

POST-APARTHEID SPATIAL INEQUALITY: OBSTACLES OF LAND USE MANAGEMENT ON TOWNSHIP MICRO-ENTERPRISE FORMALISATION

A Report by the Sustainable Livelihoods Foundation

14 August 2017



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EXECUTIVE SUMMARY

Land use management centres on the notion of protecting people and the environment from the externalities of development. It is central to strategic planning to ensure the sustainable provision of public utilities, transport infrastructure, housing and economic infrastructure. Land use management also provides an important legal/institutional framework to uphold property values and so safeguard the municipal tax base and investment. In South Africa there is a complex web of legislation (which transverses the three tiers of government) through which the state aims to manage land, control building developments, and determine the places and forms in which people can conduct business and operate an enterprise. The Spatial Planning and Land Use Management Act (SPLUMA), 2013, clarifies the roles of government in land use management. SPLUMA is an important step towards redressing the apartheid legacy of spatial injustice: the Act introduces the four principals of spatial justice, spatial sustainability, spatial resilience, and efficient and good administration to guide land use governance.

The impact of South Africa's spatially unjust land use systems on poverty and inequality has been studied in broad (conceptual) terms. Yet the picture of how urban land use systems are actually managed and how they impact on entrepreneurship has been under-researched. This report aims to address this knowledge gap. We specifically focus on the way urban land use management systems have impacted on (informal) micro-enterprises in the township context. This impact stunts the process of formalisation and/or the growth in business activity. Our point of departure is the argument that enterprise formalisation should be regarded as a strategic objective of economic development in the township economy. As in land use management, formalisation enables the state to regulate business practices (to permit new entrants and competition), ensure adherence to social standards, secure tax revenue, curtail the production and distribution of illegal goods, and increase the opportunities for enterprise growth through investment.

The report will illustrate the ways in which land use management systems have intentionally (as well as unintentionally) reinforced apartheid-era town planning and spatial injustice in the township instead of nurturing economic growth.

The report will illustrate the ways in which land use management systems have intentionally (as well as unintentionally) reinforced apartheid-era town planning and spatial injustice in the township instead of nurturing economic growth. The report shows how compliance with land management systems is near to impossible for micro-enterprises. For these entrepreneurs, the land-related processes which people have to navigate to obtain business compliance resembles a Kafkaesque world: one in which

the rules are nightmarishly complex, incomprehensible and illogical. Partially as a result of these challenges, the great majority of township informal micro-enterprises do not comply with land management system requirements and gain few or no benefits. They have no alternative to trading illegally. We refer to this process as 'enforced informalisation'. The report details evidence of the implications of 'enforced informalisation' on house taverns, house shops, early childhood development (ECD) centres, and street-based container businesses. Furthermore, the report explains why most township micro-enterprises do not adhere to the land use management system in terms of:

- Zoning rights or consent use rights;
- The proportion of floor space utilised by business activities;
- The absence of a separation between business and residential activities;
- The absence of approved building plans;
- The failure to adhere to municipal by-laws relating to environmental health, food safety and the use of business signage; and
- The failure to adhere to informal trading by-laws and restrictions on trading activities within roads.

The report concludes that the objectives of spatial justice and spatial resilience have little advanced since 1994. This result can be attributed to the combination of inappropriate policy framing, non-supportive legislation (especially at municipal level), the absence of political will to foster township economic growth and formalisation, and the persistence of apartheid-era concerns with maintaining control to prevent 'unruly' social and economic activities. Based on detailed evidence, the report amplifies the argument that South Africa requires a land use system that can more effectively operationalise the principles of spatial justice and spatial resilience, whilst making allowance for the economic marginalisation of township communities. Such a land system needs to recognise the fluidity of urban conditions and the multiple uses of land for business, social, cultural and residential purposes.

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The report advocates the following recommendations towards the development of a more appropriate urban land use system in South African townships:

- The SPLUMA principles of spatial justice and spatial resilience need to be clarified. In working towards clarifying the development planning implications of these two principles, it is important to consider organic land use outcomes from the perspective of township resource constraints, including the historical legacy of spatial injustice.
- SPLUMA should be amended to mandate spatial development frameworks (SDFs) to make explicit the linkage between spatial justice and land reform. In municipal SDFs, plans should indicate where additional land will be made available for township micro-entrepreneurs to establish business activities, specifying, inter alia, localities for those enterprises with high social and environmental externalities.
- Municipal land use management systems need to be simplified and made more flexible in terms of accommodating a mixture of residential, business, cultural and social uses.
- Mixed land use should be permitted without a menagerie of preconditions. Zoning schemes should not impede individuals or households from the pursuit of an economic livelihood, except where the activities pose a demonstrable and serious risk to the health and safety of the area and measures cannot be instituted to reduce these risks.
- Municipalities should investigate the feasibility of establishing local community planning tribunals to oversee land use applications.
- There is a need to establish new ways of recognising land ownership given the growing disparity between formal records of ownership (title deeds) and the actual (informal) ownership of properties in townships. Until an appropriate system such as this can be implemented, the requirements regarding ownership of land contained in land use management systems and building regulations should be treated with the greatest possible degree of flexibility.
- The National Building Regulations and Building Standards requirements should be re-assessed to recognise vernacular architecture and the utilisation of non-standard building materials for enterprise purposes.
- National government should develop a policy on micro-enterprise formalisation. The policy should afford all three tiers of government a shared competency in regulating business and supporting formalisation. The objective should be to create a universal framework for micro-enterprise regulation, specifying, inter alia, land use requirements and specific additional criteria for certain classes of enterprise (such as ECD centres, house shops, house taverns).

TABLE OF CONTENTS

Executive Summary	1
List of Maps, Figures and Tables	5
Acknowledgements	6
Abbreviations and Acronyms	7
Definitions	8
1. Introduction	11
1.1. Aims	11
1.2. The central argument	12
1.3. Why land use management matters	14
1.4. Poverty and micro-enterprises	16
1.5. Report structure	19
2. Part One: Land Use Management Systems	20
2.1. Spatial Planning and Land Use Management Act (SPLUMA)	22
2.1.1. Aims, objectives and scope	22
2.1.2. Spatial development frameworks	24
2.2. National land management competency	25
2.3. Provincial land management competency	26
2.4. Municipal land management competencies	27
2.4.1. Land use rights	27
2.4.2. Alignment with the National Building Regulations and Building Standards	31
2.4.3. Municipal by-laws	32
2.5. Municipal business registration	33
3. Part Two: Specific Contexts of Land Regulation	34
3.1. Home-based enterprises	34
3.1.1. Where land ownership is legally secure	34
3.1.2. Application procedures and costs	37
3.1.3. Administrative penalties and compliance notices	38
3.1.4. Where land ownership is legally insecure	40
3.2. Enterprise sector specific (land use) stipulations	41
3.2.1. Early childhood development centres	42
3.2.2. House taverns	44
3.3. Street traders and other micro-enterprises that are located in public areas	47
3.3.1. Street traders	47
3.3.2. Container businesses	51
4. Conclusion	55
5. Recommendations	56
6. Reference List	60

LIST OF MAPS, FIGURES AND TABLES

Map 1: Enterprise distribution within 3 nodal points, Ivory Park.	17
Map 2: Spatial distribution of home liquor outlets (licensed and unlicensed) in Delft South, 2015	45
Map 3: The potential impact of the proposed 500m exclusion zone on home liquor outlets.	46
Map 4: Concentration of street traders on the high street in Delft South, 2015	48
Figure 1: Land management roles across the three tiers of government	21
Figure 2: The land use management process	21
Figure 3: SPLUMA's core components	22
Figure 4: Property development thresholds	35
Table 1: Business land uses permitted in the most common residential zone in the townships of five South African cities	30
Table 2: Land-related regulatory steps	37
Table 3: Land use application costs, City of Cape Town	38

ACKNOWLEDGEMENTS

This report was undertaken as part of the Sustainable Livelihood Foundation (SLF) project, **Unlocking Land for Micro-Enterprise Growth** (ULMEG). The ULMEG project aims to lead a policy engagement process on the land-related constraints that impact on the growth and formalisation of micro-enterprises in townships. The ULMEG project has received funding from multiple donors towards the various project components; however, South African Breweries is the major donor.

The research was undertaken through a collaboration between the SLF and Stuart Denoon-Stevens at the University of the Free State. The collaboration twinned the micro-entrepreneurship expertise of the Foundation with the academic and systems knowledge of urban planning research. In response to one of the knowledge gaps identified through the research, a secondary collaboration was undertaken with Rodolphe Demeestère, a PhD candidate at Panthéon-Sorbonne University/ University of the Witwatersrand, to investigate the land constraints on the use of street-based container trading in Delft South. Lastly, a research collaboration was undertaken with UrbanWorks Architecture and Urbanism to investigate the specific land-based constraints of ten micro-entrepreneurs in Ivory Park, Johannesburg. This latter research is to be published in a companion report, entitled: Ivory Park: Case Studies of Land Constraints in Micro-Enterprises.

The report has benefited from the valuable suggestions and advice of a review panel, comprising Professor Nel (University of the Free State), Professor Piper (University of the Western Cape) and Associate Professor Claire Bénit-Gbaffou (University of the Witwatersrand). The authors of this document are, nevertheless, solely responsible for the arguments expressed in the report. This disclaimer applies to the reviewers and other contributors.

The Foundation acknowledges the roles of Orli Setton for the design of the graphics and layout. The spatial maps were developed by Teresa Legg. Kayla Brown is acknowledged for her technical support role in developing the illustrations and publication layout. All of the figures, diagrams, maps and the photographs used in the report are the property of the SLF.

ABBREVIATIONS AND ACRONYMS

BDM	building development management
ECD	early childhood development
LUM	land use management
NBRBSA	National Building Regulations And Building Standards Act, 1977
RDP	Reconstruction and Development Programme
SABS	South African Bureau of Standards
SAPS	South African Police Service
SDF	spatial development framework
SLF	Sustainable Livelihoods Foundation
SMMEs	small, medium, or micro-sized enterprises
SPLUMA	Spatial Planning And Land Use Management Act, 2013
SR	Single Residential
ULMEG	Unlocking Land For Micro-Enterprise Growth

DEFINITIONS

additional use	A land use right specified in a land use management scheme as an additional (occupational) right permitted within the zone additional to the primary right, provided the use adheres to any specified provisions.
Agrément	Agrément South Africa is a government entity, operating with the Ministry of Public Works, that provides assurance of the fitness-for-purpose of non-standardised construction products, systems, materials, components and processes which are not fully covered by the South African Bureau of Standard (SABS) code of practice.
base zone	The primary zone that determines land use and rules for the development of a land unit before the application of additional parameters of rules of an overlay zone.
building line	An imaginary line on a land use, specifying the distance from an erf boundary within which the erection of buildings or structures is prohibited.
by-law	Legislation passed by a municipality which is legally binding within the municipal area of jurisdiction.
consent use	A land use right that is permitted within a land use management scheme as a result of the consent of the municipality (not a mandatory right).
diagram	A document containing geometrical, numerical and verbal representations of a piece of land, line, feature or area forming the basis for registration and signed by a land surveyor.
early childhood development (ecd) centre	Can refer to a crèche, a day-care centre for young children, a playgroup, a pre-school, after-school care, etc., which provides protection and care for more than six children away from their parents (National Department of Social Development and UNICEF 2006, Guidelines for Early Childhood Development Services). In the township context the term educare has the equivalent meaning to an ECD centre.
erf	A distinct portion of land to which a unique number has been given by the Surveyor-General. A land unit has the equivalent meaning.
floor area threshold	The proportion of total available floor space which may be used for business purposes other than allowed residential use (typically specified in municipal land use schemes to ensure that the primary use of property remains residential).
home industry	The use of a portion of a dwelling house and/or outbuildings for entrepreneurial activities that entail manufacturing and the repairing of goods. Business activities that are deemed to cause a nuisance or affect a person's health, safety, or welfare are excluded.
home occupation	The use of a portion of a dwelling house and/or outbuildings for professional services or occupational purposes, but (usually) excluding entrepreneurial activities that are primarily retail-based and/or entail manufacturing. Business activities that are deemed to cause a nuisance or affect a person's health, safety, or welfare are excluded.

house shop	A shop operating from within a dwelling house and/or outbuilding within a residential property that retails grocery items, including perishable foods. Where the land use scheme requires municipal permission to operate a house shop, this is usually subject to the conditions that the primary use of the property remains as a residency and that the business operator resides permanently on the property. Some land use schemes specify maximum floor area thresholds to ensure that the area devoted to business activities does not materially reduce the area devoted to residential use. Spaza shops are similar to house shops, but can operate both from within a residential property or a structure and/or container situated on public open land, within a road reserve or informal settlement.
house tavern	<p>Taken to be synonymous with the term 'shebeen' in respect to land use management. House tavern refers to the portion of a dwelling house and/or outbuildings within a residential property used for the sale of alcohol. Municipal permission is usually subject to the stipulation that the primary use of the property should remain residential and that the operator resides on the property. Some land use schemes specify maximum floor area thresholds to ensure that the area devoted to business activities does not materially reduce the area devoted to residential use.</p> <p>From the perspective of liquor regulation, a tavern is generally understood to refer to licensed retailers, whilst a shebeen refers to unlicensed retailers (hence illegal businesses). The term house tavern applies to enterprises that sell liquor for consumption on the premises (on-consumption) as well as those that sell liquor for consumption off the premises (off-consumption), even though this distinction is recognised in different categories of liquor licensing.</p>
informal settlement	An unplanned and/or inappropriately located settlement on land which has not been surveyed or proclaimed as residential, consisting of shacks and makeshift dwellings which have not been approved by the local authority. South Africa's National Department of Human Settlements further considers widespread poverty, vulnerability and social stress to be characteristics of informal settlements, as well as lack of public and private sector investment. The term informal settlement is often used interchangeably with 'township' in South Africa, although they are not necessarily synonymous.
land use	'The purpose for which land is or may be used lawfully in terms of a land use scheme, existing scheme or in terms of any other authorisation, permit or consent issued by a competent authority, and includes any conditions related to such land use purposes' (Spatial Planning and Land Use Management Act, 2013).
land use management system	'The system of regulating and managing land use and conferring land use rights through the use of schemes and land development procedures' (Spatial Planning and Land Use Management Act, 2013).
micro-enterprise	'A business with either five or fewer employees, or generating less than R200 000 per annum' (National Small Business Amendment Act, 2003).
overlay zone	A category of land use applicable to a defined area which affords the land units with additional development parameters that may be more or less restrictive than the base zone.
place of worship	A land unit upon which a religious ceremony is attended by a congregation or religious activities are practised.
primary use	A land use that may be undertaken legally on a land unit as defined in the relevant land use management scheme without the need to apply for rezoning, a departure or consent use.
property	An erf or land unit together with all buildings and structures on the land.
public open space	A land unit in which the ownership vests in the municipality.

public road	Land that is indicated as a road on an approved plan, diagram or map, and which has been set aside for such use in the deeds office, the ownership of which vests in the municipality.
road reserve	Designated land situated between the cadastral boundary of an erf and the adjoining public street or public road that has been set aside for the further construction or expansion of a public road or street.
shelter	An informal dwelling, outbuilding or storage facility constructed from materials which may or may not adhere to the National Building Regulations and Standards Act.
shipping container	A container that is ordinarily used for the transport of goods by sea, rail and road, and which can be utilised (either as refurbished units or otherwise) as a storage facility or business premises. The term usually refers to containers which are situated outside a building structure and which can be arranged or stacked to provide a purpose-designed business premises.
shopping centre	A purpose-built complex that consists of a number of business units (both retail and services) wherein the majority of shops are not accessible via a public road and where parking is provided in a dedicated parking area.
spaza shop	A small grocery store, where trade takes place from a dedicated business space, either within a residential home, converted garage, iron shack or shipping container. Spaza shops differ from house shops in that they usually sell a wider range of items, have business signage and a business name, have longer trading hours, and operate from a wider range of locations.
street trader	Street traders operate within public roads, public open spaces and road reserves. Street trader businesses can be sedentary, operating from a specific locality (both formally or informally defined), or ambulatory, moving from point to point. Street traders transport their goods to their point of sale and store the goods away from the trading site afterhours. Usually the structures from which street traders operate are of a temporary nature and can be disassembled at short notice, except where municipal facilities are purposefully provided for shelter and storage. Although the term refers to businesses operating from public localities, it excludes businesses operating from shipping containers and shelters within such localities where goods are stored overnight and/or the structures are not disassembled on a daily basis.
temporary departure	An application that results in authorisation to depart from the zoning scheme for a specific period. In the City of Cape Town, for example, temporary departures are awarded for five years.
title deed	A title deed is a document showing proof of property ownership for private property. Each privately owned property has its own title deed, containing the details pertaining to that specific piece of land, such as the names of the existing and previous owners, a description of the property (including measurements), the purchase price of the property, and any usage restrictions on the property.
township	Commonly refers to low-income urban suburbs with little or no formal economic developments. Specifically, the term refers to residential areas that during apartheid were reserved for non-whites (Africans, Coloureds and Indians) who lived near or worked in areas that were designated 'white only'. Townships are usually situated on the margins of urban settlements.
use right	The right to utilise land in accordance with its zoning, including any approved departure, consent use and building plan.
zoning	A category of permissible land uses (as indicated on the zoning map of a land use scheme) and associated parameters that set out rules for the development of land.

1. INTRODUCTION

1.1. Aims

This report aims to address the under-researched topic of the role of land use management systems in micro-enterprise formalisation in the context of the township economy. Within this aim, the report investigates the enduring impact of spatial injustice and economic vulnerability, and the role of land use management systems on these dimensions of poverty and inequality.

The impact of land management system rigidity on micro-enterprise formalisation has not been adequately recognised in the literature that seeks to explain why South Africa's informal economy is small in relative and absolute terms.

Although the report is not the first to highlight the rigid nature of the post-apartheid land management systems, it seeks to chart a different course. The

impact of land management system rigidity on micro-enterprise formalisation has not been adequately recognised in the literature that seeks to explain why South Africa's informal economy is small in relative and absolute terms. Based on detailed primary research, our objective is to show that the important policy objectives of spatial justice and spatial resilience will not, under the current land use management systems, result in the desired

transformation for township residents in general and micro-enterprises in particular. From a perspective of inclusive economic growth, wherein enterprise formalisation has a central place in development strategies, the research aims to show how land use management systems and associated business regulations impact negatively on (informal) micro-enterprises, affecting formalisation and/or business activity. Furthermore, we aim to illustrate the ways in which land use management systems in townships have intentionally (as well as unintentionally) reinforced apartheid-era town planning and spatial injustice instead of nurturing economic growth.

Through demonstrating the inextricable link between land use management systems and enterprise informalisation (or 'enforced informalisation' [Charman, Piper & Petersen, 2013]), the report aims to contribute towards addressing policy weaknesses in land use management systems, whilst highlighting inappropriate allied legislation and development agendas.

1.2. The central argument



Photo 1: Aerial photo of Ivory Park, illustrating the density of settlement.



Photo 2: Survey and land use plan (zoning scheme) of Ivory Park. Note the misalignment between the plan and actual settlement.

Apartheid produced a racial–spatial divide in rural and urban settings. Apartheid urban planning established townships on the periphery, often close to industrial centres though distant from white neighbourhoods and the central business districts. Access to land as well as land use within townships was strictly controlled. The objectives of the apartheid state were multiple, including the triple objectives of: enabling the state to exercise maximum political control; preventing the encroachment of township settlements onto adjacent land; and fostering and preserving a residential dormitory characteristic to these settlements whereby the residents were afforded access to certain urban labour markets (unskilled and low wage), but restricted from independently embracing entrepreneurship and operating businesses (the developmental consequences of this legacy are analysed in: Pieterse, 2009; Turok & Parnell, 2009). Since the downfall of apartheid the township environment has undergone significant changes. Many new township-style settlements have arisen; some of these have been formally planned and have benefited from state investments in housing and social infrastructure, though at least an equal number remain informal. Business activities are now permitted and where market conditions have effectively responded to consumer demand, micro-enterprises have flourished. Micro-enterprise activities are now widely evident along high streets and within residential areas. Although such changes might be regarded as positive, there is substantial scholarly support for the claim that the post-apartheid state has failed to redress spatial inequality (Sinclair-Smith & Turok,

2012; Turok, 2001). Almost universally across South Africa, townships remain isolated settlements, disconnected from the commercial heartland, whilst within settlements micro-entrepreneurs continue to face a struggle to access land for doing business. The places and spaces for conducting business, we argue, remain as constrained today as during the apartheid era.

The overriding post-apartheid land use management policy framework set out in the Spatial Planning and Land Use Management Act (SPLUMA), 2013, seeks to redress spatial injustice and build spatial resilience in marginalised economic communities. The report will argue that due to a combination of inappropriate policy framing, non-supportive legislation (especially at municipal level), the absence of political will and the persistence of apartheid-era concerns with maintaining control to prevent 'unruly' social and economic activities, the objectives of spatial justice and resilience have little advanced since 1994. As a critique on this failure, the report examines some of the ways that land management systems and associated business regulations continue to be influenced by apartheid-era ideas of modernist town planning and the impact of such policies and laws on community development. The report focuses in particular on exploring how land use management systems impact on enterprise formalisation in South African townships and informal settlements. Furthermore, our concerns lie specifically with informal micro-enterprises that provide a livelihood and means of survival for the urban poor. We argue that these economic activities are informal in large part as a result of the stringency of business regulation and the difficulty in obtaining the necessary licences or permits to conduct business legally. The report will demonstrate how land management systems present a key obstacle in this regard, preventing business formalisation and consequently retarding economic growth.

Whilst we recognise that aspects of land use management are justifiable, the report argues that so too should the state regard enterprise formalisation as a strategic

Formalisation enables the state to regulate business practices (to permit new entrants and competition), ensure adherence to social standards and promote public health objectives, secure tax revenue, and curtail the production and distribution of illegal goods.

development objective. Apart from seeking to protect people and the environment, formalisation enables the state to regulate business practices (to permit new entrants and competition), ensure adherence to social standards and promote public health objectives, secure tax revenue, and curtail the production and distribution of illegal goods. Such objectives are aligned with inclusive economic growth. Apart from fostering the objectives of inclusivity, formalisation can facilitate enterprise investment and growth. We argue that

the majority of micro-entrepreneurs within the township operate informally on an involuntary basis due to barriers which include inflexible land use systems. The involuntary informality of poor micro-enterprises, it must be noted, differs from

the informal businesses activities operated by the non-poor, some of whom wilfully seek to avoid formalisation and yet have the financial and human capital means to comply with laws and regulations. Whilst most of the micro-enterprises in this study embrace informality (towards land and business regulation) on an involuntary basis, some accept the risks of operating outside the law voluntarily. So, informality can present both the means for livelihood survival and an opportunity for exploiting system failure (Webb et al, 2013: 604). In respect to the involuntary informal micro-enterprises of the township economy, we argue that there is incongruence between the policy objectives and laws of land use management and the policy objectives of economic formalisation. Instead of enabling formalisation, post-apartheid land use management systems have had the effect of 'disallowing informality' (Charman, Petersen & Piper, 2012) through aiming to prevent informal businesses operating in specific places and spaces. The effect of stringent controls on land use has been to keep these micro-enterprises small, profoundly informal and illegal.

1.3. Why land use management matters

Land use management centres on the notion of protecting people and the environment from 'the externalities of development' (Nel, 2016: 258). Land use management is central to strategic planning, which is necessary to ensure, for example, the sustainable provision of public

Land use management centres on the notion of protecting people and the environment from 'the externalities of development'.

utilities, transport infrastructure, housing and economic infrastructure, to name four important planning roles. Furthermore, land use management provides an important legal/institutional framework to uphold property values and so safeguard the municipal tax base as well as investment opportunities. In this respect land use management provides a framework for the mediation of (potentially opposing) public and private interests. The main mechanisms in land use management, from a modernist perspective, seek to control the density and/or intensity of land use in the belief that the change in these variables would have a negative impact on people, the environment, or wealth generation. Social and health considerations are also important for the poor, though the precise concerns with such issues may differ in weighting or prioritisation from non-poor communities. The modernist concern with wealth preservation has enticed the critique that if land management systems underpin wealth, then, on the basis of the principle of equality, the poor should also benefit from a protective land use system (Parnell & Pieterse, 2010). However, the current nature of land management in South Africa, we argue, paradoxically excludes the poor, either directly or through failing to take account of the nature of their lives and settlement conditions. This exclusion is particularly pronounced in the case of micro-enterprises.

The report aims to show that compliance with this web of legislation is near to impossible for informal micro-enterprises in marginalised geographies.

The historical legacy of racialised urban spatial control (which was combined at the time with a variety of regulations prohibiting black communities from developing independent business activities) is still felt in most township areas. As pointed out above, there is almost no commercial land accessible to township micro-entrepreneurs, whilst spatial plans are biased towards residential land use, and don't provide land or rights to address the need for residents to operate businesses or maintain a livelihood (Parnell & Pieterse, 2010; Charman et al, 2012; Massey, 2014). Whilst the impact of South Africa's spatially unjust land use systems has been studied in broad (conceptual) terms, the picture of how urban land use systems are actually managed is considered to be 'murky' (Zack & Silverman, 2007). This murkiness reflects a complex web of legislation (which transverses the three tiers of government) through which the state aims to manage land,

control building developments, and determine the places and forms in which people can conduct business. The report aims to show that compliance with this web of legislation is near to impossible for informal micro-enterprises in marginalised geographies. For these entrepreneurs, the land-related processes which people have to navigate to

obtain business compliance resembles a Kafkaesque world: one in which the rules are nightmarishly complex, incomprehensible and illogical. Partially as a result of these challenges, the great majority of township informal micro-enterprises do not comply with land management system requirements and gain few or no benefits from urban planning. Micro-enterprises have no alternative to trading informally and often illegally. This in turn amplifies citizen concerns around the social and health externalities of business activities.

Modernist systems are reliant on complex bureaucracies, wherein the system complexity derives from its construction upon pillars of technocratic specialisation, with each pillar assigned a high degree of autonomy in all decision-making processes. These systems intentionally exert a heavy burden on municipal administrative capacity and are time-consuming. Watson (1993), in response to the impracticality of land use systems in marginalised communities, has argued that land regulation should not focus on strict regulatory compliance. Rather, Watson argues, the primary goal of land use management should be to enable livelihoods and income generation which, in consort with community-based monitoring, can justify minimum state control. Even in non-poor areas, land use zoning and its development controls have been intensively criticised for some of the outcomes produced. These include the 'formless' and 'mono-functional' 'landscapes of modern suburbia' which are the 'antithesis of diversity' (Nel, 2016). Within the suburbs, a clear manifestation of these problematic landscapes are security estates that enable the (upper) middle-class citizens to spatially detach themselves from the 'threat' of

encroachment and social interaction with the poor (Ballard & Jones, 2015). In many of the South African metropolitan areas (as in colonial countries), a rigid land use management approach applied uncritically has hastened urban sprawl, resulting in cities that are neither ecologically nor economically sustainable, whilst excluding the poor (Watson [2009] provides specific evidence). An important criticism is that modernist town planning has often failed to provide adequate social, recreational and market space in high-density settlements where living space is constrained. To the poor, the overriding result is the creation of cities characterised by social and economic exclusion. State actions to enforce land use management compliance often result in re-enforcing this sense of exclusion. Such inappropriate exercise of state authority can be seen in the raiding of street traders, the confiscation of containers situated on public land and the application of administrative penalties on house taverns – three examples of contrasting contexts that we document in this report.

1.4. Poverty and micro-enterprises

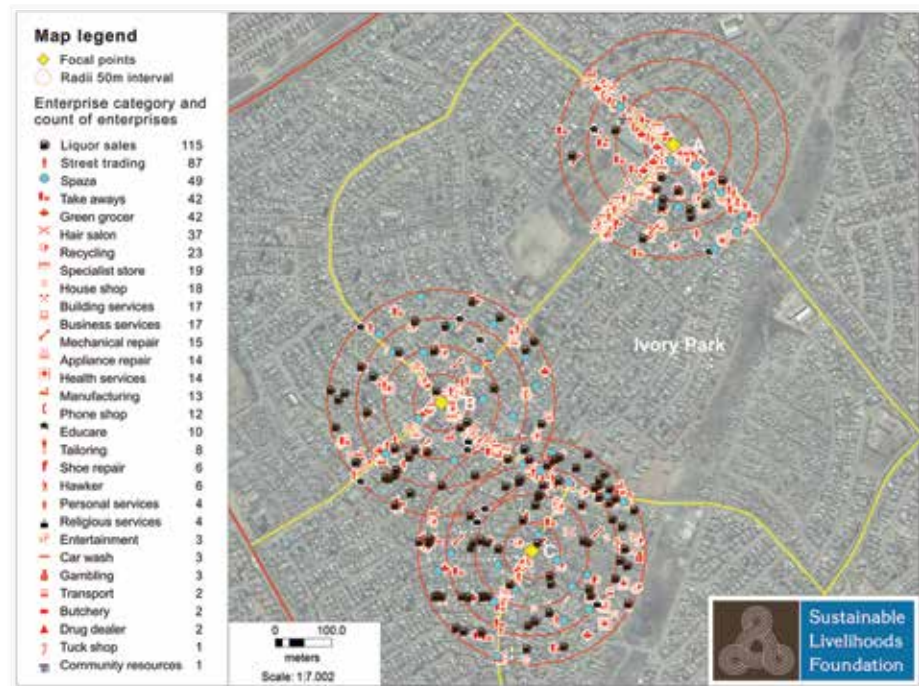
Despite the post-apartheid investment in housing, social and community infrastructure, and the provision of welfare transfers, poverty remains widespread. According to Budlender, Leibbrandt and Woolard (2015), it was estimated that in 2015 as many as 62.76% of South Africans were poor, and 20.98% lived in extreme poverty. This is partially due to the extreme level of unemployment in South Africa, which is one of the highest globally at more than four times the global unemployment rate (World Bank, 2017). Income poverty and unemployment are spatially concentrated in marginalised communities, which in the urban context are townships and informal settlements.

Within urban communities that are poor, informal economic activities fulfil a crucial role in providing opportunities for people to generate a livelihood. Furthermore, informality has now become a way of life, providing access to land, business opportunities and social as well as financial institutions. The Bureau for Economic Research (2016) estimates that in 2015 there were as many as 1.57 million informal sector small, medium and micro-sized enterprises (SMMEs) compared to 1.42 in 2008, a finding which suggests growing participation in small business. The aforementioned study found that 93% of SMMEs are operated by individuals with an income below R30 000 per annum. Statistics South Africa (StatsSA, 2017) estimates that informal employment accounts for about 2.695 million jobs (a level that has not changed substantially for over a decade), though the actual level of participation in the informal labour market is methodologically difficult to quantify. South Africa is considered to be an outlier in global development in having characteristics of high

Within urban communities that are poor, informal economic activities fulfil a crucial role in providing opportunities for people to generate a livelihood.

unemployment and relatively low levels of participation in informal businesses (Yu, 2012). Whilst the scale of participation in informal enterprises is relatively small, there is no doubt that micro-enterprises provide alternative opportunities for income generation and skills acquisition, especially in communities where access to formal employment opportunities are limited. It should be noted, notwithstanding, that the township economy is considered to be non-dynamic, characterised by thin markets in which weakly competitive retail trade is dominated by industry (Mahajan, 2014; Charman, 2017). This is illustrated in Map 1 which shows the dominance of retail activities within 3 nodal points characterising A) transport node, B) a high street node and C) a residential street node.

Map 1: Enterprise distribution within 3 nodal points, Ivory Park



In this report, the focus is on five spatial situations/enterprise resources: house shops, house taverns, educares (early childhood development [ECD] centres), street traders and street-based grocery shops (spaza shops) (see Definitions for the relevant descriptions).



Photo 3: A house shop.



Photo 4: An unlicensed house tavern and pool room.



Photo 5: A street trader and customers.



Photot 6: A street-based spaza shop.



Photo 7: An ECD centre.



Photot 8: Informal trading structures on a high street.

In these sectors/spatial situations, the obstacles to formalisation are onerous, whilst the consequences of enforced informalisation are potentially ruinous. We focus on these five categories since these micro-enterprise sectors have been the most systematically targeted by the state to enforce laws that derive in part or wholly from land use management. Street traders, unlicensed house tavern owners and micro-enterprises operating out of containers are, in consequence, regularly subjected to demands for bribes or have their stock confiscated, with state action justified on the basis that the micro-enterprise has failed to comply with some aspect of regulation. Similarly, ECD centres are disadvantaged by the land management system since the majority are unable to formalise and thus access state grants for children attending ECD centres. There is substantial literature which documents how the actions of the state disadvantage informal businesses, including Benit-Gbaffou (2015) and Herrick and Charman (2013), a summary of which falls outside the bounds of this report. Using commonly occurring cases, the report will nevertheless highlight the high financial, administrative and time costs associated with complying with the land use management system and allied business regulation.

1.5. Report structure

The report is divided into two parts.

Part One outlines the nature of the land use management system in South Africa. Part One provides the foundation for understanding the spectrum of regulatory hurdles (related to both land use and business management) that impact on township micro-enterprises. The material is presented to make sense of the interdependence between land use systems and the legal/institutional frameworks for enterprise formalisation. Part of the analysis examines the business regulations that come attached to certain land use situations.

Part Two describes the impact of land management systems on specific micro-enterprise sectors in different land use settings. This part provides evidence to substantiate the argument that the current land use management system is incongruous with the aims of inclusive economic development and that it perpetuates apartheid spatial injustice and economic exclusion.

The conclusion summarises the key arguments on current land use management systems and the implications for enterprise formalisation and development.

The report offers a set of recommendations for national, provincial and local government on actions that could contribute towards the realisation of SPLUMA and the development of an appropriate post-apartheid land use system in marginalised urban geographies.

2. PART ONE: LAND USE MANAGEMENT SYSTEMS

This section explains the multiple layers of land management that govern the ownership and use of land in South African townships. The governance of land use management is transversal, with different competencies allocated to the three tiers of government: national, provincial and municipal (local). It is important to note that there are multiple land use systems in South Africa. The paper does not address all systems, but instead seeks to focus on the predominate systems in the five largest metros: the City of Cape Town, the City of Johannesburg, the City of Ekurhuleni, the City of eThekweni and the City of Tshwane. The reason for this narrow selection is practical: legislative information about the largest metros is the easiest to obtain, and smaller metros often take their example from the larger ones.

The governance of land use management is transversal, with different competencies allocated to the three tiers of government: national, provincial and municipal (local).

The central focus of the report is on existing land use management systems applied to township settlements. We recognise that some of these systems are currently undergoing revision to align them with the SPLUMA principles and minimum requirements (see below). There is not scope within this report to discuss at length the legacy of spatial planning systems that arose from the implementation of the Black Communities Development Act, the Less Formal Township Establishment Act and the Development Facilitation Act. Berrisford (2011) provides an overview of the political contestations around the development of post-apartheid urban planning prior to SPLUMA. One of the most important outcomes of these contestations was the recognition that municipal government has a constitutionally mandated role in land use planning.

Figure 1: Land management roles across the three tiers of government

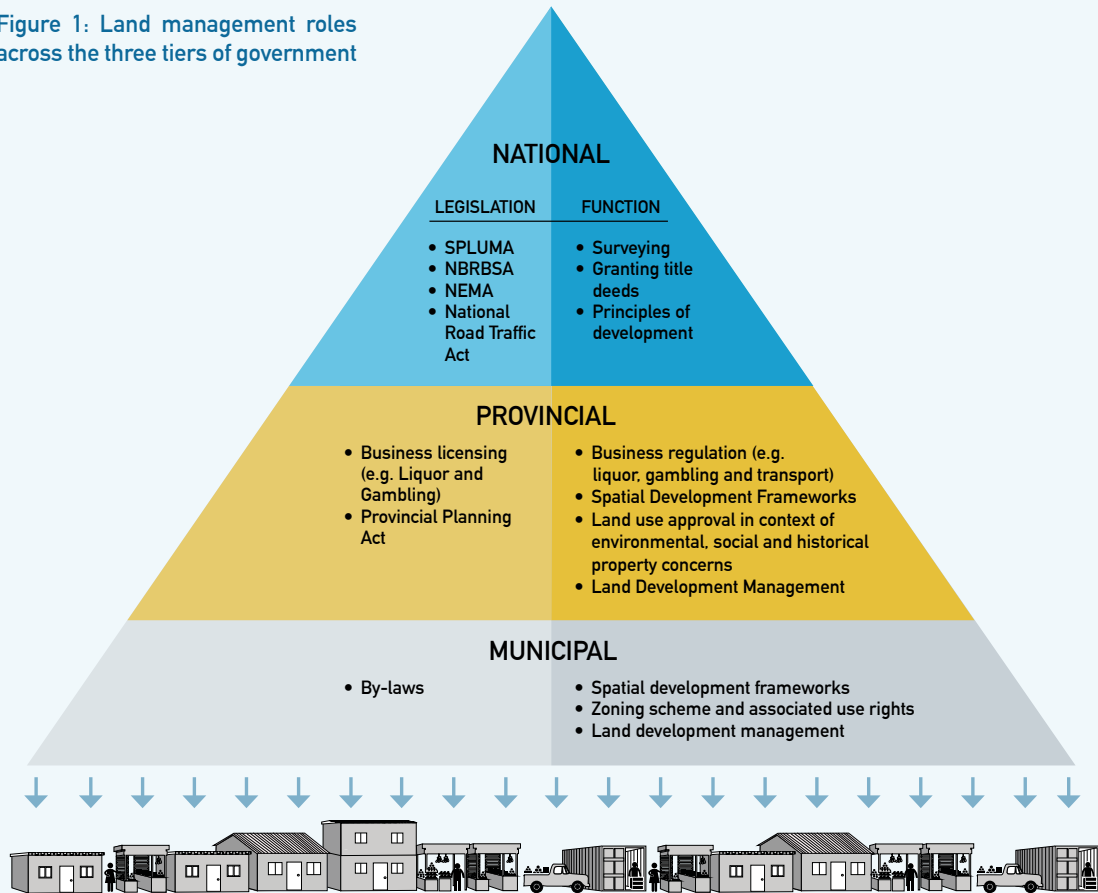
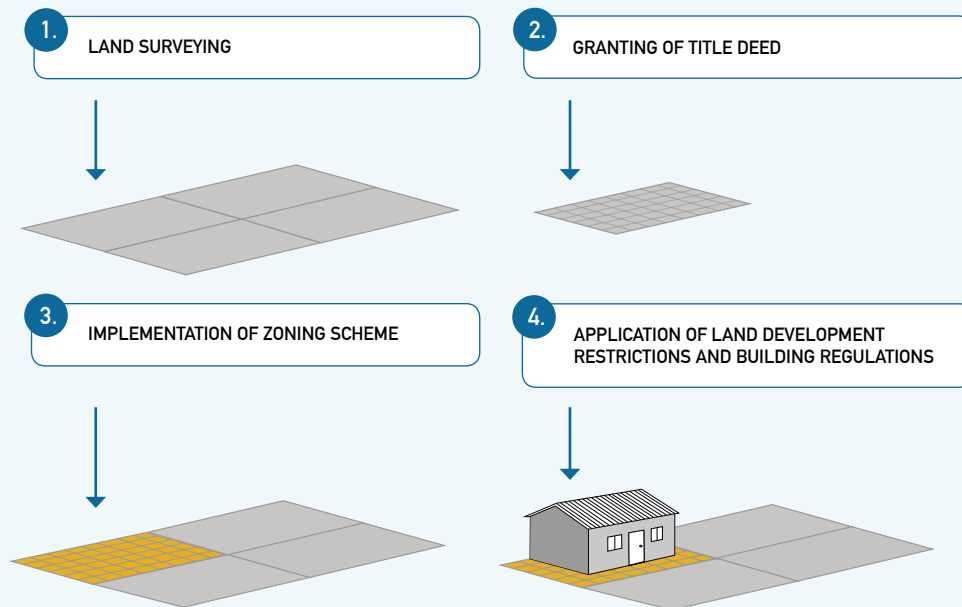


Figure 2: The land use management process



2.1. Spatial Planning and Land Use Management Act (SPLUMA)

2.1.1. Aims, objectives and scope

To redress the spatial injustice of apartheid, the Spatial Planning and Land Use Management Act (SPLUMA) was passed in 2013. SPLUMA sets out a national framework for land use management with the specific political objective of facilitating spatial justice (Denoon-Stevens, 2016). As illustrated in Figure 3, there are four components to SPLUMA, namely:

- I. A set of development principles (spatial justice, spatial sustainability, spatial resilience, efficiency and good administration) to which all land developments and systems must conform.
- II. The institutionalisation of spatial development frameworks (SDFs) as a central planning tool; the Act mandates all three tiers of government to develop and revise their SDFs every five years.
- III. The (endorsement and) institutionalisation of land use schemes to codify specific land use to each land parcel.
- IV. The specification and institutionalisation of procedures to be applied in all three tiers of government in the management of land development processes.

Figure 3: SPLUMA's core components



The principles set out in SPLUMA are especially important in the township context as they provide the political goals of land management by which all municipalities must abide in the development of systems. Indeed, SPLUMA mandates all three tiers of land administration to align with the goal of redressing 'spatial and other development imbalances' and improving 'access to and use of land'. Although some of these principles are vaguely defined, SPLUMA specifically calls for land use provisions that are 'flexible and appropriate'. For municipalities, the Act necessitates the revision of apartheid-era land management systems (including the Black Communities Development Act, the Less Formal Township Establishment Act and the Development Facilitation Act). All land administering authorities (notably municipalities) are expected, as a consequence, to revise their land use management systems and institute plans to redress spatial injustice; some of the metropolitan municipalities have already completed this task whilst in other cases the process is at an advanced stage.

SPLUMA actually reinforces modernist planning ideas, in particular by codifying land through zoning schemes.

Nel (2016) argues that although SPLUMA seeks to redress past land management injustices, the new Act actually reinforces modernist planning ideas, in particular by codifying land through zoning schemes. Zoning schemes as developed in South Africa (and following the approach in the

United States) are intended to support 'appropriate' land use (such as residential, industrial, or commercial). Although there is merit to the delineation of different kinds of land use, the manner in which these schemes have been implemented are inherently inflexible. In referring to the American approach to zoning, Hirt (2007) critiques the way zoning was utilised to prevent the 'mixing of land uses', and institutionalised with the aim, in particular, to preserve (or 'protect' as planners saw their role) residential zones exclusively for a single activity. In this conceptualisation of land use management, commerce (including light manufacturing) was seen as incompatible with residential uses. This idea was applied to townships in the apartheid era, though aspects of this protectionist logic to zoning remain in current land use systems including those supposedly aligned with SPLUMA. The early town planning movement which gave rise to a regimented and codified land use system, argues Oranje (2014), were imbued with Christian concerns with the destruction of the emerging industrial city (and society), whilst drawing religious inspiration from the role that planners could fulfil to achieve 'salvation' from these problems. From the birth of professional town planning in South Africa in the early 1940s, town planners were afforded little role in creating prosperous settlements (and utilising their zealous influence) and were instead relegated to the twin tasks of control and regulation: the zoning of land, freezing land use activities, and controlling the expansion of urban settlement. In these roles, especially as applied in townships, planning became the 'handmaiden' of the apartheid state (Oranje, 2014).

SPLUMA will not fundamentally address the legacy of using zoning to create (and safeguard) mono-functional settlements. Although some zoning schemes now enable a degree of mixed usage through permitting certain commercial activities in residential zones, the 'devil' continues to lie 'in the definition', to paraphrase Hirt (2007). The definitions of land use permissible within zoning schemes, we argue below, sustain the criticism of land use zoning per se as exclusionary, unjust and unsustainable. Township settlements challenge normative ideas (i.e. social constructs that have been self-legitimising) about residential land use since these settlements from their outset have had to organically accommodate non-legitimate land uses (commercial and recreational). These settlements therefore lend themselves to broader zoning categories such as have been used in some European land use systems (Hirt, 2007; Nel, 2016).

2.1.2. Spatial development frameworks

An SDF provides guidance on what should, and should not, be approved through a textual description of land uses and maps depicting desired patterns of future land use. Municipal SDFs are subject to higher-order policies for certain areas and types of land uses in the municipal area. The aim of these policies is to provide guidelines for specific areas in the municipality that are of strategic importance (e.g. the central business districts or areas of special heritage) and particular land uses that, in the opinion of the municipality, need special management. Municipalities can advance these objectives through the application of an overlay zone in a particular area or land unit on which additional development parameters can be stipulated. These can be more or less restrictive on business activities than the base zone.

The development principles contained in SPLUMA (spatial justice, spatial resilience, spatial sustainability, efficiency and good administration) apply to all land use management schemes and applications. However, the implications for SDFs and zoning schemes remain unclear, especially for residents of townships and informal settlements who continue to face spatial injustice in the pursuit of economic livelihoods and property investments. An important limitation of SPLUMA is its silence on land reform. There is no requirement for SDFs to include strategies for land reform. As we have argued at the outset of this report, township businesses are disadvantaged by the non-availability of land for development. It is questionable whether spatial justice can be achieved in the urban context without land reform providing additional land resources for township economic activities as well as settlement.

An important limitation of SPLUMA is its silence on land reform.

In the next section, the report considers the role of the different tiers of government and relates these roles to the SPLUMA objectives.

2.2. National land management competency

SPLUMA mandates national government to develop and maintain a legal and institutional framework to govern land matters across the tiers of administration and jurisdiction. The national government's specific competencies include: land surveying, the issuing of title deeds, the development and institutionalisation of a land use development policy framework, and the development and institutionalisation of business policy frameworks.

Land is owned by the state until a deed of grant is issued. When land is granted to an individual or entity, two processes occur. Firstly, a surveyor goes to the land parcel and records the dimensions of the land unit in question, drafting a diagram in the case of a single portion of land, and when the surveyor marks the location of multiple portions of land on a single document, a general plan is drafted. Secondly, a conveyancer drafts the 'deed of grant' which records who the land is being given to, which diagram or general plan depicts the land unit dimensions, and any restrictive conditions or entitlements to which the land owner is eligible (more on this latter aspect later). Once the deed of grant and survey diagram or general plan have been registered, the land owner is able to sell the land to any other individual or entity. When this sale occurs, a deed of transfer is drafted by a conveyancer and registered at the deeds office.

When a deed of grant or transfer is issued, the land unit comes with a 'bundle of rights'.

It is important to note that when a deed of grant or transfer is issued, the land unit comes with a 'bundle of rights'. These rights typically include the right to use the land for specified purposes, to sell it, to build on it, and so forth. The owner of land can sell these rights to other land users without selling the whole unit of land, and the owner of land can also reduce the bundle of rights when selling the land unit to another individual. An example of this could be a restrictive condition against using the property for business purposes. Another common instance of conditional use is the registration of a servitude right of way, which entitles the owner of an abutting land unit and/or municipal authority (the 'dominant tenement') to drive or walk over another property not owned by the said individual (the 'servient tenement'). These restrictions can apply to the whole property, or to a portion of the property and can be altered through making an application to the municipality for an amendment of conditions, through mutual agreement between the affected parties, or through a decision by the high court.

Beyond selling a property (with or without certain rights of land usage), a land owner can also apply to subdivide the land unit into smaller units, consolidate the land unit into a larger portion, change its type, or a combination of the aforementioned. This occurs through an application to a municipality. Once this application is approved

and the land owner has met all the conditions of approval, a surveyor drafts and registers a new diagram or general plan with the Surveyor-General which describes the new property unit. In addition, an endorsement is placed on the original title deed describing the new land units. The property owner can then sell each of the new land units to a new owner, in which case the respective land unit is issued with its own deed of transfer or a certificate of registered title. Often, through such processes of consolidation or subdivision, further title deed restrictions are placed on the use of land.

When the land is subdivided, land that is to be used as a public street, road, thoroughfare, sanitary passage, square or open space is demarcated as a public place, with the consequence being that the ownership automatically vests in the local authority. Land classified as a public place is entitled to special protection. Specifically, if the municipality wishes to sell the land or use it for a purpose other than that of a public place, such as closing a road, then the municipality has to follow a closure process. This process requires advertising the application to abutting land owners and other interested and affected parties, and then obtaining a resolution from the Council to close the portion of land in question.

Land classified as a public place is entitled to special protection.

The National Road Traffic Act, 1996, prohibits street trading on certain public roads, including most roads outside urban areas. The Act prohibits street trading in urban areas within certain places, including within 5m of any intersection. Finally, the Act requires that municipalities cannot designate trading areas alongside provincial roads without provincial approval (Turok, Scheba & Visagie, 2017).

2.3. Provincial land management competency

In practice, provincial government has very little influence on urban land use management and hence its roles are only briefly discussed. Provincial government is constitutionally mandated to restrict land use developments on the basis of environmental wellbeing and in consideration of the preservation of social and cultural heritage. Provincial government is also responsible for the establishment, maintenance and control of provincial roads. These powers can impact on spatial justice where poor communities inhabit environmentally fragile and significant localities, occupy historic buildings (over 60 years old), and trade on sites situated within road reserves. In situations where environmental and historical considerations affect future land use, any change in the use of land would require specific authorisation from the relevant provincial bodies dealing with matters of the environment and heritage; the application process for such approval is (usually) complex and requires supporting technical assessments to

be undertaken. Provincial government also has a limited role in approving larger land use applications, though such applications are uncommon in townships and informal settlements.

Provincial governments can exert an indirect influence over how land is utilised in the pursuit of business activities. This influence is applied, for example, to business applicants for certain provincial licences, wherein the licensing conditions require adherence to municipal land use management systems and regulations. The most common examples are liquor trading and the registration of ECD centres (through the Children's Act, 2005). In both situations, informal micro-enterprises need to comply with the relevant land use schemes (which may or may not permit the business activity) and building regulations in order to obtain business operating licences.

2.4. Municipal land management competencies

Local government or municipalities have the widest range of control measures (regulations and by-laws) over land use and building regulations. Similarly, municipal land use policy can determine the spaces and places at which businesses are situated, the times of trading, and specific requirements to trade legally.

Local government or municipalities have the widest range of control measures (regulations and by-laws) over land use and building regulations.

In a municipal land use management scheme, also referred to as the zoning or town planning scheme, the municipality assigns each land unit with a specific category of use (and potentially also a density zone) which has parameters stipulating the kind of land uses that can occur on the property and limiting how buildings can be built on the property (e.g. maximum building height, setbacks from property boundaries, etc.). These parameters can only be changed through an application to the municipality, which must then result in an official endorsement. The process typically requires the submission of a written application, a fee payment, public notification in newspapers, and the application usually requires comments from a range of service providers and affected parties. A decision made on the application may include further conditions that need to be complied with in order for the approval to be finalised.

2.4.1. Land use rights

Land use zoning can impose substantial constraints on micro-enterprise activities. Most municipal zoning schemes contain a detailed list of the range of business

activities that are permitted on the property (as a right of use or 'primary use') and the activities which require a land use application. The scheme may also specify restrictions on trading days and hours. In residential zones, the right to conduct commercial activities is usually subject to a land use application. Such applications are required for activities categorised as 'additional use' (permitted in the zoning scheme provided specific conditions are complied with). The zoning scheme may include a list of land use activities, categorised as 'consent use', that are permitted with municipal approval. There is a case to argue that land use business restrictions are well intended. Among politicians, land use planning is viewed as a tool to reduce social and economic harms, which, when aligned to business regulations as in the case of liquor retailing legislation, has been regarded as part of a state strategy to rescue the township from the pathologies of crime, violence and disorderliness (Charman, Herrick & Petersen, 2014). It is important to note that the decision as to which business activities are permissible in residential areas is not based on technocratic logic alone, but subject to political influence. When the City of Cape Town produced a draft of its new (integrated) zoning scheme, house taverns were permissible under the scheme, but were then subsequently removed from the final version through pressure from the then political leadership at the City (SAB, 2010). Though well meaning, restrictions on business activities have been difficult to enforce, whilst some restrictions, we argue, have had the unintended outcome of enforcing the informalisation of business activities that constitute part of the socio-economic fabric of township life.

If a business activity (such as a mechanical repair business, butchery, tavern, etc.) is not listed as a primary or additional use, or listed as a consent use, then an application will need to be made to the municipality for permission to operate from the land unit in question. We should point out that these categories of enterprises do not follow the International Standard Industrial Classification or even the StatsSA Quarterly Labour Force classification. Neither of these systems could adequately account for the diversity, characteristics and business dynamics of micro-enterprises which sell specific items or derive income from multiple streams. Urban planners have applied a set of normative business categories (and principles) when specifying 'additional use' and 'consent use' within residential land use management schemes. The categories themselves have been derived from a normative understanding of formalised business activities occurring in the commercial city, whilst the exclusion of certain activities (such as mechanical repairs or selling alcohol) excludes businesses that are ubiquitous in residential areas. The idea that informal micro-enterprises in the township restrict their activities to a particular sector is fanciful.

The idea that informal micro-enterprises in the township restrict their activities to a particular sector is fanciful.



Photo 9: A micro-enterprise consists of numerous separate income streams.

For example, house shops may also sell alcohol, whilst house taverns may equally sell groceries. When house taverns sell prepared meals, the micro-enterprise functions as a restaurant, at other times as a takeaway food seller. At some points in the month a business might function as a shop, at other times as a house tavern or a food takeaway. Township religious businesses may at times entail practices of ritual slaughter, medical practices and euphoric transcendence akin to leisure activities (generating noise), whilst the same venue might be used for an alternative business during the day. Some schemes permit, under consent, residential areas to operate boarding houses or guest houses, though neither of these categories adequately relates to the provision of rental accommodation found throughout townships.

Municipalities in South Africa differ substantially in what is, and is not, permitted in each land use category as set out in their respective zoning schemes. Table 1 presents a comparison across five of South Africa's metros: Cape Town, Johannesburg, Ekurhuleni, eThekweni and Tshwane. The comparison focuses on land categories commonly found in townships and informal settlements. The City of Cape Town allows certain business activities on properties zoned Single Residential (SR) Zone 2 (formerly incremental housing) provided that the business activities are ancillary to the residential use. In contrast, the Johannesburg, Ekurhuleni and eThekweni metros only permit certain business uses in the equivalent residential zone where the municipality has given consent for such use. This requires a land use application to be lodged with the municipality (for residential properties in low-income areas). In several municipalities, land use rights were afforded to homeowners in terms of the Black Communities Development Act, the Less Formal Townships Establishment Act and the Development Facilitation Act. The regulations of the Black Communities Development Act stipulate that the occupants of residential buildings may practise their 'social and religious services and their occupations, professions or trades, including retail trade' provided that the 'dominant use' remains residential and the business activity is not 'noxious'.

Table 1: Business land uses permitted in the most common residential zone in the townships of five South African cities*

City	Additional use	Consent use	Restrictions and conditions
Cape Town (2015)	House shop Home occupation Bed & breakfast establishment Home childcare/ECD centre Informal trading	Any educational, religious, occupational or business purpose	These rights are subject to a variety of restrictions, most notably the dwelling on the property should be occupied by the business proprietor. Furthermore, the house shop must not exceed 40m ² or 40% of the total floor space of the dwelling, and the sale of alcoholic beverages is prohibited. No area used for trading may open onto a bedroom or toilet.
Ekurhuleni (2015)	Home occupation Administrative and professional services	The majority of non-residential land use (with home occupation & administrative services as exceptions)	Residents of residential properties are permitted to operate administrative and professional service enterprises. Home industries are also permitted. These enterprises may not employ non-residents. Any other business activity use requires the consent of the municipality. Furthermore, no informal trading is permitted without the consent of the municipality.
Tshwane (revised 2014)		The majority of business use	Business use on residential properties, including uses such as house shops, requires the consent of the municipality. Furthermore, no informal trading is permitted without the consent of the municipality.
Johannesburg (2011)	Home occupation (relating to professional trades, not retail)	The majority of non-residential land use (with home occupation as an exception)	Business activities, including house shop or house tavern, require the consent of the municipality. A resident may conduct a 'home occupation' from their dwelling, a concession which specifically does not include retail activities. The concession relates to professional trades, for example, an accounting or legal practice. This is further subject to the restriction that a maximum of two individuals may operate a business from the premises, whilst the area dedicated for business activity should not exceed a maximum area equal to 25% of the dwelling floor area.
eThekweni (draft Durban Central scheme, 2014)	House shop (subject to certain conditions)	The majority of non-residential land use (with house shop under certain conditions as an exception)	All non-residential land uses require the consent of the municipality. In the case of a house shop, the property owner must secure consent from all adjacent registered property owners to obtain municipal approval.

*Municipal planners might interpret these restrictions more or less leniently.

Township life is primarily mixed use, where on a single property a multitude of uses can occur from residential, to commercial to cultural/religious.

The notion of an ideal separation between residential and business land use (with a modest degree of enterprise activity) is rooted in a rigid modernist thinking and reflects preconceived notions of an ordered city (Jacobs, 1961). In contrast, township life is primarily mixed use, where on a single property a multitude of uses can occur, from residential, to retail, to cultural/religious. This mixed-use characteristic is a direct response to the reality of unemployment and economic marginalisation. A residential property is not just a residence (or home), but a space from which to generate a livelihood (Marais, Ntema, Cloete, Rani & Lenka, 2016). The failure to recognise this dynamic results in land use management schemes which are not relevant to the lives of the poor.

Where a business owner needs to apply to a municipality for land use authorisation, the municipality is guided in making its decision to refuse or approve the application by policy documents such as the municipal SDF, local spatial plans for the area the land unit falls in, or any policies dealing with the land use type (e.g. house shop, workshop, etc.), and finally the SPLUMA development principles. An application for a departure from the land use zoning scheme's use rights, for consent to undertake a specific business activity not included in the scheme, is usually submitted to the relevant municipal land use management (LUM) office. The applicant can be required to submit drafted plans (a locality plan as well as a layout plan), provide a copy of the survey diagram and a written motivation. The LUM can request additional documents, including a conveyancer's certificate to determine whether the land does not contain any title deed restrictions. An application may also require additional approval from, inter alia, other departments as well as the local ward councillor. Finally, the proposed land use amendment has to be advertised in the local newspapers as part of a 'public-notification' process during which period residents may submit comments and objections.

2.4.2. Alignment with the National Building Regulations and Building Standards

The National Building Regulations and Building Standards Act (NBRBSA) provides an overarching legal framework to govern building and associated land use. The NBRBSA requires that any structure built, and any significant change to the use of a room, for example changing a bedroom to a house shop or house tavern, requires a building plan be submitted to the municipality and approved before building works can commence. While the Act sets the legal parameters for the process, the actual standards are set by the South African Bureau of Standards (South African Bureau of Standards (SABS)). These standards are very thorough and complicated, with the

standards having 23 parts in total, with each part dealing with a different section of the building. It should also be noted that the SABS building standards only recognise brick and timber structures. Any type of walling system other than brick or timber (e.g. drywall, corrugated iron, earth, etc.) either has to have a certificate certifying its suitability from the government organisation Agrement, who test each system's adequacy based on a specific set of parameters, or otherwise has to prove to the municipality and the National Home Builders Registration Council that the walling system is 'fit for purpose.' This can limit any micro-enterprise operating out of a structure that is not built out of brick or timber from obtaining building plan approval.

2.4.3. Municipal by-laws

Municipalities can enact and enforce by-laws with respect to land use. Such by-laws can apply to public and private land and these laws constitute part of a municipal land use management system. In the case of trading activities on public land, municipal by-laws can specify particular spaces in which trading may or may not occur as well as the time in which trading is permitted. By-laws also aim to restrict unauthorised development on public land including the erection of trading structures, advertising signage and the parking of vehicles/objects that could cause obstruction. The municipal role in managing informal trade is principally determined by the Business Act, 71 of 1991 (as amended). The Act mandates municipalities with the responsibility to manage street trading, including the right to prohibit trade or restrict business activities to designated sites and stands. The Act lists a range of spatial situations in which street trading can be prohibited. Importantly, these include situations in which street trading is deemed to obstruct vehicular traffic, pedestrian movement (or cause harm to non-traders), when street trading is in competition to formal businesses selling goods of the 'same nature' or in a residential area in cases where the owner of the building objects to street trading. There are restrictions on making or cooking on open fires 'at any place' unless the trader has specific authorisation from the relevant municipal department responsible for food hygiene and environmental health. It should be noted, notwithstanding, that the Act requires municipalities to consider the impact of restricting trading activities through, inter alia, instituting a public participation process. Some of the major metropolitan areas have adopted informal trading policies to guide the development of street trader facilities and the provision of spatial opportunities. These policies remain fairly restrictive on the places where informal traders can operate, adhering to the specifications of the Business Act, National Road Traffic Act and other such higher order legislation. Furthermore, city by-laws designed to control 'noise', 'nuisance' and the use of streets afford municipal law enforcement agents with wide ranging powers to issue fines, confiscate goods and remove structures where activities are deemed unlawful.

2.5. Municipal business registration

In certain aspects of the economy, the registration and regulation of business activities upholds and further empowers provincial and municipal government with authority in land management. Some of this legislation, including laws to maintain

The laws with the greatest impact on the informal economy are the Business Act and legislation governing the registration of particular sectors (such as education, liquor retail & public transport).

resource conservation and environment wellbeing, has little direct application to informal businesses and micro-enterprises. The laws with the greatest impact on the informal economy are: i) the Business Act, 71 of 1991, and ii) legislation governing the registration of particular sectors (such as education, liquor retail & public transport).

The Business Act empowers municipalities to regulate (certain) business activities, including businesses which are deemed to present a potential risk to society and thus require licensing. Such enterprise sectors are listed in Schedule 1 of the Act and include, businesses selling or supplying i) any foodstuff in the form of meals for consumption and ii) any perishable foodstuff. The prohibition applies to enterprises operating from fixed premises and street traders. Furthermore, the schedule under Item 2 details a range of enterprises that provide 'health facilities or entertainment' including businesses that provide: i) escort or massage services; ii) operate three or more 'mechanical, electronic or electrical contrivances [...] designed or used for the purpose of the playing of any game'; iii) business that keep three or more billiard tables; and iv) conduct night clubs. The Act states (sub-section 4) that licences should only be issued to enterprise categories within the schedule where these businesses comply with the requirements relating to 'town planning'. Furthermore, the Act requires all businesses involved in the 'preparation, handling or sale of foodstuffs' to comply with municipal by-laws relating to the 'health of the public'. It stipulates that compliance extends to 'any apparatus, equipment, storage space, working surface, structure, vehicle, conveyance or any other article or place' used for the business activity.

3. PART TWO: SPECIFIC CONTEXTS OF LAND REGULATION

This section provides more detail and evidence on how five categories of township micro-enterprises (house shops, educares, house taverns, street traders and container businesses) are impacted by land use management. The intent here is to highlight the regulatory challenges that different sectors encounter and the nature of the obstacles. The cases will add credence to our claim that compliance with the web of legislation is near to impossible in certain sectors and contexts. The land-related processes, in particular, are nightmarishly complex, incomprehensible and often illogical. Whilst we focus on the rules and procedures, we recognise that these stipulations of business regulation and land use management systems are rarely enforced in their entirety.

In our analysis, the report distinguishes between the enterprise context of the home (or residential setting) and public spaces including the street. With respect to home-based micro-enterprises, the analysis further distinguishes between the situations where ownership is legally secure (i.e. the business owner has title to the property on which the business is based) and the situation where property ownership is insecure.

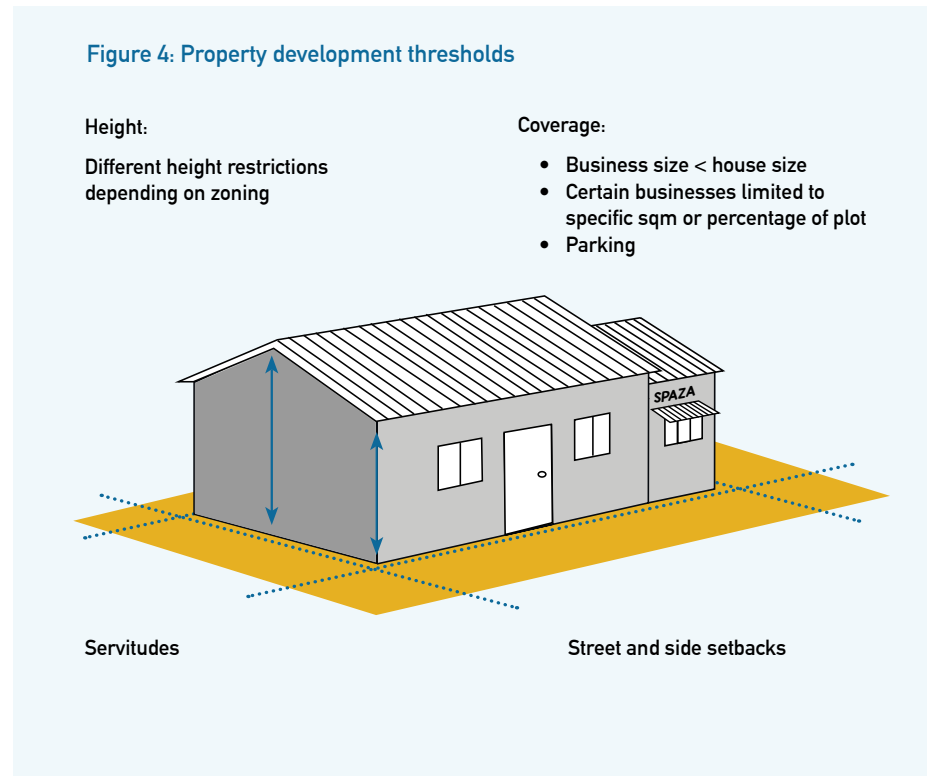
3.1. Home-based enterprises

3.1.1. Where land ownership is legally secure

This sub-section focuses on home-based businesses such as house shops where the ownership of the property is legally secure and where the 'formal' property owner has given (written) consent for the micro-enterprise to operate from the property.

Often the first obstacle which home owners confront in seeking to operate a business or develop their properties are title deed restrictions. A deed may stipulate municipal servitudes which limit the scope to which the property can be expanded officially. Figure 4 indicates the kind of property development thresholds on township residential properties. In the title deeds issued to residents in Ivory Park, Johannesburg, for example, the standard terms impose a servitude of 3m along street boundaries, a servitude of 2m along the rear boundary and a servitude along the side boundaries to a minimum width of 1m. The property owner is required to obtain authorisation from the municipality for an exemption of these conditions should they desire to expand their properties onto boundaries. These conditions technically prevent the property owner from building structures for business purposes with direct access onto the street. All home-based micro-

enterprises require an approved building plan under the NBSBRA, in respect of which the building structure must then comply with SABS material standards. This requirement excludes the use of corrugated iron and other such materials used in township vernacular architecture. Furthermore, the right to trade might be subject to title deed conditions which can prevent a business from operating from the land unit. Where such restrictions exist, the property owner must obtain municipal approval for the title deed to be amended (or removed), a process that has to be formally undertaken by the Deeds Registry.



Each municipality has discretionary authority to permit or restrict business activities on a particular land unit, as per their zoning scheme and high-order SDF objectives. In the City of Cape Town metro, for example, house shops are permitted as a use right on properties zoned SR2, subject to a number of conditions. It is important to note that not all properties in low-income areas are zoned SR2. In other residential zones, property owners require permission to operate a home-based enterprise, unless the goods sold are produced or assembled on the property (e.g. selling food that has been made on-site), a use right for SR1. In the City of Johannesburg metro, house shops are a consent right and therefore can only be established with municipal approval. The enterprise owner has to carry the costs of making such an application, whilst the process can take months, and in some instances years, to secure approval of consent rights. In 2011 it was estimated that, in the City of Johannesburg, most land use applications took between six to eight months to be completed, with simpler applications taking less time (Baylis,

2011). The twin burden of application costs and time wastage can impact on the survival of an enterprise, or indeed provide a substantial barrier to new entrants. There are considerable financial and time risks for operating a business without land use approval. The operator can be issued with an administrative penalty, which is usually calculated on the proportionate value of the property with respect to the floor area utilised for the unauthorised business, or be issued with a compliance notice. Lastly, it should be noted that land use consent applications place a not inconsiderable administrative burden on municipalities, requiring human and financial resources that could be put to better use.

There are considerable financial and time risks for operating a business without land use approval.



Photo 10: The shopkeeper sleeps in the shop with the shelves providing a rough partition between the shop and bedroom.

Most planning schemes permit home-based enterprises on condition that the business proprietor resides on the property. The intention is to prevent a situation where a house enterprise is operated by an absentee owner(s) (i.e. an entrepreneur who has placed his/her employees in the house business). Furthermore, most schemes require a separation between business and residential space through, for example, the requirement of separate entrances. The intention is to reduce the risk of harm to individuals within the household as a result of the business operation, the operation of equipment and exposure to products. These concerns are justified, not least in the context of the situation in which a business operator (or his/her employee) resides within the home business floor space itself. SLF research in nine townships found that sleeping on the business premises commonly occurs in house shops, notably where the house shop is rented from a property owner.

The operation of house shops would be severely curtailed if municipal land use management regulations were systematically enforced. But enforcement is very uneven, not least due to the absence of a national regulatory framework on house shops. Moreover, there is limited municipal capacity to enforce land use infringements.

3.1.2. Application procedures and costs

Table 2 presents a summary of the various land-related compliance stages to formalise a home-based micro-enterprise. The costs associated with land use management authorisations are potentially a financial barrier to home-based micro-enterprise formalisation. Table 3 presents an indication of the possible costs, using the figures from the City of Cape Town for the 2016/2017 financial year. If a rezoning application is required, then the cost is R2 225. If the proposed land use is permitted as a consent use (see Part 1), then the lower fee of R324 applies. In both situations, an advertising fee is required, except if the property owner is able to get signatures from all of the affected parties and interested organisations to the effect that they either have or do not have an objection to the proposed application (City of Cape Town, 2016a&b).

Table 2: Land-related regulatory steps

Land use compliance requirements		1	2	3	4	5	6	7
1	Acquire legal property rights							
2	Secure authorisation from property owner to conduct business							
3	Obtain council approval of business use in land use zone							
4	Obtain council approval of building plan							
5	Obtain council approval that structures will comply with the NBRBSA							
6	Obtain council certificates of compliance with municipal by-laws							
7	Obtain provincial or national sector-specific business operating licences							

Table 3: Examples of land use application costs in 2016/17, City of Cape Town

Application type (sample of fees)	Cost
Area rezoned up to and including 2 000m ²	R2 225.00
Any other land use application required to permit a house shop	R324.00
Building plan for a state-subsidised dwelling	R12.00
Building plan for a non state-subsidised dwelling, where the building work is less than 25m ² (minimum fee)	R456.00
Building plan for a non state-subsidised dwelling, where the building work is between 25–50m ² (minimum fee)	R1 056.00

For land use authorisation, the costs could escalate to R10 000 or more if there are restrictive title deed conditions. This is because an application to amend a title deed restriction must be advertised in the newspaper and provincial gazette, whilst every property in an area that benefits from the title deed condition must be canvassed (although not applied in the City of Tshwane). The National Building Regulations stipulate that building plans are required if the homeowner intends to change a building or change the use of a specific room. Furthermore, the regulations stipulate that plans must be drawn by a draughtsperson or architect who is registered with the South African Council for the Architectural Profession (for properties greater than 500m²). These regulations further amplify compliance costs.

3.1.3. Administrative penalties and compliance notices

Municipalities have discretion to penalise individuals who build illegally or have an illegal land use on their property. These fines are referred to as administrative penalties. Penalties can be imposed on the property owner (so administrative penalties cannot be issued in cases where ownership is legally insecure) based on a fine not exceeding 100% of the municipal valuation of the property area that is used unlawfully. It is important to note that administrative penalties cannot be imposed on the house occupant or an informal property owner. The mechanism thus perversely penalises formal land ownership where properties are utilised for business purposes.

There is no public record of how frequently administrative fines are charged on township micro-enterprises. A City of Cape Town Municipal Planning Tribunal Meeting (South Eastern) held in November 2016 provides an insight into the kind of fines applied in respect of unlawful business activities. In this particular tribunal, the lowest fine was R0 (fine waived) and the highest was R21 629 (20% of the

municipal valuation of property, based on the area unlawfully used for business activities). The latter fine was imposed on a female homeowner in Mitchells Plain who operated an unlicensed house tavern. In weighing up factors in consideration of the fine, the tribunal found that the tavern had been operating for four years on a property zoned SR1 (taking up 40% of the total extent of the property), the property owner had applied unsuccessfully for a temporary departure although they had continued to trade, which resulted in the issue of a compliance notice. In assessing the merits of the case, it was put on record that no complaints had been made to the City of Cape Town from the public with respect to the illegal tavern. Yet the LUM office argued for the 'gravity' of the charge against the woman, writing that: 'taverns by definition have a greater impact than liquor shops as patrons have the opportunity to sit down, congregate and socialise there for hours after ordinary business'. In accepting this unsubstantiated argument (and an argument that has never been utilised against pubs or bars in historical white neighbourhoods), the tribunal increased the 'recommended' penalty from 10% to 20% (City of Cape Town, 2016c).

Municipal officials have authority to issue 'compliance notices' where an enterprise activity fails to conform with land use or infringe any other by-law (signage, environmental health, food safety, noise, etc.).

Municipal officials have authority to issue 'compliance notices' where an enterprise activity fails to conform with land use or infringe any other by-law (signage, environmental health, food safety, noise, etc.). The extent to which compliance notices are issued on home-based entrepreneurs is difficult to gauge, though the researchers have encountered examples in both the Cape Town and Johannesburg municipalities.

In one such case, an environmental health official at the City of Johannesburg issued a compliance notice on a long-established though unregistered ECD centre which SLF had studied in 2012 and re-interviewed in 2017. The notice gave the business owner 21 days to do the following: 'provide a kitchen for the day care, provide toilet facilities, provide a sickbay, ensure that there is no overcrowding in classes'. The compliance notice misrepresents the nature of the business and the largely adequate facilities (including flush toilets) available to the children. SLF has presented the findings of this case in a separate companion study.⁵ Apart from the significant costs of undertaking these changes, the business owner faces additional hurdles. The land belongs (technically) to the municipality from whom the entrepreneur would require consent to operate an ECD business and consent to erect the required structures. Furthermore, the space available to expand the building is situated within the boundary servitude and would again require municipal consent, though this is unlikely as the buildings abut onto the boundaries.

⁵ Ivory Park: Case Studies of Land Constraints on Micro-Enterprise Dynamics (SLF, forthcoming).



Photo 11: A compliance notice was issued to the owner of this educare in Ivory Park because it did not fully comply with ECD centre 'norms and standards'.

3.1.4. Where land ownership is legally insecure

Spatial justice and land use rights are substantially retarded in situations where title deeds have not been registered and/or where ownership of the property is insecure. In both situations the property holder is not permitted to apply for building plans or land use approval since they do not hold the legal status of owner. SPLUMA defines an owner as 'the person registered in a deeds registry as the owner of land or who is the beneficial owner in law'. This also includes an individual to whom the land concerned has been made available for development in writing by a state authority. In the case of beneficiaries of land lease agreements with municipal authorities, the lease agreements commonly stipulate that the property be used 'solely for residential purposes'. In Ivory Park, such lease beneficiaries have lease agreements for the land alone. Yet most of whom have since built houses for themselves, though their lease agreements stipulate that structures can only be erected upon authorisation from the municipality and that all buildings must have approved plans.

Spatial justice and land use rights are substantially retarded in situations where title deeds have not been registered and/or where ownership of the property is insecure.

In informal settlements, plots are unsurveyed and unregistered in the deeds office (except in the case of site and service developments). This makes it impossible for the landholder to apply for land use or building plan authorisation, except in the very unusual situation of the landowner giving his/her permission for such

an application to be made. A similar challenge relates to landholders in surveyed settlements where title deeds are yet to be registered in the name of the beneficiary. The landholder cannot make the necessary applications without first obtaining a letter from an organ of state authorising their occupation of the land unit. This also occurs in cases where the title deed has been issued, but the property has been sold informally to another individual. Owners who have acquired property informally cannot lodge land use applications in their own name without authorisation from the deed holder. The scale of informal property sales in townships has not been quantified, though it is thought to have occurred on a large scale in response to the time-bound restrictions on the sale of Reconstruction and Development Programme (RDP) houses.

According to a report by Gordon, Nell and Di Lollo (2011), it is estimated that some 1.1 to 1.4 million housing subsidy beneficiaries (as of 2011) do not have the title deeds to their properties. The same limitation applies to municipally owned residential properties issued to beneficiaries (on a rental basis) prior to the urban land reforms

In townships and informal settlements, where insecure property ownership is greatest, the majority of property holders are potentially disentitled from making the necessary applications to receive land use or building plan approval to operate a home-based micro-enterprise.

and housing programme after 1994. Data from the StatsSA (2016) Community Survey indicate that merely 44% of South African households (tentatively) possess a title deed. In townships and informal settlements, where insecure property ownership is greatest, the majority of property holders are potentially disentitled from making the necessary applications to receive land use or building plan approval to operate a home-based micro-enterprise.

3.2. Enterprise sector specific (land use) stipulations

In certain sectors, home-based micro-enterprises are required to comply with provincial (and national) legislation – regulatory approval which is itself subject to municipal land use parameters, by-laws and business licensing. As examples, the article considers two sector cases: ECD centres and house taverns.

3.2.1. Early childhood development centres



Photo 12: ECD-centre micro-entrepreneurs invest to improve their facilities and comply as much as possible with ECD centre 'norms and standards' even though land barriers prevent the formalisation of many such enterprises'.

The Children's Act 2005 requires all ECD centres be registered with the relevant provincial social development department. This authority can reject an application if the ECD centre does not meet the relevant registration criteria, as stipulated in the national social development department's Guidelines for Early Childhood Development Services. According to these guidelines, the relevant provincial social development department must determine whether or not the applicant is deemed to be a fit and proper person, or if they have the necessary skills to operate an ECD centre, or if the programme proposed meets the full spectrum of children's needs (Section 97 of the Act). Furthermore, an ECD centre is expected to comply with certain building, premises and equipment requirements (again, according to the Guidelines for Early Childhood Development Services). These include:

1.5m² of indoor space per child (2m² for toddlers);

- 1m² of outdoor play space per child (if no outdoor space is available, add 1m² to indoor space allotment per child);
- Windows, to let in light and fresh air, and allow children to see outside;
- A kitchen, which is separate from play area, with facilities to boil water, cook food and clean bottles if necessary;
- One hand basin and one toilet per 20 children;
- A separate area for children who are sick; and
- A separate area for staff to rest and store belongings (if more than 50 children are enrolled at the ECD centre).

According to these guidelines, an ECD centre with 20 children and no toddlers needs 30m² of indoor floor space, 20m² of outdoor play area, with additional rooms for a kitchen, a toilet and a sick bay. An ECD centre with 20 children and ten toddlers requires an additional 20m² of indoor floor space (to accommodate for the 2m² requirement per toddler). Any renovations which ECD centres undertake to meet these requirements must adhere to the NBSRSA (which introduces the licensing and ownership problems already highlighted). Additionally, anecdotal evidence from land use planners in Westonaria report that for micro-entrepreneurs to operate an ECD centre, the cost of a rezoning application (including fees, notifications and maps) amounts to about R7 500.

Very few ECD centres in townships are able to meet these requirements; as the example above demonstrates, the space requirements are particularly onerous

Being unable to meet these standards and thus being considered ineligible for registration has severe financial consequences for ECD centre operators, since they are ineligible for the subsidy from the relevant provincial social development department of R15 per child per day.

in contexts of extreme land shortages. Being unable to meet these standards and thus being considered ineligible for registration has severe financial consequences for ECD centre operators, since they are ineligible for the subsidy from the relevant provincial social development department of R15 per child per day. For an ECD centre with 20 children, the state subsidy amounts to R6 522 a month. This is a substantial amount of money for a low-income ECD centre operator who, by definition, has limited start-up and operational capital. Whilst

the requirements for registration are onerous out of good intention, they have the consequence of limiting the number of ECD centres that operate legally.

3.2.2. House taverns

The licensing of liquor retail is a provincial competency, hence the nine provincial governments have different legislation which, independently, adheres to the objectives of the National Liquor Act. The sale of alcohol is tightly regulated, with the power of regulation shared by national police, provincial liquor inspectors and municipal agents. A house tavern licence is highly prized, for unlicensed taverns are probably the most persecuted sector of home-based businesses. Research into unlicensed liquor trading within the township economy found that two-thirds of unlicensed taverns had been raided by the police (Charman et al, 2013). There are severe consequences for persons who trade liquor without a licence, including subjection to police brutality and human rights abuse, arrest, stock confiscation and prosecution with fines and/or imprisonment. Most prosecutions for illegal house taverns take place under the Criminal Procedures Act, 1977, whereby the arrested person has the option to pay 'an admission of guilt fine', as a result of which they would receive a criminal record. This presents a further obstacle to formalisation since liquor laws disallow persons with a criminal record from being able to obtain a liquor licence.

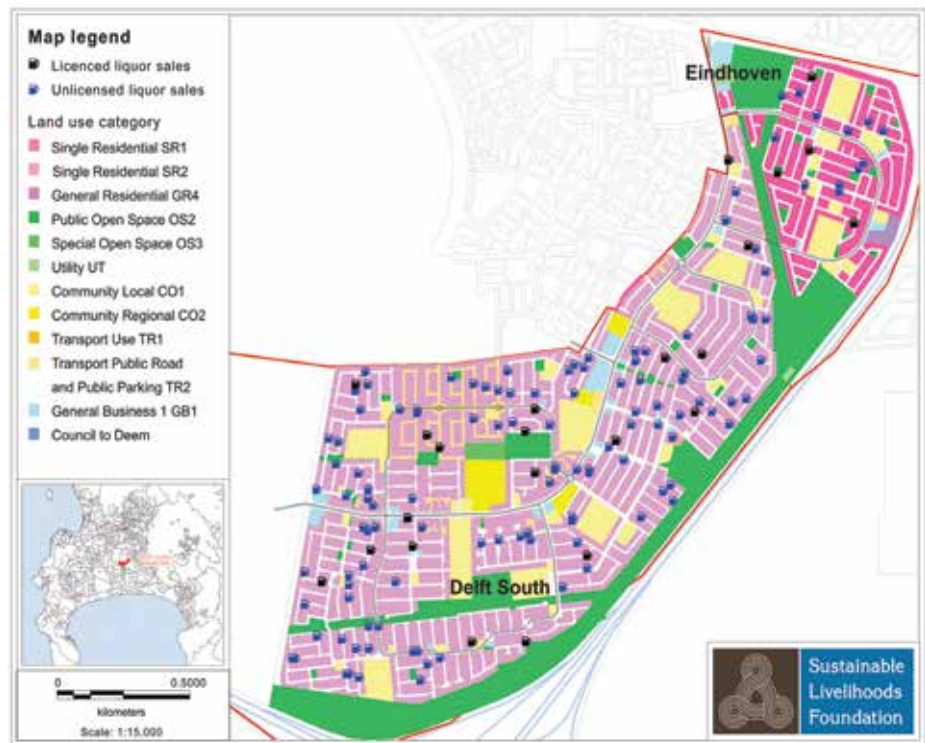


Photo 13: New legislation has made it increasingly difficult for house taverns to operate in residential areas. Some municipalities do not recognise vernacular architecture for business purposes.

Although unlicensed traders have a strong incentive to formalise their business, legislation has sought to minimise the number of house taverns operating in townships. A common policy thrust has been to minimise the presence of liquor retailing through proposing new restrictions on 'residential' trade and/or requiring traders to comply with municipal zoning schemes. The Western Cape Province has taken the most extreme position. Under the provincial law, traders need to comply

with all aspects of municipal land use systems, including the zoning scheme and building regulations. For house businesses selling liquor within the City of Cape Town, for example, the implication is that liquor trading is not permitted in residential land use zones. Business owners would either be required to rezone their properties to land use zones wherein the scheme permits liquor trade as a use right or consent right. This stipulation perpetuates spatial injustice because few land units within townships have been zoned for such commercial use. The zoning predicament that liquor traders confront is illustrated in the case of Delft South. Map 2 shows the distribution of 145 liquor outlets identified by SLF researchers in 2015 and the corresponding land use zoning. The map distinguishes between businesses that have (historically) obtained liquor licences (n=22) and those that are unlicensed and trade illegally (n=123). The research shows that even the majority of licensed house taverns do not operate on commercial land units and their licences (issued under a previous dispensation) will subsequently lapse. Since the City of Cape Town has adopted a policy stance to prohibit liquor trading in 'residential areas', it is virtually impossible for Delft house taverns to convert their land use zone and regularise their businesses. Their options are to relocate the business to a suitable locality (of which there are none in Delft) or continue to trade illegally. See Map 2.

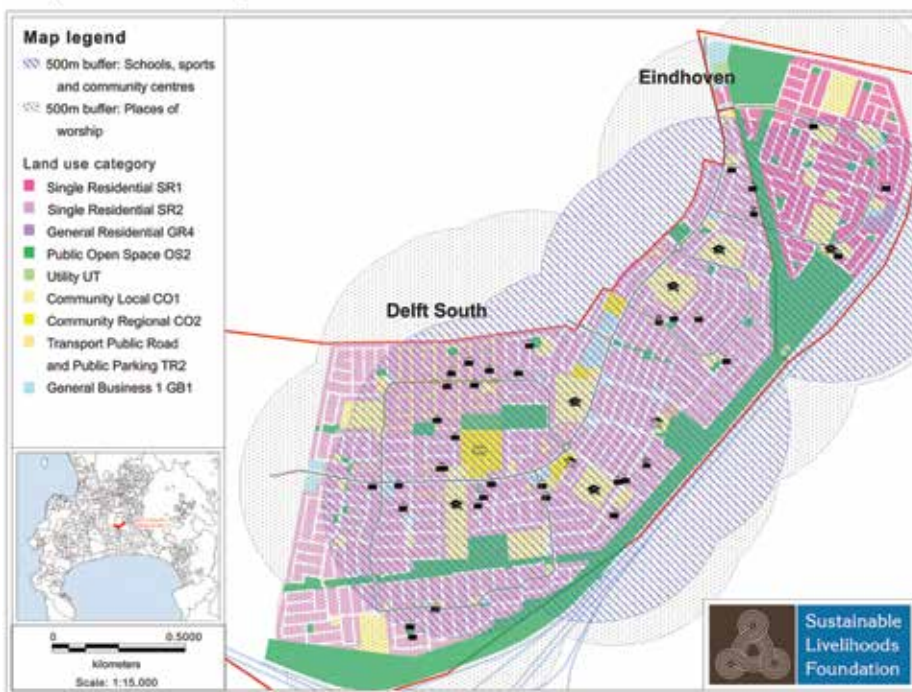
Map 2: Spatial distribution of home liquor outlets (licensed and unlicensed) in Delft South, 2015



The idea of prohibiting liquor sales in townships and informal settlements has now been proposed in 2016 amendments to the National Liquor Act. If these changes are enacted, residential prohibition will be mandatory across all nine provinces. One of the core mechanisms to achieve this objective is the stipulation that house taverns should not be situated within 500m of schools, places of worship, recreation facilities, rehabilitation or treatment centres, and public institutions. Map 3 in explores the implication of this recommendation again in the Delft case. The map illustrates the geographic extent of the exclusion zone, determined using a 500m buffer drawn from i) schools, sports and community centres and ii) places of worship. As is clearly indicated, there is no land within Delft that exists 500m beyond these points. See Map 3.

A core mechanism in the current proposal for residential prohibition is the stipulation that house taverns should not be situated within 500m of schools, places of worship, recreational facilities, rehabilitation and treatment centres and public institutions.

Map 3: The potential impact of the proposed 500m exclusion zone on home liquor outlets.



Some provincial licensing authorities have taken a pragmatic stance towards house taverns, recognising their historical, social and economic role in townships. Both the Eastern Cape and Gauteng liquor authorities once permitted township liquor traders to obtain 'shebeen' permits/licences. These permits were understood to be a temporary measure, made available in recognition of the profound obstacles that

most micro-entrepreneurs would have to overcome to obtain conventional tavern licences. The issuing of shebeen permits has been discontinued, though permit holders continue to operate from a quasi-legal position (technically the permits have expired), whilst in Gauteng permit holders have been, since 2012, entitled to apply for a 'shebeen licence'. The licensing conditions stipulate that the floor must be at least 20m², whilst on-consumption venues must have 'ablution facilities' and provide 'light meals'. Furthermore, if the property is currently zoned 'residential', the 'dominant use' of the property must remain residential, a concept that is not specifically defined. Trading times are restricted from 10h00 to 22h00. In the case of a tavern licence, applicable provincial legislation usually stipulates that the premises should be separate from any other dwelling, or separated by means of 'walls and securable doors'. The licensing process for taverns is also significantly more onerous. Apart from compliance with land use schemes, tavern applications require, inter alia, the following documents: i) a written motivation; ii) a detailed sketch plan of the premises showing the rooms, services, buildings and indicating the construction materials; iii) a detailed written description of the proposed venue/ premises and photographs; iv) a report(s) from liquor and other inspectors; v) proof of the publication of notices in newspapers; vi) a certificate of the applicant's suitability issued by the South African Police Service (SAPS); and vii) a tax clearance certificate.⁶ Furthermore, tavern applications must 'also be accompanied by unequivocal approval by the relevant department of the relevant metropolitan or district council, in addition to any zoning or planning or environmental law requirements' (Gauteng Liquor Act, 2003, Chapter 23, Clause 4). For these reasons, it is only those township entrepreneurs with access to sufficient financial resources to engage the services of a legal entity specialising in liquor licence applications that succeed in obtaining a licence and formalising their businesses.

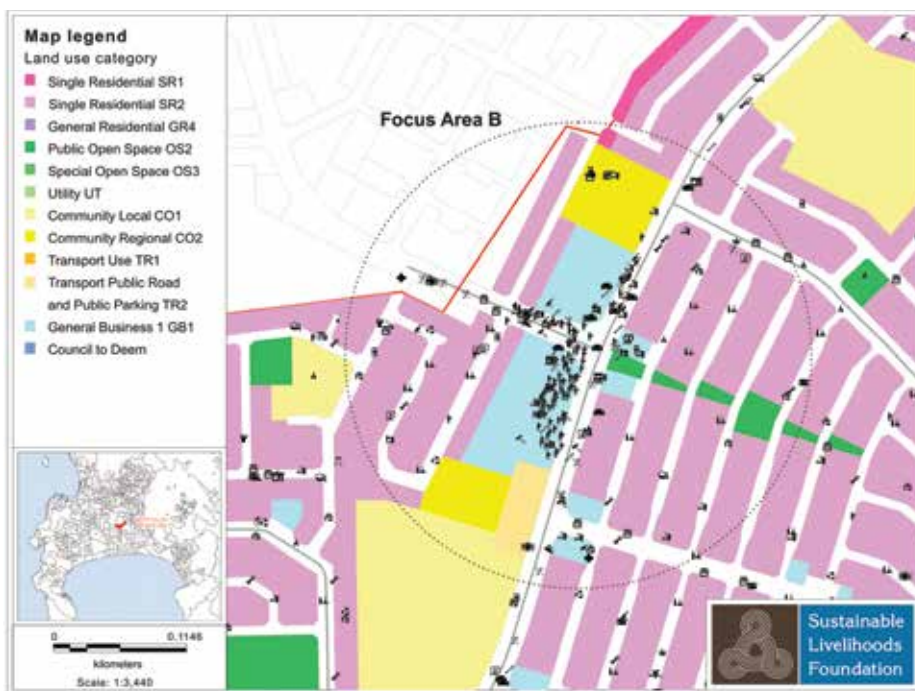
3.3. Street traders and other micro-enterprises located in public areas

3.3.1. Street traders

The discussion now turns to the case of street traders. In townships and informal settlements, a large proportion of micro-enterprises operate from the street (sidewalk) and other public areas, selling goods informally from trading stands, make-shift stalls and pavement displays. As the land that is traded upon is usually public land under municipal ownership, the legal framework governing these enterprises is principally determined by municipal by-laws. See, for example, the spatial distribution of street traders in Delft high street (See Map 4) and their concentration on underdeveloped land along the high street.

⁶ Based on the criteria of the Gauteng Liquor Act, 2003.

Map 4: Concentration of street traders on the high street in Delft South, 2015



As we have noted, the National Business Act affects street traders in two ways. Firstly, Schedule 1 of the Act requires that the sale of any foodstuff for immediate consumption or any perishable foodstuff requires a licence. This requirement applies equally to house shops, spazas, takeaways, restaurants, etc. For street traders, the Act has a wide ranging impact on businesses selling braaied meat⁷, grocery products, takeaway food, and fruit and vegetables, to name some of the business categories that sell or handle food and perishable products. The hurdles of obtaining a licence, especially for survivalists (as street traders frequently are) can be insurmountable. Certain informal-sector business practices in the food sector (such as cooking on open fires, street slaughter or selling meat from unrefrigerated counters) are prohibited outright in most municipalities. Secondly, the Act bestows upon municipalities a range of regulatory and restrictive powers with regards to street-based micro-enterprises. Included is the power to prohibit street trade in certain areas, determine trading hours and prohibit certain kinds of business activities in public areas in accordance with a 'trading plan'. The cities of Cape Town, Johannesburg, Ekurhuleni, Tshwane, and eThekweni have enacted informal trading by-laws in exercise of the powers granted by the National Business Act.

⁷ Meat cooked on an open fire or barbequed.



Photo 14: Street abattoir.



Photo 15: Street braai.

The Cape Town and Johannesburg informal trading by-laws, as do the others, restrict or altogether ban street trading in a variety of locations, including prohibiting informal trade outside religious buildings, public monuments, cash machines and police stations, within 5m of any intersection or at any place likely to obstruct traffic, on a sidewalk which is less than 3m wide, or on a sidewalk outside any formal business selling the same products – to list a few examples. In Cape Town, these

restrictions are further reinforced by the by-law Relating to Streets, Public Places and the Prevention of Noise Nuisances, 2007, which prohibits any person or vehicle: '(a) when in a public place [traders may not] intentionally block or interfere with the safe or free passage of a pedestrian or motor vehicle'. In township contexts, these restrictions are nonsensical because the locations at busy intersections where taxis stop, along busy pedestrian routes, and at sites outside of public buildings, to cite three examples, are the most profitable sites in which to trade, having high quantities of passing commuter and pedestrian traffic.

Within a trading plan, street traders are usually not permitted to occupy more than a 3m² space, whose locations are determined by the trading plan. Furthermore, all enterprise activities within the plan must comply with the zoning scheme, whilst all enterprise structures must comply with the NBRBSA. Outside of these areas, traders may not erect any structure or shelter, may not store or leave property in a public space, may not obstruct the sidewalk or make an open fire. Again, the City of Cape Town by-law Relating to Street, Public Places and Prevention of Noise Nuisances reinforces these restrictions, disallowing the storage, accumulation, packing or unpacking of goods in a public place and preventing open fires (for cooking food) and carrying the carcass of an animal through a public road. Some of these prohibited behaviours have arisen in response to the lack of supportive infrastructure for traders (like wider sidewalks, permanent trading and braai stands, shelter from sun and rain, or storage facilities) and to the inappropriateness of the trading plans and designs.

Municipalities do not have the capacity to fully enforce these prohibitions and restrictions. Much law enforcement is concentrated within central business districts where trading plans have been developed and infrastructure facilities accommodate some traders. There is a large body of literature which documents the vulnerability of inner-city street traders to sporadic, random and haphazard applications of the law, including harassment and the confiscation of goods (see Bénit-Gbaffou, 2015 & 2016). In most townships there are neither trading plans nor equivalent facilities. Certain zoning schemes permit street trading on public land in these areas provided the business structures are temporary and can be disassembled at the conclusion of the trading day. No permanent structure is permitted. Since by-laws on street trading are less systematically enforced in township residential localities, street traders have positioned their stands close to pedestrians and erected purpose-built infrastructure.

Many informal street traders sell second-hand goods, such as clothing, hardware, furniture, to name the most common items seen in trading sites. These traders are required, in terms of the National Second-Hand Goods Act, 2009, to obtain a certificate of registration from the SAPS, specifying the nature of the goods and details of the premises from which the goods are sold.



Photo 16: A container-based barber shop.



Photo 17: A container-based phone shop and pool venue.

3.3.2. Container businesses

Businesses operating from shipping containers are commonly observed in townships and informal settlements. A wide spectrum of businesses utilise containers, including retail activities (spaza shops), takeaways, barber shops and hair salons, mechanics, and metalwork, tyre and burglar-bar workshops, to list the most common examples. In addition, containers provide office space for a range of community and service activities, from office space for councillors to accommodation for ECD centres. In contrast to wooden or zinc structures (which

require permanent infrastructure), containers are compact, more secure and can be easily moved from one locality to another if the entrepreneur seeks to explore new market opportunities. This latter consideration is particularly advantageous for (new) entrepreneurs who need to test market demand for their service/products.

In most municipalities, the use of shipping containers as business infrastructure is subject to regulatory compliance across a range of regulations, including i) the land use management scheme; ii) municipal by-laws in respect of structures and business activities conducted in public space; iii) informal trading by-laws; and iv) national legislation on building regulations and allied municipal building management systems. The case we detail in this sub-section refers to the City of Cape Town where business containers are subject to the Informal Trading By-Law, 2013, the Streets, Public Places and Prevention of Noise Nuisances By-Law, 2007, the Municipal Planning By-Law, 2015, and the National Building Regulations and Building Standards Act, 1977. Whereas the Informal Trading By-Law and the Streets, Public Places and Prevention of Noise Nuisances By-Law are largely enforced by designated officers of the informal trading unit and/or municipal police, the planning by-law and building regulations are largely enforced by officials of the planning and building development management department. Within this department, the responsibility for enforcement is split between two branches, the land use management (LUM) and building development management (BDM) district offices.

If, with respect to container businesses operating on private land, the proposed business activity is not listed in the prescribed business rights of the zoning scheme, the business owner is required to obtain municipal approval for a temporary departure to permit change in the land use zone from residential to commercial, or for consent use where the enterprise activity is permitted in the scheme. These applications are channelled through the LUM district office. There is less flexibility to accommodate consent use in some residential zoning schemes, notably the SR1 (conventional housing) zone. In SR1 the 2015 planning by-law specifies that 'any new structure or alteration to the property to accommodate an additional use right shall be compatible with the residential character of the area, particularly in regard to streetscape' (p.102). This provides the Council with discretionary authority to prevent building developments on the basis of aesthetic considerations, with or without objections from local residents. A similar provision is included in the SR2 zoning scheme, though the conditionality only applies to a limited range of business activities (including house shops) and is seldom enforced. Apart from land use compliance, it is important to note that the NBRBSA only permits the use of container structures on a temporary basis to store building materials or refuse. If the container is to be used for non-storage business activities, a certificate is required from Agrément South Africa. But since business containers cannot be used without special approval, the BDM district offices tend to reject applications outright even where the proposed activity has land use rights.

If an entrepreneur operates a container business on private land without the necessary consent, the Council has authority to issue a land use compliance notice. In such cases the notice requires the property owner (note, not the business owner) to apply for consent use or a temporary departure within either 14 or 30 days. The municipality may, in addition, impose an administrative penalty (based on the area of the business relative to the property area used in contravention of the zoning scheme) on the property owner. Should the property owner fail to submit the required application (and obtain approval), the municipality can take the property owner to court to obtain an order to remove the container. Once a court order is obtained, the Sheriff of the Court becomes responsible for having the container impounded. Court judgments against container-based businesses on private properties in the City of Cape Town are seldom enforced.

Where shipping containers are situated on public land, on road reserves and land zoned for public use, regulations tend to be more tightly enforced.

Where shipping containers are situated on public land, on road reserves and land zoned for public use, regulations tend to be more tightly enforced. According to municipal staff, the City was once more accepting towards container businesses situated in public sites in the mid-1990s, though this position has regressed towards an 'anti-container' perspective in

recent years. The Streets, Public Places and the Prevention of Noise Nuisances By-Law requires that any building or structure situated on municipal land requires Council approval, which (excluding the building regulatory issues) entails obtaining an official land lease agreement. Containers that occupy municipal land without the necessary authorisation can be impounded. This action can be initiated by officials from the informal trading unit, the general law enforcement unit (metro police) and/or the anti land-invasion unit. These units collectively impound about 50 container businesses per year. When an illegal container-based business is identified, the law enforcement agents are required to first issue a compliance notice. The notice gives the owner seven days to remove the container, though the period can be extended based on a written appeal. If the container owner fails to comply with the compliance notice, the law enforcement agents are then instructed to impound the container. Owners can recover their containers subsequently if they agree to cover the costs of impoundment. These costs are calculated on the hours for which the designated impoundment truck was used, the mileage driven, the human resources mobilised, on top of which an administrative fee as well as a daily impoundment storage fee are added. The costs can be reduced (up to 50%) on successful appeal to the executive director of the safety and security department, who acts on behalf of the City manager.

Given the limited capacity for law enforcement at the City, container impoundments are usually undertaken in response to public complaints. A variety of reasons can be put forward at the neighbourhood level for container-based businesses to be

removed, including: i) public security concerns (where the business is thought to contribute towards a crime hot-spot); ii) visibility concerns and evidence of pavement surface destruction; iii) sanitary complaints (where businesses such as spaza shops or takeaways have no access to water and sewerage; and iv) where a concern is expressed relating to business competition. The latter occurs in cases where a container business is situated on public land in close proximity to an established micro-enterprise that competes in the same market segment. This has happened in the spaza market where business competition has focused on dominating neighbourhood market niches, wherein shops compete to retail to residents living within close walking distance (Liedeman, Charman, Piper & Petersen, 2013). Since the process of container impoundment is usually complaint driven, the enforcement of regulations can be mobilised to fight entrepreneurship battles or to pursue a local political agenda. Our research has found that complaints can be withdrawn, in which case the City (usually) takes no further action towards the illegal land use situation. The process of making a complaint and then withdrawing the same complaint can be used (and is used) instrumentally to exert pressure on micro-entrepreneurs with the (hidden) objective of extracting informal taxes (protection money) and/or imposing leadership patronage at the neighbourhood level. At the same time, container-based micro-entrepreneurs can also seek to manipulate law enforcement for commercial benefit through, for example, paying bribes to secure uninterrupted trading despite not complying with the range of municipal by-laws and building regulations.

4. CONCLUSION

The report has shown that most township micro-enterprises do not adhere to the land use management system in that:

The business activity has zoning rights or a consent use right;

- The business floor space occupies an area smaller than the residential area;
- There is separation between business activities and residential activities;
- The building structure in which a business activity is conducted has an approved building plan and conforms to national building standards and regulations;
- The micro-enterprise and business activity adheres to municipal by-laws relating to environmental health, food safety and the use of business signage;
- Business undertaken in public spaces adheres to informal trading by-laws and restrictions on trading activities within roads.

The report has argued that as a consequence of inflexible and inappropriate land use management systems, many micro-enterprises are unable to meet business regulatory compliance. This process of exclusion from formalisation should be seen as 'enforced informalisation'. This applies where township entrepreneurs who would otherwise endeavour to comply with regulations are excluded due to the onerousness of compliance criteria. The report has sought to argue that the onerousness of these criteria needs to be measured against the smallness of the enterprise and the financial vulnerability and limited social capital of micro-enterprises. Such micro-enterprises are involuntarily informal. It is unjust to

It is unjust to expect township micro-enterprises to fulfil land management systems and other business regulatory requirements designed with formal businesses in mind that have both the financial means and access to the legal services necessary to navigate the web of legislation.

expect township micro-enterprises to fulfil land management systems and other business regulatory requirements designed with formal businesses in mind that have both the financial means and access to the legal services necessary to navigate the web of legislation. The report has provided evidence of the implication of 'enforced informalisation' on house taverns, house shops, ECD centres and street-based container businesses. This process has resulted in the exclusion of township businesses from opportunities to grow and invest, whilst simultaneously reducing the scope of the

state to regulate business activities. There is considerable evidence that informal and illegal business activities are ubiquitous in townships. Although the state has sought to eliminate certain business activities – such as illegal liquor retail, unregistered ECD centres and street trade – its efforts have been largely ineffective

in scale. Instead, individual micro-enterprises have been targeted, resulting in forms of economic sabotage (bribes, stock confiscation, etc.), fines and penalties, prosecution, infrastructure impoundments and the issuing of compliance notices.

The report argues that a more effective land use management system is required. SPLUMA provides an important starting point in this respect. The core principles of spatial justice, spatial resilience, sustainability and efficiency, and good administration are to be welcomed. It is still too early to assess whether SPLUMA will provide sufficient direction towards the fulfilment of these objectives in SDFs and land use systems. Most municipal entities are still revising these documents. But early warnings can already be identified. First, the policy makes no reference to the urgent need for urban land reform, especially in respect to making land available for township business activities and small-scale commerce. Second, the policy institutionalises the code approach in land use systems. This has enabled municipalities to persist with the ill-adapted requirements of land use zoning schemes. Whilst the intention of codes to protect society and the environment from the externalities of development and commerce is well meaning (and deserves support), the application of a coded system in townships has done little to achieve such goals. This is because the rigidity (and complexity) in municipal land systems is unable to accommodate the fluidity of development processes wherein land has multiple and rapidly changing uses. Our research shows that this fluidity is the consequence of human endeavour in the struggle to get out of poverty, wherein the multiplicity of informal and illegal land uses in townships are a manifestation of individual social action towards spatial justice and spatial resilience.

The report endorses the argument that South Africa requires a land use system that can more effectively operationalise the principles of spatial justice and spatial resilience and make allowance for the economic marginalisation of township communities. Such land systems need to recognise that which Zack and Silverman (2007: 4) describe as 'highly fluid urban conditions'; urban fluidity relates to changes in settlement demography, settlement urban form and land use for business, social and cultural purposes. A more appropriate system needs to be based on the premise that a residential property is not simply a residence (or home), but a space from which to generate a livelihood and foster relationships. Land use systems must accommodate mixed use. The idea of mixed land use is recognised in land use management systems in Germany and Sweden for example, where the systems are still code based but comparatively broad in scope. The report endorses the argument for a 'flexible discretionary system' (Nel, 2016: 263), one that can accommodate a high degree of community participation whilst introducing form based codes to manage density increases and the development of social **infrastructure**. In the township context, a spatially just system should recognise that micro-enterprises are themselves highly fluid in their business activities, constantly changing to seek out new opportunities or respond to different

livelihood needs. It is unrealistic to expect these micro-enterprises to conform to normative ideas of business categories and fulfil complex regulatory requirements. Moreover, in working towards appropriate land management use, further research is necessary, as Turok (2016) points out, to understand the 'political economy of land', including the power dynamics that influence development projects, such as housing, transport and retail investments in townships.

Finally, the report concludes that the objectives of spatial justice and spatial resilience have little advanced since 1994. This fact can be attributed to a combination of inappropriate policy framing, non-supportive legislation (especially at municipal level), the absence of political will to foster township economic growth and formalisation, and the persistence of apartheid-era concerns with maintaining control to prevent 'unruly' social and economic activities.

5. RECOMMENDATIONS

The report advocates the following recommendations towards the development of a more appropriate urban land use system in townships:

- The SPLUMA principles of spatial justice and spatial resilience need to be clarified. In working towards clarifying the development planning implications of these two principles, it is important to consider organic land use outcomes from the perspective of township resource constraints, including the historical legacy of spatial injustice.
- SPLUMA should be amended to mandate spatial development frameworks (SDFs) to make explicit the linkage between spatial justice and land reform. In municipal SDFs, plans should indicate where additional land will be made available for township micro-entrepreneurs to establish business activities, specifying, inter alia, localities for those enterprises with high social and environmental externalities.
- Municipal land use management systems need to be simplified and made more flexible in terms of accommodating a mixture of residential, business, cultural and social uses.
- Mixed land use should be permitted without a menagerie of preconditions, for example, conditions that only permit business use that is ancillary to residential land use, or which require the owner to reside on the premises, or which limit business to particular enterprise categories. In addition, where land-related applications are required, the process should be as affordable and fast as possible.
- Where land use conditions and development parameters are imposed on residential properties, the economic imperative should always be emphasised. Zoning schemes should not impede individuals or households from the pursuit of an economic livelihood, except where the activities pose a demonstrable and serious risk to the health and safety of the area and measures cannot be instituted to reduce these risks.
- Municipalities should investigate the feasibility of establishing local community planning tribunals to oversee land use applications. Such bodies should comprise representatives of municipal planning departments and communities, though be weighted in favour of representatives from the affected community, including representatives of business groupings. No single community perspective (political, social, religious, or business) should be afforded an elevated status.

- There is a need to establish new ways of recognising land ownership given the growing disparity between formal records of ownership and the actual (informal) ownership of properties in townships. In this regard, the relevance of the Social Tenure Domain Model, which is an alternative approach for managing land information being developed by United Nations (UN) Habitat, should be investigated to determine its relevance for South Africa. Until such time as a system such as this can be implemented, the requirements regarding ownership of land contained in land use management systems and building regulations should be treated with the greatest possible degree of flexibility.
- The National Building Regulations and Building Standards requirements should be re-assessed to recognise vernacular architecture and the utilisation of non-standard building materials for enterprise purposes.
- National government should develop a policy on micro-enterprise formalisation. The policy should afford all three tiers of government a shared competency in regulating business and supporting formalisation. The objective should be to create a universal framework for micro-enterprise regulation, specifying, inter alia, land use requirements and specific additional criteria for certain classes of enterprise (such as ECD centres, house shops, house taverns, etc.). There should be scope within the policy to exempt certain business activities and situations from formalisation. A micro-enterprise formalisation policy should enable the creation of a mechanism for the licensing of micro-enterprises in a manner that is comparatively simple and low in cost, consolidating national, provincial and municipal stipulations in a single process. The outcome will enable government to better fulfil a regulatory function, whilst minimising the exclusion of micro-enterprises from state benefits such as grants for ECD centres.

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