

**PERIURBAN TENURE
MANAGEMENT IN
SOUTH AFRICA**

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INTRODUCTION

- Practical policies, strategies and practices that effectively integrate the urban, peri-urban and rural landscapes are critical
- I will cover legislation and agriculture
- Urban areas continually grow
- Consume agricultural land in the process.
 - Impacts on food security
- Urban sprawl unsustainable
 - Public transport subsidies greater than income
 - Health problems, unemployment and crime

South African Periurban Land

- In land proximate to urban areas, there is a mix of rural, industrial and urban land uses.
- Different land tenure practices, range from individual ownership to traditional African land tenure, with continuum of hybrids and adaptations
- Income levels, land values, land use and land parcel sizes vary considerably
 - “Merc & manure”, commercial & subsistence farming, informal settlements, low cost housing, traditional areas

PERIURBAN ENVIRONMENT

- Apartheid city spatial structure
- Upper income whites on residential small holdings where land is not utilised for food production.
 - Inappropriate land use – tourism, illegal industry
 - Land held for speculative purposes, and is sometimes deliberately stripped of its agricultural potential
 - Security a major factor - crime impacts on personal safety as well as theft of product.
 - Providing services to smallholdings is costly

Low Cost Housing and informal settlements

- Land tenure dynamics involve disparate overlapping claims and different power structures such as warlords, civics, traditional leaders.
- Competing agendas for land use
- Informal settlements are often created by organised invasions or shack farming
- 1.5 million houses built. But, incorrect assumption that most households are urbanised and immobile.
- Informal trading in land, housing and accommodation takes place.
 - Backyard infill shacks in land reform housing projects.
 - Landlordism occurs as powerful individuals purchase houses informally and then rent them out.

Traditional Areas

- In areas where the urban area interfaces with former African customary areas, groups have been known to split away from the main tribal coalitions to create informal settlements.
- Reluctance on the part of many traditional leaders to contemplate development initiatives in their areas, for fear of losing control
- Inappropriate, over-detailed and inflexible regulatory and legal frameworks.
 - Lack of capacity to carry out effective governance

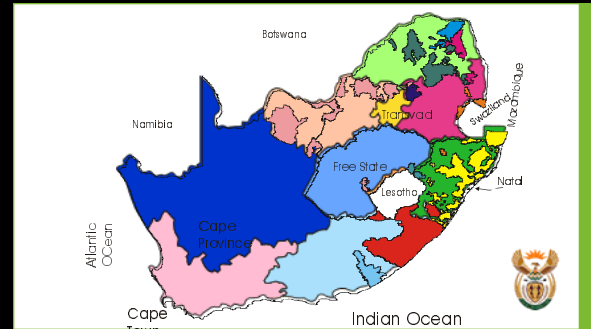
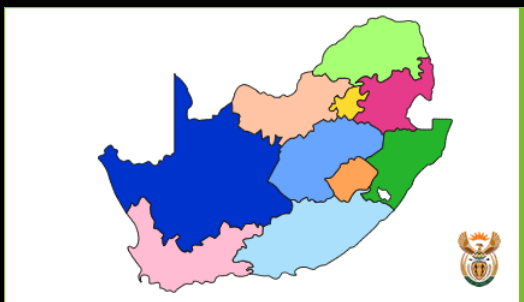
Imperatives

- Need an urban edge
- Soft edge, a buffer zone of green space wherein intensive agriculture is the predominant use of arable land
- Social and political imperative - black South Africans practice agriculture under secure tenure.
 - Urban edge provides opportunities

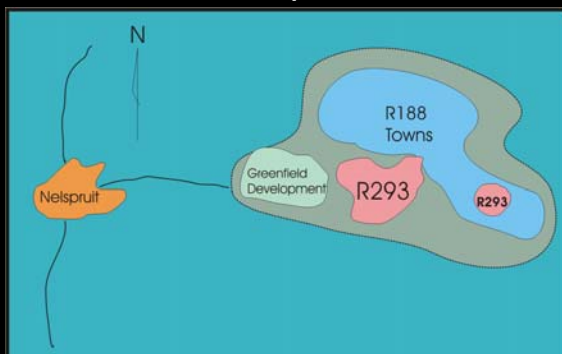
Apartheid Spatial Planning



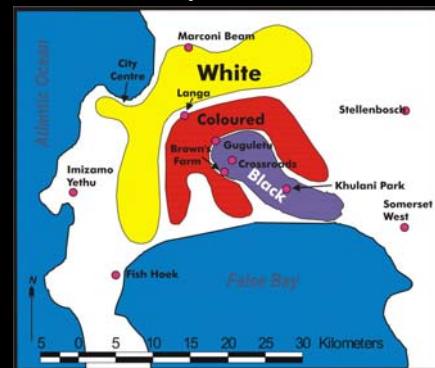
Post 1994 Provinces

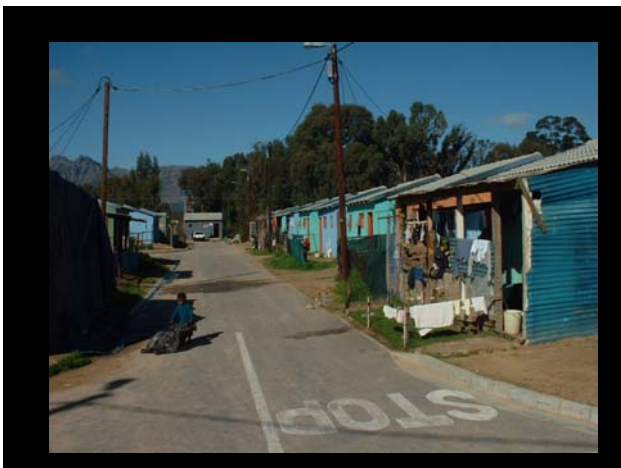
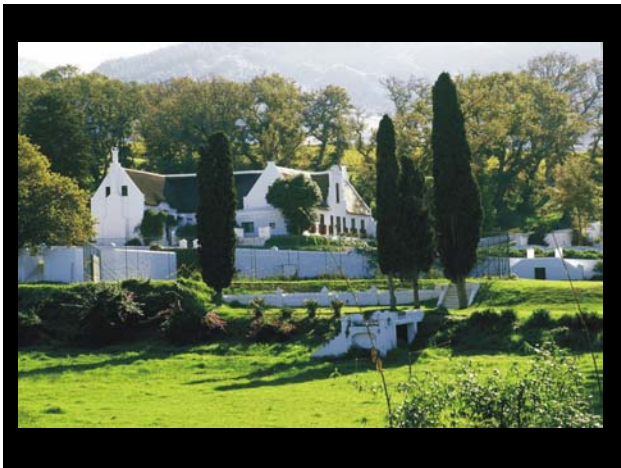
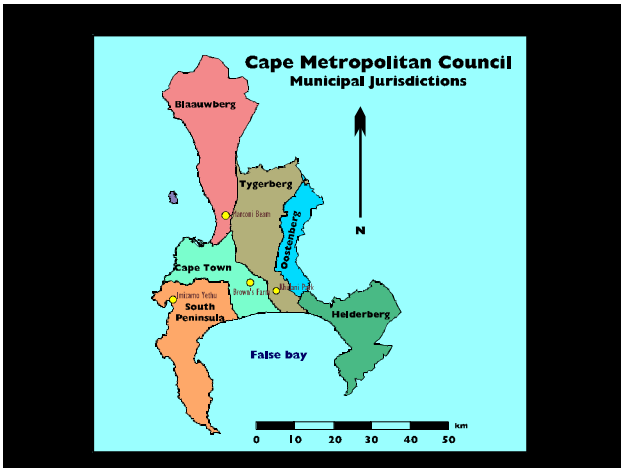


Nelspruit



Cape Town







The Development Facilitation Act 67 of 1995 (DFA)

- addressing the spatial patterns inherited from apartheid
- to fast track formalising land rights
- provides for a range of tenure options including individual, communal or tribal based systems
- Provides for initial ownership which can be converted into full ownership
- Local government is required to set land development objectives
 - services (including public transport), urban and rural growth, interests of beneficial occupiers, coordination with other authorities and finance.

Constitution 1996

- Recognises the institution, status and role of traditional leadership.
- A traditional authority that observes customary law may function subject to any applicable legislation and customs, subject to the supreme law of the land, the Constitution.
- Details of policy relating to how this should be achieved have been published in the Draft White Paper on Traditional Leadership and Governance (RSA 2002).

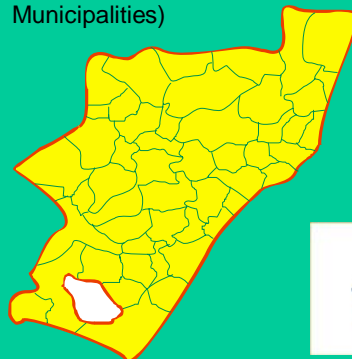
Constitution 1996

- **Category A** municipalities have exclusive municipal executive and legislative authority in their areas
- A **Category B** municipality shares municipal executive and legislative authority in its area with a category C municipality within whose area it falls
- A **Category C** municipality has municipal executive and legislative authority in an area that includes more than one municipality. Category C municipalities may contain a number of category B municipalities and rural areas.

Enabling Policy and Legislation

- Municipal Demarcation Act 27 of 1998
- Municipal Structures Act 117 of 1998
- Municipal Systems Act 32 of 2000
- Communal Property Associations 1996
- Communal Land Rights Bill, 2002
- Draft White Paper on Traditional Leadership and Governance

KwazuluNatal District Councils (C-Municipalities)



Municipal Systems Act 32 of 2000

- Compels municipalities to formulate an integrated development plan (IDP).
- Each municipal council must, within a prescribed period after the start of its elected term, adopt a single, inclusive and strategic plan for the development of the municipality.
- These must be aligned with, and complement, the development plans and strategies of other affected municipalities and other organs of state to give effect to the principles of co-operative government.

Legislation Analysis

- Governance structure and legislation are excellent
- Criticism that 4th tier of government introduced
- Devil in the detail of defining mandates and financing of Municipalities and the District councils (C-level municipalities)
- Capacity and morale problems at municipal level; this can be expected during transformation
- Daring too much and then achieving too little so that laws are dismissed as rhetoric
 - ... but few alternatives provided by critics

Management strategy

- Urban agriculture initiatives
- Land Tenure options
 - path to ownership
 - Or advantages for owners to densify e.g. superblocks.

Peri-urban Agriculture

- People have multifaceted livelihoods.
- Realistically, agriculture can augment income and nutrition
- Small scale farming operations can provide buffer zones around installations
- Urban and periurban conservancies in partnership with traditional healers and medicine suppliers
- Need to manage township livestock for health reasons.
- Opportunity for recycling waste and for the usage of grey water.
- Small parcel farming operations can serve a role in restoring environmentally damaged areas
- Green space - might deter invasion if cultivated by locals

Strategy Components

- Systemic approach.
- All the parts must be in place
 - Low success rate
 - Experience of infrastructure vandalised
- Institution like agricultural cooperative
 - Distribution, marketing, irrigation, fertiliser
- Training and capacity building
- Select people who want to farm
- Change management – engage resisters
- Design public transport for agricultural traders to get their products to markets.

High risks of failure, there are numerous uncontrollables, but have to proceed anyway

“Do Nothing” is not an option

Municipal Demarcation Act 27 of 1998

- **Factors to be taken into account**
- 25. In order to attain the objectives set out in section 24, the Board must, when determining a municipal boundary, take into account -
- a. the interdependence of people, communities and economics as indicated by-
 - i. existing and expected patterns of human settlement and migration;
 - ii. employment;
 - iii. commuting and dominant transport movements;
 - iv. spending;
 - v. the use of amenities, recreational facilities and infrastructure; and
 - vi. commercial and individual linkages;
- b. the need for cohesive, integrated and unfragmented areas, including metropolitan areas;
- c. the financial viability and administrative capacity of the municipality to perform municipal functions efficiently and.

Municipal Demarcation Act 27 of 1998

- effectively;
- d. the need to share and redistribute financial and administrative resources; e. provincial and municipal boundaries;
- f. areas of traditional rural communities;
- g. existing and proposed functional boundaries, including magisterial districts, voting districts, health, transport, police and census enumerator boundaries;
- h. existing and expected land use, social, economic and transport planning; i. the need for co-ordinated municipal, provincial and national programmes and services, including the needs for the administration of justice and health care;

Municipal Demarcation Act 27 of 1998

- j. topographical, environmental and physical characteristics of the area;
- k. the administrative consequences of its boundary determination on -
- i. municipal creditworthiness;
- ii. existing municipalities, their council members and staff; and
- iii. any other relevant matter; and
- l. the need to rationalise the total number of municipalities within different categories and of different types to achieve the objectives of effective and sustainable service delivery, financial viability and macro-economic stability

Demarcation Process

When coupled with the serious shortfalls of capacity throughout our country and the existing spatial inequalities in resource provision it is clear that the transformation process will require intensive monitoring and adjustments as the system evolves. From assigning functions and powers to municipal governance, to restructuring administrations, the demarcation process has not only initiated a whole series of processes which will forever change the geography of South Africa, but has challenged the way western mindsets organise space and politics: as urban and rural, as locations of primary/secondary/tertiary activity, as spaces of production and reproduction and as containing struggles for representation versus struggles for participation

MUNICIPAL STRUCTURES ACT NO. 117 OF 1998

- **2. Areas which must have category A municipalities.**—An area must have a
- single category A municipality if that area can reasonably be regarded as—
- (a) a conurbation featuring—
 - (i) areas of high population density;
 - (ii) an intense movement of people, goods, and services;
 - (iii) extensive development; and
 - (iv) multiple business districts and industrial areas;
- (b) a centre of economic activity with a complex and diverse economy;
- (c) a single area for which integrated development planning is desirable; and
- (d) having strong inter-dependent social and economic linkages between its constituent units.

MUNICIPAL STRUCTURES ACT NO. 117 OF 1998

- **3. Areas which must have municipalities of both category C and B.**—An area
- that does not comply with the criteria set out in section 2 must have municipalities of
- both category C and category B.
- **4. Application of criteria.**—(1) The Demarcation Board must—
- (a) apply the criteria set out in section 2 and determine whether an area in
- terms of the criteria must have a single category A municipality or
- whether it must have municipalities of both category C and category B;
- and
- (b) determine the boundaries of the area in terms of the Demarcation Act.

MUNICIPAL STRUCTURES ACT NO. 117 OF 1998

- **19. Municipal objectives.**—(1) A municipal council must strive within its capacity to achieve the objectives set out in section 152 of the Constitution.
- (2) A municipal council must annually review—
 - (a) the needs of the community;
 - (b) its priorities to meet those needs;
 - (c) its processes for involving the community;
 - (d) its organisational and delivery mechanisms for meeting the needs of the community; and
 - (e) its overall performance in achieving the objectives referred to in subsection (1).
- (3) A municipal council must develop mechanisms to consult the community and community organisations in performing its functions and exercising its powers.

117 OF 1998

Participation of traditional leaders

- **81. Participation in municipal councils.**—(1) Traditional authorities that traditionally observe a system of customary law in the area of a municipality, may participate through their leaders, identified in terms of subsection (2), in the proceedings
 - of the council of that municipality, and those traditional leaders must be allowed to attend and participate in any meeting of the council.
- (2) (a) The MEC for local government in a province, in accordance with Schedule 6 and by notice in the *Provincial Gazette*, must identify the traditional leaders
 - who in terms of subsection (1) may participate in the proceedings of a municipal council.
 - (b) The number of traditional leaders that may participate in the proceedings of a municipal council may not exceed 20 per cent of the total number of councillors in that council, but if the council has fewer than 10 councillors, only one traditional leader may
 - so participate.

117 OF 1998

Participation of traditional leaders

- (c) If the number of traditional leaders identified in a municipality's area of jurisdiction, exceeds 20 per cent of the total number of councillors the MEC for local government in the province may determine a system for the rotation of those traditional leaders.
- (3) Before a municipal council takes a decision on any matter directly affecting the area of a traditional authority, the council must give the leader of that authority the opportunity to express a view on that matter.
- (4) The MEC for local government in a province, after consulting the provincial House of Traditional Leaders, may by notice in the *Provincial Gazette*—
 - (a) regulate the participation of traditional leaders in the proceedings of a municipal council; and
 - (b) prescribe a role for traditional leaders in the affairs of a municipality.

117 OF 1998

Participation of traditional leaders

- (5) (a) When participating in the proceedings of a municipal council a traditional leader is subject to the appropriate provisions of the Code of Conduct set out in Schedule 1 of the Local Government: Municipal Systems Act, 2000.
- (b) (i) A traditional leader who participates in the proceedings of a municipal council is entitled to the payment of out of pocket expenses in respect of such participation.
- (ii) A municipal council must determine the criteria for, and calculation of, the out of pocket expenses referred to in subparagraph (i).
- (iii) Out of pocket expenses referred to in subparagraph (i) must be paid from the budget of the municipality in question.

117 OF 1998

- **84. Division of functions and powers between district and local municipalities.**—(1) A district municipality has the following functions and powers:
 - (a) Integrated development planning for the district municipality as a whole, including a framework for integrated development plans of all municipalities in the area of the district municipality.
 - (b) Potable water supply systems.
 - (c) Bulk supply of electricity, which includes for the purposes of such supply, the transmission, distribution and, where applicable, the generation of electricity.
 - (d) Domestic waste-water and sewage disposal systems.
 - (e) Solid waste disposal sites, in so far as it relates to—
 - (i) the determination of a waste disposal strategy;
 - (ii) the regulation of waste disposal;
 - (iii) the establishment, operation and control of waste disposal sites, bulk waste transfer facilities and waste disposal facilities for more than one local municipality in the district.

117 OF 1998

- (f) Municipal roads which form an integral part of a road transport system for the area of the district municipality as a whole.
- (g) Regulation of passenger transport services.
- (h) Municipal airports serving the area of the district municipality as a whole.
- (i) Municipal health services.
- (j) Fire fighting services serving the area of the district municipality as a whole, which includes—
 - (i) planning, co-ordination and regulation of fire services;
 - (ii) specialised fire fighting services such as mountain, veld and chemical fire services;
 - (iii) co-ordination of the standardisation of infrastructure, vehicles, equipment and procedures;
 - (iv) training of fire officers.

117 OF 1998

- (k) The establishment, conduct and control of fresh produce markets and abattoirs serving the area of a major proportion of the municipalities in the district.
- (l) The establishment, conduct and control of cemeteries and crematoria serving the area of a major proportion of municipalities in the district.
- (m) Promotion of local tourism for the area of the district municipality.
- (n) Municipal public works relating to any of the above functions or any other functions assigned to the district municipality.
- (o) The receipt, allocation and, if applicable, the distribution of grants made to the district municipality.
- (p) The imposition and collection of taxes, levies and duties as related to the above functions or as may be assigned to the district municipality in terms of national legislation.

117 OF 1998

- A local municipality has the functions and powers referred to in section
- 83 (1), excluding those functions and powers vested in terms of subsection (1) of this
- section in the district municipality in whose area it falls.

Municipal Systems Act 32 of 2000

- 26. Core components of integrated development plans.—An integrated development plan must reflect—
- (a) the municipal council's vision for the long term development of the municipality with special emphasis on the municipality's most critical development and internal transformation needs;
- (b) an assessment of the existing level of development in the municipality, which must include an identification of communities which do not have access to basic municipal services;
- (c) the council's development priorities and objectives for its elected term, including its local economic development aims and its internal transformation needs;
- (d) the council's development strategies which must be aligned with any national or provincial sectoral plans and planning requirements binding on the municipality in terms of legislation;
- (e) a spatial development framework which must include the provision of basic guidelines for a land use management system for the municipality;

Municipal Systems Act 32 of 2000

- (f) the council's operational strategies;
- (g) applicable disaster management plans;
- (h) a financial plan, which must include a budget projection for at least the next three years; and
- (i) the key performance indicators and performance targets determined in terms of section

Municipal Systems Act 32 of 2000

- 27. Framework for integrated development planning.—(1) Each district municipality, within a prescribed period after the start of its elected term and after following a consultative process with the local municipalities within its area, must adopt a framework for integrated development planning in the area as a whole.
- (2) A framework referred to in subsection (1) binds both the district municipality and the local municipalities in the area of the district municipality, and must at least—
- (a) identify the plans and planning requirements binding in terms of national and provincial legislation on the district municipality and the local municipalities or on any specific municipality;
- (b) identify the matters to be included in the integrated development plans of the district municipality and the local municipalities that require alignment;

Municipal Systems Act 32 of 2000

- (c) specify the principles to be applied and co-ordinate the approach to be adopted in respect of those matters; and
- (d) determine procedures—
- (i) for consultation between the district municipality and the local municipalities during the process of drafting their respective integrated development plans; and
- (ii) to effect essential amendments to the framework.
- (Date of commencement of s. 27: 1 July, 2001.)

