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**Opening the Gates to the Formal and Legal  
City:**

Formal access to land and housing by the  
urban poor – some lessons from Johannesburg  
and Dar es Salaam

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## **ABSTRACT**

In an increasingly urbanizing world, access to land and housing in cities presents enormous development challenges. This paper explores the relationship between law and development by examining how law influences the regulatory frameworks governing formal access to land and housing processes. I argue that legislative reform affects the articulation of regulatory frameworks, which in turn differentially impact upon the efficiency and equitability of processes whereby the urban poor can formally access land and housing. Johannesburg is found to have more post-legislative-reform positive changes in these processes than Dar-es-Salaam, illustrating the developmental potential of law as a tool of urban change.

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## **ABBREVIATIONS AND ACRONYMS**

<b>Access processes</b>	Formal access to land and housing processes
<b>DFA</b>	Development Facilitation Act
<b>DOH</b>	Department of Health
<b>HA</b>	Housing Act
<b>IDP</b>	Integrated Development Plan
<b>LA</b>	Land Act, 1999
<b>LDO</b>	Land Development Objective
<b>MSA</b>	Local Government: Municipal Systems Act
<b>TCPO</b>	Town and Country Planning Ordinance, 1961
<b>Urban poor</b>	Low income and poor city dwellers

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*...land is the be-all and end-all of what a city is going to be and where it is going to go. The attendant complexities present a formidable bottleneck in the development process ...*

*(Kitay 1985, 2)*

## 1. **INTRODUCTION**

We live in an increasingly urbanising world in which cities provide strategic spaces for development. Cities present exciting social, political and economic opportunities; but can also be sites of inequality and exclusion. Reaping the benefits of the opportunities, while averting potential crises of urban development, is a critical challenge facing cities, especially in the developing world. While urban development challenges are numerous and multifaceted, they are most patently seen in the realm of human settlements where billions of low income and poor city dwellers live in squalid and insecure conditions, most often within informal settlements. Unable to gain formal access to affordable and adequate land and housing, these city dwellers are excluded from the formal and legal city domain and the opportunities and security offered therein.

A number of factors converge to close the gates to the formal and legal city and relegate the majority of city dwellers, especially the poor, to the informal and illegal city domain. This study is interested in one significant barrier to formal access to land and housing, namely the regulatory frameworks - or the regulations, procedures and standards - that govern formal access to land and housing processes. Regulatory frameworks have the potential to operate as formidable impediments to formal access possibilities, and throughout the developing world rank high amongst the barriers that inhibit the urban poor from being able to formally access land and housing in cities.

Correctly assessing the role of law in urban development generally, and in formal access to land and housing processes specifically, is of crucial importance to scholars, policy makers and legislators committed to an inclusive urban development agenda. The role of

law in urban development has received increasing attention and arguments associating law with positive urban change are not novel. Few studies, however, have focused on the mechanisms by which such association actually takes place – i.e. *how* the law operates to bring about change. This study aims to contribute towards filling this gap by examining how the law, through processes of legislative reform, influences the articulation of regulatory frameworks which govern formal access processes and in turn what impacts this has on access possibilities for the urban poor.

This study is thus interested in the areas and linkages between formal access to land and housing in cities, regulatory frameworks, law and urban development. These topical issues will be examined through the framework of two city case studies: the Johannesburg conurbation in South Africa and Dar es Salaam in Tanzania. Given that legislative reform in the realm of land and housing has occurred in both Tanzania and South Africa since the early 1990s, and taking into account the differences in the efficiency and equitability of processes whereby the urban poor are able to formally access land and housing in each city<sup>1</sup>; these cities present fascinating portals through which to explore these issues. This longitudinal comparative study will adopt a historical and analytical account of recent law reform, together with an analysis of formal access processes in each city, in order to answer the central research question: “*Why are processes that enable the urban poor to formally access urban land and housing more efficient and equitable in the Johannesburg conurbation than in Dar es Salaam?*”

It will be argued that legislative reform influences the articulation of regulatory frameworks, which in turn differentially impact upon the efficiency and equitability of formal access to land and housing processes in cities. This analysis illustrates the link between law and the important developmental outcome of improved shelter options for the poor, by examining the mechanisms through which – i.e. *how* – the law operates as a tool of change. By exploring how the law can improve the articulation of regulatory frameworks, which in turn can contribute to more efficient and equitable formal access processes, the important developmental potential of law as a tool of urban change is

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<sup>1</sup> (as will be illustrated in chapters 3 and 4).

demonstrated. This dissertation will be structured as follows. Chapter 2 will lay out the theoretical framework of this study with an exposition of the challenge of formally accessing land and housing in cities, regulatory frameworks and the role of law in urban development. Chapters 3 and 4 will set out the South African and Tanzanian case studies respectively. The comparison and analysis discussion will occur in Chapter 5, before concluding in Chapter 6.



## **2. THEORETICAL FRAMEWORK**

### **2.1 ACCESS TO LAND AND HOUSING IN CITIES**

#### **2.1.1 The crisis**

Recent trends of urbanization have led to the enormous growth of urban populations, a trend most acute in the cities of the developing world. The growth of cities has been described as inevitable and irreversible, with the world's urban population set to rise to 5.5% billion by 2025 (UNDP 1991; UN-HABITAT 2003a). Significantly, 2007 represents a turning point in the balance of human settlements with more people now living in cities than in rural areas (Beall et al. 2006, 1). Moreover it is estimated that nearly all of the world's population growth in the next 25 years will be absorbed by cities in the South and that by 2030 city dwellers will constitute 61% of the total population of the world (*ibid*; UNPD 2003).

The urbanization trend has been accompanied by a plethora of complex and interconnected challenges. Levels of urban poverty are expected to rise to 45-50% of the total population living in cities by 2020 (UN-HABITAT 2003b, 7). A particularly conspicuous manifestation of urban poverty is visible in human settlements in cities of the South. As McAuslan states, one central and overwhelming issue stands out from the phenomenon of relentless city growth, namely the need for land in the city (2003, 354). In most cities of the developing world, up to one half of the urban population live in inadequate, insecure housing conditions within informal settlements (UN-HABITAT 2003b, 7). With at least 1 billion people currently living in urban slums, a number predicted to rise to 1.5 billion by 2015, and up to 2 billion by 2030, access to land and housing by the urban poor in cities of the South presents one of the most serious challenges facing national governments and the global development community today (see Beall et al. 2006, 2; Payne and Majale 2004, 113).

### **2.1.2 The formal and the informal city**

Responding to this challenge will require a narrowing of the gap between the formal and the informal city. Most cities in the South are divided into distinct formal and informal realms. McAuslan (2003, 6-7) draws on Santos' (1979) formulation of the notion of two circuits of the urban economy in order to explain differing circuits of land that exist in society. According to this conception, formal urban land markets constitute the 'upper circuit', and are regulated by statutory codes of law interpreted and applied by state officials. In this realm, laws, regulations and rules are complied with when land is accessed. Informal urban land markets constitute the 'lower circuit', and are regulated informally by custom or practice. Here land is primarily accessed outside of the formal system where official laws, regulations and rules are generally not complied with. The majority of city dwellers in developing countries, especially the poor, operate within the 'lower circuit' in the informal realm. Durand-Lasserve (2005, 2) and Fernandes and Varley (1998, 3) argue that the attractiveness of this informal circuit has been strengthened by the failure of governments' land and housing policies and the inability of the formal private sector to provide land for housing the poor, who have turned to informal processes to access shelter.

City dwellers that access land and housing informally are disadvantaged in a number of significant ways. They are vulnerable to disease, violence and social, political and economic exclusion (Beall et al, 2006, 2). They lack the benefits of adequate secure housing and tenure, entitlement to physical and social infrastructure services and safe living environments, generally afforded to those operating in the formal city domain (see Rakodi and Leduka 2003, 8). Additionally, according to de Soto (2001), their informal status and associated lack of security of tenure prejudices them further as they are unable to utilise titles as collateral for loans to advance economically. Informal residents are also not eligible for social packages offered by a city (CoJ 2005b, 35). The corollaries of these disadvantages are clearly advantageous to city dwellers able to access their land and housing in the more protective formal realm (see Rakodi and Leduka 2003, 8; UN-HABITAT 2006, 7).

Notwithstanding the disadvantages associated with accessing land and housing informally, arguments regarding the informal city domain or the systems in terms of which land is accessed within it as deviant or unimportant are unsophisticated and have been widely discredited. The existence of informal land markets and systems, reasons for their existence, as well as their enormity has been widely recognised (see Hardoy and Satterthwaite 1989; Fekade 2000; Kombe 2000; Jenkins 2001; Durand-Lasserve 2005). Literature on the enormously positive potential of informal systems as innovative responses to the land and housing crisis, has also been steadily increasing. Arguments that advocate the need to work with informal systems when devising land and housing policies are prevalent (see Cross 2000, 195; Payne 1997; Balamir and Payne 2000; McAuslan 2003, 6). Kombe (2001) stresses the importance of enabling informal systems to complement an ailing formal sector.

While acknowledging the above-mentioned bodies of literature and recognising the important role of informal land and housing systems, this study argues for a returned focus to formal systems and access processes. It contends that improvements in the efficiency and equitability of formal access processes are beneficial to incorporate more city dwellers into the formal and legal city domain, and to ease pressures on the informal system. Multifaceted urban development crises call for diversified responses. Informal systems have a crucial role to play but inclusive formal access systems are indispensable components of realistic responses to the land and housing crisis.

### **2.3 The challenge: bridging the formal/informal divide**

Cities in which the majority of residents are excluded from its formal systems are divided, non-inclusive and non-sustainable. Finding ways to improve formal access possibilities for the urban poor constitutes an important effort in creating inclusive cities and bridging the formal/informal city divide. Each time formal access possibilities for the urban poor are improved; the gates to the formal and legal city open a little wider. The ultimate goal is the creation of inclusive and equitable cities, where residents, regardless

of background or income status, are incorporated into the city domain and granted secure land and housing rights as part of an overall decent standard of living (see Aldrich and Sandhu 1995).

The land and housing crisis in cities of the South is vast and multifaceted and needs to be tackled by a variety of approaches. This study examines one such approach, namely improving formal access possibilities for the urban poor. The barriers to access that prevent the urban poor from being able to formally access land and housing in cities are similarly numerous and multifaceted, necessitating a further delineation. This study focuses on just one such reason, albeit a critical one; prohibitive regulatory frameworks that act as barriers to formal access possibilities. It is to an analysis of such regulatory frameworks, what they are, how they act as barriers, and what can be done to reform them, that the next section turns its attention.

## **2.2 REGULATORY FRAMEWORKS**

### **2.2.1 Regulatory Frameworks Defined**

Regulation can be conceived of as a rule or order of conduct prescribed by an authority, either requiring or prohibiting certain behaviour for various purposes (Payne and Majale 2004, 25; Baldwin et al. 1998; see also Mitnick 1980). Payne and Majale describe regulation as occurring through a continuing administrative process (2004, 26). For its purposes, this study defines regulatory frameworks to mean the regulations, standards and procedures that govern processes whereby land and housing is formally accessed in cities. The term will thus not encompass the overarching legislation and policy which informs it. This meaning is based on the definitions delineated by Payne and Majale (2004) as contextualized by Royston and Ambert (2002) in their innovative multi-country research study. Regulatory frameworks thus consist of: planning regulations (which stipulate what development is permitted on urban land), planning standards (which stipulate the level and quality to which all officially acceptable land and housing development should conform) and administrative procedures (which stipulate the official steps that urban developments need to follow to be officially acceptable) (Payne and Majale 2004).

### **2.2.2 Barriers to formal access**

A major proportion of urban housing in developing countries is developed outside officially sanctioned (or formal) processes, in disregard of official planning regulations, standards and administrative procedures (Payne 2001, 308). While many factors converge to explain why this is so, the unaffordable costs attached to adhering to formal regulatory frameworks ranks high amongst such factors (*ibid*). As well encapsulated by Payne:

...opportunities for access to legal shelter are significantly influenced by the social and economic costs of conforming to official requirements. Where these

costs are greater than households can afford, they have little alternative but to seek other options (*ibid*).

There are numerous ways in which regulatory frameworks act as barriers to the urban poor in their attempts to formally access land and housing (see Payne 2001; Struyk et al. 1990; Kitay 1985; de Soto 1980). Regulatory frameworks act as barriers by prescribing lengthy and time-consuming procedures involving numerous cumbersome steps that impose great costs (both in terms of time and money) on would-be applicants. The excessive number of years it can take to record a land transaction on official title registers and how this in turn hinders the involvement of private sector developers in low-income housing in many developing countries was observed by Kitay (1985, 20). Similarly Struyk et al. (1990) recorded that in West Java it took an average of 32.5 months for title to be issued in land transfer processes, adding an estimated 10%- 29% to the cost of land acquisition (see Payne 2001, 309). De Soto (1989, 2000) found that in Peru administrative procedures were so burdensome that it was impossible for development to take place unless rules were contravened (Payne 2001, 309). It took 159 bureaucratic steps to legalize informal settlements in Lima, a process taking approximately 20 years (De Soto 1989; Payne 2005, 137). In the Tanzanian context, Kironde (2004) illustrates how it can take more than seven years between identifying an area for a planning scheme and getting the requisite letters of offer issued; a process involving 13 steps each with a number of sub-steps (see also Silayo 2002; Payne 2005, 138). Likewise in Bolivia, obtaining official permission for the legal development of residential land is a process requiring a minimum of 20 time-consuming steps (Farfan 2004).

Regulatory frameworks also act as barriers to access by prescribing costly standards often based on inherited practices and beliefs, rather than on relevant local realities (Payne 2005, 137). Examples of incongruous application of inappropriate regulatory frameworks can be seen in Lesotho, where building regulations are based on those of Sweden, or in the highlands of Papua New Guinea where they are based on Australian regulations derived for coastal conditions (Payne 2001, 309). Hardoy and Satterwaithe (1989, 31) argue that existing codes and standards price most third world citizens out of the legal housing market. Regulatory frameworks that prescribe costly, time-consuming,

cumbersome procedures that lack in local relevance impose great time and monetary costs on would-be applicants and act as formidable barriers to access.

### **2.2.3 Reforming Regulatory Frameworks?**

In order to meet basic development objectives, a regulatory framework should enable access to appropriate affordable services by all urban dwellers, including the poorest (Majale 2002, 6). An appropriate regulatory framework needs to define and protect the public interest without imposing conditions which are of no relevance to local communities (Payne and Majale 2004, 116). The current widespread exclusion of the majority of city dwellers from formal access processes, serves to illuminate the disconnect between existing regulatory frameworks and the needs and realities of local communities. There is an urgent need for reform. Numerous studies have stressed this need and have advocated reviews of regulatory frameworks (see Kitay, 1985; Hardoy and Satterthwaite 1989; Farvacque and McAuslan 1992; Payne 2001; Payne and Majale 2004). It is argued that effectively reforming regulatory frameworks will improve formal access possibilities thus granting entry to the formal and legal city to more of its residents. This will help bridge the divide between formal and informal shelter options formal and informal city domains.

So what reforms are needed? Calls have been made for quicker, more streamlined, flexible, locally relevant and affordable regulatory frameworks (Payne and Majale 2004; Majale 2002; McLeod 2003; Kironde 2004; Payne 2007). Payne and Majale's cross-country research study proposes that simplifying administrative procedures involved in legally accessing urban land can lead to meaningful improvements (2004, 116). Further reform suggestions include promoting partnerships between key stakeholders and integrated planning and development strategies (*ibid*).

Together the above-mentioned reforms can help lower the barriers presented by inappropriate regulatory frameworks and improve formal access possibilities for the urban poor. The crucial question is thus *how* such reforms in regulatory frameworks can

be brought about? It is to this question, and the role of law in this process that the next section of this chapter turns its attention.



## **2.3 LAW AND URBAN DEVELOPMENT**

### **2.3.1 Law and Development**

Law has profound implications for urban development, simultaneously defining systems of urban government, establishing systems of urban planning and regulation of land development and defining the powers of urban planners and managers (McAuslan 2003, 139). Correctly determining the role of law in urban development is crucially important. Within the realm of land and housing, analysing the relationship between the law and the regulatory frameworks that act as barriers to formal access is an indispensable component of any pragmatic attempt to rise to the challenges presented by the land and housing crises in cities.

Historically however the significance of law in urban development has been largely overlooked. As McAuslan explains, in the past a legal dimension to development in general and to human settlement development in particular was not thought to be important (2003, 110). This gave rise to a rather illogical paradox where despite law and urban development being almost synonymous in the real world of urbanisation; in the world of research on urbanization, law was never granted a central role (McAuslan 1998a, 18). Fernandes and Varley have also commented on the underestimation of the legal dimension of the urbanization process (1998, 3).

The relationship between law and urban development has however progressively been accorded greater significance. Challenges to the doctrinal nature of legal scholarship that prevailed prior to the 1960s and which regarded law as a self-contained discipline began with the 'legal realism' movement (see McAuslan 1998a, 18-21). From the 1960s onwards this more open and social-science-oriented approach began to influence legal scholarship, leading to the creation of the 'Law and Development' movement which emphasised the need to understand the legal dimension of urban development (*ibid*, 21; Fernandes and Varley 1998, 11; ILC 1974, 20-21).

The importance of law in the urban development process was solidified by the Habitat Agenda of the 1996 UN City Summit which emphasised the central role of law in the implementation of its Global Plan of Action (McAuslan 2003, 110). A considerable body of Law and Development literature in the area of urbanization now exists. This literature spans a vast area and has developed at differing paces and with different levels of emphasis throughout the world. Land management, informal settlements and ‘formal’ legal issues such as rent control are areas which have received considerable attention (McAuslan 1998a, 23, 31; see Manaster 1968, Karst 1971, Smart 1988 and Westen 1990). The vast majority of research on legal aspects of urban land issues in Africa has however focused on issues of land tenure. While some progress has been made in the realm of urban planning law, especially through criticisms of its elitist and locally irrelevant nature (Kanyehamba 1980; Farvacque and McAuslan 1992) many research gaps in the realm of urban planning remain to be filled.

### **2.3.2 Law and Change: towards an understanding of *how* ...**

With the increased recognition of the significance of the relationship between law and urban development, a number of studies associating good or strong laws with positive improvements in urban development have emerged. It has frequently been argued that there is an important association between law and positive developmental outcomes. For instance, North (1990) and de Soto (2000) argue that law (in the form of property rights) is imperative for economic growth. Similarly Acemoglu et al. (2000) argue that secure property rights are correlated with economic growth with causality running from property rights to growth. While the existence of a link between law and positive developmental outcomes is thus often acknowledged, *how* this link is made or how the law operates to bring about positive change is often overlooked. This study aims to contribute towards filling this gap by examining how the law influences the articulation of the regulatory frameworks which govern formal access processes, and in turn, what impacts this has on access possibilities for the urban poor. In this way the developmental potential of law will

be analysed through an examination of the relationship between law and regulatory frameworks and an exploration of *how* the law operates as a tool of change.

The crisis of inadequate formal access to land and housing in cities is clear, as is the importance of understanding the roles played by regulatory frameworks and the law in improving formal access possibilities for the urban poor. However, although the crisis exists to some extent in most developing world cities, the extent of the crisis differs between countries. For example, efficiency and equity levels in the provision of formal land and housing to the urban poor are very low in Dar es Salaam, yet Johannesburg fares far better in this regard, offering substantially more efficient and equitable formal access possibilities. The rest of this dissertation will explore the themes discussed in this theoretical framework chapter, through an examination of why this difference exists.

### **3. SOUTH AFRICAN CASE STUDY: THE JOHANNESBURG CONURBATION**

#### **3.1 Context**

##### **3.1.1 Location**

South Africa is a rapidly urbanising country with estimations of 75% of the population expected to live in urban areas by 2020 (RSA 1995a). Gauteng, its smallest province accommodates approximately 20% of the total South African population and is the most highly urbanised province in the country with an estimated urban population of 96% (Statistics South Africa 2006). The City of Johannesburg (CoJ) is the densest urban area within the province with a population of approximately 3.8 million people (CoJ 2005).

The South African case study examines formal access to land and housing processes in an area defined as ‘the Johannesburg conurbation’. This encompasses the CoJ together with Boitumelo, a selected adjacent area situated 45km immediately to the South of the CoJ within the Emfuleni municipal district. Boitumelo is included in the study due to the relevance of data accessed from a research study conducted there recently. The development processes that occurred in Boitumelo are also representative of the processes that occur within the greater Johannesburg conurbation.



### 3.1.2 Formal Access to Land and Housing

In South Africa, the government is not directly involved in the provision of housing, although municipalities can and often do take on the role of developer in some housing delivery projects (Royston and Ambert 2002, 4). Government policy on housing recognises that the State has insufficient resources to meet the needs of the homeless on its own and that sustained, substantial investment in housing from sources outside of the national fiscus is required (RSA 1994, 25). The government's role is thus primarily one of enabler and facilitator, seeking to facilitate an efficient and equitable functioning of the land and housing market. Government housing policy strategies include: stabilising the housing environment, institutional support, mobilising savings and housing credit, providing subsidies and facilitating the speedy release of land (*ibid*; Royston and Ambert

2002, 4); the latter two strategies being of the most relevance to the regulatory framework focus of this study.

There are a number of ways in which land and housing can be formally accessed in the Johannesburg conurbation. The most important formal supply option for the urban poor is the housing subsidy scheme which is a once-off capital amount granted to qualifying beneficiaries, used to purchase land, housing and infrastructure. Eligibility for the subsidy is determined principally by income status, with beneficiaries needing to earn less than R3,500 (approximately £250) to qualify (Royston and Ambert 2002, 1).

In addition to, and often in association with the housing subsidy scheme, the CoJ through its Housing Department and as part of its integrated development planning process, initiates projects to aid formal access possibilities for the urban poor. Examples of such projects within the CoJ include Greenfield Development projects and social housing interventions.<sup>2</sup> In Greenfield Development projects new housing is provided on vacant, previously undeveloped land. Social housing developments are funded through housing subsidies and involve the delivery of medium to high density housing for rental on a not-for-profit basis (CJMM 2006, 130, 133). Greenfield development projects and social housing interventions, together with the provincial housing subsidy, present the most realistic possibilities for the urban poor to formally access land and housing in the city.

### **3.1.3 Regulatory Frameworks**

The various processes whereby the urban poor can formally access land and housing in the Johannesburg conurbation are governed by an array of regulatory frameworks. Successfully accessing formal land in the City (whether through Greenfield development projects, social housing interventions or the housing subsidy) involves interacting with a number of regulations, procedures and standards. For instance, planning regulations, drafted in respect of town planning and land development laws stipulate how land is to be

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<sup>2</sup> This is not an exhaustive list, with further examples including the formalisation of informal settlements, hostel and old age home upgrading and various other renewal projects, which due to space constraints fall beyond the scope of this study.

managed and used. Within the South African context, administrative or development procedures include the township establishment or land development procedures contained in the various planning laws, as well as the housing subsidy administration procedures, and cumulatively constitute the procedures that have to be adhered to when developing land or housing or accessing the housing subsidy. Additionally, a variety of planning, engineering and building standards need to be adhered to when developing new houses in the city (Royston and Ambert 2002, 5).

### **3.2 Legislative Reform**

South Africa's complex history of colonial rule and apartheid bequeathed a land and housing crisis of immense proportions upon the country. Democratic elections in 1994 however, heralded a fundamental transformation in the country and the post-election period was marked by the passage of numerous pieces of legislation (see Royston 2001, 1), not least in the realm of land and planning law. This legislative reform has cumulatively and significantly reformed the regulatory frameworks governing formal access processes.

#### The Development Facilitation Act, 67 of 1995 (DFA)

The DFA was prepared by the National Housing Forum (NHF), a key player in dismantling the meticulously crafted apartheid planning and development system by calling for a new approach to planning and a new regulatory framework. (Royston and Ambert 2002, 66-68). The objectives of the DFA are to facilitate the speedy delivery of land for development purposes and to lay down general principles governing land development (Royston 2001, 3; McAuslan 2003, 126). The DFA set out to deal with legislative and procedural obstacles to land development by introducing measures to facilitate and expedite projects and to bypass bottlenecks in existing regulations (RSA 1995b). It provides for an alternative and quicker route for land development applications and the creation of tribunals that can override inhibitive laws (Royston 2001, 3). The

DFA also introduced a legal requirement for local authorities to produce municipal plans, called land development objectives (LDOs) and significantly, it was through such LDOs that integrated development planning was conceptualised (see McAuslan 2003, 126; Royston 2001, 3). The overarching goal of the DFA is to cut through bureaucratic log jams to develop low income housing more efficiently (Royston and Ambert 2002, 70). The DFA represents a major shift in thinking which has reformed regulatory frameworks and introduced a new planning paradigm in post-apartheid South Africa.

#### The Local Government Municipal Systems Act, 32 of 2000 (MSA)

The MSA mandates municipalities to adopt an integrated development plan (IDP) for its municipal area. LDOs and IDPs overlap to a large degree and complement one another in establishing the planning paradigm within an area. A city's IDP is the principal strategic planning instrument which guides and informs all planning and development within it. One of the strategic thrusts for the CoJ in terms of its current IDP is the creation of sustainable human settlements by addressing housing and infrastructure backlogs and problems of land for low income housing (CJMM 2006, 61). By directing local government bodies to provide for integrated development planning, the MSA has together with the DFA shaped regulatory frameworks and contributed towards the planning paradigm shift within post-apartheid South Africa.

#### The National Housing Act 107, 1997 (HA)

The HA has also contributed to the planning paradigm shift in South Africa. The HA instructs all spheres of government to: observe and adhere to the principles in chapter 1 of the DFA; to ensure that housing development is based on integrated development planning and to give priority to the needs of the poor in respect of housing development. The HA has also contributed towards lowering the costs attached to regulatory frameworks by making funds available to the urban poor through the housing subsidy scheme, which provides funds for the costs of land, housing and associated development costs (see Royston and Ambert 2002, 1). By recognising the limitations of the private



land and housing market and the need to facilitate land and housing development in the interests of the poor; the HA has adopted a locally relevant and equitable approach which has contributed to the reshaping of regulatory frameworks.

Legislative reform in South Africa has influenced the articulation of planning and development regulatory frameworks by reforming them to be more efficient and more equitable, in turn improving formal access opportunities for the urban poor. Findings illustrating this are set out below.

### **3.3 Findings**

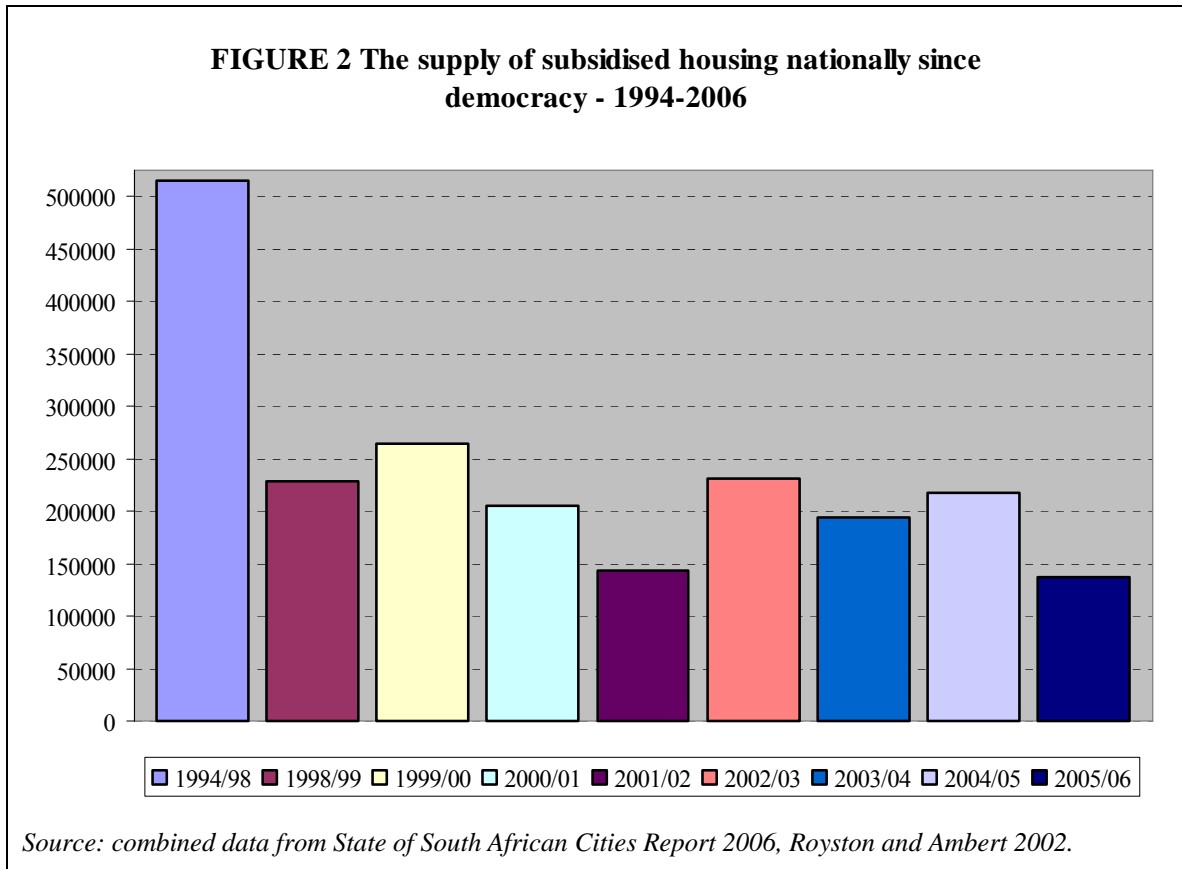
#### **3.3.1 Pre-legislative Reform Situation**

The pre-legislative reform land and housing crisis in South Africa was one of disastrous proportions. In 1994 the estimated official urban housing shortage in South Africa was 1.5 million units (RSA 1994), although likely an underestimation of the extent of the crisis. Despite huge housing shortages, in the early nineties the approximate national rate of low cost housing supply was an inefficient 30,000 units per annum (*ibid*). In addition, housing delivery processes were not designed to assist the poor, indeed apartheid discriminatory practices did the opposite, by the denying majority of South Africans the right to live or own property in urban areas.

#### **3.3.2 Post-legislative Reform Improvements**

There have been dramatic post-legislative improvements in formal access possibilities for the urban poor, both at a national level and within the Johannesburg conurbation. Driven primarily by housing subsidy funding allocated in accordance with the HA, the availability of formal land and housing for the urban poor has increased impressively. By 2006, the number of houses completed or under construction since 1994 stood at 2,081,694, with 2,848,160 subsidies approved (DOH 2006, 7). An average of 166,000

units have been completed each year since 1994, a 550% increase since the early nineties (Royston and Ambert 2002, 4; SACN 2006, 4-33).



Within the Gauteng province, the supply of subsidised housing has been amongst the highest in the country. As reported by the Department of Housing in 2007, between 1994 and 2005 ownership of 277,367 houses was transferred to Gauteng residents, 381,585 stands were serviced and 225,254 houses were built (DOH 2007). Residents within the Johannesburg conurbation constituted a substantial portion of these recipients.

Although the housing subsidy has been the main driver of improvements in the supply of formal housing, a number of other initiatives have also led to improvements by offering alternative formal access options to the urban poor. In accordance with its LDO/IDP

commitments, the CoJ has undertaken a variety of initiatives. Cosmo City and Boitumelo are examples of successful Greenfield development projects within the Johannesburg conurbation. Cosmo City is a new housing development initiated jointly by the CoJ and the Gauteng government to address housing backlogs. This development, once completed, will accommodate an estimated 70,000-plus people in 12,500 houses by the end of 2009 (CoJ 2007; CJMM 2006, 129). In Boitumelo, formal township establishment led to the supply of 3600 units to the urban poor over an approximate two year period (see Royston and Ambert 2002). Social housing initiatives within the Johannesburg conurbation, undertaken by the Johannesburg Social Housing Company (JOSHCO), have also increased the supply of housing to the urban poor. For example, the Brickfields Development in Newtown has seen the building of a 600 unit block in the first phase and will yield increasing numbers of housing units in the future. Between 1995 and 2005, JOSHCO created 1756 housing units in the Johannesburg Inner City (CJMM 2006, 133).

### 3.3.3 Reasons for Improvements: reformed regulatory frameworks

Many interconnected factors together account for improvements in formal access possibilities. Reformed regulatory frameworks that operate in a more efficient (quicker and streamlined) and more equitable (affordable and locally relevant) manner, and that embrace partnership approaches, are however key factors that can be linked to such improvements.

Quicker time frames to gain formal access have greatly improved access possibilities in the Johannesburg conurbation. Housing developments in terms of the provincial ordinances can take as little as four to six months, but more often take between eighteen months and two years (Royston and Ambert 2002, 6). Those who have followed the alternative DFA development route have experienced even faster development processes. With a mandatory hearing date having to be set between 80 to 120 days from submission, an application can be decided in as little as four months (*ibid*, 71). Improved efficiency aided the successful housing development in Boitumelo where the relatively smooth development process spanned an approximate two year period (*ibid*, viii), keeping project

costs down and enabling developers to profit without placing undue cost burdens on urban poor housing recipients.

More streamlined and less cumbersome administrative procedures have also aided in establishing more efficient formal access processes. The best example is the alternative development route offered by the DFA, which has the express intention of bypassing numerous complicated administrative procedures. In the Boitumelo development, Royston and Ambert found that few, if any, bottlenecks in the development process were attributable to the procedures *per se* (*ibid*).

TABLE 1 Administrative procedures in the township establishment process (the Ordinance route)		
Step	Party	6 to 18 months  can take 4 to 6 months  instances of over 2 years
Make application, submit required documents, pay application fee	Applicant (Normally the developer)	
Circulate and advertise application, receive comments and/or objections	Municipal authority (often assisted by applicant)	
Hearing, approval or rejection with or without conditions	Decision making authority (in the Ordinance route a municipality's planning tribunal or the Provincial Townships Board for areas where a local authority is not authorised; a provincial tribunal or provincial administrator in the Development Facilitation Act and Less Formal Township Establishment Act routes respectively)	
Notify surveyor general and deeds registry	Applicant	
Prepare general plan	Surveyor general	
Open township register	Deeds Registry	
Transfer of title deeds	Conveyancer	
Source: Royston and Ambert (2002).		

The housing subsidy is sensitive to local realities and affordability constraints and has significantly improved formal access possibilities for the urban poor. In addition to covering core costs, the housing subsidy also covers fees associated with regulatory frameworks, such as town planning, surveying, engineering design, conveyancing, project management and subsidy administration fees (*ibid*, 1), greatly reducing the cost

burdens attached to compliance therewith. Recognising the local realities of impoverished South Africans unable to meet their housing needs through private land markets, and the consequent need to provide direct assistance to the urban poor, the housing subsidy system represents an equitable response. Significantly, the stepped nature of subsidy means that the lowest income earners qualify for a higher subsidy (*ibid*, 1).

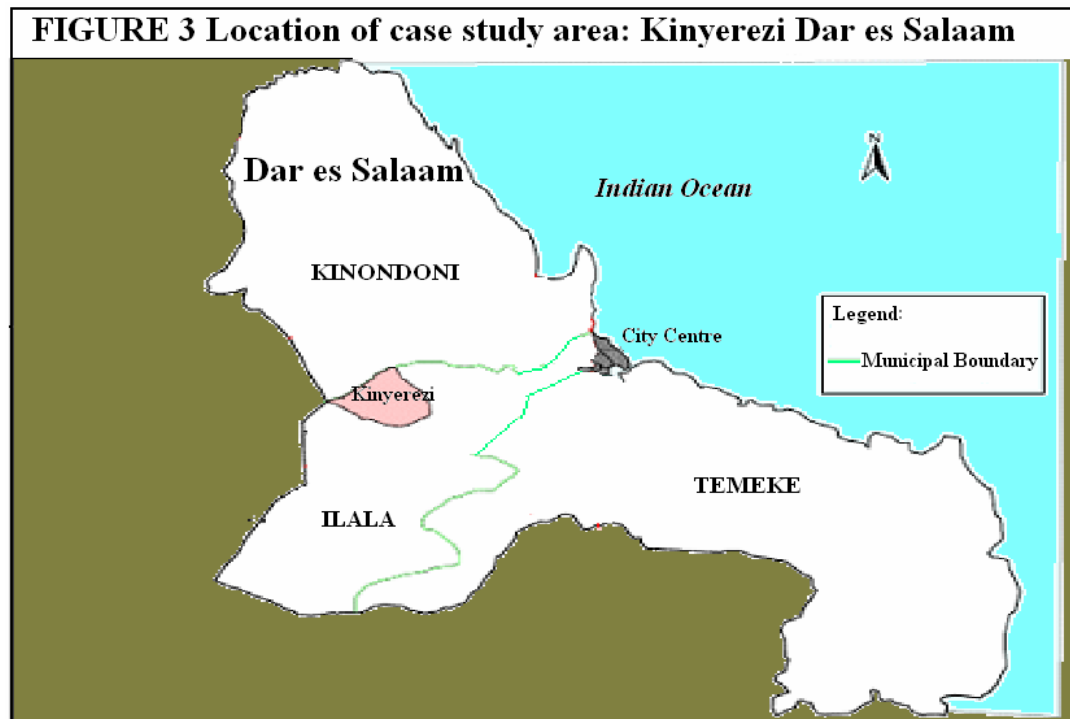
A strong partnership approach has further contributed towards successful development projects within the city. The CoJ has taken a clear partnering approach in dealing with the challenges surrounding housing (CJMM 2006, 133). For example, Cosmo City is a joint initiative of the CoJ and the Gauteng government in close association with the developers, and many of its successes can be attributed to positive partnering relations. Likewise, in Boitumelo, private developers, professionals and local and provincial authorities worked together, innovatively reforming aspects of the regulatory frameworks in order to reach desired results (see Royston and Ambert 2002, viii). A strong partnership approach was also adopted by JOSHCO in the Brickfields development project, (CJMM 2006, 133).

#### 4. TANZANIAN CASE STUDY : THE CITY OF DAR ES SALAAM

##### 4.1 The Context

##### 4.1.1 Location

Tanzania has one of the fastest growing urban agglomerations in sub-Saharan Africa (Kombe 2001). The Tanzanian case study examines formal access to land and housing processes in Dar es Salaam, the largest city in Tanzania. The population in Dar es Salaam in 2005 was over 3,500,000 a number predicted to rise to an enormous 6,700,000 by 2010 (McAuslan 2007, 172; Kironde 2004, 6). According to the UN-Centre for Human Settlements Dar es Salaam is expanding at a remarkable rate of 10 per cent a year (Mpuya 2007). Special attention is given to an area in Dar es Salaam called Kinyerezi in the municipality of Ilala. Kinyerezi is located about 20km west of the city centre. In 2001, there were approximately 5,197 people and 1,200 households in Kinyerezi (Kironde 2004, 28).



#### **4.1.2 Formal access to land and housing**

In Tanzania land vests in the State. The formal supply of land and housing for residents of Dar es Salaam is through public authorities, who have a duty to provide planned land. Formal land is usually allocated directly to users by either local authorities or the Ministry of Lands (see Kironde 2004, 9-10). Tanzania's Town and Country Planning Ordinance (Cap 378) of 1956 as revised in 1961 (TCPO) provides for the declaration of planning areas and forbids development in a planned area without the permission of planning authorities. Accessing land and housing formally in Dar es Salaam thus involves being granted a right of occupancy by a public authority (*ibid*).

#### **4.1.3 Regulatory Frameworks**

Formally accessing land in Dar es Salaam involves interacting with a number of regulations, procedures and standards. The regulatory framework in Tanzania is set out in various principal and subsidiary legislation, directives and technical instructions, including those related to land tenure, town planning, land surveying, land acquisition and infrastructure provision (Kironde 2004, 6; MLHSD 2007). Administrative procedures set out the paths through which the public authorities and citizens have to go, to provide or acquire land respectively. Planning standards are concerned with the quality of a settlement and regulate aspects of land development such as minimum plot size, and infrastructure. Planning regulations prescribe the way in which land or a plot can be developed or used (Kironde 2004, 6).

### **4.2 Legislative Reform**

Tanzania has (together with South Africa and Uganda) taken the lead in the development of new land laws (McAuslan 2003, 115; Wily 2000). The Land Act, 1999 (LA) sets out a legal framework for the operation of an efficient and equitable urban land market in Tanzania. Although criticised by some (see for example Kironde 2001; Shivji 1999) and

although encountering implementation problems (see MLHSD 2005; Kironde 2001), the LA has led to many positive results: for instance by clarifying who has the power to allocate land and providing for titles and security to unauthorised urban settlements. However, while the LA has made a notable contribution to improvements in aspects of land law, its objectives did not entail reforming the planning paradigm or regulatory frameworks governing formal access opportunities, and it has consequently had little influence in this regard.

Urban planning in Tanzania is still governed by the 1961 TCPO, a slightly modified version of the British Government's colonial model of the 1950s. In 2006 the TCPO reached its fiftieth anniversary making it the only colonial town and country planning law left in Anglophone Africa (McAuslan 2007, 174-175). McAuslan argues that there has been no considered and impartial pressure for reform to counter the internal vested interests arguing for the status quo and that in Tanzania, as in much of Africa, old colonial or racist planning laws have not been replaced with laws specifically geared to local needs (2003, 124-125).

The urban structures in Dar es Salaam strongly reflect the discriminatory divisions that existed under colonialism. In this sense, Tanzania provides an illustration of the continuation of colonial style planning under a colonial style planning law (McAuslan 2007, 174). Even more perturbing, according to Mukoko (1996) and McAuslan (2007) this continuation is not due to any kind of unconscious adoption of standards or as a result of inertia, but is rather a deliberate attempt designed to "keep the urban poor in their place" (McAuslan 2003, 125). Although proposals have been made to amend aspects of the TCPO, no reforms have yet come into being, leaving the TCPO in force. In the realm of urban planning law there have been no reforms that have influenced the manner in which regulatory frameworks articulate. Inefficient, inequitable regulatory frameworks, together with a heavy-handed and bullying approach towards the urban poor prevail within the city (see McAuslan 2007, 179); leading McAuslan to argue in 2007 that "attitudes to planning and the urban poor on the part of the political and administrative elites in the Government had not changed one iota" (*ibid*, 181).



### 4.3 Findings

#### 4.3.1 Pre-legislative Reform Situation<sup>3</sup>

Accessing planned land is extremely difficult in Dar es Salaam. While between 1990 and 2001, the Dar es Salaam City authorities received 243,473 applications for planned plots, only 829 were surveyed and allocated. This equates to a recorded annual demand of approximately 20,000 plots and an annual supply of under 700, leaving nearly 97% of the demand unallocated (Kironde 2004, 6). Shortage of planned land has increased demands upon the informal sector where the majority of residents access their land in the city. This has led to the excessive growth of unplanned areas where official sources estimate over 70% of Dar es Salaam's population to be living (*ibid*). Taking into account the average of 684 plots that have been supplied annually between 1990 and 2001 and with estimated future demand rates of at least 40,000 plots a year, unless drastic changes occur, the possibilities for the urban poor to access land in the city look bleak (*ibid*).

<b>TABLE 2 Recorded demand for, and surveyed and allocated plots, Dar es Salaam 1990- 2001</b>			
<b>Year</b>	<b>No of applications</b>	<b>Surveyed and allocated plots</b>	<b>Percent applicants unallocated</b>
1990	30,000	1,490	94.6
1991	31,734	1,256	96.0
1992	32,780	203	99.4
1993	21,370	506	97.6
1994	18,670	201	98.9
1995	29,900	1,372	95.4
1996	28,782	1,027	96.4
1997	21,876	326	98.5
1998	16,497	701	95.7
1999	6,290	609	90.1
2000	2,263	310	86.6
2001	3,311	208	93.7
Total	243,473	8,209	96.6
<i>Source: Dar es Salaam City Council and the three Municipalities records (Kironde 2004).</i>			

<sup>3</sup> The LA, the only active piece of legislation of relevance thus far, was passed in 1999 and came into operation in May 2001. The 'pre-legislative-reform' period thus spans up until 2001.

#### 4.3.2 Post-Legislative Reform: Lack of Improvements

There have not been substantial improvements in formal access to land and housing possibilities for the urban poor in Dar es Salaam. While accurate and up to date data from official sources has proven difficult to source,<sup>4</sup> reports, academic writings, advice from local experts and an examination of projects that have been implemented in the city, together strongly indicate that the formal supply of land and housing to the urban poor has not improved substantially post 2001. Kironde (2007) indicates that it is unlikely that up to date data regarding post 2001 supply and demand levels exists at this stage and that subject to the limited progress of the 20,000 plot project the current situation of land supply in Dar es Salaam remains similar to prior to 2001. McAuslan substantiates this view by stating that in 2005 at least 70% of Dar es Salaam residents still lived in unauthorised urban settlements in housing that was technically illegal (2007, 172-173).

There have however been some improvements. In 2002, the Ministry of Lands and Human Settlements and the Dar es Salaam local authorities embarked on the '20,000 plot project'. Recognising problems with inefficient land and housing supply systems, the 20,000 plot project aimed to increase the number of surveyed plots available for future residential accommodation (SARPN 2007; Kironde 2003). By May 2006, 30,655 plots had been surveyed and 23,765 had been allocated, indicating some improvements in land delivery in Dar es Salaam (United Republic of Tanzania 2007; SARPN 2007). However, the project has been criticised for providing expensive plots without services on the outskirts of the city, mainly benefiting the well-off due to high costs associated with the plots, and thus not aiding the urban poor in their attempts to access land in the city (see SARPN 2007; UPR 2006). Kironde (2007) argues that a major problem with the project was that the plots allocated were very expensive, leaving the urban poor to continue to acquire land they can afford in unplanned areas. The project thus failed to deliver much in terms of sustained efficiency improvements.

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<sup>4</sup> Attempts to access further data from the Dar es Salaam city council and other authorities in Tanzania throughout June, July and August 2007 unfortunately proved unsuccessful, presenting a limitation to the evidence presented in this study.

While limited efficiency improvements have occurred, the lack of equitability in urban planning remains striking. Old colonial laws originally designed to separate the masses from the urban elite are still being used to oppress the urban poor (see McAuslan 2007, 186). In Dar es Salaam the perpetuation of this inequitable approach occurs principally through the TCPO which is in many ways representative of the prevailing regressive approach towards the poor. As McAuslan argues, Dar es Salaam continues to lag behind in putting into action the Habitat Agenda in so far as it relates to urban planning (*ibid*).

#### 4.3.3 Reasons for Lack of Improvements: Regulatory frameworks as barriers to access

There are many reasons why it is difficult for the urban poor to formally access land in Dar es Salaam. However, regulatory frameworks that increase the time and monetary costs attached to adhering to them present significant barriers to access. Regulatory frameworks that are inefficient (time-consuming and administratively burdensome) and inequitable (unaffordable and locally irrelevant) act as barriers to formal access attempts by the urban poor, keeping the gates to the formal city firmly shut.

Lengthy time periods to proceed through formal access processes have increased the costs attached to formally accessing land in Dar es Salaam. The Kinyerezi development, for example, took seven years to complete. It is indeed not uncommon for periods of seven years or longer to elapse between the identification of an area for implementing a planning scheme to the time requisite letters of offer for a right of occupancy are issued (Kironde 2004, 6).

Administratively cumbersome procedures have also increased the costs attached to complying with regulatory frameworks. In the Kinyerezi development, for example, numerous cumbersome administrative steps had to be followed, representing the long bureaucracies characteristic in Dar es Salaam (*ibid*).

**TABLE 3 Procedures in the Kinyerezi Planning Scheme**

<b>Year</b>	<b>Event</b>
1993	Kinyerezi declared planning area. Negotiations with the local population
1994/95	Preparation of planning schemes
1995	Issue of first set of survey instruction
1996	Valuation for compensation
1996/97	Land surveying completed in some parts
1997	Allocation of land starts
1998	Compensation funds released
1998-2001	Surveying completed in other parts
<i>Source: Ministry of Lands, Illala Municipal Council and Kinyerezi Ward Office, Komu (2002) in Kironde (2004).</i>	

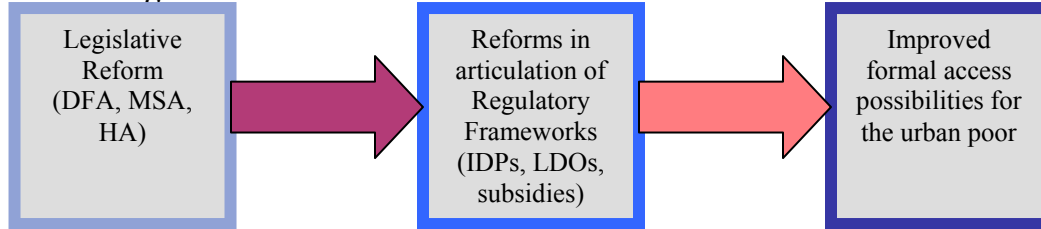
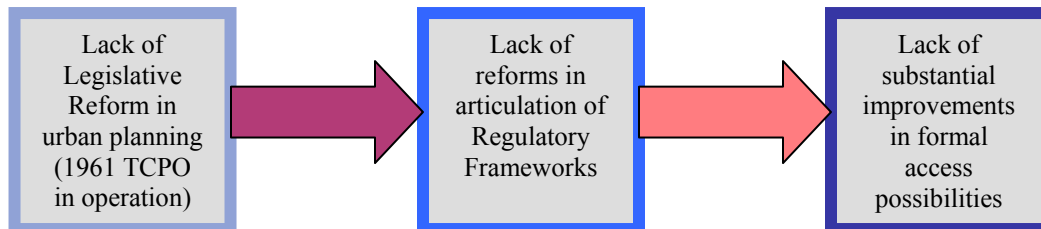
By failing to assist the urban poor, for instance through a subsidy or similar system, regulatory frameworks remain locally irrelevant, further contributing towards the lack of improvements within the city. Most households in Kinyerezi earn a very low income and only 4 percent of residents obtained their land as normal applications through the formal access route (Kironde 2004, 8), indicating the local irrelevance of the formal access processes supposed to apply to them.

## 5. CITY COMPARISON AND ANALYSIS

### 5.1 Discussion

Chapters 3 and 4 highlighted substantial differences in the efficiency and equitability of processes whereby the urban poor are able to formally access land and housing in Johannesburg versus Dar es Salaam. The evidence shows that while the gates to the formal and legal city have been opened to many of South Africa's urban poor, for the majority of Dar es Salaam's urban poor, they remain firmly shut. Why is this so? To restate the central thesis question: *"Why are processes that enable the urban poor to formally access urban land and housing more efficient and equitable in the Johannesburg conurbation than in Dar es Salaam?"*

It is the contention of this study that a key explanatory factor behind these differences lies in the type of legislative reform that has occurred, or failed to occur in these two cities. An analysis of the evidence illustrates that legislative reform influences the articulation of regulatory frameworks, which in turn differentially impact upon the efficiency and equitability of formal access to land and housing processes. While reformed regulatory frameworks that operate in an efficient (quick, streamlined and partnership oriented) and equitable (affordable and locally relevant) manner, can facilitate the urban poor's access attempts; inhibitive regulatory frameworks that operate in an inefficient (slow and cumbersome) and inequitable (costly and locally irrelevant) manner, act as barriers to access for the urban poor (refer to Figure 4 for a diagrammatic representation of the argument).

**FIGURE 4****Johannesburg Conurbation:****Dar es Salaam:**

Prior to 1994, much of South Africa's population was excluded from the benefits of life in the country's largest cities (see SACN 2006, 12). Post the legislative reforms of the 1990s, there have been enormous improvements in the urban poor's ability to access land and housing both nationally and within the Johannesburg conurbation. Legislative reforms have influenced the articulation of regulatory frameworks, cumulatively ensuring that they operate more efficiently and equitably than before. The DFA and the MSA have influenced regulatory frameworks by introducing urban planning concepts such as LDOs and IDPs which encourage and facilitate quicker, more streamlined and partnership oriented processes of land and housing development. The HA, through the housing subsidy system, has significantly lowered the costs attached to conforming to regulatory frameworks and accessing housing, making access processes more affordable and locally relevant to the urban poor. Reformed regulatory frameworks that operate more efficiently and equitably have in turn improved possibilities for the urban poor to formally access land and housing in the Johannesburg conurbation, contributing towards a lessening of a need for informal settlement development.

In contrast, in Dar es Salaam possibilities for the urban poor to access land and housing formally are very limited and there have not been substantial improvements in this regard post the coming into effect of the LA. As they did prior to 2001, the majority of Dar es Salaam residents, especially the urban poor, currently have to rely on informal systems to access land and housing within the city. A lack of legislative reform in the realm of urban planning can be correlated with the perpetuation of a colonially inherited planning paradigm, inhibitive regulatory frameworks, and a consequent lack in substantial improvements in the urban poor's ability to access land and housing in the city. While the LA has reformed aspects of Tanzanian land law, legislative reforms in the realm of urban planning have not yet occurred, and the 1961 TCPO still governs regulatory frameworks and the planning paradigm within the city. The regulatory frameworks governing access processes prescribe cumbersome and lengthy processes which are costly both in terms of time and money. The planning paradigm further fails to prioritise the local realities and needs of the poor, contributing towards a costly and locally irrelevant access process. Lack of reforms to such inefficient and inequitable regulatory frameworks has resulted in their continued operation as barriers to formal access processes for the urban poor in Dar es Salaam, perpetuating the need for informal settlement development.

Comparing some examples of recent land and housing developments in the two case study cities is instructive. In the Johannesburg conurbation, the Boitumelo development took approximately two years to complete, in contrast to the seven years-plus it took for a similar development in Kinyerezi in Dar es Salaam. The administrative steps in the Boitumelo development were additionally less cumbersome and more flexible than those in the Kinyerezi development, with a cooperative partnering approach in Boitumelo leading to some innovative responses to the regulatory frameworks and the planning process. A locally relevant approach sensitive to the realities of poverty in South Africa is reflected in a housing subsidy system which makes access processes more affordable for the urban poor. Lowered costs, more progressive planning and quicker, more streamlined processes can cumulatively go a long way to explain the delivery successes of Cosmo City, Boitumelo, the Brickfields development and projects like them. In Dar es Salaam in contrast, the planning and regulatory framework has not been linked to programmes

prioritising the local realities of the poor, such as subsidies or poverty reduction strategies. Colonially inherited legislation and regulations continue to govern access processes in the city, only now favouring the urban elite rather than colonialists, but having the same prejudicial effect on the urban poor.

## 5.2 Implications

The above analysis, if correct, has significant implications. It highlights the potentially important role that law can play in development, by illustrating *how* the law can operate as a tool of change: namely through its influence on the articulation of regulatory frameworks and planning paradigms that govern formal access to land and housing processes in cities. The South African case study demonstrates how legislative reforms influenced the articulation of regulatory frameworks so that the opportunities for low income and poor city dwellers to formally access land were improved. The Tanzanian case study indicates that a lack of legislative reform in the realm of urban planning and a consequent lack of reform of regulatory frameworks can be correlated to insubstantial improvements in access possibilities for the urban poor. While many studies have drawn attention to the relationship between law and urban change and development, this study has delved deeper to examine mechanisms through which law brings about change, namely by influencing and reforming the articulation of potentially inhibiting regulatory frameworks, ultimately improving access possibilities for the urban poor.

South Africa's urban history is an unusual one and it is a history in which law has played an extensive role (Berrisford 1998, 224). In 1998 Berrisford argued that:

In the urban sphere, despite popular opposition, the law succeeded in establishing a physical pattern of urban growth and development that reflected the racist ideology of the apartheid state. The current processes of political transition represent an opportunity to redefine the appropriate role of law in urban processes (*ibid*).



This study contends that the appropriate role of law in urban processes has indeed been redefined in post-apartheid South Africa. Notwithstanding the numerous challenges and problems that still exist in the country, the DFA, MSA and the HA have together operated as significant tools of urban change and development by influencing regulatory frameworks and planning paradigms in a way that has improved possibilities for the urban poor to access affordable, adequate and secure land and housing. The gates to the formal and legal city have not yet been opened wide enough to allow access to all South African citizens, but the processes of progressive legislative and regulatory reform discussed in this study have undoubtedly opened them wider, granting many South Africans previously excluded from the formal and legal city, a space within it.

### **5.3 Caveats**

South Africa cannot be overstated as a success story, as although much progress has been made, enormous problems persist and the current demand of land and housing still outstrips the supply. Population growth, urbanisation pressures, apartheid legacies and housing backlogs have converged to keep the land and housing crisis very much alive, and with one in five people still live in informal housing (see CJMM 2007) the argument presented is not that adequate solutions have been achieved. Significant improvements have however occurred and examining what has led to such improvements and how this can be built upon is imperative in the pursuit of successful responses to the land and housing crisis. Legislative reform in South Africa has led to improvements which need to be built upon to open the gates to the formal and legal city progressively wider until all city residents have realistic access opportunities in the cities in which they live.

To restate an important delineation, the parameters of this study have been confined to formal ways in which the urban poor can access new land and housing in cities. There are however other important ways in which the crisis can be tackled. Processes of formalisation or regularisation of informal settlements where residents are granted formal title in respect of the land and housing they already utilise informally constitute

alternative yet imperative paths to incorporate the urban poor into the formal and legal city domain. Substantial progress in this regard has been made in both cities under examination. Payne insightfully argues for a “twin-track approach” to tackling the land and housing crisis consisting of: the adoption of innovative approaches to improving tenure security in existing unauthorized settlements; and the revision of regulatory frameworks to reduce the need for future slums by significantly improving access to legal land and shelter (2005, 135). Without in any way undermining the former, the focus of this study has been confined to the latter.

## **CONCLUSION**

The starting point of all urban development is land (Kitay 1985, 1). A city that fails to provide all its citizens, including the poorest, with efficient and equitable access to formal and legal land and housing is neither inclusive nor sustainable. The stakes attached to unsustainable urban development patterns are high. Potentially 2 billion people living in urban slums in cities in the developing world by 2030, operating informally in the 'lower circuit', excluded by the systems of the societies that they make up the largest part of. The role law can play in addressing challenges of urbanisation and access to land by the urban poor demands further attention. Post-apartheid South Africa's experience, while continuing to need improvements, illustrates the developmental potential of law as a tool of urban change and development. Through impacting upon inhibitive regulatory frameworks, legislative reform aided in opening the gates to the formal and legal city to thousands of South Africans previously excluded from this urban and legal space. It is imperative to continually monitor and improve this process. In Tanzania, inadequate legislative reform in the realm of urban planning has resulted in the perpetuation of inhibitive regulatory frameworks that act as barriers to access for the urban poor. Most residents of Dar es Salaam remain excluded from the formal and legal city domain and denied of the associated advantages of city living. Whether amendments to the TCPO or the enactment of new legislation relating to urban planning will succeed in improving formal access possibilities for the urban poor in Dar es Salaam will require careful scrutiny in the future.

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