Town (a portion of Erf 149294 Cape Town) measuring 109ha (commonly known as the Victoria and Alfred Waterfront)	Transnet Pension Fund	V&A Waterfront Properties (Pty) Ltd  V&A Waterfront Marina (Pty) Ltd	R1 363 978 026.00  R88 825 605.00	23 October 2000  18 February 2000
2) Erf 162686, Cape Town (a consolidated erf from Remainder Erf 144208 and 144209, Cape Town) measuring 57ha (commonly known as Grand West Casino)	Western Province Agricultural Society	H. Investments No 55 (Pty) Ltd (changed name to Sunwest International)	R40 584 000.00	26 August 1994
3) Erf 168605 Cape Town (a portion of Erf 163506 measuring 14,04ha). Known as Vangate Mall.	City of Cape Town	Vangate Development Company (Pty) Ltd; and Foschini Property Goodwood (Pty) Ltd	R6 700 000.00  R1 799 415.00	09 May 2002  03 June 1987
4) Erf 5188 Montague Gardens and Erven 18474, 18475 and 18476, Cape Town (43ha). Known as Century City or Canal Walk shopping mall.	City of Cape Town (previous Blaauwberg Municipality administration)	Monex Ltd.	R15 390 000.00	
5) Erf 11657, Cape Town (22,14ha) known as the Old Conradie Hospital (See footnote 6)	Republic of South Africa (Western Cape Provincial Government)	Iliza Elitsha Investment	R80 000 000.00	2006
6, 7 and 8	Klipfontein Road Belhar Tamboerskloof	Information not available	Not available	Not available

**FIGURE 7.3: WELL LOCATED PUBLIC LAND DISPOSED OF TO PRIVATE INTERESTS IN CAPE TOWN (2010)**



**Note:**  
This figure should be read in conjunction with Table 7.1. The combined sale value of disposed public land as at 2007 for known sales is estimated at R1,6 billion.

<p><b>Key:</b></p> <ul style="list-style-type: none"> <li>● Tender Awarded But Transfer Not Confirmed</li> <li>● Public Land Sold &amp; Transferred</li> <li>— Coastline</li> <li>— Municipal Boundary</li> </ul>	<ol style="list-style-type: none"> <li>1. V+A Waterfront</li> <li>2. Conradie</li> <li>3. Vangate Mall</li> <li>4. Klipfontein Road</li> <li>5. Belhar</li> <li>6. Grand West Casino</li> <li>7. Century City</li> <li>8. Tamboerskloof</li> </ol>
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Source: Cape Town Deeds office search, January 2010 and media sources as referenced.  
Own map work and analysis, 2010

The Victoria and Alfred (V&AW) Waterfront is situated at the sea front between Table Bay Harbour and Sea Point (Figure 4.3). In 2007, Transnet Pension Fund / V&A Waterfront Company sold the entire precinct to Dubai World through an international proposal call. The area is developed for mixed use commercial, retail, residential, parking and sea-front / port activity such as tourism.

The V&AW Company was considered the legal successor of one of the divisions of the South African Transport Services and therefore the V&AW site was subject to the provisions of the Legal Succession to the South African Transport Services Act, No. 9 of 1989. Section 13(6)(a) of this Act made provision for agreements between a company recognized in terms of the Act and a competent authority in whose jurisdiction the company's land is located to be entered into in respect of land used for any purposes other than that permitted in terms of the zoning scheme in force through the consent of such authority or through rezoning. The land was enabled around the year 2000 jointly between the V&AW company and the City of Cape Town; and subsequently developed to a market value of approximately R7 billion<sup>46</sup>.

The Grand West Casino is located along Vanguard Drive (the N7). The type of development is predominantly a casino with associated retail and commercial land uses including conference facilities and large parking areas. The land was consolidated and formerly owned by the Western Province Agricultural Society, a government agency. The consolidated property was first disposed of by sale to H Investments No 55 Pty Ltd in 1995 who changed its name to Sun West International, an internationally based hotel group.

Vangate Mall (formerly the Athlone Golf Course) is located along Vanguard Drive and onto Klipfontein Road, Gatesville one of the most thriving small business nodes and corridor in Cape Town. The type of development is formal mixed use commercial in a shopping mall form with large parking areas. The mall is flanked by lower to middle income medium density housing. As a result of the sale, development and privatization of this land, the area has not only experienced the loss of a major public facility but also reinforces middle income suburbanization which undermines good city principles yet, Interviewee No. 9 (2008) places on record that this development was one of the CoCT's most successful urban development initiatives and arguably so in a neo-classical urban development paradigm.

Portions of Century City or Canal Walk Shopping Mall was owned by the then Blaauwberg Municipality (now City of Cape Town). It was sold to Monex Ltd in 1998 who changed its name to Century City Ltd and later to Century City (Pty) Ltd. Development here comprises

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<sup>46</sup> Mail and Guardian, December 4 to 10, 2009.

large retail malls, with car parking, a theme park similar to Disney Land in Los Angeles in the United States of America. Like the V&A Waterfront, Century City is often referred to as integrated from a land use perspective as it offers housing, shopping, employment, financial and other services in one place.

The old Conradie Hospital site is situated in Forest Drive, Pinelands, one of the first Garden Cities in Cape Town mainly occupied by middle class residences with a neighbourhood scale commercial centre. This site is to be developed for mixed use purposes including office parks, industrial units and affordable housing. The site was sold by the Provincial Government of the Western Cape by public tender to Iliza Elitsha Investment for R80 million in 2006. It is understood that the company still owes government ninety percent of the purchase price and that no development has happened to date<sup>47</sup>. Most of the medical operations have been moved to another hospital in Mitchells Plain located in the south east sector of Cape Town where most of the urban poor reside as discussed in chapter 5.

Tenders for some of the sites listed on Figure 7.3, Tamboerskloof, Klipfontein Road, Conradie Hospital and Belhar, were confirmed as having been awarded but transfer to successors in title have not yet been concluded thus no information was available from the Cape Town deeds office. It must also be noted that other public land parcels have been disposed of by government to private interests / developers all in the name of boosting economic growth. The City of Cape Town launched its three year proactive property disposal programme in August 2008 advertising the proposed disposal of 80 sites for purposes of commercial, residential and industrial development (<http://www.capetown.gov.za/en/property>). The sites are located throughout the metropolitan area.

The extent of land discussed in Table 7.1 measures approximately only 275ha (approximately only 90 percent of the size of Central Park in New York City) excluding the sites for which transfer could not be confirmed at this stage. Compared with the extent of land developed for the urban poor for housing measuring over 4000ha, the disposal of the 275ha may not appear to be significant at all. However, the combined sale value of the disposed public land is approximately R1, 595 477 631.00 compared with the ISLP investment budget of R1, 200 000 000.00 for 40 000 low income households. Based on the sale of the V&AW in 2007, the value of this development (land and improvements) grew from R1, 595 477 631.00 to approximately R7 billion benefiting the private sector's asset value significantly from the sale of public land assets in a very active urban land market. At the same time, these transactions have not only excluded the poor from occupying or accessing

<sup>47</sup> The Cape Argus, August 21, 2009.

these desirable locations but also consideration was not given to the potential entitlements that could be had from conceptualizing the development and use of the land to address urban poverty directly. It is not suggested that large scale economic development on large well located sites is necessarily wrong but why at the expense of the urban poor and against the manner and form of the principles of the good city. Sen's view that the utility (or welfare) of no one can be raised without reducing the utility (or welfare) of someone else rings true in this instance (Sen, 1999: 117). Through the sale of public land to private interests, the welfare of the poor was not necessarily raised and if it were in other conceptualizations of utilizing land towards a pro-poor agenda, the utility of the State and potentially that of the wealthy would have been reduced in one way or another. The State would have been deprived of a large sum of money from the sale of the land concerned and the wealthy may have had to share their locations with the urban poor which could have major implications for property values in a market driven economy.

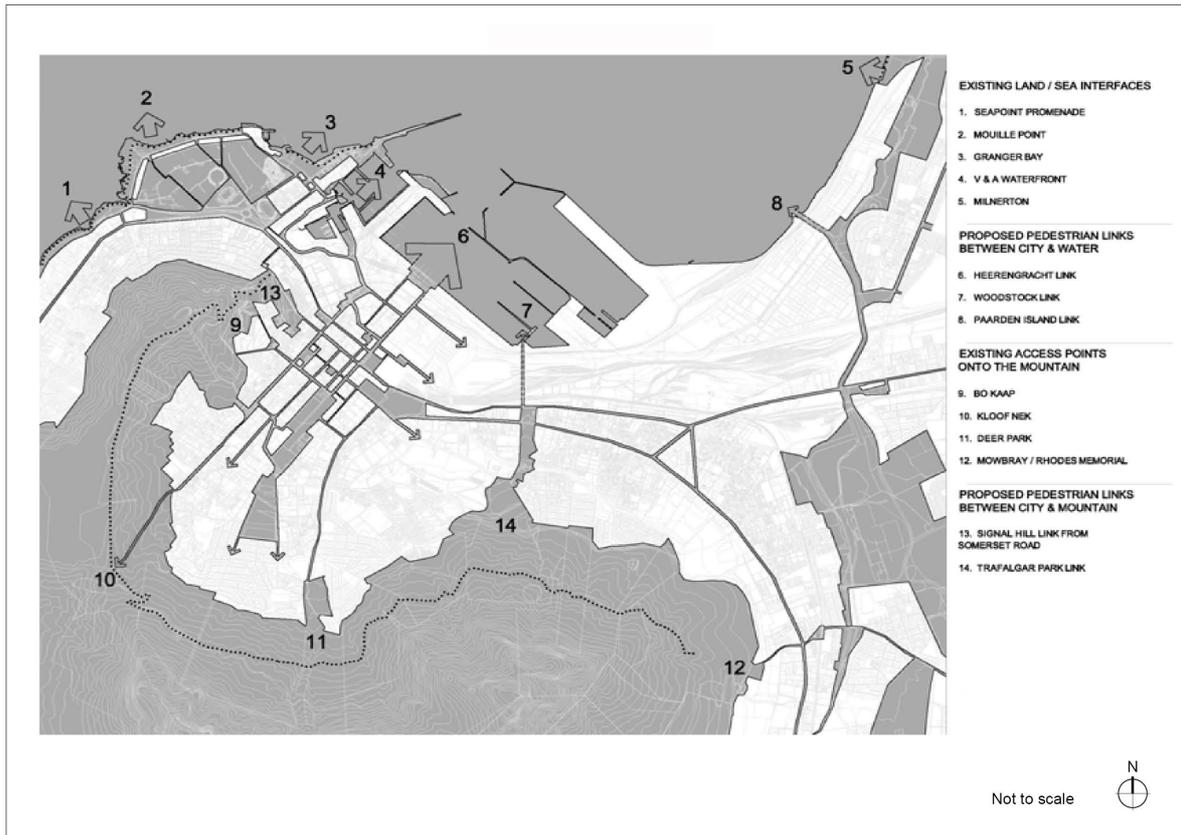
Furthermore, government argues that it requires funds from the disposal of public land assets for investment in social infrastructure such as hospitals and other public facilities. For this reason strategic public land assets were put out to tender for outright disposal with reserve prices or on a 99 year leasehold basis by the Western Cape Provincial Government. Examples respectively include strategic land parcels in Cape Town<sup>48</sup> advertised in the local media and the Somerset Hospital Precinct (Provincial Government of the Western Cape, 2007) valued at approximately R87.5 million in 2006 (City of Cape Town, 2007). Yet, government budgets are under-spent. For example, the provincial health budget in the Western Cape was under-spent by R57million in one financial year (2006-2007) (<http://www.pmg.org.za>). Be this as it may, the Somerset Hospital Precinct was not disposed of as intended as a result of irregularities in the tender procedures and the suspicion that the then Premier and some of his ministers were simply going through the motions but had already promised the site to Dubai World<sup>49</sup> who acquired the V&AW in 2007.

The cases of key strategic sites presented in Table 7.1 are typical examples of how Cape Town has been placed at the mercy of the free market with government's assistance; mostly under the guise of facilitating economic development, assisting the poor and building a solid rates base to support service delivery within government and local government in particular.

<sup>48</sup> Cape Times, 10 December 2007

<sup>49</sup> Mail and Guardian December 4 to 10, 2009

**DIAGRAM 7.1: V&AW PRECINCT WITHIN THE NATURAL AND SPATIAL PUBLIC ENVIRONMENT OF CAPE TOWN**



Source: NM & Associates Planners and Designers, 2004.

**DIAGRAM 7.2: SOMERSET HOSPITAL PRECINCT**



Source: NM & Associates Planners and Designers, 2004.  
Aerial Photograph: City of Cape Town, 2003.

For example, the Grand West Casino contributes to, among other projects, a bursary fund which was acknowledged by Western Cape Provincial Minister of Education in his budget speech on 21 August 2007 (<http://www.capegateway.gov.za>); and gave some money towards the establishment of the Cape Town Convention centre. Tendencies of corrupt practices in the disposal of public land are also apparent from the account of the Somerset Hospital withdrawn tender and indeed other public land deals across the country that involve transfers to private owners who are often politically linked.<sup>50</sup> In an interview with a developmental land practitioner (Interviewee No. 4, 2008) the interviewee accounts in response to 'what are the potential constraints to utilizing public land towards urban poverty reduction' that:

*'Revenue generation logic is a constraint. Best would probably be that a balance is struck as revenue generation remains an important driver especially at municipal level. The logic of best price is not very developmental. Neither is a dual prioritization of domestic use and use for pro-poor settlement. Corruption may be a big issue.'*

From a good city perspective, these cases are also typical examples of the 'privatisation of public space and the commodification of public services' [which] are consolidating our spaces into even more segregated places, divided along socio-economic lines, where controlled, secure and themed environments have found a growing market' (Marks, 2001: 22). The author was referring specifically to Century City and Grand West Casino. However, this statement is relevant to all the developed cases referred to in Table 7.1.

The V&AW case is particularly interesting for various reasons. Firstly, the disposal of public land assets to foreign ownership and the risks associated herewith including: a) the fact that global markets falter at the best of times and greedy investors over-invest to the degree that they become cash strapped in a poorly performing global economic market<sup>51</sup>; and b) the fact that the tourism industry which in large part drives the operations of the V&AW is a very vulnerable industry linked directly to global markets and events which when depressed, can influence the decline of the industry immensely.

Secondly, in an interview with one of the respondents (Interviewee No.7, 2008), an economist, it was pointed out that Dubai World bought the V&AW at an inflated market rate. He intimated that the real value of the estate was in the order of R5 to R6 billion. Linked to what was stated above in respect of the interest that Dubai World had in acquiring the Somerset Hospital Precinct and the facilitation of such interest by the provincial government at the time, it is important to note that the hospital offered the Dubai World an opportunity to

<sup>50</sup> Cape Times June 10, 2010; Mail and Guardian July 2 to 8, 2010; Mail and Guardian, June 15 to 21 2007

<sup>51</sup> Mail and Guardian December 4 to 10, 2009

gain back its funds from the (over) development of the site. At the time, the planning of this site was complete, publicly participated and largely endorsed and based mainly on reasonable floor space that not only responded to the infrastructure capacities but could also simultaneously serve the public interest by maintaining the hospital as a key public asset. However, this planning process was abandoned after the need on the part of Dubai World to (over) develop the precinct as an extension of the V&AW, the very development alternative that was discarded by a legitimate public participation process. In this way, the over-expenditure on the V&AW could be made up over time.

A further danger inherent in this type of land transaction is that the most expensive publicly owned real estate becomes another Jumeira Palm Island (as in Dubai) which smacks of environmental irresponsibility and economic un-sustainability. As Jonathan Freedland remarks in the Mail and Guardian, December 4 to 10, 2009 *'The sheikh who wanted the Burj al-Arab to be the world's only seven-star hotel is not that different from the Florida couple who moved out of the trailer park into a condo. They both bought something they couldn't afford with money that wasn't theirs'* and at the expense of the people of Cape Town and the country as a whole.

Secondly, the need to dispose of State assets to fund the improvement of the core businesses of parastatals as they are either not self-sufficient in sustaining themselves or they have inherited such immense debt from the apartheid regime that their core businesses will never have an opportunity to catch up to break even point. A further consideration is that they could also be very badly or unethically managed which in turn, assists corrupt practices<sup>52</sup>. Be this as it may, they require rethinking in terms of how they are managed or disposed of for public good and benefit purposes.

Thirdly, from a land use management point of view, the use of legislation such as the Legal Succession to the South African Transport Services Act, No. 9 of 1989 to facilitate and fast track urban development implying that long drawn out planning and land use processes could be circumvented is clearly facilitative of privatization of public land. Urban development occurred rapidly between 1994 and 2007 at the V&AW resulting in a market value of approximately R7 billion in 2007; yet District Six measuring only approximately 40ha in extent has still not been appropriately zoned and developed for its intended restitution purpose. Government subsidized land schemes do not enjoy this special land use management treatment (Box 5.2 in chapter 5).

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<sup>52</sup> Mail and Guardian November 27 to December 3, 2009  
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Fourthly, in the introduction of the dissertation the point was made that one of the most poignant features of the urban land and poverty debate is the power relations that govern the distribution, use and access to land. Sociologist, Tessa Marcus (1998: 35) makes the point 'that the distribution of land is of vital concern to all citizens as it affects their basic human rights. Whoever owns the land controls access to it, determines the use to which it is put, decides the economic, social and political beneficiaries of production on it, and how wealth below it is to be exploited. That control over land as a vital source of power did not escape the architects of apartheid, who used dispossession and deprivation of land rights as the means of exploiting and subjugating the black majority.' It can be argued that by the current democratic State disposing of public land and specifically in the manner and spatial form that the land parcels take post privatization; government has acted against the potential of land rights that if held publicly; could have been more beneficial to society. Government is therefore not only an agent of capital but also a partner to capital in diminishing its own non-renewable resources for gains that are not apparent in facilitating poverty reduction and actively promoting land redistribution. In fact, where the State is legally mandated to redistribute and restore land to the dispossessed through land tenure reform, their efforts have not been very successful.

#### 7.1.2 Urban land tenure reform

As noted in chapter 2, the issue of land tenure reform is the focus of much of the literature in cities of the global South (Dowall and Clarke, 1991; Gilbert, 2002; Payne, 2002). Urban land tenure in South Africa has only emerged recently mainly through the work of Urban LandMark (2006). The main reason for the lack of focus on urban land tenure reform according to the literature is the State's intent on home ownership in urban areas as promoted by De Soto (2001). As stated earlier Gilbert (2002) contends that many governments around the world are following the argument put forward by Hernando De Soto (2001) that capitalism fails in the third world because of lack of property titles. For many reasons as stated earlier, De Soto's contention is flawed and simplistic, a key one of which is that a range of tenure options as alternatives to the conventional freehold title and property registration system are operational in urban communities. Many of these are informally-based and linked to informal financial arrangements, savings schemes such as stokvels, customary schemes and so on. Gilbert (2002) cites the legalized self-help schemes in Bogota where he shows that property transactions are more common when people lack legal title. The author also shows very importantly, that the ability to sell these houses in the self help scheme is limited and therefore offers very limited potential to accumulate capital.

Gilbert (2008) continues that worldwide, 1 billion people will be living in 'slums' by 2030. In the meanwhile, there have been many initiatives to limit slum settlements including a major drive to promote home ownership through various means including the state subsidization of housing delivery processes, mortgage financing, settlement upgrading processes and the promotion of land invasions amongst other strategies and processes. Home ownership has been punted as the solution to poverty and other urban infrastructural crisis by most governments across the world. The author estimates that notwithstanding the push towards homeownership, 1 in 3 urban dwellers across the globe are tenants. While many of these are concentrated in cities of the highly developed world, a very large and growing number are located in the informal, incrementally developed 'slum areas' of the newly urbanized zones of the world, where affordability levels are extremely low. These areas are home to those who operate outside of the market, eking out an existence by accommodating themselves through a complex set of arrangements / negotiations within a broader formal, but in many cases informal, system of land delivery processes. (Rakodi, 2006; Durand-Lasserve and Royston, 2002)

Many large cities in the world, including New York, Los Angeles, Zurich, Berlin, Lagos, Moscow, Accra, Nairobi, Mumbai and Shanghai, have rental as a dominant form of tenureship (Gilbert, 2008). "The level of economic development is not a particularly significant variable (*in establishing whether home ownership dominates tenure forms*) because housing tenure is so strongly influenced by the process of urbanization, the form of land occupation and most importantly by the nature of state policy. 'What is apparent is that public housing which was provided by governments to service the needs of the poor the world over and comprised 19 percent of all housing stock internationally in the 1990's,' (UN Habitat, 2003: 28) has been on the decline. Rental stock in particular has borne the brunt of the strategies of states to rid them of the burden of being housing providers, and specifically, landlords since the late 1980's (UN Habitat, 2003). Rental accommodation is typically provided now by the private sector and social institutions in the developed countries and by a growing group of "self-help landlords" in the developing countries.

The question of affordability is limiting the ability of urban inhabitants to own property. Land is a finite commodity and income levels are not increasing. Gilbert (2008) contests that to rent will grow whatever governments may say or do. It is obvious that we need a range of alternatives based on the fact that there is a range of differing needs. Rental allows for flexibility in that it can accommodate the likes of more transient members of the urban population, the needs of those associated with differing stages of life and those of different means.

Across the developing world cities have struggled with tenure reform and security. According to Dowall and Clarke (1991) the lack of good cadastral, registration and tenure records is a significant impediment to efficient city growth in developing countries. The main reason for this is that formal systems of registration were established when city growth was slow. With the urbanization wave land transactions, occupations and land use changes increased significantly causing land registration systems and human resources to fall behind in keeping their formal systems updated making tenure identification difficult for legitimate citizens. This in turn makes it difficult for these citizens to obtain credit without proper legal title where lenders require title as security for loans.

Security of tenure as provided by clear and / or registered title whether owned or leased has significant benefit for urban households as it removes the risk of eviction. It also has substantial benefit in terms of land and property values. In Jakarta for example residential plots with clear title sell at 45 percent more than plots without clarity of title (Dowall and Leaf, 1991). The purpose of tenure is to answer three basic questions unambiguously: a) who owns the land or property? b) where is the property located and what is its legal description? and c) what encumbrances exist on the property concerned? What registered title does not directly do is to state what rights vest in the land and who has jurisdiction over those rights in the case of title other than ownership.

An important aspect of land tenure reform is cadastre reform and falls in the legal domain of land surveying which is significantly informed and influenced by urban planning practices. Cadastre reform has been focused on recently in the literature from a pro-poor perspective which begins to recognize socially just principles at the scale of the house or plot or urban block 'subdivision' (Lloyd, 2010). It examines different forms of tenure that can be redefined cadastrally to create live-work and mixed use opportunities that can at the same time increase asset value, secure rights in land and facilitate asset formation for the urban poor. Albeit at a level of detail, cadastre reform is not only about spatial definition but also about rights, title and interest in land to establish asset formation in the South African urban context (Lloyd, 2010; Fourie, 2002; Barry, 1998). This in turn, could facilitate land markets and transactions for the urban poor through an alternative model to land use regulation that embraces an urban performance based system of land use and promotes good city principles and a pro-poor urban agenda.

Research work completed by Barry (1998) begins to demonstrate that many informal tenure arrangements exist in informal areas in Cape Town; and may necessitate a new form of tenure rather than the 'pure western based principles of full and free ownership' (Barry 1998:

23). The author's paper begins to explore more appropriate cadastral systems design as potential alternatives to the typical freehold title in informal contexts that can begin to be more formally recognised. The interesting question is whether informality in Cape Town is as serious as we think it is compared with Mumbai (Bombay) and Peru where most urban centres are surrounded by informal settlements (Payne, 2002) and whether the drivers of informality are the same in South African cities as they are in Latin America generally and from a land tenure perspective (Huchzermeyer, 2004). In other words, cadastral redesign, cadastre and tenure reform in informal contexts is far more possible in Cape Town given the relatively insignificant scale of informality compared to world cities such as Mumbai.

The question of tenure is further expounded particularly citing cases in the developing world by Payne (2002; 2004) and Durand-Lasserve and Royston (2002) to provide insight into international trends and patterns in urban land / housing acquisition and associated institutional mechanisms which would be useful for comparative purposes. Examples include among others, Bogota, Cairo, Dakar and Delhi. While dealing with very different contexts to that of South Africa the international literature highlights the importance of both land ownership (tenure) and land management or regulation. Payne's work is particularly helpful in developing a contextually based conceptual framework for a land tenure formalization process in informal settlements. This author's work can also assist with the consideration of a range of tenure options to ensure security of tenure for the urban poor including their own unconventional or customary forms.

Fernandes (2002) discusses the role of the law and legal institutions in the process of urban development. He contends that "the exclusionary pattern of urban development in Brazil has been largely due to the nature of state intervention in urban development through its overall economic policies, lack of effective housing policies and distorted attempts at urban planning... the legal order, especially the anachronistic land-related legislation, has also played an important role in this process" (Fernandes, 2002: 103). Unlike Brazil, Cape Town has excellent urban development policies but, like Brazil, it still relies on inappropriate legal tenure practices to establish land for the urban poor with far reaching implications for land tenure (Zweig, 2006). In South Africa the problem manifests in the persistence of inappropriate apartheid land tenure legislation with respect to development for the urban poor and the integration of the post-apartheid city which the latest draft SDF for Cape Town pays testimony to. The SDF expresses the intent to support land reform initiatives (City of Cape Town, 2009b: 4). Yet, where in Cape Town such land reform is to occur is not expressly stated. Moreover, the role of public land and the question of land tenure reform in urban and agricultural areas where the urban edge is demarcated are not directly addressed

in this spatial directive for the city for the next five years. It may therefore be argued that these are highly politically motivated issues that are best addressed by broad brush policies in SDFs than “the devil being in the detail”.

The second aspect of the urban land question in South Africa, urban land tenure reform, raises the question as to whether the State can improve its role in promoting urban land tenure reform that can begin to reshape land to build entitlements for the urban poor. It would appear that the State’s focus on promoting home ownership blinds it to find a variety of ways of addressing urban land tenure reform. New forms of tenure more suited to informal living and incremental city building, have largely been ignored mainly because the land and housing discourse is confused and the end state of land is conceptualized as formalized urban development with the expectation of freehold title. The following section makes the formalization of urban development more evident.

### 7.1.3 Urban land restitution

The legacy of apartheid and colonialism mean that specific instruments to achieve redress in land ownership were included in the South African Constitution (1996) and the Restitution of Land Rights Act, No. 22 of 1994 (Table 5.1A in chapter 5). The Land Rights Act makes specific provision for the restoration of land rights lost as a result of displacement. Translating opportunities for land entitlements not only as redress but also as reducing poverty has been largely unsuccessful in Cape Town as exemplified by the District Six case.

According to the Surplus Peoples’ Project, by 1983 some 3, 5 million people were forcibly removed from their urban / rural abodes in the reign of the apartheid regime (cited in Payze, 1994: 3). Some of these people applied for restitution and others did not. According to the Department of Land Affairs (1996:20) more than 130 000 families were dispossessed in urban areas, but only 70 502 urban claimants applied for restitution (Sustainable Development Consortium, 2006). Since 1994 of the 70 502 claims lodged in terms of the Restitution of Land Rights Act (Act 22 of 1994) 65 642 urban claims (23.5 percent resettlement, 72.7 percent financial compensation and 3.8 percent alternative means), have been settled in the country as at 31 March 2007 ([http://land.pwv.gov.za/restitution/settled\\_restitution\\_claims](http://land.pwv.gov.za/restitution/settled_restitution_claims)). It can be argued that through delays and frustrations to prepare sites for resettlement, claimants were forced to settle mainly for financial compensation, missing a major opportunity for urban, race and class integration.

There are approximately 10 000 claims within the City of Cape Town against sites located in the areas depicted in Figure 7.4. Like other urban centres in South Africa, Cape Town is a

constantly growing city with an expanding population, placing increasing pressure on urban land parcels. The city is struggling with appropriate and successful urban land restitution programmes related to relevant policy and delivery to legitimate claimants. There are a number of unresolved land restitution cases in Cape Town for example, District Six, Wingfield (Pieterse, 2006) and Protea Village (Interview No.17, 2009) which are in large part complicated by the location and associated market value of relevant land. A review of these cases in relation to city planning and human settlement objectives is very valuable in enhancing our understanding of why it is so difficult to overcome the apartheid city and the role land restitution can play in this regard.



Photograph 7.3: District Six public participation meeting at District Six Museum, 2004.



Photograph 7.4: First row of 24 houses built to resettle claimants in District Six, 2005

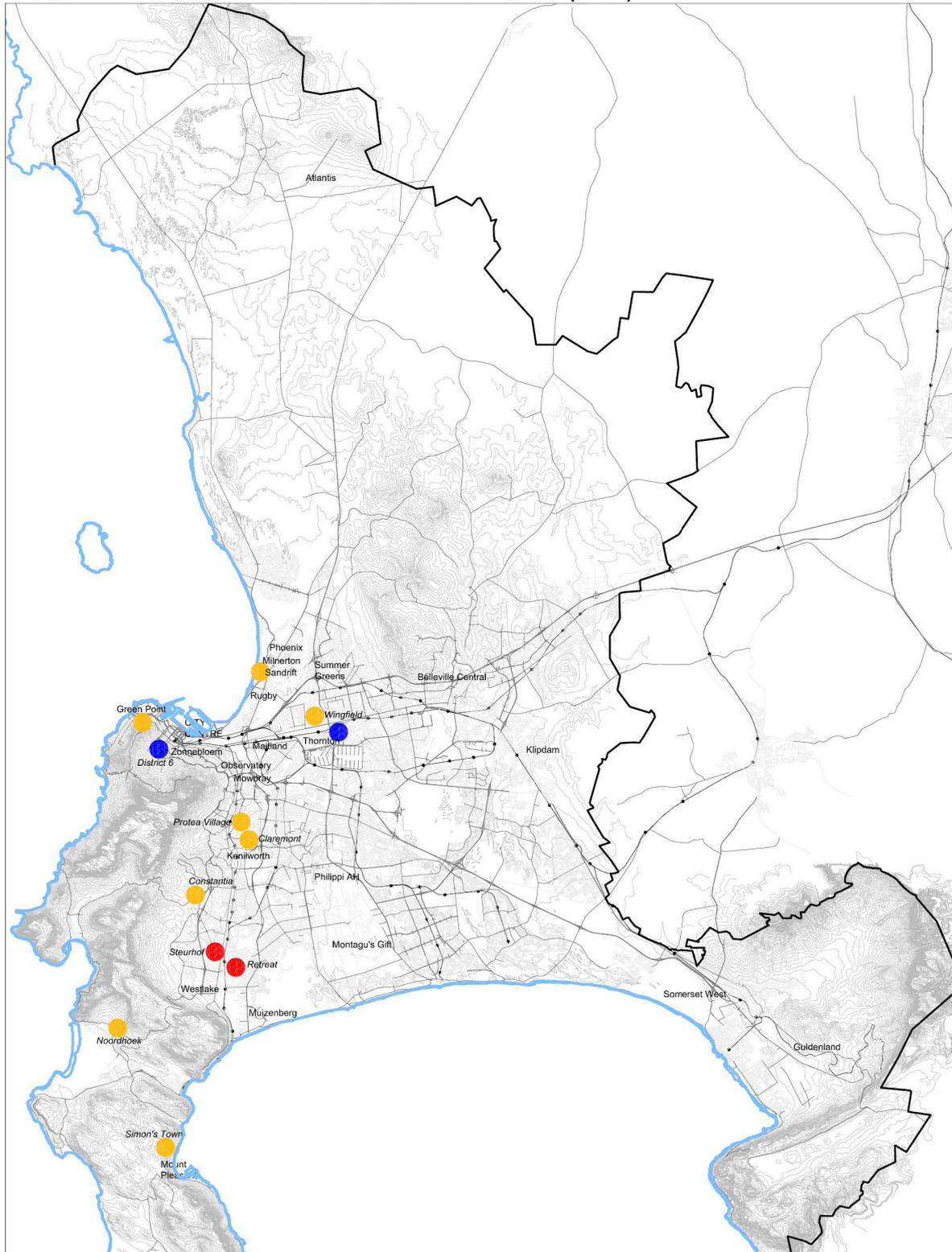


Photograph 7.5: Historic Hanover Street in District Six prior to forced removals, 1996

Source: Lucien le Grange Architects and Urban Planners.

Historic photograph, Jackie Heynes

**FIGURE 7.4: RESTITUTION SITES IN CAPE TOWN (2006)**



**Notes:**  
Approximately 10 000 restitution claims were made in terms of the Restitution of Land Rights Act, No. 22 of 1994 in the City of Cape Town municipal area. The largest claim of approximately 1500 claimants is in District Six of which as at January 2010 only 24 claimants have been resettled.

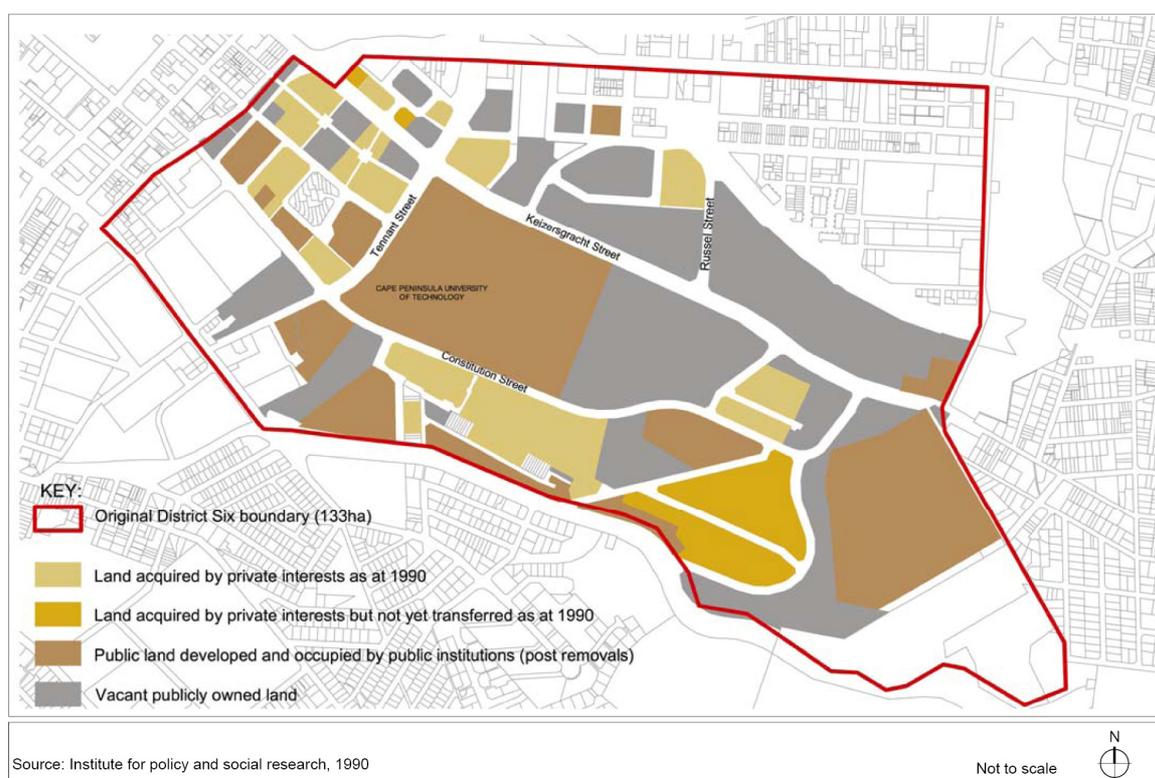
**Key:**  
● Restitution completely taken up  
● Restitution partially taken up  
● Restitution not taken up at all (in process)  
— Coastline  
 Municipal Boundary

Source: Western Cape Regional Land Claims Commission's Office, 2005.  
Own map work and analysis, 2006

### 7.1.3.1 District Six Land Claim

District Six is located in close proximity to the central historic city and business district of Cape Town. It is the subject of a restitution claim in terms of the Restitution of Land Rights Act (Act No. 22 of 1994). It is common knowledge that this entire area, measuring between 114 and 150ha at the time of displacement and located at the foot of Table Mountain, was proclaimed a White Group Area in terms of the Group Areas Act, Act No. 77 of 1957, as amended, resulting in the removal of approximately 60 000 residents (Angelini, 2003: 2). As a result of private interests, approximately only 40ha is available to resettle the claimants back onto the land (Figure 7.5).

**FIGURE 7.5: CHANGES IN THE EXTENT OF THE ORIGINAL DISTRICT SIX AREA**



A planning process is currently underway to plan and release the 40ha of vacant land in District Six for the return of legitimate land claimants who registered claims in terms of this Act. It is proposed to accommodate a medium to high density mix of land uses including approximately 5000 residential units, commercial development, public facilities and public spaces, industrial uses, utilities and so on in an integrated environment (Le Grange and Mammon, 2010).

This case illustrates that the economics of land operates against the concept of social justice in a free market urban land economy. In an urban context and from a classical economic perspective, land is the basis for economic activity. As stated previously, the argument goes

that agglomeration economies in cities can only be achieved if land is used efficiently i.e. spatial patterns are generally supportive of productive cities, where the costs of production and service provision (social and other services) are generally affordable, and land uses are reasonably proximate to facilitate ease of access to raw materials, production sites, service providers and markets. According to Dowall and Clarke (1991: 10) the opposite is also true. Poor spatial patterns can have the reverse effect on cities where 'diseconomies of agglomeration costs cancel out the beneficial effects of agglomeration economies'. In terms of this economic understanding of cities, the framework within which we can begin to understand urban land is that of a free-market and fair value or price system concerned with land primarily as a commodity that can be transacted and invested to enable efficient and profitable use of land as a resource base to an individual or corporation / enterprise.

The Restitution of Land Rights Act provides the legal means through which the claimant community can exercise their right to return to their former place of abode. However, there is an inherent tension between the workings of the urban land market and the fundamentals of the Act. On the one hand, the urban land market operates on a competitive basis which excludes the majority of the poor from access to land or decent housing with secure tenure in well located areas such as District Six. On the other hand, the Act promotes the principle of *social justice* by facilitating the restoration of land rights lost by displaced claimants. The question that arises is *how does the claimant community of District Six fit into this notion of the urban land market and beneficiaries of restitution?*

One of the weaknesses of the Act is that it assumes that all claimants are at the same level of economic development and in a position to act and transact in a competitive land market. As far as the District Six claimants are concerned this is clearly not the case. The majority of the District Six claimant community:

- a) Neither own enterprises that benefit from agglomeration economies nor live in the inner city where these opportunities present themselves most optimally. According to a household profile survey of District Six claimants conducted by the City of Cape Town in 2003 the average household income of the claimant group falls between R6401.00 to R12 800.00 per month (City of Cape Town, 2005b) which is typically known as the lower-middle income group.
- b) Suffer economic set backs when agglomeration dis-economies obtain in a city because enterprises that they form the labour force of move to cheaper land on the outskirts of the city or down-size or close down, changing travel patterns which usually means making travel more expensive, or people become unemployed. In addition to agglomeration dis-

economies, relocation in terms of the Group Areas Act (Act No. 77 of 1957) had severe dis-economy effects on the claimants and other displaced communities.

- c) Carry some of the external costs when the cost of living increases as a result of inflationary tendencies caused by externality costs, among other things.
- d) Are reliant on the state and external resources to not only resettle them onto the District Six land but also assist to restore their dignity by ensuring their integration into the main stream of the inner city.

Against this background, it can be argued that the majority of the poor and legitimate land claimants will continue to be excluded from access to urban land against the weakness on the part of the State to promote and facilitate resettlement in the spirit of social justice. In support of this view Marx (2006:3) argues firstly, that 'economic growth acts as the primary referent for urban land markets' and secondly, that 'policy makers assume economic growth to be the outcome of competitive urban land markets'. Thus, the poor or claimant community are by their very status excluded from access to valuable land assets if it was left to the urban land market supported by government as policy makers and as agent of market forces to determine their fate of resettlement.

To engage in asset formation and build asset value in District Six, the claimants face an additional barrier that is the perception that their income profile and the likely type, form and cost of their prospective abode would result in lower land values for surrounding land and property owners. As stated earlier, asset value in a market based system is directly linked to location which in the case of District Six is not only an extension to the CBD of Cape Town but also located at the foot of Table Mountain and reasonably close to the Atlantic seaboard contributing to the land value being exceptionally high. In the latest valuation by the City of Cape Town (2007) the land earmarked for resettlement by the claimant community was valued at approximately R1.1 billion (Western Cape Regional Land Claims Commissioner's Office, 2008).

Restitution awards being made do not give claimants sufficient money to develop on the land awarded them at no cost. Claimants receive a subsidy per household of approximately R50 000.00<sup>53</sup> to assist with the top structure, site servicing and professional planning services.

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<sup>53</sup> This amount comprises the restitution discretionary grant, settlement planning grant and access to 25 percent of the land value of District Six. In addition, access can also be had to the government's housing subsidy provided that claimants qualify. In most cases, claimants have either had access to this subsidy or do not qualify on the basis of earning more than R3500.00 per month. This means that claimants would have to access mortgage loans from financial institutions which especially in economic downturns places them at risk of losing their reclaimed home and as a consequence could lead to the gentrification of District Six.

During the time between dispossession to the time being considered for resettlement (often 30 to 40 years after removals), changes will have taken place to the areas so that their social and economic character is often fundamentally different. Many of the restitution sites including District Six are in middle to upper-income areas (Figure 7.4). Any new housing therefore, should not only meet the needs of its future occupants, but also be appropriate to the context. This raises questions on the ability and affordability of claimants to return to these areas. Yet, the claimants' award is structured around the State's subsidy, not the reality of what it will actually cost to build, inhabit and maintain. This requires that ways and means be found to access bridging finance and develop a more economical form of housing accommodation and a commercial component to achieve economies of scale; to enable claimants to return. By implication, the private sector whether through the financial institutions or any other form, is almost guaranteed a role in restitution.<sup>54</sup>

Given the legal role of the State, the claimants' right to return to the land, the guaranteed role for the private / financial sector and the threatening interests of developers (Institute for Policy and Social Research, 1990), the different role players become confused, form 'strategic' alliances and misunderstand their roles which not only takes the focus away from restitution but also delays the return of claimants. This not only frustrates the claimants but could also be seen as a means of compelling them to resort to financial compensation which will lead to the demise of the inner city integration and social justice objectives. At the same time although the instrument put in place to address the question of restitution is founded on social justice, it is weak in its economic applicability to the land that is the subject of restitution and further weakened by the State's inability to find alternatives to a conventional land market approach to restitution. In the words of the Land Claims Commissioner's office and her senior official (Interviewee No. 17) on social justice in land restitution, it was stated that:

*'Full State support is needed through alignment of all departments' work. Social justice is only in its infant stages. The State often sees land as a secure income for itself; not necessarily for the claimants. For the politician it is often about what makes them remain in politics. This attitude together with the long time that it takes to return to the land results in claimants opting for financial compensation.'* (Office of the Western Cape Regional Land Claims Commissioner: Cape Town, 2009).

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<sup>54</sup> The need for cross-subsidization through commercial development is based mainly on market-driven demand for commercial floor space which in turn is based on highest and best use and returns implying that only experienced market role-players / developers can afford to develop and access this floor space leaving limited room for small scale operators or tenants.

To return to the social justice debate debated in chapters 1 and 3, it is clear that government's approach to the land question on behalf of the previously dispossessed is not working for the majority of people requiring access to land; and public land in particular. At most it has set up an unhealthy tension between government's commitment to protecting (individual) property rights which can be argued has succeeded very well in the interest of those who can afford to own land and property; and the role that the State has committed to play in redistributive justice in land. The implication is that South Africa's policies and legal framework on the land question as espoused by the property clause in the South African Constitution, is grounded in a liberalist / neo-liberalist view of social justice and reasonably well suited to being 'located and bounded to multiple interpretations of the human condition' (Visser, 2000: 34).

In the context of city building and urban development, it can be argued that sustainability is one of the *most misused* terms given its leanings and emphasis towards the economic aspects of the so-called triple bottom line that is achieving balance among economic, social and environmental concerns. The urban and social sustainability of the city is of great concern given the lack of emphasis in urban development and human settlement programmes in re-thinking the 'sustainable' South African city. Marcuse (1998: 104-105) writes that in the context of urban development and housing, 'sustainability is a trap'. It suggests all humanity has a similar interest in 'sustainable housing' or 'sustainable urban development'; that if we simply recognized our 'common interests everything would be fine, we could end poverty, exploitation, segregation, inadequate housing, congestion, ugliness, abandonment and homelessness.' Yet, housing and urban development are conflict-laden areas which is very evident in the case of District Six. The proponents of sustainability in the housing or built environment arena often limit their perceptions of the term to building technologies, energy efficiency and environment within a framework of economic feasibility, not urban or social sustainability. This thesis contends that there is a significant role and place for urban and social sustainability in the redevelopment potential of District Six given its historical, social, cultural and symbolic significance. Yet, District Six remains a contested territory where the full restoration of land rights and the return of claimants are hindered by, among other things, the absence of political will, the threatening interests of speculative development coupled with the economics of inner city land, and the value of social justice as perceived by different role-players in the planning process.

## 7.2 Summary

This chapter considered the investments that the State made between 1994 and 2007 in public land as serviced land or serviced land and housing for poorer citizens in Cape Town. It questions the view taken by De Soto that capitalism fails in the third world because of lack of property titles against Gilbert's and others' views that many households the world over rely on rental and informal accommodation as alternative means of tenure. Yet, governments across the world have been actively promoting home ownership. It is clear that the asset value created for the poor is questionable in terms of where the assets are located and what form they take although some authors argue that freehold titling is a key step towards attaining wealth. Alternative forms of tenure, cadastral systems design and cadastre reform together could potentially address the issue of security of tenure without promoting ownership per se.

This chapter also considers what happened to strategically located public land in Cape Town over the period 1994 and 2007. It is clear that government has been the facilitator of using public land to encourage large scale private urban development along with the 'disneyfication' (Marks, 2001) of Cape Town and disposed of strategically public land against the real needs of the urban poor. Corrupt practices in public land deals are apparent resulting in self interest rather than the public good being promoted. There is certainly no doubt that sufficient legal and by implication, institutional arrangements including funding mechanisms have been put in place to secure the rights of access to land by the poor and disadvantaged. However, in practice government's track record is not particularly good in having addressed the questions of access to urban land and simultaneously addressing the urban poverty question. From a social justice perspective government's approach to the urban land question on behalf of the previously dispossessed is not working very well and access to land has been substantially compromised for this sector of Cape Town society. Housing and land have been conflated calling not only for a new concept to address the role of public land to obtain a situation that is more sustainable for land as a non-renewable resource but also for public land to play a much bigger role than only housing from a land use point of view. For example, public land can benefit the poor in terms of earnings and employment opportunities for this sector to grow beyond only survivalist livelihoods as demonstrated by the cases of Kerala and China. Alternative markets can also be generated either through State or grassroots initiatives utilizing public land assets.

What is also apparent is that planning legislation particularly, the Land Use Planning Ordinance discussed in chapter 5, whose purpose is to protect the impact of development on

property rights and to demonstrate the desirability of land use in an area; has been used significantly to imprint on the Cape Town landscape, desirability of land use driven by an economic agenda, not a pro-poor and inclusive city agenda. Public land can shift this position when normative planning principles and technical planning standards begin to work together in a systemic land planning system (Henderson, 1990). The following chapter considers the notion of an alternative land concept based on the principles of a freedoms approach and promotes an improved role for the State in respect of public land assets based on the principles of social justice, sustainability and a deliberative planning interventionist practice.

University of Cape Town

PART FOUR:

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4. S Y N T H E S I S

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## Chapter 8: Towards a freedoms public land assets approach

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'Unless there is a catastrophic event, the long-term consequences of land use decisions are ignored; yet land, like time, plays a critical role in practically every aspect of the human condition'. (Cornia and Riddell 2008: 4).

### 8.1 Introduction

This chapter begins by consolidating the major findings of the thesis by drawing together the ideas presented in its first two parts, with part one being the theoretical and conceptual frameworks within which the thesis was framed, and part two of the thesis, which presented the legal and policy frameworks of the Cape Town urban land and land use experience. The core purpose of the chapter is, however, to interrogate the proposition of the thesis - that there is a role for the State to embrace both the philosophical / moral and technical aspects of land planning and land use management in facilitating access to urban land for the poor; highlighting the potential role that public land can play to this end.

This chapter also considers whether a freedoms approach based on the concept of social justice is possible in a market based economy; and presents the criteria for a reformist land concept from a freedoms perspective. A key characteristic of social justice with respect to land is equitable access which could be considered in terms of an urban poverty bias. Based on the alternative conceptual framing and on the assessment of the City of Cape Town's failed performance in using land more wisely for the urban poor so that they can improve their endowments and in doing so the economic and social conditions that will allow them to exchange and transact in an exchange economy, the final sections of this chapter underlines that there is still room for the State to improve its role as far as urban poverty and land access are concerned. In defining alternatives to how land could be used this chapter responds directly to the premise of this thesis that *there is a role for the South African State through an alternative freedoms model*, in facilitating access to urban land and contributing to the reduction of poverty in the city. It also responds directly to the questions raised in chapter 1.

#### 8.1.1 Philosophical and technical reflections of the thesis

The first part of the dissertation revealed that the freedoms approach forms a valuable framework for reconceptualising the role of (public) land and land use management in urban poverty alleviation. It was found that although this approach does not directly propose an alternative to the free market system as understood from a neo-classical perspective,

particularly in respect of urban public land assets and land use management, it takes a developmental view within a free market urban land system which can be broadened to embrace public land and land use management as strategic public assets that can be used towards a pro-poor urban agenda. The debate as to whether the notion of freedom as (substantive) individual freedom or action, as opposed to collective or societal freedom / action, was raised and it was argued that the individual is integral to society and vice versa. The freedoms of individual lives cannot be regarded as separate from societal lives because the collective is equally important in its role to obtain individual freedom. This is an important consideration for the purposes of redistributive action in society and emphasizes the *substantive* nature of Sen's understanding of individual freedom. In respect of urban public land therefore and in response to the question *what policy directives drive the urban land agenda and what are the implications for public land relative to poverty reduction goals* it was found in the research in chapter 5 that redistributive policies have been developed and strategically considered but not implemented to address societal needs at large and in particular, community needs resulting from deprivation which in turn exists and impacts on society as a result of conditions of urban poverty.

The limited guidance offered by the literature reviewed on how public urban land might be enlisted in the fight against poverty derives in part from the fact that the bulk of the literature on South Africa and the developing world focuses largely on rural debates, informality, land tenure and housing although the implications of land use management are acknowledged to a limited extent (Kihato and Berrisford, 2006; Marx and Rubin, 2008; Gar-On Yeh, 2005; Fernandes, 2002; Dowall and Clarke, 1991; 1996). Moreover, land and housing are generally conflated in both academic work and policy prescriptions. Against these traditions, the question of whether land should have a conceptually different or distinct place in the context of urban poverty debates was raised. It was seen that while there are many ways of gaining access to and control over resources beyond the market for example, through transactions in informal land and housing markets (Royston, 2006; Marx, 2009), these are limiting for the urban poor which beckons the State to improve its role in urban land on behalf of this sector. The freedoms approach offers a much more specific and focused proposition than that which can be found in the emerging literature which makes a more general or indirect case for a freedoms approach through complementary rights (to the city) and / or urban livelihoods perspectives in urban contexts (Friedmann, 2000; Rakodi, 2002; Parnell and Pieterse, 2010). Together these approaches to urban land and the city (that is the general argument for the right to the city and the specific argument that pro poor use of public land must drive the entitlements on which the rights will be realized), could form the building blocks of urban

poverty alleviation. Practically the case of Kerala and less so China, highlighted some lessons in applying the approach of utilizing land as an instrument for reshaping society to obtain social (redistributive) justice (chapter 3).

The three concepts of social justice, urban sustainability and deliberative planning which underpin the freedoms approach and in turn, the approach developed in the thesis to the use of urban public land provides theoretical support and conceptual focus as to how to restore a values-based State-society relationship in land. These three concepts are considered in greater detail later on in this chapter as a means of consolidating lessons from practice for theory and vice versa. This interactive relationship is important because it begins to open the door for deeper reflection and dialogue on how urban development should be approached that facilitates development as freedom to occur not only for the urban poor but also for urban society as a collective. It behoves both practitioners, theoreticians and policy makers to respond genuinely to the realities of urban development and the urban poor within an appropriately framed land and land use management framework which relies on a combination of neo-positivist and cross sectoral human meaning making methods that are typical of a deliberative planning approach.

The second part of the thesis covered the legal and policy frameworks within which urban land and housing operate as these are the drivers of urban development and often inspired by philosophical, theoretical and practice related concerns. It also analysed the case of Cape Town and local area scale case studies in this city to understand the enabling and barrier effects in urban land and land use management instruments. *One of the main institutional barriers that prevent access to land for the urban poor* is the persistence of outdated land use regulations and the disjuncture between these regulations and the values based strategic planning instruments in the form of spatial frameworks. It was argued that unless there is integration between the two to serve the interests of society at large, the muddled land use planning system will continue to compromise city making on the basis of social justice principles.

An analysis was made of whether planning instruments shifted land consumption and distribution patterns to better reflect the demographic profile of the South African city against the notions of redistribution, reform and restitution of land rights that were put in place by government policies and legislation. The research finding that public land at the approximate land value of R1, 6 billion was disposed of by the State who operates within a neo-classical paradigm and its actions in the interest of the private sector and property market were made

apparent in chapter 7. It was found that the State uses its strategic public land holdings to service the needs of the private sector as opposed to those of the urban poor and the implications of these actions for the city were revealed against urban land measures and models available for housing the urban poor. In unpacking the entitlements (the set of alternative commodity bundles that a person can command in a society using the totality of rights and opportunities available to him/her) in other words, his/her endowments in a market driven economy, the poorest of the poor and/or less well-off generally have very limited entitlements and endowments, particularly with respect to adequate access to urban land and land markets. In response to the question: *what impacts do the current patterns of asset disposal to the private sector and land ownership have on the urban poor*, land patterns in Cape Town indicated that the most usable, developable and best located land including public land resides in the hands of the very wealthy and the less suitable land for urban development, poorly located and managed land in the hands of the poor who very often have no legal claim over the land that they occupy (chapter 6). For land entitlement to be successful the location (proximity to urban opportunities and markets) and quality of the land require to be such that apart from access to land being unthreatened for the entitler, the land unit itself is habitable, potentially productive and inherently capable of facilitating exchange including the ability to sustain livelihoods and raise capabilities.

At the same time it was also found that although the percentage of public land (48 percent) as opposed to private land in Cape Town has reduced significantly over time, the public land asset register in Cape Town of vacant land identified within the urban edge in public ownership is still substantial measuring some 11 697ha which leaves room for the State to shift the use and development of strategic land holdings towards urban poverty alleviation and integration measures in South African urban society. It was acknowledged in chapter 7 that there is great opportunity in the vacant public land (chapter 6, Figure 6.12) still available in the south east sector of the city as well as in other well located parts of Cape Town implying that opportunities exist for large scale public investment and the promotion of mixed use developments not just housing, in a manner that can begin to improve the endowments of the urban poor. Thus *the Cape Town vacant public land availability demonstrates that it is not too late to improve the position of land as potential entitlements and endowments of the urban poor* in direct response to this research question.

It is also evident from the Cape Town experience that the private sector's needs in city development are addressed in a manner that land and land use management have supported this sector as opposed to addressing the needs of the urban poor directly through

alternative land models (chapter 7). In response to research question: *what is the State doing to achieve developmental and poverty reduction goals through facilitating urban land development and acquisition in appropriate locations by the poorer sectors of society*, it was found that although extensive investment in land for housing the urban poor is evident in the Cape Town case, the needs of the economic, social and quality of life of the urban poor have not been addressed directly in as far as they too can engage in asset formation and participate in the formal urban land market. Investment in housing on public land that is poorly located for the urban poor of Cape Town has had only limited inclusionary effects because market principles have been applied and because of unimaginative and narrow interpretations of how the State can use its main resource towards poverty reduction. A large part of the problem stems from the coupling of land to housing and the wastage of land allocated for dormitory settlements on the city's periphery for the poor where inappropriate planning norms and standards are applied. Thus a dual system of public land investment and disposal has emerged in Cape Town; one for the private sector who serve primarily the needs of the wealthy; and one for the urban poor resulting in the reinforcement of race and class based urban development (chapter 7).

If urban land markets continue to operate only on a competitive basis in terms of the neo-classical paradigm as evident from the Cape Town analysis, and if the State continues to act as agent of this market, the majority of the poor will be excluded from access to urban land. Marx (2006: 3) points out that while economic growth is understood by a number of factors, there are two concepts that relate directly to economic growth one, innovation and two, aggregate savings. The author points out that what is 'common to all theories of economic growth is the understanding that investments are related to the level of aggregate savings which provide the necessary financial resource that can be drawn upon for new (typically large-scale) investments. New investments, in turn, underpin innovation and hence, economic growth' (Marx, 2006: 3). The point the author is making is that 'the primary responsibility for saving is identified as residing amongst the non-poor' implying that the poor can never access the necessary (financial and other) resources to engage in investments of significant scale, including investments in strategic urban land. For example, it was found in chapter 7 that when well located public land is sold on the open land market through a willing seller, willing buyer agreement it can only be bought by those who have access to loan finance and market know how because of high land values and intricate land transaction arrangements. By implication, poor people who engage in survivalist economies are automatically excluded from strategically located public land sales.

The Cape Town land experience shows that whilst in theory a democracy in a free market system implies a certain degree of freedom on the part of its citizens to act and transact, the pre-conditions to exercise this freedom are not equally in place for the urban poor at this stage of the city's development. The majority of those that have been disadvantaged as a result of apartheid rule are not at the same level of economic development and means and the urban poor in particular, require significant 'catch up' time to participate in a free market economy. They need to develop, among others: a) the resources, energy, confidence and capability to act and transact; b) the know-how or expertise to participate in and understand the land and property market mechanisms; c) the networks of support to persuade key role-players of their own informal systems of operation as alternatives to the conventions in a free market system; and d) their capabilities to the level where they can reach their full potential as human beings within a supportive land planning and land use framework that allows genuine economic development (as freedom) to occur as was apparent in the case of Kerala in chapter 3 where land reform improved the lives of the vast majority of people in this State. State ownership of land is a key ingredient for gearing land planning instruments towards specific societal goals as was apparent in the case of Vietnam and China also discussed in chapter 3 (Gar-On Yeh, 2005; Butler, 2003, Ding and Knaap, 2003).

It was also found in the Cape Town case that the current land policy, management and land use system is structurally unable to address the needs of the urban poor which have a major barrier effect on urban land access for the urban poor. This was demonstrated in both the cases of Farm Bardale 451, Cape Town (Box 5.2) and District Six in chapter 7. It was also shown through the case of District Six that the question of land cannot necessarily be redressed on behalf of the urban poor and on the basis of social justice principles in a neo-classical paradigm. An alternative approach needs to be adopted to begin to address meaningfully this most significant question in the country. The Cape Town experience shows further that the will to follow through on legal mandates and progressive urban policies in favour of the poor is generally weak for various reasons. Firstly, there is a resistance to integrate poor citizens into the inner city fabric at enormous cost to the public purse against other competing urban needs such as health care. Secondly, land values in well located areas such as District Six are substantially higher than land values on the lesser endowed periphery of the city implying that the State can earn more gainfully from revenue producing urban development occupied by well off citizens than poorer restitution claimants who not only get the land for free but also enjoy a rates holiday for at least the first ten years of occupation (Le Grange and Mammon, 2010).

If the land is 'finite and fixed' as argued by Sachs (1990), is it not incumbent on the State to exercise wisdom, consciousness, caution and care as to how it distributes, consumes, uses and holds custody over land? Before the land surface area reduces as a result of indiscriminate market driven development that forgets about the role of urban land redress in building a healthy integrated society, the State can no longer afford not to act with urgency and take on a more developmental role with respect to urban land management. This developmental role could be enhanced through State regulation and participation in the competitive urban land market on behalf of or as an agent of the urban poor; and adopting a genuine developmental agenda to urban development and the use of State land assets. Hints of political power struggles and corruption are alluded to in the dealings on land in the Cape Town experience as was demonstrated by the Somerset Hospital withdrawn tender and other public land deals across the country cited in chapter 7 which directly oppose any form of social justice and collective intentions.

This is not to say that the State has not done anything to address the question of poverty in Cape Town. The development of urban housing on public land for the poor and the disposal of strategic public land for financial gain to cross-subsidize public and social facilities programmes pay testimony to this (see chapter 7). Considerable public investment has also occurred in infrastructure, transport and public space to make the city more viable for urban development as demonstrated in chapter 6. However, the full pro poor potential of the use of public land was not realised because none of the programmes recognize the fundamental link between urban land release to this end and urban development.

As it is not too late to explore the potential of public land and land use management to begin to address urban poverty reduction goals, the Cape Town experience suggests that it is possible to revisit and give more specificity to what land could mean in a freedoms framework focusing on the potential role of land in raising the capabilities of the urban poor which suggests common place for a two track approach to urban land planning and land use management where public land and strategic public land in particular is one component and the urban land market as we know it, the other. What should set the former apart from the latter is that the former is based on a freedoms concept to public land assets and land use management premised on the following criteria.

- a) It is motivated by a universally-founded action when the land is used, developed or reserved for the greater public good and contemplated for development in respect of the urban poor.

- b) Strategic public land assets in urban areas are regarded as a foundation for the entitlements and endowments of the urban poor based on what society collectively 'owns' and shares through the State as custodian of these resources.
- c) Its management, development and land use are based on a set of ethics and values founded in social justice that not only define the behaviour of the custodians and users of the land but also its performance in terms of how it achieves the workings of a good city based on principles of urban sustainability.
- d) It adopts as a fundamental the raising of the poor's capabilities to address the question of urban poverty directly and through facilitating this sector's access to urban land.
- e) A freedoms approach is based on a legal framework that embraces the concept of social justice in the redistributive, secure tenure and developmental role of public land to address the urban land question through a deliberative planning approach.

How do these criteria influence the way public land and land use management could be considered? Firstly, public land as a collective resource can begin to form the basis on which individual and societal value can be established to prevent this sector from remaining unfree and excluded. Secondly, different public land policies and directives that connect directly the philosophical with the technical planning imperatives would have to drive the State to influence land and land use management relative to poverty alleviation. It was noted in the Cape Town experience that the State has dabbled in the philosophical as far as planning laws and policies are concerned but has done very little in the realm of technical transformation, the effects of which are clearly apparent on the ground. Thirdly, public land programmes could form the basis of evaluation of the success or improvements in State-society land relations which call for alternative ways and means of evaluating land programmes to the conventional neo-classical based indicators. From a freedoms perspective, indicators on urban land improvements should reflect whether and how the interests of society as a whole and the poor in particular, have been served through land. The freedoms approach offers alternative instruments for measuring the success of and participation in society based on social justice principles which can be broadened to include land.

## **8.2 Public land as a measurable instrument of freedom**

The term 'social justice' was introduced in parts one and two of the dissertation and is expounded here as a foundation for a set of instruments or principles related to the question

of public land as a means of addressing the urban poverty question. In Smith's view (1994: 24) the key sentiments associated with the concept of justice or what he terms '*distributive*' justice include 'fairness, consistency and impartiality in the expectation that people in the same circumstances should be treated in the same way'. Thus the principle of justice in general reflects a set of ethics that begin to structure not only how one thinks about addressing the needs of the urban poor but also how one measures the improvements of this sector's lives.

A freedoms approach proposes a number of 'instruments of freedom' discussed by Sen (Samuels, 2005: 58) which include: Political freedoms, Economic facilities, Social opportunities, Transparency guarantees and Protective security. In each case Sen (Samuels, 2005) outlines the conventional manner in which these instruments are evaluated which he calls 'Top-down, Deductive Quantitative Evaluators' and proposes 'Alternative Evaluators Measuring Unfreedoms' which he terms 'Bottom-up, Inductive Qualitative Evaluators'. In chapter 3, the interpretative or deliberative approach to the dissertation argued for a shift of emphasis from scientific proof to discourse and dialogue and at the same time, a search for a 'value-critical' policy science that can generate 'usable knowledge' (Fischer, 2003) - knowledge that is generated for appropriate intervention. A deliberative approach demands a shift in what the foundational materials are for professional urban planning practice and State policies that are often informed by the same sources which are in large part based on quantitative-based positivist approaches that depict problems and needs in the same way as they have always presented in quantitative terms rather than focusing on assets, endowments and programmes for the urban poor. Sen's inductive methodology synchronizes with the values of a deliberative planning approach that encourages dialogue, discourse and engagement in a network-based society.

Of particular importance in Sen's work is the instrument of 'Transparency guarantees' (Samuels, 2005) which relates directly to the relationship between civil society, the State and aspects of land related matters. This instrument of measuring unfreedom would be a good indicator of the urban poor's participation in local governance particularly in respect of land related matters. It is important that along with the freedom to have access to the city's resources in a broad sense (transport, clean water, sanitation services and public space) there is also the freedom to participate actively in how public land is 'distributed' and to what end in a deliberative planning approach? After all, the State is the legal custodian of public land and because the state is democratically elected and placed in power by the people; the people are indirectly the 'owners' of public land and should have a say in how, where and for

whom public land is distributed. Thus the thesis argues that the principle underlying 'Transparency guarantees' in respect of public land is *trust*. Society and the urban poor in particular must trust that the actions of the State in conjunction with their own are towards a greater public good. It may well be the case that poverty never really ceases in its entirety in urban society but at least targets can be set to reduce poverty and to address chronic poverty in particular as defined in chapter 6.

It can be inferred that *trust* based on universally founded action; can create a more harmonious situation for the urban poor, society and the city even if poverty never really ceases. Hence in the workings and makings of public land (and the urban environment, in turn), these principles could potentially form the antidotes to corrupt practices in land matters or 'legitimate' public land deals that only benefit a handful of people. In more practical terms, how the progress of the urban poor, the State and planning stakeholders' actions are measured would be different to the conventional ways using indicators such as Gross Domestic Product (GDP) as but one example. To begin to do this, reliance on research methods, information bases, planning instruments and indicators is required that enable us to measure society's progress generally and particularly in terms of raising the poor's capabilities as well as measuring the degree to which society in general remains unfree. In other words research methods and planning instruments that are about human and environmental meaning making and value rather than pure science or rationality alone would be employed. The value of this thesis lies in recognizing that the complexity of urban land in the post apartheid South African city required multiple research approaches and mixed methods of inquiry in the hope that this methodological basis would facilitate an interaction between theory and practice. Moreover, it reflects on and questions the appropriateness, quality and availability of information on urban public land in post apartheid Cape Town to inform policy making sufficiently.

Public land approaches cannot only be developmental in nature but could also be measured in broader terms in other words, whether post state / society interventions have indeed raised the poor's capabilities. The evaluative framework could therefore be based on a multi dimensional concept of improvements in the human condition of the urban poor which includes viewing poverty and urban poverty in particular from a multi-dimensional perspective; not just income deprivation. From a freedoms perspective, 'the assessment of development cannot be divorced from the lives that people can lead and the real freedoms that they enjoy. Development can scarcely be seen merely in terms of enhancement of inanimate objects of convenience, such as a rise in GNP or technological advance, or social

modernization. These are of course valuable – often crucially important – accomplishments, but their value must depend on what they do to the lives and freedoms of the people involved’ (Samuels, 2005).

The evaluative framework for determining whether and to what degree the capabilities of the urban poor have indeed been raised through the reorientation of public land programmes as a means towards this end, could be determined on the basis of a combination of the conventional (statistical) techniques such as GDP and income levels but also finding out from the urban poor themselves over time through engagement, dialogue and discourse, whether they have more reason to live the kinds of lives that they value and what real freedoms they have achieved and enjoyed. To this end, a new planning approach or ‘new normal’ is required that begins to adopt a more inductive, bottom-up, qualitative and systemic approach to urban land planning and land use management. The overarching goals of this approach could include how to achieve urban poverty reduction and raise peoples’ capabilities on the back of a public land programme and at the same time, improve sustainable state-society relations in land. Only in this way is a freedoms approach to land possible in a market based economy.

### **8.3 A legal framework that embraces the concept of social justice**

The thesis broadens the urban application of the concept of freedom by linking it to and drawing from the concept of the good city (Friedmann, 1992; Amin, 2006) which translates into a positive context where people experience humanely-performing environments that add value to society at all levels: the region, the city, the neighbourhood and the household. To achieve the good city requires a set of normative values, rules and processes that do not dominate the environment but rather synchronizes moral standpoints with technical detail. The good city is premised on a structural framework within which all citizens can live, work, build, create, recreate and thrive. This framework promotes, among others, the elements of city making and urban performance that enable and support the principles of the good city and at the same time have wider meanings for land use planning. It is ideally structured to fulfil the public environmental needs of all citizens. Public space and public life, not just shelter, therefore become important elements of the spatial framework that is created by the values, rules and processes that underpin the elements of the good city.

The good city requires to be underpinned by a positive land use regulatory framework where urban environments are transformed and supported as humanely-performing that work for all

citizens. To support this, the primary concern of governmental decision making is focused on the broader public aspects and public realm of the good city, including the use of public land towards poverty reduction and inclusion of the urban poor into the city's fabric. This means that we forward looking institutional mechanisms are required that would facilitate the actualization of this framework. It is clear from the Cape Town case outlined in this thesis (chapters 6 and 7) that the institutional land reforms necessary to achieve a freedoms approach have yet to be realized by the post apartheid State.

In a country where the majority were deprived of access and rights to the land, the notion of social justice, together with the characteristics of the good city defined in chapter 5 as a fundamental basis for approaching land for all, is posited as the starting point for land use regulation, particularly with respect to public land management. Social justice is 'concerned with how people should be treated in particular circumstances, by other people directly or within the human creation of institutions whereby behaviour is regulated' (Smith, 1994: 27). The people 'to be treated in particular circumstances' are the citizens displaced and deprived of access to land as a result of apartheid. 'Other people' or 'institutions' refer to a seemingly pro-poor developmental state represented by politicians and planning or built environment officials whose job it is to regulate land use in an environment where behaviour is largely fraught with, and focused on, power and control at the expense of enabling the public good as demonstrated in the case of Farm Bardale 451, Cape Town (Box 5.2). To embrace the concept of social justice, public land management and access for the urban poor does not only contribute to the actualization of the good city but also have an enabling legal framework that focuses on development facilitation and controls that begin to restore and improve the urban poor's rights, title and interest in land. In this way, the urban land and poverty questions can begin to be addressed and the analysis presented in chapters 5 to 7 gives clear indication of exactly what kind of land reforms are appropriate in the South African city context. While these reforms will always have to take on locally specific characteristics, the discussion above sets out general principles that would apply across cities of the South.

Attempts have been made in Cape Town to shape land use patterns and improve land use regulation but thus far to no avail (see chapter 5). Urban development frameworks (UDFs) have emerged as planning instruments that can better shape land use patterns towards achieving the socially just city alongside integrated development plans and spatial frameworks and more recently, city development strategies (CDS) yet are still not adequately supportive of a pro-poor agenda (Parnell and Robinson, 2006; Harrison, Todes and Watson, 2008). The legal and institutional impediments are still so complex and fragmented to

achieve the principles of these frameworks in space, as became apparent in the Cape Town experience and described in chapters 5 and 6.

The lessons from the Cape Town experience are threefold. Firstly, it is not in the interest of urban development generally to rely on setting up new legislation and policies unless there is systematic attention to prioritizing matters of principle such as land redistribution, reform, restitution and equitable access relying on public land as a tool to support this agenda<sup>55</sup> and the transformation is across all legal impediments from the principle of the law to the detailed norms and standards that it provides for. Secondly, it is important to recognise the inappropriateness of the existing legislation in terms of achieving developmental and societal goals which cannot in all cases be motivated on the basis of desirability alone. Lastly, the value in formulating performance-based land use whereby a city which is based on good city principles is created at the same time as addressing developmental goals is stifled by rules and development controls that mitigate against the principles of the good city. An effective land use planning and regulatory instrument would therefore be more useful if mindful of the values and principles, but in a way that can address all three aspects in the most efficient manner. The existing legislation falls severely short in this regard.

In chapter 5, the Less Formal Townships Establishment Act, Act No. 113 of 1991 or LEFTEA was introduced which provided for shortened procedures for the development of land for less formal forms of residential settlement. Again, note the emphasis on *residential* settlement, not urban settlement in general terms and in respect of sustainable land use. Notwithstanding the legislation, there is still a mushrooming of illegal housing throughout Cape Town and South African cities. There is a perception from the literature on urban land (Urban Landmark, 2006) that the problem with informal settlements has proven to be an intransigent one which has not so far responded to well-intentioned State (and, to a lesser extent, private sector) interventions. Yet, we have seen that while this may be perceived to be the case, informal settlements do in fact respond well and make a much better and faster contribution to urban development and the housing problem than formal State or private sector attempts (Rakodi, 2006). Land in informal settlements, not housing is what counts most to participants at this level of settlement.

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<sup>55</sup> The City of Cape Town's new policy on the management of its immovable assets was released for public comment and includes ten principles for managing public land administered by local government (Weekend Argus Saturday July 10 2010). These include principles such as transparency, accountability, and the best interests of the community and so on. However, the point must be made that if this policy is not supported by shifts in philosophical and technical land use management frameworks from the highest levels of laws to the local levels in terms of the hierarchy of land use regulation; the policy may again only partially be successful.

Public land and strategically located public land in particular in cities can play a key role in facilitating access to urban opportunities, not only housing (Butler, 2003; Gar-On Yeh, 2005). Governments can therefore invest in the establishment of a model whereby they do not dispose of such land but rather use their landholdings to temper the urban land market (Butler, 2003; Ding and Knaap, 2003). In this way, the urban poor could potentially be the primary beneficiary of public land development programmes. This will ensure that government becomes a major player in the urban land market which should result in a reduced crowding out effect of the less well-off.

Fernandes (2003: 230) argues that ‘...very little has been written from a critical perspective on the role law has performed in the social process of production of urban space. Only marginal theoretical consideration has been given to the importance of law as an instrument of urban and social change.’ His position has surprising resonance for South Africa, a highly legalistic country where law has played a central role in defining land and development rights (chapter 5). In this case the problem is less that there has been no legal reform, but the reform that has taken place has been inappropriate resulting in the urban land law that exists failing to reflect the stated values base of the South African Constitution (1996). For example, legislation such as LEFTEA and LUPO (chapter 5) do not address directly the fundamentals of the transformative role that law can play in just or good city making and only recognize the need to intervene in urban space that is structured for less formal and formal purposes respectively. In the case of LEFTEA, the legislation role is partly to sanitize the environments and prevent the spread of mass slums in the South African city by providing services and top structures; and partly to formalize urban development in areas considered less formal.

To tackle this very complex urban issue the work of specialists such as Fernandes (2009) whose practical experience and adeptness in contexts such as Brazil, where rapid urbanization of cities and the urbanization of poverty are far more severe, is significant as this work provides guidance to deeper understandings of two key areas in the South African context. The first is that of the public environment (chapter 6) that can begin to not only structure informal settlements but also give more meaning to their inhabitants as an evolving urban environment. In the case of informal settlements public environments can be the focus of development not just housing and can be directed towards improving informal environments through urban public land and public space programmes that are coordinated with other urban layers such as investment in public transport.

The second aspect is cadastral systems design and cadastre reform which were discussed in chapter 7. Cadastral systems reform practice is beginning to recognize socially just principles at the scale of the house, plot or urban block subdivision (Lloyd, 2010) and devising ways and means of securing tenure that are not only about freehold title. Different forms of secure tenure to create live-work and mixed use opportunities are available to increase asset value, secure rights in land and facilitate asset formation for the urban poor. Alongside a public investment programme in areas such as the south east of Cape Town cadastral reform can be a powerful way of creating value which could potentially facilitate land markets and transactions for the urban poor through an alternative model to land use regulation that embraces an urban performance based system of land use and promotes good city principles. The components of such an alternative model are discussed below.

### 8.3.1 Key components of an appropriate land use regulatory model

Two considerations are presented one, nationalizing land law and two, protecting the public domain, including public land. The first big step to address the urban land question in terms of equitable access, redistribution, tenure reform and restitution is to nationalise land law. This will ensure that South Africa has a single or national law governing the question of land rights and the custodianship of public land, so that issues are looked at not in terms of race and class, as is presently the case, but in terms of interests and values of importance to the country as a whole (Sachs, 1990). Accordingly, this requires three important actions.

One, establishing a nation-wide legal framework in respect of interests in land which must reflect the values held in relation to property rights by all South Africans as well as the values that drive public land programmes. Two, this framework takes account of the varied situations and needs relating to land, for example, different forms of tenure, different claims that displaced people have to the land, different workers' and property rights and, in the case of the public domain and public land in particular, influencing land use and development patterns that begin to reflect the principles of the good and socially just city. Thirdly, and very importantly, the asset register under public ownership is made explicit and transparent by the State as custodian of public land holdings to the public as the indirect owners of public land.<sup>56</sup> This implies that State record keeping of an explicit public land register would have to be explored and created as an integral part of land and land use management systems.

<sup>56</sup> In chapters 4 and 7 it was pointed out that numerous attempts over a period of more than 24 months were made to obtain public land disposal information from the Western Cape Provincial Government all of which have failed with officials giving reasons such as 'restricted information' or 'strictly confidential information' which can only be released by the relevant Minister or Head of

It may be argued that the State is indeed attempting the nationalization of land and land use management law through the facilitation of legislation such as the Land Use Management Bill (No.11 of 2007). However, this legislation does not address the varied needs of all citizens, the specific needs of the urban poor; and the question of land use management as enabling of urban development that can respond appropriately to the South African city context. The important lesson is that if the philosophies of the moral stand point in land and land use management are not combined and translated into technical guidelines for city development from the national level right through to local area interventions; there may never be success within a freedoms framework and will continue on a neo-classical land path that is not only inappropriate in the South African public land debate but also unsustainable in respect of public land management.

At a local scale, there is no denial of the potential value of the integrated zoning scheme (IZS) as presented in Chapter 5, to effect change and to restructure the urban landscape to a more positive domain for the broader city publics. To be more effective in doing this, however, a shift away from development rules and procedures to principles of setting up the public spatial domain, and development rights associated with public land in a positive urban structure and inclusive public processes can be pursued. Instead of dealing with rights, obligations and privileges of property owners, these tools could be promoting three important aspects.

The first is to promote the public elements and projects that will redefine the city and its people in terms of a set of values that legitimize access to (public) land as a basic right and necessity. In response to the research question on the role of public land in poverty alleviation, the respondent stated that *'public land should be prioritized for land access. We don't really have a land redistribution language in our urban development vocabulary. Introducing the notion of a land reform agenda for public land in urban areas is something I would like to see. Land reform, and land redistribution would be very welcome introductions to the urban development lexicon'* (Royston, Interviewee No 4, 2008).

According to Sachs (1990) nationalising land law would avoid seeing redistribution of land simply as a racially quantitative procedure. The law can be a major support in terms of offering land jurisprudence to obtain fairness and social justice and should not be discounted as a major force in land redistribution efforts. As the former judge of the High Court and an

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Department. The thesis holds the view that if transparency was an underlying public land management ethic; information on public land assets would be readily available and easily accessible.

interviewee in the qualitative research conducted towards this dissertation, Judge Albie Sachs, Interviewee No. 11 (2008) said: *'at a certain level, the State should hold the mandate in respect of land on behalf of the poor'* and the principle on which land law should always be based when considering the rights of the poor is *'mediation based on meaningful engagement between and among parties to the extent that we arrive at a win-win situation'*. The implication is that there is fairness and consideration for all in the face of land law and it is in this spirit that public land can be pursued in the interest of promoting justice in a deliberative planning approach.

Secondly, a values-based perspective could provide the scope for shared legally protected interests, whether these interests are public or private as long as they address directly or indirectly, the question of urban poverty and the urban freedom of society at large. The third is to promote a city form that is based on urban sustainability as discussed in chapter 3. An important aspect of urban systems theory upon which urban sustainability is founded, is how urban populations will live; what land they will occupy, how much energy and water they will use and how will they cope with limited resources particularly in a market-driven economy? What this means for urban public land and landscapes is to consider carefully the impacts of (rapid) urbanisation on land patterns in preparedness. In other words, what form of land and landscape is appropriate that marries the requirements of the urban land market with those of public land programmes adapted for the needs of urban society and particularly the urban poor?

#### **8.4 The good city**

The Cape Town experience indicated that we face challenges of fragmented, sprawling environments (Swilling, 2006). Evidence presented in chapters 6 and 7 shows that the sprawling city is exacerbated by the workings of the urban land market. The current development path is not capable of delivering a 'good city' which reflects universal access (Parnell and Pieterse, 2010) and where people experience humanely performing environments that add value to society at all levels. For a good city model to be the aspiration land resources would have to be managed more sustainably so as to achieve poverty reduction goals as well as obtain a more equitable situation across Cape Town. The attention of the thesis now shifts to reflect on what an alternative land management system that draws from a freedoms perspective and that could deliver a 'good city' might entail.

There are various characterizations of urban form that are deemed appropriate to support a sustainable urban future. Irurah and Boshoff (2003: 248) talk about the compact city (chapter

6) as opposed to the sprawling city; the integrated versus the segregated city; the ecological versus the non-ecological city and the just versus the unjust city. The authors point to an important fact that one of the primary resources consumed by cities is land, which is required for locating and developing different urban functions such as commercial, industrial, residential and socio-cultural activities. Being a scarce resource, land-take for such urban functions means an opportunity cost with regard to alternative uses. The authors continue to outline the disadvantages of the suburban (sprawling city) against the advantages of the compact city as the more desirable urban form which they argue 'demonstrate high levels of environmental and socio-cultural sustainability and their ecological footprint is relatively low'. Coehlo and Ruth (2006) support this argument that the extent and nature of a city's impact on the local and global environment are defined by spatial arrangements as well as cultural characteristics that govern patterns of production and consumption. The more compact these arrangements, the less environmental impact they have on cities (Kenworthy, 2006; Burdett & Rode, 2007).

The advantages of the compact city were recorded in chapter 6 (Irurah and Boshoff, 2003) and challenged by Bierman (2009) who supported her argument on the basis of empirical data that tests the study's hypothesis 'that low income housing in peripheral localities is more costly and less beneficial to society than the same housing provided in more central localities' and finds that 'more central localities do not necessarily perform better overall than more peripheral localities' on the scores measured of which the main 'variables were transportation costs, travel times, fuel consumption and accessibility to employment and other urban opportunities and amenities' (Bierman 2009: 97). If built environment professionals continue to argue on the basis of evidence that does not seek to address the right questions in terms of urban patterns that presently inhibit the urban poor's access and quality of life which can be improved by a compact city form; the correct answers and softer issues will never become real or clear so that policy can begin to shift in the right direction – towards the rights of the urban poor to the city and the opportunities that it offers. The study by Bierman (2009) not only reinforces the conflation of housing (with land) and promotes the urban land market and land price as the most important basis for determining urban form; but also contradicts the value of an alternative freedoms approach which would embrace the methodology of deliberative planning that encourages discourse, engagement and dialogue – inductive rather than rational deductive methodologies.

The ideal of a mixed-use, accessible, financially viable and sustainable city, in the concept of the 'compact city', is contrary to what one currently finds on the ground in Cape Town. Some

even argue that a compact city form assists to increase land prices (Bertaud, 2004). However, appropriate intervention in the urban land market through the alienation of public land to this end may assist to influence land prices in a manner that feasible development options for a range of citizens can be established and assist the integration of diverse sectors of society closer to urban opportunities. As a key public layer, public land would assist to integrate the urban poor into the city and contribute to a more integrated and redistributed city. In this way, social, urban and ecological sustainability can be promoted through an urban land use management system that promotes the principles of the good and socially just city.

### **8.5 Summary**

This chapter explored the criteria and elements of a freedoms concept to public land asset management; with potentials for new thinking in terms of the roles that public land could play in its development and use to address urban poverty concerns. It argues that in terms of the freedoms approach the building blocks of urban poverty alleviation include social justice and urban sustainability upon which a new foundation for urban land and land use management should be based. The alternative concept is based on a two track system of land management; one for the regular land market as we know it; and one to promote the potential of public land as a poverty alleviation instrument which combines the philosophical aspects of land, law and city making with detailed technical considerations in the hope that state-society land relations will improve and enhance the lives of the urban poor. To determine whether such improvement has occurred as a result of an alternative public land paradigm located in the freedoms approach, alternative more inductive based methods of evaluation are required as supported by a deliberative planning approach.

To facilitate urban land redistribution, tenure reform and restitution in urban areas of South Africa an urban concept based on sustainability and deliberative planning needs to be developed. What is appropriate about these approaches is that they not only assist to establish appropriate urban form but also encourage discourse and dialogue towards a new policy science that can generate more appropriate knowledge and materials for a value laden understanding of society which has important implications and responsibilities for the State and urban planning practice.

The following chapter concludes the thesis with the main findings and begins to articulate the potential role of the South African State in facilitating public land access for the urban poor.

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## Chapter 9: Conclusion

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### 9.1 Introduction

In modern cities, including most large and medium sized South African cities, the urban poor have been systematically alienated from urban land through forced removals, displacement and economic exclusion. Employing a mixed method approach, which relies mainly on case study material on the city of Cape Town, this thesis demonstrates that there is a crucial role for the State in responding to the needs of the urban poor through improved legal facilitation and the appropriate management and use of State land assets. It is argued in this thesis that through targeting strategically located public land, governments can create an institutional environment, founded on a values-based freedoms model, to facilitate access of the urban poor to land and thereby enable their rights. Despite a recent flourishing of work on urban land there has been little comparable analysis of the political economy of urban land in post apartheid South African cities, and the contribution of this thesis thus complements the dominant focus of research which is largely concerned with land use management. This thesis makes a valuable empirical and conceptual contribution in this general respect. More specific findings of the thesis are set out below.

### 9.2 Key findings and contribution to knowledge

The main findings of the thesis can be summarized in seven major points.

- a) Even though Yin (2003) warns that the case study method is often challenged from rational perspectives and insights gained from case study material are underappreciated, the case study material presented in this thesis (in combination with empirical and qualitative data collection techniques and analysis) added substantial value to understanding the complexity of the urban land question in a city that has both formal and informal land allocation procedures. The thesis recognized that the complexity of urban land in the post apartheid South African city required multiple research approaches and mixed methods of inquiry and adopted this method in the hope that this detailed study of sites and processes would facilitate an interaction between theory and practice. What the methodology enabled was the drawing of strong connections between land and other urban layers, ensuring that State assets were not dealt with in isolation but approached through urban systems thinking. Moreover, the thesis reflects on and questions the appropriateness, quality

and availability of information on urban public land in post apartheid Cape Town to inform appropriate urban land analysis and thus policy making.

- b) While Sen's freedoms approach does not specifically discuss the way that entitlements, endowments and the rights of the urban poor can be extended to land and urban land in particular in a free market system, this thesis demonstrates that there is no logical reason this cannot be done through a targeted public urban land programme. The thesis enables the urban application of the concept of freedom by linking it to and drawing from the concept of the good city which translates utopian ideas about cities into actions that will enhance a positive urban experience for society in general and the urban poor in particular.
- c) Based on the freedoms approach a fresh understanding of land entitlement emerges from the thesis which puts forward the idea that, for land entitlement to be successful, the location and quality of the land is key. Land based entitlements require land for the poor to be such that apart from access to land being unthreatened, the land unit itself is habitable, potentially productive and inherently capable of facilitating exchange including the ability to sustain livelihoods and raise capabilities.
- d) The entitlements and endowments that urban land could potentially bestow on the urban poor and society at large are shaped by the manner and extent to which the State invests and engages in land allocation and protection through the instruments of land planning and land use management. Recognising the enduring role of the State in not just distribution but also maintenance of land entitlements has fundamental implications for a significant role for the State as custodian of public land. It is concluded in the thesis that this role must emphasize the explicit land asset register under public ownership to not only instil trust in the poorer sectors of urban society, but also intensify the State's leadership in the urban land market as shown in the cases of Kerala and China.
- e) It is suggested in the thesis that a two track system of land planning and land use management may be more appropriate in dealing with land in the post apartheid South African city, one stream for market driven land and one for targeted public land programmes that run in parallel and directly address urban poverty. However, for public land to realise its potential to shift the position of the urban poor requires the State to make strong connections between the philosophical and the technical aspects of land and land use management systems. Accepting that the twin tracks of public and private land are linked in a single urban system, would necessitate a shift from a pure neo-classical land and land use operational model to an alternative freedoms approach to urban land.

- f) As the alternative concept for urban land and land use management suggested above is a two track parallel system it is vastly different to the system of land management as is presently understood in South Africa and would require the reframing of the land use management system as it currently operates and purports to operate in its transformed format requiring integration and coordination between strategic level planning and land use law and management in practice. To facilitate land redistribution and reform in urban areas of South Africa therefore, the thesis suggests that a sustainable and deliberative planning approach needs to be developed that is intervention based and continuously evaluated to ensure that the urban land policies and legal mechanisms that are developed are followed through in practice to promote an interactive relationship between theory and practice.
- g) It was shown in the thesis that, while there are multiple ways of gaining access to and control over land resources beyond the market, these are essentially limiting for the majority of the urban poor when land and housing debates are conflated. It is therefore concluded that the conflation of land with housing debates result in other non-residential land debates having been silenced. Yet non-residential public land debates have the potential to offer alternatives to the neo-classical model of property, which ironically offers a deeper and more familiar understanding of a city scale system of land and land use management.
- h) Based on the evidence presented in this thesis, it can be concluded that only when the State assumes a more critical interventionist role in land and public land programmes in particular would it be possible to obtain social justice and apply the principles of the good city in the South African urban context. Additionally, a deliberative and systemic planning approach, which rely on a combination of rational data and alternative qualitative methods and materials that have to do with human meaning making, would have to be developed to inform a transformatory land and land use management system.

### **9.3 Towards urban freedom**

The premise of this thesis is that the developmental use of urban land should be ethical, fair and promote social justice in all urban contexts. The thesis examined the urban land question in South Africa and particularly Cape Town where land distribution and ownership are grossly inequitable. Key urban land questions, namely redistribution, land tenure reform and land restitution were analysed conceptually and empirically. It was argued that while the South African Constitution commits government to protect the property rights of those who currently own property, it also endorses land redistribution to those who have been

dispossessed. This tension was explored to understand what it means for urban land redistribution and reform using the freedoms approach developed by Amartya Sen as a conceptual framework. Sen's freedoms approach was extended to and presented as an alternative value base to the neo-classical model within which urban land presently operates.

It was argued that the State's role is important to temper the urban land market by proactively transforming the land planning system in general and the land use management system in particular, which among other things, provide the institutional framework of power relations in urban society. Using the Cape Town case of publically owned land it is suggested that the State undoubtedly has a developmental role to play in urban land and land use management in cities of the global South. The case for an interventionist role for the State in land and land use management was made through the investigation of the dynamics of land in urban transformation and the case of Cape Town, and the wider national context of South Africa.

Using the post apartheid South African example, the thesis argued that the urban land market cannot be driven by an agenda that is biased towards those who have the capability, means and acumen to participate in land markets. To improve equitable access to land, a two track system of land and land use management was therefore considered more appropriate - one stream of land for market driven land and one for targeted public land programmes where the latter directly address urban poverty. In accordance with this two track system the thesis motivates that the State also gears land planning and use management systems of the city as a whole towards a pro-poor urban land agenda.

Moreover, the thesis argued that public land has the potential to shift the position of the urban poor by obliging the State to make strong connections between the philosophical and the technical aspects of land planning, mandating the State to act on behalf of this sector in respect of land and land use management systems. It was shown that the South African State holds a land redistribution and reform mandate in terms of the country's Constitution (1996) yet it has not taken sufficient transformatory action on behalf of the urban poor and society at large. In fact, the Cape Town experience demonstrated that land use management practices support the ongoing class and race based fragmentation in the spatial distribution of urban land, as was the case during apartheid rule. Existing land practice is also creating and reinforcing ecologically unsustainable urban form, and one that negates all generally understood notions of a good city.

In strengthening the State's role, a shift is envisaged from a pure or dominant neo-classical approach to land to a freedoms approach as an alternative to land and property markets with the latter forming the framework within which public land can potentially operate. It was argued in the thesis that the traditional neo-classical model is concerned with highest and best use of land, which in turn is concerned with land being used in the most appropriate way to ensure the maximisation of profit from land value. It was also recognised in the thesis that, ironically, the neo classical model understands the States role in urban land planning and land use management better than any other alternative or more progressive models.

These alternatives, which are theoretically also supported in principle by the Constitution, were shown to be without substantive powers in practice. This lacuna in the systemic application of the principle of redistribution of property was revealed through the analysis of Cape Town's land restitution and land reform experiences. In other words, the institutional mechanisms for land management of a private land market are in place while the new and alternative mechanisms needed to ensure redistribution have yet to be applied within the urban context. Should urban planning practice perpetuate the current impact that land use regulations supported by a neo-classical paradigm have on urban land and public land in particular, and concern itself only with the protection of the impact of urban development on property rights; the principles of the good city will never be embraced. It can therefore be concluded that a complete overhaul of the current land use management system is required to adopt a combined philosophical and technical regulatory framework to begin to give meaning to the principles of the socially just and good city.

In examining the laws and policies on urban land and land use management it is demonstrated in the thesis that the distribution of land to improve the entitlements and endowments of the urban poor could be better prioritized as a land action particularly in respect of public land. To embark on such land action, the freedoms approach is considered an appropriate alternative to the pure neo-classical model, among other reasons, because it challenges the notion of highest and best use of land and calls for a set of public land redistributive principles, laws and actions that are based on the concept of social justice. The thesis supports this call for redistributive action that relies on direct intervention by the State to address the damage caused by inequitable land distribution practices and patterns of the past.

The thesis argued that to adopt the values of a freedoms approach to land is necessary but not sufficient for realising the good city. It is very important to define precisely and technically what public land is and how it can be used to build the endowments of the urban poor. In

terms of the land-housing debate discussed at length in the thesis, it was argued that if the State acknowledges that urban land should not be equated with housing and that public land in particular has multiple roles to play, land policies and actions could be more effective and sustainable. These roles are to be identified in terms of addressing the challenges of urban poverty and could be translated into land use intentions that begin to transform society and the city into inclusionary urban settlements. Traditional top-down delivery approaches to mass housing and infrastructure could be more balanced and interdependent with other public land programmes. The State's role therefore, becomes an enabler of the spatial and structural framework through appropriate land use management rather than only a provider of mass housing and infrastructure which could lead to the creation of dead assets for the urban poor in isolated areas with limited locational value as demonstrated in the thesis. One of the role's of the State in this respect is a critical review role that begins to treat land in a more holistic and coordinated manner and makes the asset register under public ownership more explicit and transparent.

The thesis also questioned the motivation for promoting the protection of private property rights, title and interests in land and the appropriateness of this motivation against a potential urban poverty agenda that views the role of public land differently. The freedoms approach is therefore broadened and directed to include and take a collective view on urban land. It is argued in the thesis that to address the question of urban poverty from a land and land market perspective requires the State to begin to underwrite the poorer areas of the South African city which implies redirecting considerable investment to the public domain, not just investment in housing. By implication, State investment in public land (allocation and improvement) will enhance local entitlements towards the development of more compact and integrated environments focusing particularly on public investment that directly addresses the urban poverty question. This can be achieved through prioritising public land investment in relation to public spending by, for example, developing public transport at the same time as developing public land to support its viability. This recasting of the role of land defines a further role for the State in redirecting public investment towards an inclusive city.

The conceptual reframing of land proposed in this thesis encourages the State to recognise, at a number of scales across the city, that compact urban development provides a sustainable answer to urban growth which could potentially not only lead to a reduction in urban sprawl but also assist to make strong connections between land and other fundamental urban layers that urban societies thrive on for example, the connection between land and water systems. The State can therefore be proactive, engage in critical research and value meaningful participation in public land development based on the non-renewable

nature of land and the social, economic and political entitlement land access affords which demands an oversight role on the part of the State. This oversight role could be extended to good practice, continuous evaluation on the basis of an evaluative framework that adopts a value - based approach to making urban land work for the urban poor as opposed to the traditional indicators of evaluating the success of a city or society's public land programmes.

Finally, it can be concluded that only when the State assumes a more critical interventionist and value based role in urban public land programmes would it be possible to obtain a new normal for land based on socially just and good city principles.

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