

Managed Land Settlement Programme Evaluation Report

“The challenge to end economic, geographic, gendered Apartheid is huge. Much of this challenge exists at a local level. But, as this guide shows, the Constitution empowers communities to claim their rights. Activists must connect the dots and ensure that Government prioritises the rights of people. We encourage you to use this guide to do that!”

Pregs Govender, Deputy Chairperson, South African Human Rights Commission, 2011,
foreword to *Making local government work: an activist's guide*,
www.localgovernmentaction.org

“If we can all be involved, government, NGOs, all stakeholders, then the People’s Housing Process [PHP] is the best because it involves the people: people are being capacitated, it is not uniform housing, people are taught how to do their own plans, the contribution in finance and materials by beneficiaries makes the house bigger than 40m². This all brings ownership to the beneficiary. You won’t rush to sell that house just as in the rural areas it is very rare that people sell as they have sweated in building their house.

“I am very pleased that [the Department of] Human Settlements is now eager for a PHP approach. If we go this way we will have far less defects in housing construction.”

BCMM Councillor Ms Mgezi, Mayoral Committee Member for Human Settlement, 29
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Disclaimer: This report has been prepared at the request of and paid for by Afesis-corplan. However the views expressed herein (and the mistakes) are those of the author and are not necessarily those of Afesis-corplan or of any persons interviewed or any documents cited for this evaluation.

¹ A former student activist, then an NGO activist in the para-legal and rural land sectors, later a senior manager in the public service establishing and driving land redistribution in the Eastern Cape Province for national government from 1995-2004, including embryonic incremental settlement projects.

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Acronyms

AC – Afesis-corporation
ADM – Amathole District Municipality
BCM/BCMM – Buffalo City Local Municipality, now Buffalo City Metropolitan Municipality
CBO – Community-Based Organisation
CFO – Chief Financial Officer
COO – Chief Operations Officer
CORC – Community Resource Centre
CPA – Communal Property Association
DFA – Development Facilitation Act, No. 67 of 1995
DFID – (British) Department for International Development
DLA – national Department of Land Affairs, now Rural Development and Land Reform
DORA – Division of Revenue Act
DST – national Department of Science and Technology
DWA – national Department of Water Affairs
ECLRO – Eastern Cape Land Reform Office (of DLA)
FEDUP – Federation of the Urban and Rural Poor
GK – Great Kei Local Municipality
HDA – Housing Development Agency
HoD – Head of Department
HPF – Homeless People's Federation
HS – Department of Human Settlements, either national or provincial as per context
IDP – Integrated Development Plan
IDT – Independent Development Trust
LFTEA – Less Formal Township Establishment Act, No. 113 of 1991
MIG – Municipal Infrastructure Grant
MLS – Managed Land Settlement
MoU – Memorandum of Understanding
NDHS – National Department of Human Settlement
NDP – National Development Plan
NGO – Non-Governmental Organisation
NT – National Treasury
NUSP – National Upgrading Support Programme
PDHS – Provincial Department of Human Settlement
PHP – Peoples Housing Process
RDP – Reconstruction and Development Programme
SDF – Spatial Development Framework
UISP – Upgrading of Informal Settlements Programme
VIP – Ventilated Improved Pit latrine

Summary

The Managed Land Settlement (MLS) project at Cwili under the Great Kei Local Municipality shows every sign of being a very successful pilot project involving incremental land settlement and development.

This project came about in an unfavourable policy and institutional environment, yet was perceived by the respective role-players as the only practical solution to the particular challenges at the time and as a mechanism to avoid an unmanaged land invasion.

The policy environment is now more favourable to MLS and this is indicated by the contents of Outcome 8 of the *Delivery Agreement* of national government and programme initiatives such as the National Upgrading Support Programme (NUSP) and the local programme on the upgrading of informal settlements recently put forward by Buffalo City Metropolitan Municipality (BCMM).

While the attempts of FEDUP to obtain land and development with its members in the Buffalo City area have to date not been successful, there are now new opportunities and some potential solutions which may enhance their success in future.

The MLS model appear to work in practice and requires little adjustment if any at all. What may be needed is more aggressive advocacy of the model in the context of a much more favourable policy and institutional environment nationally and locally.

There are still many obstacles to the delivery of viable human settlements. In the right circumstances, MLS presents a novel solution and delivery method.

One area which stands as a limitation on the development of markets in land and housing amongst the urban poor who are beneficiaries of the human settlement programme is the imposition of freehold tenure which evidence suggests may be inappropriate in many if not most areas. Afesis-corplan and the Land Mark initiative as a whole may need to devote considerable attention to this matter.

Lessons

(As per sub-section headings below in the body of this report)

5.1 Amongst the many potential roles of an NGO, Afesis-corplan has successfully adopted a role located at the nexus of piloting innovation and bringing this to bear on state policy.

5.2 The success of an innovative MLS project such as at Cwili depends on many role players but most critically on a wise and energetic local leadership to drive the process at community level.

5.3 The status of the agreement between FEDUP and the national Minister must be clarified, in particular as to what it means at local level and to counter the perception of queue-jumping by FEDUP.

For FEDUP to succeed, a greater organisational presence is required in the East London area, in the form of either or both a paid official of FEDUP or/and the assistance of a NGO such as Afesis-corplan.

5.4 With the benefit of hindsight, Afesis-corplan could have played a more active role in assisting FEDUP to acquire land in the BCMM area. In general there is room for more work on capacity building at project and beneficiary level.

With the benefit of yet more hindsight, and given the long relationship between AC and GIZ and Misereor, communication should have been initiated by either party to review the project focus and consider shifting from MLS in BCM to support for FEDUP in BCM. The lesson is that greater interaction, communication and flexibility is required between AC and funding partners.

5.5 For MLS to proceed at scale in the Eastern Cape Province, some amendment may be required of zoning schemes across the province to enable the construction of informal housing in areas Zoned for residential use.

Public engagement with a large municipality such as BCMM on settlement issues requires a central interface with the municipality to avoid being referred from one department to another. One suggestion was for the establishment of a "housing development front desk".

5.6 The failure or non-existence of a mechanism to issue Item 28(1) Certificates as necessary steps in the establishment of human settlements is a failure of the state which impacts directly on the Constitutional right of citizens to shelter. Therefore this may be an issue which should be referred to the Housing Development Association (HDA) or even the office of the Public Protector.

5.7 The issue of title deeds becoming more and more out of date with the passing of each generation is a legal and cultural attitudinal issue. It cannot be resolved in the medium to long term by strictly legal or strictly cultural changes but by some appropriate combination of the two. Until such time as serious attempts are made to address both aspects, the Deeds Registry will with the passing of each generation of new landowners become less and less reflective of the actual ownership and possession of land.

5.8 Redressing the legacy of spatial planning may require serious attention to land use control measures and changes to both national and provincial legislation providing for the zoning of municipal land to facilitate incremental settlement both in-situ and greenfield.

1 Introduction and brief

Afesis-corplan required an independent evaluation of the Managed Land Settlement (MLS) pilot project in Cwili phase 2 in Kei Mouth and the FEDUP land acquisition support project in Buffalo City Municipality that it has been involved in over the last few years.

This evaluation report is prepared for the benefit of the staff of Afesis-Corplan, the beneficiaries of the programme, programme funders and any interested policy makers.

Afesis-corplan is an NGO with a history stretching back over twenty years, in fact to the 1980s on the part of the Afesis component. The NGO has a wealth of experience in urban housing in both the larger urban environment as well as in small towns in the Eastern Cape Province. It is networked with a number of other similar NGOs in other centres such as the Development Action Group (DAG, Cape Town), the Built Environment Support Group (BESG, Durban/Pietermaritzburg) and PlanAct (Johannesburg), as well as other related NGOs, CBOs and associated networks.

Afesis-corplan has a comprehensive and up-to-date website (www.afesis.org.za) with considerable information as well as links to other related sites. Only information directly relevant to this evaluation is repeated in this report. A full list of websites relevant to this evaluation is included at section 8 under the heading "Documents and websites" towards the end of this report.

As per the introduction to the brief for this evaluation report,

"Afesis-corplan has been involved in a Land Access project for the last 3 years.

- iCwili is a managed land settlement project where about 100 households in the iCwili township in Kei Mouth have been assisted to move onto a planned piece of land prior to government housing subsidies being made available.
- FEDUP (Federation of the Urban and Rural Poor) is a group of more than 500 households from East London who are organised into savings schemes with the intention of getting land and housing subsidies for their members. The members have been unsuccessful in finding land up to now." (Annex)

Outputs required of the evaluation were stated as:

"A case study report that addresses, 1) the iCwili phase 2 project, 2) the FEDUP project and 3) the broader land access work of Afesis-corplan. The following is a guide for the report but the report does not have to be restricted by these questions.

1. For pilot projects (iCwili phase 2 and FEDUP)

- a. Has the original purpose of the pilot project work been met? What has been the impact of the pilot projects?
- b. What happened in past and what is happening now in relation to implementing the pilot projects?
- c. What role did (is) Afesis-corplan, the community and other role-players play and are playing in the pilot projects?
- d. How did the community participate in the process?
- e. What were (are) the challenges and opportunities faced?
- f. What lessons can be learnt from each project?
- g. What recommendations can be made for continuing to develop each project?

2. For broader Afesis-corporate land access work

- a. Broadly, in summary, what has been the impact of Afesis-corporate's work with the LANDfirst network and the development and promotion of the Managed Land Settlement model?
- b. What broad challenges and opportunities has Afesis-corporate faced in carrying out its work?
- c. What broad lessons and recommendations can be made for how the managed land settlement model can be improved?
- d. What broad options can Afesis-corporate consider for how it could intervene in similar or new land access work?" (Annex)

Questions 1a to 1g above are addressed in sections 2-5 of this report.

Questions 2a to 2d are addressed in section 6.

2 Background

2.1 Legal framework and challenges

Section 26 of the *Constitution of the Republic of South Africa*, under the heading "Housing", provides:

- 1) Everyone has the right to have access to adequate housing.
- 2) The state must take reasonable legislative and other measures, within its available resources, to achieve the progressive realisation of this right.
- 3) No one may be evicted from their home, or have their home demolished, without an order of court made after considering all the relevant circumstances. No legislation may permit arbitrary evictions.

The right to housing does not stand in isolation but is a progressive right in relation to other rights enshrined in the Constitution such as the right to water (section 27) and a healthy environment (Section 24). Many of these rights can be addressed in the build up to and in the process prior to a citizen acquiring a house.

Various cases in the Constitutional Court have clarified and amplified Section 26 of the *Constitution*. These cases include the Grootboom case in 2000 and the Modderklip Boerdery case in 2005. Both judgements are available at www.constitutionalcourt.org.za

Parliament enacted the *Housing Act, No. 107 of 1997*, inter alia to:

"... lay down general principles applicable to housing development in all spheres of government, to define the functions of national, provincial and local governments in respect of housing development ... and the financing of national housing programmes ..."

The annual *Division of Revenue Act* (DORA) provides for an Integrated Housing and Human Settlement Development Grant. This is a Conditional Grant in terms of section 214 of the *Constitution*², for housing programmes against the submission of approved national and provincial business plans.

² S214 provides inter alia:

(1) An Act of Parliament must provide for -

While the Constitution and other legislation provides direction and a framework for the South African state in the delivery of housing, this delivery is taking place in the context of global, regional and local population and development trends:

“From a global perspective one of the key challenges is to move away from chaotic, divided cities, which are seen as normal, and look very carefully at where our cities in the south are heading. The growth in the urban population in the south is particularly daunting, and the numbers are staggering and being revisited all the time. The total urban population of the developing world will increase from 2.3 billion in 2005 to more than five billion in 2050. The growth of cities in Africa is marked by widespread land insecurity, with more than 70% of people falling outside any land register; in southern Africa, this figure is 60%. The consequences are severe and include massive inequalities in land, housing and income; the undermining of investment and the absence of services and amenities; forced eviction, corruption and ‘land grabbing’; gender discrimination whereby women globally own less than 3% of land; intergenerational challenges such that young people increasingly struggle to gain access to land and housing; and the increased undermining of rural food security and land management.” (Jean du Plessis, UN-Habitat, Urban LandMark 2012: 9)

There has been very significant delivery of housing in South Africa since 1994. However the backlog and demand for housing delivery is ongoing into the distant future:

“Since 1994, more than 2.3 million housing units have been made available for nearly 11 million people. The scale of government housing delivery is second only to China, as the Banking Association of South Africa has pointed out (DHS, 2010). However, the housing backlog has grown in leaps and bounds from 1.5-million in 1994 and now stands at approximately 2.1 million. That means approximately 12 million South Africans are still in need of better shelter (DHS, 2010). These statistics show that we are a far cry from the visions of the Constitution and the Freedom Charter and that much work needs to be done by the Department of Human Settlements (DHS, 2010).” (Nevondwe and Odeku 11339)

While the numbers differ on the extent of the backlog, even with a smaller estimate of this backlog, Afesis-corporation quotes the National Upgrading Support Programme (NUSP) that the resource requirements to address this backlog are just too great:

“Since 1994 the South African Government has delivered 2.3 million houses, but the housing backlog still stands at about 1.2 million homes. The housing backlog still stands at about 1.2 million homes. The National Upgrading Support Programme (NUSP) estimates that meeting this backlog with the standard RDP housing package (40m² top structure on 250m² serviced site plus 30% for roads and amenities) would require 40 000 hectares (plus 30%) and a budget of R92.4bn (equivalent to 70% of the total budget 2009 – 2015).” (Afesis-corporation 2012)

-
- (a) The equitable division of revenue raised nationally among the national, provincial and local spheres of government;
 - (b) ...
 - (c) Any other **allocations** to provinces, local government or municipalities from the national government’s share of that revenue, **and any conditions on which those allocations may be made.**

Whether the current backlog stands at 2.1 million or 1.2 million housing units³, and echoing the trend for the south outlined by Mr Du Plessis above, the potential ballooning of the South African scenario into the future is as daunting,:

“Another 7.8 million people will be living in South African cities in 2030 and a further 6 million by 2050, putting pressure on municipalities to deliver services. A large proportion of new urban residents will be poor, reflecting a phenomenon referred to as the urbanisation of poverty.” (National Development Plan, 2012: 266)

Thus it seems unlikely that despite our relative wealth as a country, South Africa will always be racing to deliver. It may indeed be that the delivery of housing per se or as in so-called “top-structures” may have to be supplemented by other measures:

“Many homeless people will continue to live for many years in unrecognised and unplanned informal settlements without access to adequate basic services if we exclusively pursue approaches to housing development that emphasise fully packaged houses on serviced plots with individual ownership. There are just not enough (human and financial) resources available in the country to rapidly provide everyone in need with a fully packaged house. LANDfirst provides an additional entry point for the homeless to access land and housing that does not rely on land invasion or waiting for government to provide a fully packaged RDP house.” (Landfirst 2010a: 2)

The *Delivery Agreement* for Outcome 8 under the present government (www.dhs.gov.za) reflects a serious attempt to address some of these challenges, at least at the level of policy. This document creates a range of opportunities which may be utilised by Afesis-corporation and will be addressed briefly in section 5 headed “Opportunities and suggested actions” below.

2.2 Changing policy environment

Shifts in the national policy environment towards recognition of the challenge faced by informal settlements in particular and a consequent relative de-emphasis on greenfields projects should be welcome news to Afesis-corporation which has a long history of involvement in complex informal settlements.

The *Delivery Agreement* for Outcome 8 includes as Output 1 the accelerated delivery of housing opportunities and a very significant sub-output on the upgrading of informal settlements:

“The target is to provide at least **400 000 households in well-located informal settlements** with tenure, basic services and access to amenities over the period May 2010 to April 2014. This embraces the provision of tenure and services in well-located informal settlements as the first step in an **incremental process of their transformation to sustainable human settlements**.”

“Output 1 is a shift away from the current paradigm of exclusively state-provided housing for the poor. It explicitly includes improving livelihoods through **the provision of different forms of tenure**, and provides for **alternative methods of housing delivery**. It is the first large-scale **programmatic response to incremental upgrading of informal settlements** in the country.” (page 14, emphasis added)

The Delivery Agreement also talks about the need to do things differently:

³1.2 million households still live in informal settlements (www.upgradingsupport.org/background). The total number of households with a need for housing will be more as it must include backyard shacks, overcrowding, rural areas etc. This may account for the higher figure of 2.1 million.

“... by working to overcome the prevailing orthodoxy of state-subsidised provision and greenfield site development and **changing the behaviour, attitudes and organisational culture of housing officials and professionals to embrace incremental upgrading, participatory planning and livelihoods-based approaches.**” (page 18, emphasis added).

More recently the National Development Plan (NDP) outlined the reason for the need for a new approach:

“There is an ambivalence across government towards how to address the upgrading of informal settlements, and the mechanisms for the insitu upgrade of informal settlements have yet to be fully developed. The **institutional capabilities to manage processes such as incremental tenure, infrastructure and shelter upgrade and the development of appropriate regulations, in a participatory and empowering way, have yet to be developed.**” (page 273, emphasis added)

Former Afesis-corplan director, Steve Topham, now with NDHS's National Upgrading Support Programme (NUSP), provided a very useful summary of the recent shifts in policy in a presentation entitled “Running to stand still ...”⁴ at the Afesis-corplan seminar on 26 October 2012. The bullet points which follow are extracted directly from this presentation:

- Informal settlement growth: 300 in 1994 to 2 700 in 2010.
- Service delivery protests: From two per month in 2008 to 16 per month in 2012, with increasing violence.
- Subsidy quantum lags behind real costs of development, and means provinces and municipalities must squeeze costs down, increasing requirement for cheaper land, thereby pushing settlements to remote or unsuitable areas.
- Greenfield development is easier (plus don't have to deal with resident community).
- Top-structure expectations plus engineering and financial efficiency requirements leads to peripheral development, most often at edge of townships – so, in effect, we have “perfected apartheid planning”

The response:

- Outcome 8 Delivery Agreement national target: 400 000 households in well-located informal settlements to receive basic services and secure tenure by 2014.
- Cabinet Lekgotla 2011: Integrated upgrading programmes in 45 municipalities.
- National Planning Commission Vision 2030: expand upgrading programme, create new instruments for tenure and regularisation.
- NDHS and Presidency 2012: Detailed project plans for 1 800 informal settlements.
- ALL to be produced by participatory planning.

The above has led to an important shift in approach, evidenced by:

⁴ Available in full at www.afesis.org.za

- Upgrading of Informal Settlements Programme and Part 3 of National Housing Code: basic services, secure tenure PLUS empowerment – relocation as a last resort.
- Land release target: 6 250 ha public land to be released for housing development at 60 units per ha.
- Urban Settlements Development Grant per National Planning Commission Vision 2030: new NDHS and National Treasury (NT) instrument for informal settlement upgrading, currently for metros but to be expanded.
- Accreditation of municipalities: human settlements development functions being transferred closer to communities.
- National Upgrading Support Programme (NUSP): pipeline of upgrading programmes and projects at local level.

Challenges:

- Mindset and attitudes towards informality need to change, with commitment to participatory development.
- Expectations of top-structure squeezes out alternatives.
- Very weak on participative planning, sustainable livelihoods and securing community partners.
- More flexibility of instruments and planning regime –subsidy streams, affordable rental, incremental tenure, informal settlement recognition.
- Capacitating municipal officials, politicians and practitioners is essential.

Opportunities:

- Growing number of communities engaged in local upgrading activities: seeking community partnerships and working practices (such as enumeration, re-blocking), practice fed back into programmes and policy.
- First tranche of NUSP technical assistance contracts: upgrading programmes and strategies in 14 local municipalities, detailed settlement plans in three metros.
- Encouragement of socio-technical approach: seeking to embed ‘social’ and ‘technical’ components in state and private practice.

However the above does not amount to a statement of arrival. The fact that NUSP is not an integral part of the NDHS may itself be an indication that the thinking behind the NUSP is not or at least not yet central to the thinking of the Department.

Therefore this adds to the weight of importance of the Afesis-corplan MLS programme and its objective to open up other practical and demonstrably workable routes towards addressing the backlog in the provision of human settlements.

2.3 Managed Land Settlement (MLS) and incremental settlement

“Managed Land Settlement [MLS] is a fancy name given to the process that lets people like you, who have been identified by the community and government, move onto the land in an organised way so that you have somewhere to live while you wait for the area to be upgraded.” (iCwili Phase 2 MLS pamphlet)

“MLS is where basic development products are provided to a green field portion of land, and households are allowed to settle on this land as a first step towards future upgrading and improvement. MLS needs to be understood as a process that continues into the future - It is not a once off event. MLS is explained in more detail in the Wiki pages.” (www.incrementalsettlement.org.za)

Another way of describing the same process is as follows:

“Incremental settlement is about allowing people to settlement on the land even if the full title and services are not yet in place and then over time allowing these areas to be upgraded.” (Afesis-corplan 2011: 2)

“... the incremental settlement approach assumes that the land is already available on which this incremental settlement can happen. Getting land in the first instance is the BIG challenge ...” (ibid 4-5)

MLS refers to greenfield development while incremental settlement may take place in situ, in other words in existing informal settlements, or on new land. Incremental settlement in situ is usually referred to as the upgrading of informal settlements.

A key aspect of MLS and incremental settlement is the local administration of land tenure:

“Locally administered means tenure administered by a municipality or a community group or a partnership between the two. This is not a parallel system to the registration of deeds system – it’s intended to address what municipalities can do with communities to secure tenure progressively in the absence of formalisation, or while people wait for the housing subsidy and the township establishment and title deed requirements that come with it, to arrive.” (Roysten, page 2)

In about 2007/8 there was a realisation within Afesis-corplan that access to land and incremental housing development were key to the ongoing development of urban settlements. At that point the NGO prepared a funding proposal to begin focussed work to develop this approach. Donor funding was secured from Misereor from 2009 for 2 ½ years and then DED which has since merged with GTZ as GIZ.⁵

In 2006 the Urban Land Markets Programme Southern Africa (Urban LandMark), an NGO aiming “to make urban land markets work better for the poor” (www.urbanlandmark.org.za) also picked up on the issue of land access and tenure. Urban Landmark has been supported by the British Department for International Development (DFID) since 2008. Urban LandMark is part of a broader and international movement. Since about 2009 Afesis-corplan and Urban LandMark have worked closely together.

Afesis-corplan experience suggests a clear preference for MLS when compared with experience of housing development using a co-operative model as in completed projects facilitated/managed by Afesis-corplan in Amalinda, East London.

⁵ All four organisations or agencies mentioned are German development funders. All three acronyms are from the German and not directly translated.

Incremental housing is not a new concept. It follows on what was previously known as site-and-service schemes started in the dying days of the apartheid regime and driven initially by the Urban Foundation which was set up by the regime and big business to attempt to reform and stabilise urban environments, and later driven by the Independent Development Trust (IDT):

“Site and service schemes were implemented by the previous government and the Independent Development Trust. These projects provided people with a piece of land and services and the households had to build their own houses. There was no subsidy to build the house. Only when the new government came into power was a consolidation subsidy introduced to allow households to build a house on the serviced sites. Individual ownership and a full level of services to each site were provided in site and service schemes.” (Landfirst 2010b: 3)

Site-and-service schemes did not include any subsidy for the building of houses on these serviced sites. This may account for the caution with which some urban residents presently still view an incremental approach to housing – there may be a real fear based on past experience that acceptance of a serviced site amounts to exclusion from the housing waiting list. This experience and concern was raised in the interview with a planning official in BCM and is reflected below at section 6.3.

There was at last one IDT site-and-service project in BCM in Scenery Park and there may have been others.

MLS is not yet part of official housing policy and the various associated official funding mechanisms⁶. These existing funding mechanisms are outlined in an Annex to this report. However per Topham’s presentation above, the NDP has proposed a new Urban Settlements Development Grant and NDHS and National Treasury (NT) have proposed extending the new instrument for informal settlement upgrading currently available only in metropolitan municipalities.

However while not part of housing policy since 1994, the MLS approach has been adopted in a number of areas in the Eastern Cape Province. Some examples of the involvement of the national Department of Land Affairs (now the Department of Rural Development and Land Reform) with municipalities in MLS are described in a further Annex to this report.

The Afesis-corplan MLS or incremental settlement programme prior to 2012 had four initial focus areas, the last two below were later combined:

1. Three pilot projects, in Great Kei at Cwili, in BCM, since abandoned, and attempts to assist FEDUP with the acquisition of land only.
2. Networking and advocacy at national level with 12 other SA NGOs, learning events in Johannesburg, and the formulation of a “Land First Charter”. This area met with success with the adoption by government in Outcome 8. Once funding for this project ended, the project has been in hibernation with a website www.landfirst.org.za remaining.⁷

⁶ The Western Cape Provincial Government has shown interest in site-and-service approaches although at least partly for party political reasons their efforts have not always been welcomed or sufficient.

⁷ As at late November 2012 this site may no longer be available as a search for it is redirected to the page on the Afesis-corplan website on Landfirst. [check this again]

3. The development of a model for incremental settlement, addressing issues including planning, land tenure and services.
4. Capacity building and awareness-raising.

There has been a further donor contract between Afesis-corplan and Misereor. A considerable amount of self-study material has been developed for the website www.incrementalsettlement.org.za

The programme has also included:

- commissioned work on data bases on public and private land and how this information can be accessed by communities;
- a review of SDFs;
- an analysis of a review of housing sector plans by PDHS from the perspective of how the housing sector plans support access to land for low income households;
- a case study of land expropriation; and
- an envisaged two-day training programme on municipal planning for community leadership, perhaps to focus on spatial planning.

Since early 2012 Afesis-corplan has focused on the critical first step of securing access to land and developing it incrementally.

2.4Cwili

Cwili settlement is located at the coastal resort settlement of Kei Mouth on land owned by the Great Kei (GK) local municipality.

Phase 1 of the settlement involved the construction of housing on 268 sites and is 70% completed. The provincial government and the municipality are involved in this project.

Phase 2 involves a further 117 sites which were pegged in the early 2000's when the area was first planned and it was anticipated that phase 1 would be completed fairly quickly. The pegs were once again relocated in September – October 2012 as they had been covered by soil and vegetation in the intermediary period.

In 2009 the contractor for the construction of Phase 1 housing left without completing some of the houses. Some of the building materials went missing, some of the houses were not built to standard and cheap and inferior materials were used.

During Phase 1 the contractor trained some local people in aspects of housing construction work. However when the workers felt they had gained enough experience some left the project to find work elsewhere, leaving a shortage of trained labour. New people had to be found and trained, thus causing a delay in the project. All of these challenges resulted in the Phase 1 project coming to a halt. It is quite possible that these kinds of issues led to Phase 1 becoming unprofitable for the contractor as profit margins are generally very small in RDP housing projects.

The intended beneficiaries are still not settled on the land set aside for Phase 2. Most are still residing in informal dwellings in the backyards of Phase 1 sites.

The municipality is looking to employ a new contractor in 2013 to finish off the Phase 1 project so that it can proceed to apply for housing subsidies for Phase 2. PDHS will not entertain such an application until Phase 1 is completed.

In late 2009 Afesis-corplan intervened and their offer of assistance to break the deadlock by adopting an incremental approach was welcomed by GK.

There is an accepted beneficiary list for Phase 2 and sites have been allocated to beneficiaries. Sites will be held, initially at least, until further discussions and decisions, by means of "occupation certificates". Amathole District Municipality (ADM) is providing bulk infrastructure in the form of stand pipes and two blocks of communal toilets on sites that will later be church sites once each residential site is serviced.

Afesis-corplan does not intend to be involved in the Phase 2 project once the beneficiaries are on the land, basic services are in place and the land transfer mechanism is sorted out.

It will then be the responsibility of the GK local municipality with the beneficiaries of Phase 2 to apply for housing subsidies for the building of formal top structures, servicing of individual sites, tenure reform etc.

It is likely that some Phase 2 beneficiaries will start to build their own structures on their allocated sites in the December 2012 to January 2013 period.

The background and history of this project has been outlined in some detail in two documents and is not repeated here:

- Afesis-corplan, July 2011, *Kei Mouth/ Cwili Location Land Access Case Study*, internal document.
- Noxolo Kabane⁸, November 2012, *An exploration of managed land settlement as a mechanism for the provision of sustainable settlements: a case study of iCwili location in Great Kei Local Municipality*, submitted to NMMU in partial fulfilment of the requirements for M.A. degree.

Cwili as well as Afesis-corplan experience with the Amalinda Housing Co-operatives were also described in some detail at the Afesis-corplan public seminar on "Smarter land Access" held in East London on 26 October 2012. This presentation is available on the website of Afesis-corplan (www.afesis.org.za).

2.5 Federation of Urban and Rural Poor (FEDUP)

"The Federation of the Urban Poor (FEDUP) was officially launched in early 2006 but its roots go back to 1991 when a social movement was born as a result of an African People's Dialogue on Land and Shelter.

"FEDUP is the South African affiliate of Shack Dwellers International and is the primary support initiative for many urban poor movements in Africa." (www.corc.co.za)

FEDUP is also part of the SA Informal Settlement Network according to Afesis-corplan.

The organisation from which FEDUP originates was launched in 1994 by 200 savings clubs across SA. Until the early 2000s, FEDUP was known as the Homeless People's

⁸Project Co-ordinator with Afesis-corplan

Federation(HPF). However in the early 2000s in the East London area and in other parts of the country, there was some fracturing of the HPF. One group renamed themselves FEDUP and continued to work with the support organisations uTshani and CORC, while another group retained the name HPF.

In 1995 the National Housing Board endorsed uTshani Fund as a conduit for housing funds to FEDUP members.

Presumably all references to FEDUP prior to 2006 are in fact to its forerunner organisation, HPF, from which it split in 2006.

Since 1995 FEDUP has overseen a Revolving Fund which makes loans to the poor to build housing. Contributors to the fund were the national Department of Housing and the German donor, Misereor.

“Through loan funds, members’ savings, subsidies and other sources, FEDUP had built more than 30 000 houses by the end of 2006, using the People’s Housing Process (PHP) model.” (FEDUP pamphlet attached to FEDUP letter dated 15 June 2012 to BCM)

Further details as to how FEDUP operates including the various savings and loan schemes are covered in this same pamphlet which is available from Afesis-corplan.

In 2006 a Memorandum of Understanding (MoU) was concluded between the national Minister of Housing, then Lindiwe Sisulu, and FEDUP to grant each province 1 000 housing subsidies per year through the People’s Housing Process through FEDUP.

The Eastern Cape is the only province which has not consistently utilised these subsidies according to the FEDUP representative in East London.

FEDUP also has the assistance of the Community Resource Centre (CORC), an NGO in Cape Town and Johannesburg which assists with capacity building, as well as the assistance of the uTshani Fund, a financial and project management NGO.

FEDUP has 500 members across BCM in about 10 saving schemes. They meet on Sundays.

FEDUP members announced itself to BCM in 2006. A municipal councillor called in Afesis-corplan as the councillor was unable to assist, according to the FEDUP representative in East London.

Afesis-corplan is dealing with FEDUP at an arm’s length when compared to Cwili. The focus of Afesis-corplan with FEDUP is on access to land only rather than incremental settlement.

In the late 1990’s the Homeless Peoples Federation (HPF), the forerunner to FEDUP, negotiated for land in the Amalinda area of East London for some of its members. However the savings groups involved in this project were part of the splinter group that remained as HPF when FEDUP was formed. In the mid 2000’s when the new FEDUP savings schemes emerged they discovered that the original HPF savings schemes to whom this land had been allocated to this appeared no longer to be operational. FEDUP therefore started to negotiate with the municipality for this land only to discover latter that the original savings schemes had re-emerged and were laying claim to this land.

FEDUP then approached the municipality for advice on where they could find land. The municipality was unable to assist. FEDUP approached an estate agent for advice and he helped them identify a few potential portions of land but these portions were too far out of town. It was at this time that Afesis-corplan started to assist FEDUP. One potential land

portion identified by the estate agent was in the Dawn area behind Johnston and Johnston factory but after more detailed investigation it was found that this land was outside the urban edge of the municipality and would be expensive to get bulk sanitation connections. The municipality advised that it would be too expensive to develop.

Afesis-corporation then assisted FEDUP identify a farm on the West Bank where the owner was looking to sell. The land was within the urban edge but was about 5 km from the existing built-up area. The area between the farm and East London was identified as a future expansion area for the city. A rapid feasibility study was conducted, with funding secured by Afesis-corporation to determine the planning and engineering feasibility of the land portion. The area was suitable from a planning perspective but the area could not be provided with bulk water and sanitation at this stage as the municipality still had to extend the services out into this area which was likely to take many years. FEDUP was willing to explore interim and alternative sanitation options for this land. Afesis-corporation also obtained a land valuation for the portion of land, which was valued at about R3m. However the landowner was asking more than R10m for the land. The land owner justified this amount on the basis that the area was planned for future residential whereas the FEDUP valuation valued the land at agricultural prices.

When Afesis-corporation first began to support FEDUP they approached the Housing Development Agency (HDA), a parastatal established by government to assist in the acquisition of land for housing development. HDA directed FEDUP to the provincial government for assistance.

Afesis-corporation assisted FEDUP in negotiations with PDHS. The department was unsure of how to support FEDUP as the department usually supported municipalities to get land and not communities. Initially FEDUP did not want the municipality to be involved in the land acquisition process due to the poor track record FEDUP had had negotiating with the municipality for land in the past, but after discussions with province, FEDUP acknowledged that they would likely need to work with both the municipality and province.

PDHS also suggested that FEDUP consider 'piggybacking' onto an existing project that the department was involved in where it was purchasing a farm near Needs Camp, about 14 km outside East London, to accommodate people from other informal settlements in the area. FEDUP were not too keen on this land as it was far from town but some members said they would consider it if it led to them getting land and a house.

Changes to key personnel within the provincial government led to delays in these negotiations with the provincial government. After negotiations commenced with the new staff at provincial government, provincial government informed FEDUP that they were unable to assist them and that FEDUP would need to negotiate with the municipality for land.

FEDUP and Afesis-corporation re-opened discussions with the municipal planning department to try to identify land for FEDUP. Once again no clear option could be found except for one potential option in the Cambridge area. FEDUP then opened up negotiation channels with councillors in the municipality and wrote a letter to the Municipal Manager in June 2012 asking for a meeting with the municipality to find a way forward for how FEDUP could be supported, including the possible Cambridge land portion. As of the time of this evaluation, the Municipality have not responded to the requests for a meeting by FEDUP, and the councillors have also not been able to assist. FEDUP, with the support of Afesis-corporation, are in the process of submitting a Promotion of Access to Information (PAIA) request to the municipality to inform FEDUP of what has happened to their letters of request for support and for information on the municipalities housing plans and for a potential piece of land in the Cambridge area. The intention is to put pressure on the municipality to formally respond to FEDUPs requests.

The HDA has also been re-contacted and have indicated a renewed interest to support FEDUP to find a solution to these challenges of negotiations with the municipality and provincial government for land and support.

2.6 Afesis-corporation attempts to secure land for MLS

Afesis-corporation also engaged the municipality independently of FEDUP to try to find a second Managed Land Settlement pilot project. These attempts to find land for the second MLS pilot are not part of this study but are briefly discussed below. FEDUP already had access to housing top structure funding through the MoU that FEDUP had with the NDHS so FEDUP's priority was to find land on which to develop a Peoples' Housing Process project and was not interested in piloting an MLS project.

Afesis-corporation first looked for suitable land across BCM including in Mdantsane and Bhisho without success, resulting thusfar in no second pilot project as envisaged in BCM.

The BCM Town Planning Division recommended that Afesis-corporation look to the Bhisho area for a location for a pilot MLS project. Efforts to identify and access land in the Bhisho area were unsuccessful. The assessment of Afesis-corporation was that officials with vested interests in Bhisho itself, a largely middle class residential area for public servants, were opposed to low-income households accessing land as they did not want a poorer class of residents nearby who would be building interim structures as per the MLS process.

uTshani, a town planning consultancy had been commissioned by the municipality to review the informal settlements in Mdantsane, were developing a strategy for the upgrading of informal settlements in this area. Afesis-corporation decided not to pursue a pilot MLS project in Mdantsane due to the concern that there were just too many processes underway in Mdantsane. More recently BCM has proposed to NUSP a comprehensive upgrading programme including Mdantsane. See below.

So Afesis-corporation then started to look further out of town despite the preference of Misereor to work with areas of denser, in other words urban, settlement. Afesis-corporation then looked at an area amongst the Tyolomnqa villages but after initial interest by some community leaders the village never responded to subsequent requests for meetings. It is possible that there were unlawful land deals going on (such as cash for sites) which the local beneficiaries did not want exposed to outsiders.

The fourth Afesis-corporation attempt to access land for a MLS pilot project in Buffalo City was on land near Nxahruni/Newlands off the N6 national road. The land belongs to ADM. Afesis-corporation made a formal offer of support to BCM to work with them on developing this land as a MLS type project. However due to delays in the process of transferring this land from the District Municipality to the Local Municipality (now metro) BCMM has been unable to pursue this project. Afesis-corporation had to cancel its offer of support towards the end of 2011 when this phase of the Afesis-corporation's incremental settlement project, supported by Misereor, was coming to an end.

3 Methodology

The request from Afesis-corporation was for a qualitative assessment of the programme and projects. As such the methodology was to conduct a review of directly relevant literature and

websites together with semi-structured interviews with identified role-players, pursuing the questions outlined in the brief as quoted above.

The guideline interview questions as listed under the heading “Introduction” above were used as the kick-off point for all interviews. Where relevant, responses to these questions were interrogated with follow-up questions.

All except the initial briefing interviews with and feedback from Afesis-corporation were recorded and transcribed in summary form. The digital recordings are held by the author of this report for checking the accuracy of the summaries.

After an initial interview with Afesis-corporation Senior Project Co-ordinator, Ronald Eglin, the first interview was with the Cwili Phase 2 project beneficiaries, followed by interviews with elected municipal councillors, public officials and NGO and CBO representatives including FEDUP.

All local interviews were conducted face-to-face and in person. A full list of all interviews and/or interviewees is included below.

Where interviewees in their separate interviews contradicted what other interviewees had stated, these contradictions were interrogated for clarity but not to resolve the issues. Where relevant to this evaluation, such contradictions and differences are addressed in this report. In some cases these lead directly to a recommendation in the concluding section of the report.

Interviews were deliberately restricted initially to local and provincial role-players within the BCM and GK areas so that the evaluation would reflect the local situation rather than external perspectives. This approach is compatible with recommendations below that some issues may best be resolved between these same local and provincial role-players in the first instance.

In one case further questions were asked and opinions sought telephonically or by e-mail of and from an individual out of the Eastern Cape Province.

For similar reasons, the last documents perused by the evaluator were funding proposals and agreements between Afesis-corporation and their donor partners. These were only perused after the first full draft of this evaluation report was completed. As such this evaluation has been conducted from the primary perspective of the brief for the evaluation as prepared by Afesis-corporation and not in terms of the priorities and preferences of the donor partners.

The 20th Anniversary programme of Afesis-corporation in October included a site visit to projects including Amalinda Housing Co-operative projects and Cwili on 25 October. This was a very useful trip for familiarisation with the projects.

4 Engaging public policy on housing and settlement

This section outlines the progress of the MLS and incremental settlement concept as the case was made for Cwili Phase 2 and FEDUP. It also outlines some of the concerns raised about the sustainability of the concept from a revenue perspective and some of the uncertainties in the minds of officials about the conditional grant funding environment including the Municipal Infrastructure Grant (MIG). In the case of PDHS, the general approach to housing delivery via municipalities is outlined.

Some tentative conclusions are drawn in the final subsection.

4.1 Great Kei Local Municipality (GK)

Administrative and implementation problems rather than housing policy as such created the obstacle to the Cwili Phase 2 project. The consultations leading to acceptance by both municipalities and PDHS of the piloting of the MLS process was explained by the GK official responsible for housing for the past ten years.

“Because of problems with Phase 1, people waiting for Phase 2 would have had to wait forever because up until now we have not been able to finalise Phase 1. PDHS said we could not start Phase 2 until Phase 1 was finalised.

“At that stage, we were not sure what to do. Ronald from Afesis-corporation met Mr Mbizeni, then the GK Strategic Manager, and brought the idea to council to pilot the idea of land first. This was agreed by council and Afesis-corporation then took over the running around to try to get the land surveyors etc lined up.

“Afesis-corporation went to the project steering committee in the community. Whenever they called meetings we tried to attend. AC got the beneficiary list. I had to bring AC to PDHS and ADM. The whole of GK was declared a PHP area. We had to try to sort this all out with HS so that they knew what was going on and with ADM who had to provide bulk services.

“So a meeting was arranged. We met in East London. Initially ADM and PDHS did not like the idea because they thought that we were creating an instant backlog for them because they would suddenly have 117 households needing water. Ron explained the land first process to them and I coined the term that this would be a ‘controlled land invasion’.

“Ron said let the land occupation be organised, let them have access to the land and be free to improve the situation by building their own structures. When we raise it to a housing project then we will assess the situation as to how exactly to go forward.

“PDHS asked how are we going to say these people do not qualify and these do? We suggested that we try to give sites along the edge to people who would not qualify. PDHS came to understand. ADM then looked at it as a pilot project. Mr Shezi at ADM liked the idea. In Durban he saw some form of portable toilets. He went to his management and said let us test this toilet system. Bulk connections were no problem. Mr Shezi was quite key. We got the necessary buy-in from PDHS Amathole regional office, Mr Nojoko, now replaced by Ms Nombonisa Mtwini.”

“How many qualify for the subsidy is not really an issue for the municipality. Province will screen the names and will say 100 qualify and give reasons. Around Cwili Phase 1 you can see a lot of shacks. We have to look for further land.”

What if only 60 qualify?

“We do not have to displace the 50 but they have to build their own houses. There may be a danger that the number of beneficiaries drops below a threshold. I do not know what threshold PDHS may have for a housing project.

“I agree that greenfields projects are much easier. I know from involvement in Phase 1 which was an upgrade that in situ upgrades are much more complex. Phase 2 beneficiaries will be told not to build temporary structures that will have to be demolished as happened in some cases in Phase 1.”

The official indirectly admitted to the extent of initial resistance to the incremental settlement approach:

“This is now an acceptable way forward for Great Kei. At Cintsa East people would be patient for upgrading to a project. It can be done in villages too. I do not foresee the same resistance from PDHS or ADM in future.”

The ward 6 councillor for Great Kei has supported the Cwili Phase 2 project since her election in 2011.

“The Land First approach is the way to go for the whole ward from here [Cintsa East] to Kei Mouth including the two Mooiplaas villages, Bolo and Stungu, in my ward.

“I do not see any technical or financial or political problems with this approach.”

However none of the above is to suggest that GK accepted all aspects of the package without any hesitation or reservations. The pro-forma Occupation Certificate is a little ambiguous on the issue of the transfer of rights and obligations. It makes clear provision for bequests and succession and does not clearly forbid all other transfers. When the key legal advisor on the project was asked if the issue of transfers was deliberately left out, she replied that there was some hesitation on the part of the local municipality with the whole issue of Occupation Certificates and it was perceived to be better not to raise the issue of transfers, the administrative consequences and likely complexities for GK. AC confirmed that this discussion was not an easy one when discussed in a community workshop.

4.2 Provincial Department of Human Settlements (PDHS)

The official in PDHS suggested by Afesis-corplan to be interviewed for this evaluation of the Cwili and FEDUP projects passed the buck to one of his subordinate officials. This unit is the Directorate for Land Acquisition and Devolution. The official interviewed has been with PDHS for three years and was previously with a provincial department of public works. He described his core responsibility:

“My role is to get land through donation or purchase for human settlement and only for human settlement, not for shopping malls, cemeteries etc.”

He raised concerns about people moving onto the pegged sites at Cwili and building their own temporary structures:

“PHDS would have a problem with that. We do not encourage people to build shacks. I can't quote a section in the policy so maybe this is my view. The alternative might be for PDHS to provide temporary shelters for up to 2 years, a prefabricated structure, it is safe, has different rooms, a floor and comes with VIPs, potable water, electricity etc, semi-formal rather than a shack, you can stay in it for two years. They are provided in cases of emergency, e.g. in Butterworth were there were demolitions last year – they were allocated temporary shelters but there is a project underway at the moment to accommodate them.”

It was not clear from the interview alone if the official was indeed speaking for himself or was stating the position of his Department or his section of the Department. However GK and others were unanimous in stating that all parties, including PHDS, were on board for Cwili Phase 2.

The general approach of PHDS to requests for assistance was outlined:

“Requests for land may come from groups such as FEDUP who have identified a piece of land but we do not move ahead on our own but rely on local municipalities for the go-ahead in terms of their IDP, SDF etc. The bulk of our work are requests from municipalities where we just move with pace.

“The housing work is now all done through municipalities rather than through Province unless there is a capacity problem, for example in Sunday’s River where they do not have a developer status. There is a unit or directorate within the Department looking at developing municipal capacity for the ongoing management of housing projects once completed.

“A typical group may knock on our doors. We have to be sure who we are dealing with – do they qualify for a housing subsidy? We establish their bona fides. It is a lengthy process and takes time. For example we bought a piece of land near Orange Grove, East London. PHDS is pre-planning this for a rural settlement between the Orange Grove urban settlement and the SANTA hospital. The file has now been handed over to the project management unit for possible construction next year. I am not sure of the level of services but imagine partial services.

“This community did not want anything to do with BCM as they believed that BCM was not doing its job properly and made accusations of improper processes and procedures. We made it clear that we could not go ahead without the BCMM as we cannot provide services which are the responsibility of BCMM. There is now a three-way agreement, including BCMM. It started early in 2011.

“PDHS cannot access MIG for example so the process has to involve the relevant municipality.

“The budget for land acquisition comes from National [Treasury], not out of housing development funds, but specifically for buying land in terms of Outcome 8. The costs of land acquisition do not come out of the housing subsidy. We buy land within the existing suburbs, not farms.”

Afesis-corplan has pointed out that internal to PDHS there has been some uncertainty as to which section or directorate within the department is responsible for addressing the needs and requests for assistance of groups such as FEDUP – the land acquisition section of the PHP section (AC January 2012: 7). This is a similar problem to that experienced with BCMM and for which a similar lesson and recommendation can be made to that made in the case of BCMM at section 5.5 below: the need for a central public interface.

4.3 Amathole District Municipality (ADM)

The engineering project manager for ADM was the first person to be interviewed at ADM. He was not aware of any discussion within the engineering section of ADM about policy issues relating to housing development, managed land settlement etc. Their priority is to ensure that there is bulk capacity for water and sanitation and to make such services available, both in the interim and in the long term. It is a matter of just doing the job. It is not an issue of should ADM or should ADM not provide services. There is an official project and ADM deal with it, providing the necessary and agreed services.

However this project manager referred me to his supervisor, the manager of engineering at ADM, on the consultations prior to his involvement and any policy issues.

How difficult was it getting the decision to support Cwili Phase 2 through?

“It was easy in one aspect because of interaction at the time with DWA [Department of Water Affairs] who were looking at the provision of interim services in informal settlements. HS is also starting to be more flexible. There was difficulty in ADM with persuading the CFO: Why do you fund this and why does MIG not fund it? We are using internal funds so expect a return of revenue for services but there will be no return here.”

How different was Cwili or was it just another project?

“It was quite difficult for us because we provide water into formalised areas. Informal areas are the baby of HS. Cwili was for an interim supply. We could not get MIG as it would be less than RDP standards so motivated internally.”

Could you do this again?

“We first have to look at Cwili after completion including the top structure but starting after people move in and access these services. According to briefings from Great Kei and Afesis-corplan, once we are completed with our work, people allocated stands will move in even if their housing is informal.

“There is no problem with the incremental settlement logic as long as the services provided there are sustainable – we still have to interact with our operations and maintenance team. We have a local person, a CBO [community-based operator?] for local maintenance. We have some DST [Department of Science and Technology] projects in deep rural areas where we said we need to have a water committee to do day-to-day maintenance. They get a monthly stipend.”

The ADM official pointed out some of the ongoing political statements on housing:

“While we are busy with the Cwili project, the Ministerial Human Settlement task team on sanitation, led by honourable Winnie Madikizela-Mandela, said we need not to glorify informal settlement because people need to move into decent housing programme, not to stay there for the better part of their lives.”

While no-one advocating MLS and incremental settlement would dispute the MPs statement, it could easily be interpreted by members of the public as being hostile to MLS and incremental settlement.

The official also outlined some of the uncertainties and shifts in MIG and housing funding:

“MIG funding is a little unclear in relation to housing funding – they fund the services – internal roads, reticulation, site connections but will come back ... Bulk is nearby so we will not need to go back for further bulk engineering work for a higher level of services. But HS will say go back to MIG for internal services. Now HS just provides housing. We are not too sure but by the look of projects taking place, looking at for example the housing current project in Cathcart next to Katikati, increasingly housing grants are for top structures only.

“The whole grant funding situation is quite difficult due to uncertainties and shifts in policy, especially in relation to the housing subsidy. We have a Nxuba (or Fort

Beaufort/Nkonkobe?) settlement project for farmworkers where we are not certain ... ADM has been coughing up for services.”

Does ADM have a MIG funding stream?

“Yes, we have a water services development plan which includes a five year capital budget and a three year capital plan in our IDP which goes to the MIG office.”

Does National Treasury allow flexibility?

“Yes, only for projects registered with MIG, not new projects. Registered projects can be moved about within the five-year budget.”

So there is limited flexibility for emergencies unless you go to internal funding?

“Yes. Now there is also a Regional Bulk Infrastructure Grant via Water Affairs. Claims are forwarded by us to DWA to pay.”

4.4 Buffalo City Metropolitan Municipality (BCMM)

“... there is no problem from BCMM with upgrading informal settlements or land first. We have an agreement with NUSP for urban settlement. We have identified twenty odd settlements within BCM which qualify in terms of NUSP criteria. They said they will give us R2m initially.” (BCMM planning official)

BCM has over the past two or more years been identifying, mapping and enumerating some 154 identified informal settlements across the municipal area. For some of these areas, especially those within Mdantsane and elsewhere within the urban core, preliminary layout designs and infrastructure assessments have been undertaken in-house by the municipal planning department. These 20 were the subject of a presentation to NUSP in October 2012 and agreement in principal to assist BCMM.

4.5 Conclusions

While this evaluation engaged with a limited number of individuals in the identified institutions, their views indicated the complexity of the policy terrain including some differences of understanding and interpretation of policy.

While all except one official interviewed indicated their support for an MLS approach, this is not to say that none of the supporters were instant converts to the approach. The approach was born out of necessity and in order to avoid a land invasion. However while acknowledging the reality of that pressure, the Cwili community and all role-players were very fortunate to have had a combination of individuals within the various institutions who were prepared to adopt a necessary yet novel approach. In many other sites it is entirely possible to imagine one or more institutions digging in its heels on a narrow interpretation of policy and letting the local municipality deal with the consequences such as a land invasion.

Afesis-corporation identified Cwili Phase 2 as a possible pilot project, persuaded the municipalities of the merits of a MLS approach and project managed key aspects of the process. This included commissioning engineering feasibility studies to assist in the persuasion of ADM and the hiring of land surveyors to re-peg sites.

While Afesis-corplan would prefer not to have to assume the role of project manager, this was a necessary and successful intervention which justified the decision to take on that role at Cwili.

The successful outcome of the Cwili phase 2 project, or as it appeared likely as of late November and early December 2012, was largely due to the very fortunate circumstance of the creation of a consensus between the key role-players – the local and district municipalities, the PDHS whether tacitly or overtly, and the local community and beneficiaries at Cwili and in particular their leadership through the process thusfar.

5 Issues and lessons

5.1 Civil society and NGOs

In an attempt to provide some context for the MLS programme of Afesis-corplan, this brief section picks up on some ideas in a recent article by Dr Kirk Helliker⁹, “Farewell to NGOs? – Role of NGOs in Development in Africa”, for the forthcoming Afesis-corplan 20th Anniversary Book.

Helliker provides a useful outline of some types of NGOs in Africa and their various relationships:

“A distinction is often drawn between advocacy NGOs seeking democratic change and consolidation, and development NGOs pursuing socio-economic development; though, in many cases, particular NGOs do both. These NGOs occupy an intermediary position between donors on the one hand and communities, community-based organisations and social movements on the other. The relationship with donors (which are normally international funders) involves upward accountability while the relationship with communities and movements entails downward accountability. In addition, NGOs often interface with central state ministries and departments as well as with local government institutions, and this interface may be marked by cooperation or conflict or a shifting combination of both.

“Because of this intermediary position, and their interfaces with donors, states and communities, NGOs are subjected to a range of pressures and they constantly manoeuvre and strategise in pursuing their visions and missions. This raises a number of problems and opportunities for NGOs.”

This intermediary position of NGOs has another dimension which may not be recognised in Helliker’s outline: NGOs such as Afesis-corplan often stand as intermediaries between organs of the state and citizens.

In South Africa unlike some other African countries, there is no shortage of enabling legal provisions and enlightened policies. Nevertheless the state has still shown itself incapable of meeting many delivery targets. In some cases this is indeed due to incapacity or related practices such as corruption, nepotism etc. In other cases delivery mechanisms lack creativity and innovation and are excessively bureaucratized. While NGOs are still largely funded by external donors, they may stand between the state and citizens in attempting to provide the delivery of specific services where these services are not available due to administrative failures or a lack of innovation.

⁹ Senior Lecturer and Head of Department of Sociology at Rhodes University, Grahamstown

While Helliker bases much of his writing on his experiences in and knowledge of Zimbabwe, he may not be aware of this rather unique roles which some NGOs have sought to create and continue to seek to create for themselves in post 1994 South Africa. A few NGOs have positioned themselves to play a critical intervention role in facilitating and/or pioneering new approaches to service delivery. This role may have come about as a result of the very weakness of civil society and community based organisations (CBOs) in particular.

However Helliker does offer an explanation as to why civil society in South Africa is so weak:

“In fact, this [1990-94] was a time when mass-based social movements, in the euphoria of gaining control of the state, demobilised themselves.

“Or, at times, they were demobilised by the emerging ruling party (the ANC) in the interests of state-led nation-building and socio-economic development. Already, in the 1980s, the ANC-led movement (of which the UDF was part) had sought to inhibit the formation of pluralistic political and organisational tendencies in order to consolidate and discipline ‘the struggle’. In the end, as the liberation movement became the ruling party, ‘the struggle’ became absorbed into the state and dissipated as a result.”

For Helliker, the incorporation of the “struggle” including all its civil aspects into first the party and then the state has fundamentally set back the building of a vibrant civil society. Elsewhere, in a forthcoming publication¹⁰, he has in fact questioned the appropriateness of the concept of civil society in Africa, preferring the term “political society”.

“None of the debates that had existed within the anti-apartheid struggles seemingly questioned state-driven transformation as the basis for social transformation.”

The point is that state-driven service delivery, not to mention social transformation, is itself under threat by the very weaknesses and incapacities in the state at most levels. The weaker the state in the face of its huge resources, the greater is the danger of corruption.

So we have a state that is all too prone to corruption¹¹ and a very weak civil society. This leaves those NGOs which have been able to adapt and survive in a potentially very influential position to pilot innovative methods of service delivery such as incremental housing or MLS, where they can find niche areas which are not subject to excessive corruption and patronage.

Afesis-corplan is one of those NGOs which have survived and, at least in the MLS programme¹², which has defined a role for itself in pushing the limits of policy by piloting innovative approaches to current problems and challenges. In doing so it has adopted a particular role based on an assessment of how, as an organisation dependent on public funding, albeit foreign public funding, it can be most useful.

Lesson: Amongst the many potential roles of an NGO, Afesis-corplan has successfully adopted a role piloting innovation and bringing this to bear on state policy.

¹⁰Chapter headed “Imagining Civil Society in Zimbabwe and ‘Most of the World’” in forthcoming book on civil society. Draft kindly made available by the author.

¹¹ See for example Glenn Hollands, 2007, *Corruption in Infrastructure Service Delivery: South Africa*, Water, Engineering and Development Centre, Leicestershire. Hollands is a former staff member of Corplan.

¹² The brief for this evaluation is to evaluate the broad land access programme of Afesis-corplan, including MLS and incremental settlement – see Annex. Other current Afesis-corplan programmes may have the same rationale but are not covered in this report.

5.2 Cwili community participation and leadership

“So far I do not engage with any challenges at Cwili, there is no problem and I do not expect any problem because people know what is to happen.” (Great Kei Ward 6 Councillor)

Community dynamics are inevitable in any situation and perhaps more so were the community is poor and resources such as services and housing are introduced. The obvious and immediate question is who is to benefit legitimately and on what basis? No matter how poor the community, control over land and housing potentially and in reality provides both power and revenue in the form of rental arrangements whether for backyard dwellings, lodgers or registered beneficiaries renting out RDP housing stock itself. The promise and expectation of a new or additional housing project must have raised the possibility for some tenants and lodgers to acquire their own land and/or homes. It also creates the possibility for some existing property owners to acquire additional property through proxy family members and other less than honourable arrangements. When backyard tenants move onto their own land, very often the shacks they rented, if they belonged to the landowner, are simply rented out to a new tenant family. So to the tenant moving onto their own land now may also have the opportunity to admit and benefit from tenants on the new property.

The point is not to what extent do the kinds of practices suggested above exist and in what combination as some combinations inevitably do exist. The question is how do local community leadership navigate a development process, in this case an incremental settlement process, through this potential minefield of competing and conflicting interests? Most critically, how is it decided who is on the beneficiary list and who is not? Who manages this process and how is it managed?

The approach taken by GK for Phase 1 of the Cwili housing project, which was undertaken before the intervention of Afesis-corplan which was strictly for Phase 2, was outlined by the GK official responsible for housing:

“For Phase 1 I went for the elderly people to form the committee because they knew who had been in the area. I made it a point that the selection was done by them. A service provider was appointed to do the housing administration after approval by the committee. I did not want a situation where problems were thrown back at me. Preference was for elderly residents and their families.”

The beneficiary list for Phase 2 was more complicated. The local Sanco structure which was responsible for driving Phase 2 inherited two beneficiary lists. Fortunately these lists were very similar, differing only in a handful of beneficiaries. With the endorsement of the community they were able to simply combine the two lists and eliminate the names of beneficiaries who were deceased and who had no adult heirs to take their place on the beneficiary list.

But this is not to say the list process was straightforward. The beneficiaries on the lists for Phase 2 were those people who were on the list for Phase 1 but who were down the list and so were not recipients of one of the 268 houses. However there was some difficulty encountered by the new Sanco committee to get copies of the lists from individual community members who for reasons unknown were not eager to part with them. At some point a new Sanco committee was elected and most of the previous committee members were replaced. The project ground to a halt. However members of the previous committee were pulled in by GK as a steering committee to finalise Phase 1. They offered to assist the beneficiaries of Phase 2 to pick up the process. Maintaining their accountability to the Phase

2 beneficiaries and not to the community at large, this ad hoc steering committee continues to oversee the Phase 2 process and appears to have built sound relations with some member of the new Sanco committee.

Interviews with GK and ADM indicated that as far as they were concerned, community consultation was effective and inclusionary.

The manager of Engineering at ADM was aware of community involvement. He confirmed that there had been a Sanco community structure in charge going back to Phase 1. The local relationships were and are good. The contractor for the installation of the services was working out of an office in the community hall in return for some minor renovations to the hall.

However in the interview with Cwili Phase 2 beneficiaries it soon became apparent that the assembled beneficiaries were not fully abreast of the technical aspects of the project. For example they did not appreciate the different roles of the two municipalities or necessarily that of Afesis-corplan.

Now the above must be qualified; the meeting with beneficiaries was rushed; the beneficiaries had little idea beforehand what the meeting was about and had never met this stranger with a tape recorder (the evaluator) before.

However in this meeting it was not possible to explore views on the roles and performance of the various role-players, nor on the technical distinctions between different approaches to settlement development, including MLS. It would certainly be possible to explore such issues with these very beneficiaries, but this would have required an extensive workshop with thorough preparation and facilitation. It did not seem necessary to do this for the purposes of this evaluation alone.

It can fairly be said, based on the statement by the key community activist¹³ driving the Phase 2 process, that not all technical details of the project were canvassed with beneficiaries. However the critical issues and ones which the beneficiaries could engage with meaningfully were thoroughly canvassed.

On reflection and in the context of the obvious internal community dynamics, the local leadership of the Phase 2 project have been very astute and wise for their young years in some critical decisions as to when to draw clear lines and when to let interventions run their course, and foreseeing that some such interventions would simply run out of steam.

The Cwili project was very fortunate in the quality of local leadership which has driven the Phase 2 project, both when they constituted part of the local Sanco committee and after they were voted off the committee. The recent observations and experience of BESG shared at the October 2012 "Smarter Land Access" public seminar of projects at Mkondeni and Ezinketheni near Pietermaritzburg which showed just how badly projects could fare with fractious and divided leadership. This presentation is available on the website of Afesis-corplan (www.afesis.org.za).

Lesson: The success of an innovative MLS project such as at Cwili depends on many role players but most critically on a wise and energetic local leadership to drive the process at community level.

¹³ He was acknowledged as such by other local Cwili activists and Afesis-corplan who I interacted with in the course of the evaluation.

5.3 FEDUP performance

The various interviewees on FEDUP each presented slightly different facts and opinions of the various FEDUP initiatives in the BCM area. The BCM councillor presented the most optimistic scenario:

“They have been knocking on my door hence the Nelson Mandela/FEDUP Co-op was in the planning stage in Amalinda, the St Lukes project in Nxarhuni [Newlands] is going at a slow pace but not with much problems, and there is one in Needs Camp.

The BCM and PDHS officials as well as the FEDUP representative interviewed were all less optimistic.

“My involvement with FEDUP was with that piece of land opposite the SPCA [This is probably the project described above as the Nelson Mandela Housing Co-op]. One problem was that there was no bulk infrastructure at that stage. The land was allocated to FEDUP and a sales agreement was concluded but they did not act on the payment or the documentation was not signed. It was municipal land with a purchase price. There was a FEDUP project and a Buffalo Flats Development Trust project adjacent which council had decided on years back. Both projects did not materialise. BFDT dissolved. This was all about eight years ago or more.

“Other dealings with them and also involving AC were at St Lukes Mission in Newlands. uTshani fund was also involved here. Everything was in place for a housing development at St Lukes then uTshani said they would provide bigger houses than the RDP 40m². Developers barely make profit. A delay of a month will eat the profit. How can you say with the same subsidy you can build a bigger structure? About two years ago consulting engineers PD Naidoo and Associates (PDNA) retrenched the guy who was running with the project on risk. Then Ivan Tzanev (084 788 0954) took over. Greg van Rensberg of uTshani does not respond to calls or attend meetings. Momentum was lost and FEDUP is now looking bad.

“The saving scheme is a good thing but the amounts are not significant yet this has created huge expectations.

“I was a bit upset when Afesis-corplan dropped the potato on St Lukes¹⁴. They were contracted to do the facilitation and claimed R20 000 of the budget of R80 000 and then dropped the project, walked away. They said there was a problem with their funders. Maybe they also got fed up. They were almost completed and there was a beneficiary list. Then the church got involved. AC could have intervened but did not.” (BCM official)

The same BCM official made a further useful point. While FEDUP may claim some status and financial clout due to the agreement with NDHS, municipal officials are accountable for projects at municipal ward level and through council, not to the Minister of Human Settlement. He also indicated that work pressure and the pressure to deliver housing and settlements place real constraints on the time available for long processes including facilitation and dealing with frustrating community dynamics.

With reference to FEDUP letters to the MEC and the Head of Department (HoD), PDHS, including the references to the national agreement to provide housing funding, an official of PDHS pointed out that the agreement does not bind Province:

¹⁴Afesis-corplan handed the project over to FEDUP when Afesis-corplan funding ran out.

"I have seen this correspondence. It is a beautiful thing but I do not have the facts of their past developments. What we said to them, we did respond in the name of the HoD, was that they needed to deal with the municipality in as much as the municipality is organised and in order for us to assist the municipality. We buy land to assist municipalities. We cannot buy land and say here it is, FEDUP.

"We are not walking away but will assist via the municipality.

"The BCMM COO [Chief Operating Officer], Mr Matiwane, is the person to check with. We have not had more contact with FEDUP. I say to them they must intensify their efforts with Matiwane.

"FEDUP would need to link up with the Provincial MEC to introduce themselves and say what they need from the Department. FEDUP is building in PE.

If it is clear that there is some dynamic or deadlock, might it be useful make a recommendation for a three-way meeting between FEDUP, BCMM and PDHS to take things forward?

"Yes, no problem. It does seem like they are going from one door to another but I think our doors are open. If you can facilitate that process for us.

"The officials in PHDS responsible for BCMM and ADM respectively are Mr Flatela and Ms Mtswini, both have offices in Terminus Street, East London. FEDUP may need to speak to either of these two officials, depending on where the land they are talking about is located."

Both BCM and PDHS may regard the FEDUP agreement with the Minister as a hindrance rather than a help as it has raised the expectations for both FEDUP leadership and membership, yet it is in fact provincial and municipal officials who are responsible for delivery.

The agreement may also add to sensitivities about FEDUP jumping queues to access land, services and housing. This is dealt with further below.

The local representative of FEDUP was interviewed immediately after the BCM official. The representative was asked what had happened at St Lukes and why did FEDUP walk away from what had been presented as a workable project?

"BCM officials were quite helpful in identifying land for us. The land at St Lukes is owned by the Anglican Church. It was divided into two –for agriculture and for housing. Land was transferred to a CPA [Communal Property Association] for the farmers. But government would not provide subsidies on church land. The church now wants FEDUP to come back. There was a meeting about two weeks back. They are now prepared to hand the land to province. There are 200 sites. Members would come from savings clubs in the villages near St Lukes. The Federation will provide subsidies out of the 1 000 for each province. The plot size is 400m².

"We want to come up with a different model at St Lukes. We do not want to build a Mdantsane and want to build a variety of house styles including rondavels. Some are collecting materials already. Services will be communal including VIPs so not much money is going to go on services."

Another difficulty encountered by FEDUP and which was pointed out by AC is the issue of perceived queue-jumping. AC gave as an example the fact the FEDUP members in

Mdantsane consciously avoided seeking land for settlement in or near Mdantsane for fear of being seen to compete with the many other internal processes in Mdantsane¹⁵. Even the Housing Development Agency (HDA), established under NDHS to unblock stuck housing projects, hinted that FEDUP was queue-jumping. The agreement between FEDUP and the national Minister may also be perceived by province, municipalities and potential local housing beneficiaries as a further indication of queue-jumping by FEDUP.

There is no problem from the BCM councillor or official interviewed with the upgrading of informal settlements or MLS and incremental settlement. So why has FEDUP not succeeded in the BCM area while it has succeeded in other provinces and in Port Elizabeth?

The Homeless People Federation /FEDUP process has encountered difficulties in the past. There was considerable publicity some years back around the Joe Slovo project near Uitenhage¹⁶ when a serious dispute ended up in the High Court and involved a person who is now a FEDUP office bearer.

The BCM councillor was specifically asked about the different perceptions of the FEDUP projects and her view on the desirability of getting all role-players into same room. She agreed that this would be a good approach. She also suggested that more details on FEDUP projects could be obtained from Bulelwa Madolo, PDHS, 083 959 8450.

Might FEDUP require the more direct involvement of an NGO such as Afesis-corplan to begin to make headway? According to the FEDUP representative:

“Afesis-corplan has not been working closely with FEDUP. We have used their offices and telephones. They have advised on land availability etc on our request. We wanted to pay Afesis-corplan for assistance but they said that they were too busy. CORC provides technical support and pays for surveying etc. They have donor funds.”

It seems from the above that FEDUP would gladly have taken further assistance from Afesis-corplan and may even have been able to pay for such assistance.¹⁷

One of the weaknesses of FEDUP in East London may be that it is just physically and geographically too far from the locations of CORC and uTshani. The local FEDUP representative had been seriously ill for over a year when interviewed and was only recently showing signs of recovery from illness. Furthermore this representative was a volunteer and so could only provide limited support and attention to FEDUP matters. As a result FEDUP has had few organisational resources at local level to make the impact required.

(A google search for information on “FEDUP” performance elsewhere to assess if the East London experience is unique or generic leads to some background information on the CORC website only).

¹⁵ Recall that Afesis-corplan decided against any MLS pilot project activity in Mdantsane on the similar and related basis that there were just too many initiatives already in Mdantsane.

¹⁶ The national DLA was persuaded to assist 1 600 households to purchase a farm 587/Rem of 266 Ha in 1997 for R1.5m. DLA made funds available for the acquisition of the land and some project facilitation. This amounted to a very early incremental settlement project. See Annex.

¹⁷ Afesis-corplan: “It is unlikely that we would have been able to secure sufficient funds from CORC / uTshani/ FEDUP to fully cover our time. There have been no arrangements of this nature that I am aware of around the country where FEDUP etc were able to secure a local NGO to provide support. Arriving at such a contract agreement would be unique and would require detailed negotiation between the parties and funders.”

Lesson 1: The status of the agreement between FEDUP and the national Minister must be clarified, in particular as to what it means at local level and to counter the perceptions of queue-jumping by FEDUP.

Lesson2: To succeed, a greater organisational presence is required in the East London area, in the form of either or both a paid official of FEDUP or the assistance of a NGO such as Afesis-corplan.

5.4 Afesis-corplan performance

All interviews were introduced with an explanation that the evaluation was being done at the request of Afesis-corplan to learn lessons, positive and negative of the MLS programme and pilot projects. Interviewees were specifically requested to be frank, including about the role of Afesis-corplan.

Comments on the role of Afesis-corplan were overwhelmingly positive:

“AC has been next to us while we deal with the community and beneficiaries. They assisted very well.” (Cwili activist)

“AC brought a fresh idea which was very positive as we were saying we were not going to touch the area of Cwili. We are going to see more people moving in and demanding sites and housing. AC helped to solve a problem.” (GK municipal official)

“I get along with them well, we have worked on a couple of projects.

“I like AC Transformer [pulls it off his shelf]. This is excellent stuff. I circulate it here. A little removed from reality but academics are like that. They are well known; they are skilled; they know what they want.” (BCM official)

The only implicit criticism came from ADM:

“GK and AC came to us on the verge of implementing as the processes had taken sometime before they came to us. They wanted to settle the people within six months but we are now more than a year down the road. It would be better to have had us in at the beginning. So we had to fight the fire. Subsequently relations have been fine. There is a project steering committee. All along we have been interacting with AC and GK.”

However this official understood how the situation had arisen, out of a crisis, and that the intervention by Afesis-corplan had rescued a difficult situation.

Another municipal official commented that government officials do not always have the luxury of time to deal with lengthy processes, meetings and facilitation. However this did not amount to a denial of the importance of such processes and may in fact have indicated some envy on the part of the official making the statement!

On the other hand were AC has worked at arm's length with FEDUP, none (?) of the FEDUP projects have worked or at least have aroused very different opinions and assessments of the different parties interviewed. AC acknowledges that on reviewing the situation, more could and should have been done to assist FEDUP.

AC is well aware that most if not all communities and community groups are desperate for the assistance of NGOs, especially NGOs such as AC which are well-known and have a positive reputation. While this may provide the organisation with a wider range of options and

opportunities for site selection for piloting initiatives, it is no substitute for wise decisions about where exactly to offer services and to intervene.

The performance of Afesis-corporan in advancing the concepts of land first and incremental settlement is dealt with above under the heading “Engaging public policy on housing and settlement.”

An observation by AC was that FEDUP enjoyed good working relations with councillors while AC tended to have good relations with particular municipal officials. Should AC and FEDUP be able to combine their energies, they could become a much more formidable pairing acting in parallel than acting on their own.

On reflection, Afesis-corporan has concentrated more on the pilot aspects of its MLS work rather than on the capacity building of community leadership and beneficiaries in MLS projects. This is an honest assessment. The apparent success to date of the Cwili project has absorbed a considerable amount of the energy, resources and capacity of Afesis-corporan in driving and in fact project-managing key aspects of the project. Therefore it is not surprising that other aspects of the work have received less attention than was desired and intended.

GIZ asked AC the question why AC had not opened discussions with GIZ and Misereor to change focus from a second MLS project in BCM to rather provide additional support to FEDUP once it became clear that little progress was unlikely to be made with BCM.

AC responded that FEDUP’s MoU meant that once FEDUP acquired land they would be able proceed with the PHP process project and therefore AC would not be demonstrating incremental settlement. AC remained hopeful that they would be able to find a 'true' MLS pilot project in BCM and were led to believe by PDHS that they would assist FEDUP to secure land in BCM, and only later to discover that FEDUP had been let down by PDHS.

AC may have been a little optimistic given the ongoing delays and may have missed an opportunity to make a difference and break the deadlock in BCM. AC has reflected on the situation and agrees that an opportunity was lost.

Lesson 1: With the benefit of hindsight, Afesis-corporan could have played a more active role in assisting FEDUP to acquire land in the BCM area. In general there is room for more work on capacity building at project and beneficiary level.

Lesson 2: With the benefit of yet more hindsight, and given the long relationship between AC and GIZ and Misereor, communication should have been initiated by either party to review the project focus and consider shifting from MLS in BCM to support for FEDUP in BCM. The lesson is that greater interaction, communication and flexibility is required between AC and funding partners.

5.5 Municipal performance

This section does not repeat the litany of problems bedevilling governance and service delivery. It only raises issues as they pertain directly to the evaluation.

The interviews with both the GK official in charge of housing and the ADM officials responsible for engineering and services suggested that the Cwili community is fortunate to have supportive and competent municipal officials backing and driving the project.

(1) Great Kei Local Municipality

GK is one of the smallest municipalities falling within the area of jurisdiction of the ADM. It also has one of the smaller budgets, the least statutory functional jurisdiction and has at least until recently a sad history of political intrigue, lack of service delivery and allegations of corruption.

The main economic activity in the area under GK is extensive farming and coastal tourism with a number of coastal resorts running along the coast between the Kwelerha and Kei Rivers. GK also includes the large and dispersed rural village settlements of Kwelerha and Mooiplaas, some 20 villages in total. There is little revenue collected from these villages which were established in the mid nineteenth century during the wars of dispossession. The main source of revenue for the municipality is the equitable share of national revenue in terms of Section 214(1)(a) of the Constitution and set out in the annual Division of Revenue Act.

The official at GK responsible for housing has played a critical role in both the Phase 1 housing development and in opening the door to Afesis-corplan to pilot land first and incremental settlement in Phase 2.

At Cwili the Phase 2 project had little choice but to follow an MLS approach or risk a land invasion on the proposed sites for Phase 2. This was due to the failure of the contractor to complete the construction of houses in the Phase 1 development. In the Phase 1 development there was a discrepancy between the housing subsidy budget allocated for 278 houses while the planning was for 268. The reason for this discrepancy is not clear and was not investigated further in the course of this evaluation.

Despite the bad press on GK, the municipality has recently submitted about 6 000 names to PDHS for screening for housing subsidies, about 1 000 per ward, for future housing development.

The Cwili activist interviewed for this evaluation pointed out the importance of generating municipal revenue:

“No-one is paying any rates for services including refuse removal. It is our responsibility as current leaders to convince people as to why they should pay rates. Political parties who want to be voted for when they campaign they say let us not talk about this. But it must be clear that once you get your house you must pay.”

In the longer term this is an issue which will always haunt the municipality if not addressed.

A further issue which may come back to haunt the local municipality is that of zoning. A Spatial Development Framework (SDF) was prepared by Umhlaba Development Services some five years ago for Kei Mouth. However this SDF may never have been formally ratified. A zoning scheme has been prepared for Kei Mouth but is not being implemented. If such a scheme were in place, this may in fact have prevented an MLS approach, without a modification to the zoning categories, in Cwili Phase 2 because any zoning for residential development prohibits informal dwellings.

Lesson: For MLS to proceed at scale in the Eastern Cape Province, some amendment may be required of zoning schemes across the province to enable the construction of informal housing in areas zoned for residential use. This has been done by the City of Johannesburg for this same purpose.

(2) Amathole District Municipality

ADM is responsible for the provision of services in a number of local municipalities within its area of jurisdiction.

The difficulty ADM has with projects such as Cwili is to persuade their Chief Financial Officer (CFO) that there will be a revenue stream towards the recurrent costs of the services provided. The CFO asked why do you want ADM to fund this and not MIG? Because ADM is using internal funds there is an expectation of a return of revenue for services provided but there will be no return here.

Fortunately for Cwili, the engineering costs were limited because of the ready availability of bulk infrastructure connections from the Phase 1 housing project immediately adjacent to Phase 2.

A concern was raised with ADM as to the full financial implications of the new metropolitan status of BCM for ADM and hence its capacity to support the development of infrastructure and services for local municipalities. Fortunately ADM believes that this capacity will not be adversely affected due to the availability of project-specific conditional grants as well as the availability of capital budgets through the Department of Water Affairs.

The Manager of Engineering at ADM asked how AC and GK perceived the role of ADM. As the evaluator who had previously interviewed these parties I was able to convey my impression that everyone seems grateful to everyone else for their respective roles in what seems to be an unfolding successful pilot project. Cwili has brought a very fortunate group of people together who have said "let us make this work." Community leadership have been very astute and wise in the issues they have let go and those they have said we must deal with. In comparison FEDUP has travelled a more difficult path for reasons not always entirely clear.

(3) Buffalo City Municipality

The FEDUP situation is more complicated. While BCMM has capacity and competent officials, there are strong perceptions of dynamics at the political (council) level and between the councillors and senior officials and between the various officials in various sections of BCMM, all of which impact directly, mainly negatively, on delivery.

Whether these perceptions are accurate or not, they may be representative of the experiences and views of FEDUP:

"We went to the Planning Section of BCM. The problem in short was the political will and political interferences from the councillors. Some of the officials were very frustrated because the councillors tell them what to do and how to do it. Some of the officials resigned. There were no other competing groups. It was chaotic. One councillor said I cannot take this letter to the city manager because it will be interpreted the wrong way. The internal fighting of the ANC is affecting this all. Another councillor was given work by the municipality but is doing shoddy work yet contracts are renewed.

"So after getting nowhere with BCM for five years we went to Province where we were referred to HDA, Naidoo. This guy worked with us for about a year, then when we were about to find land he said that there is a farm purchased in West Bank which is big enough to include FEDUP. Then he was promoted out. A new guy said no, it is the competence of the municipality to find land for you.

“... We have gone back to the municipality, approaching the councillors. But now there is tension with the mayor and city manager. There has been no response to letters to the mayor and municipal manager.

“People are now not participating as they did before.”

One inference from the above is that in a large municipality such as BCM there are a number of different components of the municipality – planning, housing, land administration – all of which may be involved in a settlement or potential settlement project at the same or different times. Part of the negative experience of FEDUP was being referred from one section to another. What is needed at the level of the municipality is a single point for the public to engage with the municipality and where co-ordinated information from within the municipality can be provided to members of the public who are seeking settlement assistance¹⁸.

AC was first asked in to assist FEDUP by a BCM councillor who did not know which way to turn.¹⁹ If the internal municipal situation is confusing for a councillor then how much more so is it for members of the public? It would seem the Batho Pele principles demand that the municipality clarifies for itself, its councillors and the public how to deal with the maze of departments and individuals who represent BCMM and who are spread across and in numerous offices not only across East London and Mdantsane but also King William’s Town, Bhisho, ...

Under the discussion on FEDUP above, the issue of queue-jumping was raised. Perceptions and accusations of queue-jumping are perhaps inevitable but can be managed better. AC has suggested that the first step is to ensure that there is a city-wide process of information, discussion and consultation on development broadly and human settlement specifically. While opening up such a process may entail other unforeseen risks, it will greatly facilitate the flow of information and need to city planners in particular.

Lesson: Public engagement with a large municipality such as BCM on settlement issues requires a central interface with the municipality to avoid being referred from one department to another. One suggestion was for the establishment of a “housing development front desk”.

5.6 Inter-governmental issues

There are also other institutional issues outside of the municipalities. These include what may be serious failings on the part of national and provincial government to expedite the vesting of land in terms of Item 28(1) of Schedule 6 of the Constitution, where such land is required for development.

Very many public land parcels are registered in the Deeds Registry under a great variety of names. This makes it almost impossible for a Registrar of Deeds to know which sphere or department of government is in fact the owner of any particular land parcel. A Certificate issued in terms of Item 28(1) by the national Minister of Rural Development and Land Reform

¹⁸ AC comparative experience suggests that it may be easier to engage and get decisions in smaller municipalities, Great Kei being one of the smallest local municipalities. However AC and the Cwili project were very fortunate to have had a housing official in GK who was far-sighted and energetic in pushing for acceptance of the MLS project. In another municipality where the small number of officials are less competent, it may be impossible to get anything going. Sadly there have been examples of this across the Eastern Cape Province.

¹⁹ The person who was later a voluntary assistant to FEDUP in East London was at this stage still an employee of Afesis-coplan. Sadly he passed away a few weeks after being interviewed for this report.

confirms that an individual land parcel vests in either national or provincial government and compels the relevant Registrar of Deeds to reflect this in the Register of Deeds. Until this is done for each and every parcel of public land, the Registrar of Deeds cannot transfer ownership as he or she does not have confirmation of the transferor – either national or provincial government.²⁰

One case cited by BCMM is the delay in the registration and development of a settlement in the Needs Camp area due to the failure to issue an Item 28(1) Certificate since 2006.

[Could this be the same FEDUP project mentioned by the BCMM councillor above?]

If the issue of Item 28(1) Certificates is a general problem, it is likely to bedevil a number of envisaged settlement projects, whether in situ upgrade, MLS or greenfields housing projects. Unfortunately this is part of the bigger problem of the lack of capacity within government to deal with technical legal matters.

Lesson: The failure or non-existence of a mechanism to issue Item 28(1) Certificates which are a necessary step in the establishment of human settlements is a failure of the state which impacts directly on the Constitutional right of citizens to shelter. Therefore this may be an issue which should be referred to the HDA or even the office of the Public Protector.

5.7 Land tenure

In the group interview with Cwili Phase 2 beneficiaries a copy of the pro-forma “Occupation Certificate” was held up and everyone was asked if they knew what it was. After some hesitation it was agreed that all had seen it and knew what it was. When asked further how they wanted to hold the land, the unanimous answer was “title”. However it is likely that for many of those present there was little if any understanding of the implications of occupation certificate versus title or indeed even if there was any difference between the two.

The issue of land tenure has not been widely discussed or understood by the intended beneficiaries of Cwili Phase 2. When asked if they want title the answer is “yes”, but it did not appear that this was based on any appreciation of the consequences including transaction costs.

It is likely and quite understandable that the expressed desire for title is a response to the historical denial of secure tenure and freehold land tenure in particular. For generations until very recently black South Africans were forcibly removed and told where they could stay and where they could not stay. In contrast white South Africans were able to transact in the land market, hold sometimes huge tracts of land by title, accumulate wealth and hold power. Title to land and housing was an important symbol of this power and indeed under-pinned the apartheid power structure since the wars of dispossession.

For generations the World Bank and associated institutions has made tenure reform to private, freehold tenure a condition of much assistance to developing nations. But even the World Bank with all its resources, financial and intellectual, has not been able to show a definitive link between freehold tenure and broad economic development.

In South Africa, while there is awareness in some limited quarters of the need to open up a debate on land tenure, official policy still leans heavily in favour of freehold tenure, with all

²⁰More technical detail on this issue and possible solutions can be provided if required.

sorts of legal and cost implications. Even the work of Urban LandMark seems to contain an inevitable drift to freehold.

Dan Smit and Gemey Abrahams, 2010, *Incrementally Securing Tenure: An Approach for Informal Settlement Upgrading in South Africa*, Urban LandMark, define two different approaches:

“Regularisation and tenure security approaches: Two approaches to tenure [are] often contrasted in the tenure security literature. Regularisation is an approach that relies on legal recognition and emphasises individual ownership. As the name implies, tenure security approaches emphasise the importance of tenure security, and see ownership as one form of tenure. The tenure security approaches rely on both administrative and legal mechanisms to provide protection against evictions.” (page 3)

Further useful definitions are provided by the authors on the “administrative” and “legal” recognition of tenure rights, and an “incremental tenure approach.”

They provide a useful summary (pages 8-10) of the tenure debate and suggest:

“Urban LandMark’s Incremental Tenure Approach attempts to avoid the polarisation between the two approaches that the literature sometimes implies. Most adherents of the tenure security approach are not against ownership in principle. What they are against is the insensitive shoe-horning of a uni-dimensional titling approach on all situations, which is common in South Africa. There is acknowledgement that legal approaches generally do provide a superior level of tenure security in many (but not all) situations, and that greater rather than less legal protection is desirable as long as it does not undermine the tenure security of more vulnerable members of informal settlements.”

While Smit and Abrahams are addressing the upgrading of informal settlements, the same approach can be used in MLS including “greenfield” developments.

It appears that Urban Landmark has had a constructive working relationship and impact in the Johannesburg area in particular where the City of Johannesburg has a formalised “Informal Settlement Programme”. The City has passed a municipal ordinance, an Amendment Scheme ..., which provides for inter alia the designation of “Transitional Residential Settlement Areas” which in turn provides for occupation certificates and a local register of occupiers and certificates.

“This approach [to an informal settlement programme] is not fundamentally a housing approach, but rather an incremental settlement improvement programme.” (page 17)

“The DFA [Development Facilitation Act] and LFTEA [Less Formal Township Establishment Act] have specific tenure forms (albeit not commonly used), such as initial ownership or ownership certificates ... In all instances contracts of some description, tailored to deal with tenure security, may be used.”

“The contents of the [land] rights will be influenced by the nature of the form of tenure. A (short-term) lease arrangement for example would by its nature not allow the occupier to sell the land or occupation right. The same would apply if rental [i.e. leasehold] is the form of tenure. However, many specific rights/responsibilities can be written into the appropriate contract documentation. It is crucial that any rights accorded can be officially administered and protected.” (page 28)

A settlement can stay at this stage of “informal” development. However:

“If residents choose ownership then a township register will need to be opened at the Deeds Office to enable title deed registration. **If a housing subsidy is allocated for upgrading the settlement, then this will be a requirement.**” (page 30)

So whatever administrative steps are taken to cater for novel [or in fact old fashioned] tenure forms short of freehold, once the housing policy kicks in, it is freehold above all. The “Occupation Certificates” held by Cwili Phase 2 beneficiaries, significant as they are, are merely interim arrangements until a housing subsidy kicks in and the Certificates are replaced by freehold title.

The co-operative housing model does not address the underlying issue of freehold. In a manner comparable to company ownership and other ownership by corporate legal persons as opposed to real, breathing individuals, the co-operative is based on the ownership of property by freehold title. It is at the level of the composition or membership of the co-operative or other legal entity that individuals stand one step removed from actual freehold ownership.

The Delivery Agreement for Outcome 8 on the one hand seems to recognise the need for a range of tenure options:

“[Tenure] involves the provision of alternative forms of tenure (including permission to occupy, recognition through town planning scheme or by-law) through to formal freehold tenure of a stand in a formally established township. Incremental tenure mechanisms can similarly be related to the phased approach set out in the UISP [Upgrading of Informal Settlements Programme], for example:

- UISP Phase Two – tenure can start with administrative recognition (e.g. basic site plan; list of occupants; letter of occupation; basic rules, rights and obligations; communal levels of service)
- UISP Phase Three – legal recognition (e.g. detailed site plan; register of occupants linked to stand number; simple lease, planned services with individual connections)
- UISP Phase Four – township establishment (e.g. approved layout plan, township register as per Deeds Registry Act; title deed; full service levels)” (pages 41-42)

Yet once again, the final phase, UISP Phase Four, results in freehold tenure!

The inevitability of freehold tenure at the end of the settlement development process is confirmed by Lauren Roysten of Development Works who has worked as an advisor to LandFirst and Afesis-corporation at Cwili:

Question: Have any other tenure options been put on the table anywhere in SA under the housing subsidy?

Answer: Not really, although there is room within the section of the Housing Code dealing with informal settlement.²¹ The options that do currently exist are within the freehold model – such as institutional ownership as with for e.g. a housing co-operative holding the title.

However this is precisely the housing co-operative model which Ronald Eglin at Afesis-corporation has suggested has its own serious weaknesses (“Smarter Land Access”, 26 October 2012, www.afesis.org.za/Seminar-Presentations/). Anyway informal transfers continue within

²¹Roysten suggested that Laura Walker, once with BESG, may have tried to develop another tenure model at New Rest which was later subsumed under the controversial Cape Town N2 gateway project. However it is likely that this also ended up as freehold.

the co-operatives, just as they do with direct, individual freehold ownership, complicating formalities down the line.

This is an issue which had occupied a group of intellectuals and activists including Roysten in the LEAP process which has left a rich set of documentation which can be accessed at www.leap.org.za

The thinking, concerns and tentative proposals of the LEAP group is outlined in respect of the Eastern Cape Province experience in an Annex to this report. This article by King will appeared in the Afesis-coplan Transformer in 2011.

For the purpose of this evaluation it is necessary to stress and recommend that this is an area of work that is worthy of the future and ongoing attention of Afesis-coplan.

It is not the purpose of this evaluation to deal with the details of the land tenure issue and related debates, nor how these issues could be pursued.²² Those are for Afesis-coplan to pursue if the organisation decides to follow up on this recommendation.

Much like the growing backlog in addressing the provision of human settlements and the recognitions of the need to upgrade the growing number of informal settlements, there are indications from within the state housing process itself, with it emphasis to date on greenfields housing developments, that there are problem with freehold tenure. The recent Urban LandMark conference revealed figures of 50% (1.5m/2.94m) for the backlog of issuing of title deeds for RDP housing (2012: 8).

Yet just how far off the radar the issue of land tenure is for NDHS may be indicated by the result of a search of the website of NDHS: "Sorry, your search for **land tenure** did not yield any results."

Lesson: The issue of title deeds becoming more and more out of date with the passing of each generation is a legal and cultural attitudinal issue. It cannot be resolved in the medium to long term by strictly legal or strictly cultural changes but by some appropriate combination of the two. Until such time as serious attempts are made to address both aspects, the Deeds Registry will with the passing of each generation of new landowners become less and less reflective of the actual ownership of land.

5.8 Other comparative MLS experiences

There are two additional and related issues which stand out in the available literature and which deserve to be highlighted for future and ongoing attention.

Zoning

Most MLS and incremental settlement developments have taken place within existing legislation and zoning schemes. These do tend to reinforce old paradigms and approaches, including standardisation of top structures, the drift to individual freehold tenure etc. In some cases existing zoning frameworks may technically prevent the building of less formal

²² There are numerous potential angles and approaches to such work. There has been a long history of "title adjustment" processes under various legislation throughout the twentieth century. This material should all be archived and would be a rich empirical source for research and investigation. Another starting point would be a comparison of experiences and possible divergences in metro, urban and rural situations.

residential structures, as at Cwili although this issue has been bypassed in the likely absence of a formalised zoning scheme.

For this reason it may be necessary to review innovative approaches that have been taken to zoning, not for the purpose of this evaluation, but for ongoing programme work on MLS and incremental settlement by AC and network partners. Two cases stand out in the available literature.

- “eThekweni (Greater Durban) Municipality has piloted a programme of installing “interim services” on land in private ownership using environmental health legislation and local by-laws.” (Brisbane, page 33)
- In 2008 Gauteng introduced a new zoning category by an amendment to the Gauteng Provincial town planning ordinance: “The City of Johannesburg’s approach to regularising informal settlements which designates transitional residential settlement areas in terms of an amendment to the town planning scheme.” (Smit & Abrahams, page 5). Further detail is provided at pages 17-18 of this document.

Hopefully there are further examples available by now which must be known somewhere within the Landfirst network.

Peripheral land

According to the National Planning Commission:

“The spatial legacy of apartheid continues to weigh on the entire country. In general, the poorest people live in remote rural areas. In the cities, the poorest live far from places of work and economic activity. Although it was identified as a particular focus for attention even before 1994, the situation has probably been aggravated since then, with many more people now living in poorly located settlements. ...

“Reversing the effects of spatial apartheid will be an ongoing challenge in the decades ahead.” (2011: 19)

AC has been fortunate in the Cwili project where, perhaps due to the small size of the entire Kei Mouth settlement, the land is well-situated. However in direct contrast, the FEDUP experience confirmed this tendency to push poorer people to the periphery and indeed out of the city. This is in line with the perception that the incremental settlement approach has until now tended to promote urban sprawl.

It is hoped that one effect of the new national policy emphasis on the upgrading of informal settlements will be to consolidate urban areas and to use urban in-fill areas for any necessary relocations, thus limiting this tendency.²³

Lesson: Redressing the legacy of spatial planning may require serious attention to land use control measures and changes to both national and provincial legislation providing for the zoning of municipal land to facilitate incremental settlement both in-situ and greenfield.

²³ One official with Misereor had engaged with AC on this issue. Unfortunately he was not able to respond to e-mails seeking to engage with him for the purpose of this evaluation.

6 Opportunities and suggested actions

Section 2 of the brief for this evaluation asked the following:

- “For broader Afesis-corplan land access work,
- a. Broadly, in summary, what has been the impact of Afesis-corplan’s work with the LANDfirst network and the development and promotion of the of the Managed Land Settlement model?
 - b. What broad challenges and opportunities has Afesis-corplan faced in carrying out its work?
 - c. What broad lessons and recommendations can be made for how the managed land settlement model can be improved?
 - d. What broad options can Afesis-corplan consider for how it could intervene in similar or new land access work?”

In section 2.2 of this report above, the positive shifts in the national policy environment were highlighted. These included the following key phrases in the Delivery Agreement for Outcome 8:

“... the provision of tenure and services in well-located informal settlements as the first step in an **incremental process of their transformation to sustainable human settlements**.

“... **the provision of different forms of tenure**, and provides for **alternative methods of housing delivery**. It is the first large-scale **programmatic response to incremental upgrading of informal settlements** in the country.” (Delivery Agreement, page 14, emphasis added)

“... Afesis-corplan’s work with the LANDfirst network ...” aimed to achieve just this. While it is not possible to claim that the shift in policy was a direct result and a result of the work of Afesis-corplan and Landfirst alone, it does amount to recognition of what these parties have been working towards and urging for years. This addresses the evaluation question 2a.

Question 2c in the evaluation brief has been answered in part by the various lessons at the end of each subsection of section 5 above. The single biggest challenge revolves around land tenure and is outlined in section 5.7 above. Further recommendations are made in this section.

Questions 2b and 2d are best answered in the context of the strategic thinking and strategic positioning of Afesis-corplan in the recent past and into the future.

6.1 Strategic positioning of Afesis-corplan

Afesis-corplan has positioned itself to undertake a substantial role in a very limited number of pilot projects on MLS and to use these projects both to influence implementers at municipal and provincial government levels and to impact on national policy on human settlement.

The position of AC was summarised above in section 5 of this report as a lesson: amongst the many potential roles of an NGO, Afesis-corplan has successfully adopted a role piloting innovation and bringing this to bear on state policy.

As AC again takes stock of its position and looks to review and refine its strategy going forward into the next period, 2013-2016, it is fortunate to be faced with a range of opportunities.

AC has earned the respect of a range of officials within municipalities, particularly those falling within the area of the ADM and also within BCMM itself. Thus AC is in a sound position to utilise these relationships to assist selected communities and community groups to engage more effectively with the state, to innovate in terms of the delivery of human settlement in line with the revised governmental objectives outlined in Outcome 8, and to hold both official and elected representatives to account.

In the final analysis much depends on the interpretation of policy and mandates by local officials in provincial and municipal government. AC is fortunate to have a good reputation and must use this reputation to persuade wavering officials of the best way forward.

There is always a potential difficulty in NGOs working with a very small number of beneficiary groups and thus having limited impact in terms of the greater social need. But the land access programme has been only one programme of AC. In terms of AC's programme on local governance²⁴ and civil society capacitation in particular, AC has been engaging extensively with the local municipalities of Amahlathi, Great Kei and Mbashe and also, less successfully at some levels, with Buffalo City Metro.

This work has laid a basis for further co-operation in these municipalities. There may now be an opportunity to begin to link some of the work in different programmes undertaken by AC to scale up impact and influence to municipal-wide levels.

In relation to question 2b of the brief for this evaluation, Afesis-corplan has thus created some new opportunities for itself.

One tactical approach that may be useful in addressing any residual resistance in PHDS to MLS and incremental settlement is to beat them with their own logic. Since PHDS asserts that it support municipalities to deliver housing and human settlements, then it must be bound to support the approaches adopted by municipalities, including MLS and an incremental approach. So strategically for AC, priority has to be to work with municipalities which in turn must hold PDHS to support workable and proven municipal initiatives and approaches.

The recent National Development Plan (NDP) of 2012 also pointed to a critical need for training and advocacy:

“There is an ambivalence across government towards how to address the upgrading of informal settlements, and the mechanisms for the in situ upgrade of informal settlements have yet to be fully developed. The institutional capabilities to manage processes such as incremental tenure, infrastructure and shelter upgrade and the development of appropriate regulations, in a participatory and empowering way, have yet to be developed.” (page 273)

Afesis-corplan is uniquely positioned to address any number of these challenges set out in the NDP. The only issue is to decide where to concentrate energies for which intervention(s).

6.2 Cintsa East or elsewhere in Ward 6

“In Cintsa East we have 85 houses built as RDP houses but lots of people in shacks, about 500, unsurveyed with some stand pipes and six public toilets. There is some

²⁴ This includes programme work on Civil Society Action Groups and Ward Key Performance Indicators.

progress but we are waiting for the municipality. Human Settlement is doing something at area 17, layout planning. But what is important to the people – they do not understand layout – they need the land to be surveyed. We must do as at Cwili and have land allocation first, then you are ready to wait for electricity, water, sanitation.

“The Land First approach is the way to go for the whole ward from here to Kei Mouth including the two Mooiplaas villages, Bolo and Stungu, in my ward.

“There are more women than men as heads of households here in Cintsa.(Great Kei Ward Councillor, Cintsa East)

The Cwili projects falls within the same municipality and ward as Cintsa East and the other coastal, tourist and holiday settlements. Both the housing official and ward councillor are convinced of the MLS approach. What might remain is for AC to carefully consider how organisational energy and capacity is best deployed and how deployed, whether on a single settlement site, or in support of a programme by Great Kei in a number of sites. The Great Kei housing official stated that the details of some 6 000 heads of households in various sites across all six wards of Great Kei had already been forwarded to PDHS for screening for housing subsidies. Hence **the options may be numerous but an obvious priority may be to seek effective ways of scaling up within the capacity of both the municipality and AC.**

6.3 Proposed upgrading in Buffalo City

The Planning Division within BCM has seized on the opportunity created by NUSP and in October 2012 made a detailed presentation to NUSP for assistance with the proposed upgrading of an initial, prioritised twenty informal settlements in the BCM area where a total of 154 informal settlements have been identified, 82 of which are located within Mdantsane.

“There are 5 580 informal dwellings in BCMM. The proposal helps secure funds. We are at the beginning phase, and have just started the engagement with NUSP, now already talking about R4m initially. We need to submit a business plans for each settlement. They fund tenure security, not relocations and planning for in-situ upgrading. Steve Topham sms'd last week to say look out for tenders but we have done most of the planning already. Layouts have already been done for some of the twenty settlements in-house here in BCMM. We were doing this before we heard of NUSP. I am assuming that the infrastructure budget will come through NUSP although BCMM also has funds.

“One Mdantsane upgrade involves minimal relocation to build a main road into the settlement to allow fire access, bulk lines and gravity feed into an existing sewer line. We will want to pave some of the internal roads.

“For NUSP the biggest thing is to make sure that people do not get evicted and to do incremental upgrades. Some people have been living in their own structures for twenty years. Can we not provide paint or create a sense of place. It might include high mast lights, landscaping, public parks. The budget is not clear at the moment. These container toilets are about R70 000 each.

“There is still an uphill battle to convince people that you remain on the housing waiting list, we can do some cosmetic stuff, it is safe for you to stay here but you will get a house only in time. But the neighbour across the street already got a RDP house. People think once they receive a site and service plot they are off the housing list, or once you get a tin of paint you do not get a house.(BCM official)

Clearly BCMM has put a great deal of thought and energy into preparations for extensive upgrading in terms of the “The National Housing Code, Part 3 - Upgrading of Informal Settlements” which provides inter alia (emphasis added):

- The upgrading of a settlement will be the main focus with due regard for the principle that **relocation should be limited as far as possible and only as a last resort.**
- If relocation is unavoidable – then based on the **principle of minimal disruption** to the affected persons and to relocate to a site as close as possible to the existing settlement.
- A **relocation strategy** to be developed in collaboration with affected community.

Despite these attempts to minimise the need for relocations, BCM estimates that 42% or 13 000 informal dwellings and households will have to be relocated.

This BCM programme and in particular the proposal to upgrade in formal settlements in-situ and to relocate some 13 000 households may provide a significant opportunity to advance MLS and incremental housing in BCM.

While engagement with BCMM may provide a range of opportunities to influence implementation at a great scale, BCMM is in fact well-capacitated. Might the more limited energies and resources of AC be better deployed in one or more of the local municipalities? These are tactical and strategic questions for the organisation to answer.

6.4 FEDUP

The following question was put to the official in PDHS: If it is clear that there is some dynamic or deadlock but it might be possible to suggest a three-way meeting to take thing forward? The answer was unequivocal:

“Yes, no problem. It does seem like they are going from one door to another but I think our doors are open. If you can facilitate that process for us ...”

The interviewer undertook to include this suggestion as a recommendation. The same question was asked of the BCMM Councillor interviewed and the same positive answer was given.

AC might consider an intervention to get the FEDUP process moving in BCMM either as an initial step to further engagement with BCMM or as part of a wider agenda of engagement, including, for example, around the provision of support and training on MLS and incremental settlement for identified, councillors, community members and officials.

Whatever approach is taken is may be essential to include a review of the range of projects which FEDUP is or has been involved in the BCMM area, including St Lukes and possibly New Rest near Needs Camp. At some point HDA may need to be involved in such a process.

The officials in PHDS responsible for BCMM and ADM respectively are Mr Flatela and Ms Mtwini, both have offices in Terminus Street, East London. AC and/or FEDUP may need to speak to either of these two officials, depending on where the land they are talking about is located.

6.5 Advocacy

Afesis-corplan is in the fortunate position of having a seemingly (because it is not yet totally completed) successful pilot MLS project at Cwili, a sound reputation and the respect of a range of municipal and other officials including municipal councillors.

As such the organisation may have an increased responsibility to engage in advocacy work in the interest of client communities and the delivery of human settlements in general.

The call by government for a revitalised and refocused approach creates yet further opportunity and space for AC.

There are also a range of difficult and perhaps controversial issues which also need to be addressed in the public domain. These include issues of service charges and sustainability as well as appropriate forms of land tenure and tenure administration. AC may be in a fortunate position to begin to tackle these issues more systematically than they have been addressed thusfar.

Such advocacy may bring with it the invitation or challenge of further engagement with and participation in institutional arrangements with NUSP, including training programmes. This is another issue which the organisation may need to anticipate and consider.

7List of interviews/interviewees

Individuals:

Ronald Eglin, Senior Project Co-ordinator, Afesis-corplan, Afesis-corplan offices, 2 October, 2 November and 3 December

Mr Loyiso Tshetsha, Sanco, Cwili, East London, 15 November

Mr Zelick (Zet) Mbulawa, Housing Manager, Great Kei Municipality, Qumrha, 20 November

Ms Nosipho Ngabayana, Ward Councillor for Cwili, Cintsa East, 20 November

Mr Mfanufikile Machi, Directorate Land Acquisition and Devolution, PDHS, East London, 21 November

Mr Lwazi Jwamba, Engineering, Amathole District Municipality, East London, 21 November

Mr Albie Meiring, BCM Planning, East London, 23 November

Mr Mteteleli Pobana, FEDUP, East London, 23 November

Mr Mpumululo Shezi, Manager ADM Engineering, East London, 29 November

Ms Nomniki Ngesi, BCMM Councillor and Mayoral Committee Member for Human Settlement, East London, 29 November

Ms Lauren Roysten, Development Works, e-mail and telecon, 8 December

Group interview:

Cwili Phase 2 Beneficiaries, eCwili, 13 November 2012:Mr Siyabulela Kema, Ms Nombulela Bacela, about 40 beneficiaries (by the end of the meeting)

8Documents and websites

Afesis-corplan, *Transformer*, various issues

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Afesis-corplan, January 2012, *Narrative reportForIncremental Settlement Project Submitted to Misereor*

Afesis-corplan, July 2012, *iCwili Phase 2 MLS Project Questions and answers Summary*

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BCMM, October 2012, "Informal Settlement Programme", PowerPoint presentation to NUSP

Cameron Brisbane, October 2012, "Community struggles for land access – two case studies from KwaZulu-Natal", BESG, presentation to Afesis-corplan seminar

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Ronald Eglin and Noxolo Kabane, July 2011, *Kei Mouth/ Cwili Location Land Access Case Study*, Afesis-corplan

Ronald Eglin, October 2012, "Smarter Land Access", presentation to Afesis-corplan seminar

Kirk Helliker, May 2008 (First Draft), "Twice Bitten – Marginalized Communities in the Eastern Cape Countryside", published?

Kirk Helliker, 2012, "Farewell to NGOs? – Role of NGOs in Development in Africa", written for forthcoming Afesis-corplan 20th anniversary book

Noxolo Kabane, 2012, *An exploration of managed land settlement as a mechanism for the provision of sustainable settlements: a case study of iCwili location in Great Kei Local Municipality*, submitted to NMMU in partial fulfilment of the requirements for M.A. degree

Kingwill R, 2008, "Custom-building Freehold Title: The Impact of Family Values on Historical Ownership in the Eastern Cape", in Claassens Aand Cousins B (editors) *Land, Power and Custom*, UCT Press Cape Town

Rosalie Kingwill, 2008, "Local understandings of land ownership and their implications", *PositionIT*, Jan/Feb 2008

Rosalie Kingwill, "Family Title: Title Deeds, Ownership and 'Law' By Rosalie Kingwill", Afesis-corplan *Transformer*, July/August/September 2011

Landfirst, 2010a, *Understanding LANDfirst*, Afesis-corplan

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Lufuno Nevondwe and Kola Odeku, 2012, "Challenges of housing delivery in South Africa: Lessons learnt from jurisprudence", *African Journal of Business Management* Vol.6 (45), www.academicjournals.org/AJBM

Lauren Royston, 2012, "Guidelines for administering tenure locally", Development Works

Dan Smit and Gemey Abrahams, 2010, *Incrementally Securing Tenure: An Approach for Informal Settlement Upgrading in South Africa*, Urban LandMark, www.urbanlandmark.org.za

Steve Topham, October 2012, "Informal Settlements and Land Access: Running to stand still ...", NUSP, presentation to Afesis-corplan seminar, www.afesis.org.za

"Occupation Certificate", Cwili Phase 2 settlement

Urban LandMark, April 2012, *Conference Report: Urban LandMark Annual Conference*

Van der Walt, A.J., 1999, "Property Rights and the Hierarchies of Power: A critical evaluation of Land Reform Policy in South Africa", *Koers*, 264

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Annex: LANDfirst in relation to existing subsidy programmes

From Landfirst, 2010, *Frequently Asked Questions*, pages 4-5.

<http://landfirst.org.za/wp-content/uploads/2013/05/Landfirst-FAQ.pdf>

Annex: National Department of Land Affairs and MLS

I had the privilege to serve as the director of the national Department of Land Affairs (DLA) responsible for the Eastern Cape Land Reform Office (ECLRO) for the six financial years from 1998/9-2003/4. This office was responsible primarily for land redistribution across the Eastern Cape Province, as well as the disposal of state land and land tenure reform. This office was not responsible for land restitution or deeds registration or cadastral surveys.

With the benefit of hindsight, land reform under Minister Derek Hanekom and Director-General Geoff Budlender until around April 1999 may have been a little too unconfident and hesitant. In the face of the huge expectations of land reform and a much publicised target to redistribute 30% of white-owned farmland by 2004 the main instrument available was a pitifully small household grant of R12 000, argued on the basis of parity with the level of the housing subsidy.

Almost inevitably poor and expectant South Africans combined in sometimes large numbers to raise enough capital to make up the purchase price of a farm. A farm purchased for R1.2m required the combining of 100 beneficiary households to make up this price though grant finance: $100 \times R12\ 000$ per beneficiary household = R1.2m.

Yet in the Eastern Cape where pastoral farming is the norm, sometimes with a little arable land for growing some supplementary winter fodder and some food crops, such pastoral farms may in fact have been providing some livelihood for only five families – that of the landowner and a small number of farmworkers and their families.

The economics of such a land reform project were obviously disastrous from the outset: how could a farm which had supported five families suddenly support 100 families? It simply could not and this is one of the reasons why many early land redistribution projects across the country are correctly criticised and have been dismal failures (and also far too many later redistribution projects as well).

However in the ECLRO we soon came to the realisation that many people were in fact not seeking a farming income. Many were simply seeking a secure place to stay which was closer to places of work and other opportunities, perhaps where they could have more control over their lives than under some tribal authority in a bantustan village. Another motivation was that people soon came to understand that a wait for an urban RDP house could be a very long wait indeed and that the DLA route may offer a much quicker route to a secure place to stay, albeit not necessarily with the same level of anticipated services as an urban housing development.

With this realisation it became immediately necessary to involve local municipalities and their Transitional Local Councils at the time. The approach to municipalities was made on the following basis:

- DLA had capital funding available for planning activities including project preparation and design, layout planning, township establishment etc.
- DLA also had capital funding available for deeds registration, land surveying, land acquisition and infrastructure including services.
- While there was nothing to prevent DLA from releasing funds for the building of RDP houses, a decision was taken not to do so but to encourage beneficiaries through the relevant municipalities to seek further funding from the housing funds for top structures.

In essence what DLA was offering to municipalities was to provide them with funding for the provision of serviced sites, including the provision of local bulk services in the form of boreholes where other sources of water were not available, internal water reticulation and VIP pit-toilets.

Municipalities for their part were constitutionally responsible for the provision of settlements as well as spatial planning and land use zoning. By making funds available to them, they could drive the development of settlements, often situated close to or on urban fringes, within their own spatial and land use frameworks.

This approach was adopted in a number of settlements by the then Stormberg District Council: Thornhill in the Zulukama area of the Whittlesea district, Them bani (Oathay) in the Cofimvaba district, and on Birch Siding farm just south of Queenstown and next to the N6 for farm dwellers from the Imvani area.

It was also applied with the East London TLC at Reeston Phase 1 (R2.15m for 2 000 sites or R1 075 per site) and Reeston Phase 2 (R9m for 2 300 sites or R 3 913 per site) and in Berlin at the Lingelihle housing project (R1.85m for 411 sites or R4 501 per site).

In effect this was a site and service scheme. Expenditure by DLA per household was registered on the National Housing Date Base as a partial subsidy against the R12 000 total value of the housing subsidy. The difference between the amount provided by DLA for any particular household could then be applied for by the municipality from the relevant housing authority towards the construction of a top structure at some later date to be determined by the municipality.

This approach which involved separating out different kinds of land needs – needs purely for residential settlement, needs for residential settlement with access to municipal commonage and finally land needed for purely agricultural activities – was take a step further with the Amathole District Municipality (ADM).

DLA by this stage had a particular grant package and budget line available to assist municipalities to acquire additional commonage land. From 2001 it also had a sliding grant package to assist individuals wanting to acquire land for agricultural purposes, the LRAD grants. These latter grants were not linked with the housing grants. They started at R20 000 per household and escalated to a maximum of R100 000 based on a beneficiary contribution of R400 000.

Starting in 2000 a total of R34m of DLA funds were made available to the ADM for a Land Reform and Settlement Plan (LRSP) for the central region of the ADM area which excluded the areas formerly in the Ciskei and Transkei bantustans. This involved a detailed survey and breakdown of the extent and types of land needs across this area, followed by detailed planning process for the provision of residential settlement and commonage. This process was being extended to the former Ciskei and Transkei areas under ADSM at the time I departed from DLA in 2004.

This emphasis on the provision of land for residential settlement and commonage by municipalities partly contributed to a much clearer and rigorous screening process of applications to ECLRO for financial grant assistance for the acquisition of agricultural land, whether initially through the SLAG grant or later through the LRAD grant system. Over 70% of the ECLRO projects approved under the LRAD grant system from 2001/2 – 2003/4 involved small groups of family members in agriculture ventures whose members could be accommodated as members of a closed corporation which by law has a maximum of ten members.

Regrettably I am not aware of any thorough evaluation of either the residential settlement projects or the LRAD projects under ECLRO.

Annex: Family Title: Title Deeds, Ownership and ‘Law’ By Rosalie Kingwill

(From Afesis-corplan *Transformer*, July/August/September 2011)

This is a condensed summary of the paper “Lost in Translation” presented at ‘Development, Pluralism and Resources’ colloquium, University of Cape Town Law Faculty, November 2010, forthcoming in *Acta Juridica*, University of Cape Town; and from ongoing doctoral research through the Institute of Poverty, Land & Agrarian Studies (PLAAS), University of the Western Cape.

The Problem

What does it mean to ‘own’ land in South Africa? What is ‘ownership’? Evidence emerging from field research reveals a deep contradiction between the meaning of ownership as defined by law, and the meaning of ownership as practiced by a seemingly large proportion of South Africans of African descent. Under the colonial/ apartheid legacy, white settler-citizens and even foreigners ‘owned’ land, while the black indigenous population were accorded inferior occupational rights subject to highly discretionary administrative law. Now the Constitution and land and settlement policy flowing from the Constitution affirms the commitment to equalising rights of ownership. But where is ‘ownership’ itself defined and interrogated? In the absence of legal principles in any other form, the default legal position is that ‘ownership’ is that which the common law defines as ‘ownership’. Statutes confer a range of rights in land but ‘ownership’ is a discreet category, comprising the greatest number of rights within a composite often conceptualised as a ‘bundle of rights’.

Ownership according to the common law is realised when specified legal criteria are met, most obviously registration in the Deeds Registry. “The current registration system depends strongly on the well-understood concept of real rights”, and the corollary, that “in principle, rights in land that do not meet the stringent requirements of recognition as real rights may not be registered” (A. Pope 2010). ‘Stringent requirements’ at the very minimum means compliance with the national cadastre. The ‘cadastre’ comprises the formal national land information system.

The South African cadastre (like most modern cadastres) is multi-dimensional. Firstly, there is a spatial component, which is the geometric description of land parcels. Secondly, and linked directly to the spatial dimension, is the textual component, which comprises the records or registers recording the real rights in the land parcels, such as ownership, bonds (mortgages) and servitudes. Thirdly, both spatial and textual records must reflect up-to-date information, which means that every time a change occurs, such as sales transactions or inheritance, or spatial alterations such as subdivisions or servitudes, each must be duly registered. Two characteristics of this 3-D land information system are: (a) the core unit is the land ‘parcel’, which implies no overlapping or layered boundaries (statutes governing survey standards require high levels of accuracy); and (b) the spatial and personal details associated with the ownership of the parcel are linked to fiscal obligations, such as tax and servicing bills. Transactions set off a skittle effect that reverberates along a chain, like a train moving through stations: you can’t get to the destination of ownership until there has been an exchange of information at a number of stations along the way.

The contradictions I will discuss stem from this composite nature of the contemporary South African cadastre. A ‘grid’ of ownership is overlaid on the terrestrial dimensions of land, gathering up all the multi-faceted aspects of ownership into a thoroughly quantifiable private property regime that is legible to the central and local state simultaneously, as well as the

wider public. Systems that embrace common property, and/or family property regimes resist complete assimilation into a property grid. The language of the ownership grid is typified by measurable indices, identified (registered) owners, and inflexible boundary lines marked as co-ordinates on the survey map.

If we conceptualise common or family property regimes as embracing an overt social dimension, we can simplify the idea as 'social tenure', inaccurate granted, but to aid analysis. Social property regimes display characteristics that are less quantifiable. There is a fuzzy quality to the margins of access, since property relations hinge on kinship networks or webs that are changeable. Rights in the property are associated with where and how one fits into the loose 'corporation' of the extended family. These relationships are layered and elastic. Labour migrancy, which results in multiple residence, further encourages an element of fluidity in social and spatial relationships. Attempts are usually made to pin these differences down (and hence find answers) by categorising tenure in two different ways. The most usual is to think in terms of a dualistic divide between 'individual' vs. 'communal' tenure. Conceptualising land tenure in terms of different 'forms' of tenure, however, glosses over the deeper property relationships that exist between individuals in relation to the 'thing owned'.

A more conceptually useful approach is to think of tenure in terms of systems with 'exclusive' and 'inclusive' rights; though this over-simplifies the matter. The converse is also true: a degree of inclusivity and exclusivity occurs in both sets of property regimes, suggesting a continuum, rather than an opposition of these characteristics. The idea, does, however, come closer to a constructive solution.

Law, Which, Whose?

The recently thwarted Communal Land Rights Act, while seeming to re-define a stream of ownership for black rural citizens known as 'communal tenure', in fact situated communal ownership within the framework of the common law. The very notion of communal tenure, however, is couched within explanatory discourses that suggest synergy between communal tenure and indigenous law. The relationship between indigenous law and the common law, is, however, left unclear, and unaddressed. In this construction, the rights glossed as 'communal' are relegated to the internal administration of local 'traditional' structures which historically acquired their authority, not from indigenous sources of law, but from the colonial 'sovereignty'. The confusion created by these legal binaries stems, according to my argument, from the inability of the new state to confront and redefine the very essence of what legal ownership involves, since there is clear evidence that there are different normative orders (or values) associated with ownership in South Africa.

I draw on evidence from two freehold areas, Fingo Village and Rabula. These two localities are among a handful of black settlements in the Eastern Cape where freehold title was introduced in the mid-nineteenth century. The impact of titling in these localities was highly significant, but localised. In the larger scheme of things, titling did not alter property relations between white and black, nor between so-called individual and communal tenure areas. Racial distinctions in property management, and the political economy as a whole, overrode these small experiments in land tenure. Yet, the circumstances provide a unique window into understanding property relations between family members in contexts where tenure was not entirely controlled by the native affairs administration (as in the 'communal areas').

Fingo Village is a suburb of Grahamstown, Rabula a rural locality near King Williams Town in the district of Keiskammahoek, a core district in the former Ciskei. My argument is largely framed through the perceptions of landowners in these two localities. Landowners do not see their titling history as 'problematic' as yet. Though the experiences are in many ways unique to their particular historical circumstances, there is strong reason to believe that narratives of land ownership emerging from situations such as these have wider and contemporary

significance in the country as a whole. Their stories resonate with anecdotal evidence surfacing in a range of other contexts where titling is being applied, e.g., state-subsidised urban housing settlements.

I became intrigued by the evidence that private property relations are not the dominant defining feature of freehold title in Fingo Village and Rabula. I use 'private property' in the sense of marketable property. There are intimations of a nascent property market in Fingo Village, which is well situated close to town, but it is constrained. The surveyed plots are large by urban standards, 1000 sq m. The Rabula plots are smallholdings, ranging from 4-37 ha, far larger than the typical rural allocations. Poverty is less widespread than most townships, and in a handful of cases there is conspicuous investment in modern architecture and embellished finishes. Rabula boasts a concentration of professional people among the landowners, particularly school teachers and principals, also a smattering of lawyers and doctors, while a great many are public servants who commute to work in the nearby centres. The social composition of Fingo Village is more diverse. Wealthier members of the family tend to live in newer township suburbs, without cutting ties to the family properties. Both settlements have social profiles that include the 'comfortably well-off', interspersed with people of far humbler means.

Under these circumstances one would expect freehold title to function much the way it does in the former 'white suburbs', but it doesn't.

In their stories about what it means to have title, people articulate an understanding of property as 'family property'. No individual has control of the property to the extent of having powers to dispose of it, or to identify particular heirs to the exclusion of others (except in some limited situations where children born out of wedlock are not recognised, but this is not uniformly the case). Management of the property is consolidated in an identified individual. Here the language of 'management' accords somewhat with the language of executors of deceased estates, Xhosa terminology suggesting 'custodianship'. The word most frequently used is derived from the verb 'ugcina' meaning 'keeper'. The conventional western approach to identifying heirs before an owner dies (in wills) is turned on its head. It is the surviving family members who make decisions about property management when a custodian dies. This construction of division of property rights is far removed from decisions about inheritance and distribution of property through wills that predetermine heirs with powers of alienating land.

But who constitutes the 'family'? Family members are traced through lines of descent, ancestors continuing to be associated with the property and family. Membership is not just a 'given', it is kept alive and legitimated through active participation in family affairs, events and ceremonies. The entire process is thus an active one, which is different from the notion of an heir who may be completely removed in time and space, and whose role may be passive. It also means that descent can be manipulated to accommodate realities. People can be adopted into the family even if their descent lines are not strictly traceable through 'blood', providing they behave within the repertoire of family norms. This also means that conduct regarded as unacceptable can lead to exclusion.

The descent system follows patrilineal lines, with some flexibility to allow for changing contexts. This translates into male and female descendants who trace their linkages to the family through 'kin' (from 'kind'), rather than marriage. This is not a blueprint, and it is showing signs of change. But the practical examples given by people in their stories attest to the strength of the idea of families identifying their members through the male descent line. The central importance of a common ancestor is, ironically, reinforced in the context of title, because the first member of the family to have been granted the title (always males in this case) is regarded as the common ancestor through whom all subsequent descendants are traced. The patrilineal model, curiously, does not exclude the possibility of women being

custodians, nor that women have lesser claims to property rights. In Fingo Village there is, in fact, a growing bias in favour of appointing women as the keepers of the property, and women in the village play key roles in property management. Relations associated with the mother's line, however, are regarded as members of another line or 'lineage'.

These practices can easily blur into patriarchal property relations, but they are not synonymous. The system can function without blatantly oppressive implications for property rights by women, though there is a fine line of distinction. The vertically constructed band of descendants is contrasted with the more compact, nuclear family constructed along horizontal lines, spouse and children. Here relations are traced through both mother and father (bilateral descent) and it is usually the spouse and children who inherit the material property, the approach arising as it did in the market economy, where land developed monetary value. The more dispersed versus concentrated inheritance structure has profound implications for the meaning of ownership.

Reflection

The idea of 'customary' law to capture the dynamics described above helps to move the debate into a more constructive realm, but potentially drifts into a quagmire of legal pluralism. How does a dualistic solution escape return to racial categories and equity compromises? Recent Constitutional Court judgements have begun to confront these problems. The judgements underline the pluralistic sources of law, but within a framework of parity. The judgements cannot give content to land rights, but do, however, move the idea of customary law towards the notion of the 'living customary law', or the 'living law' to acknowledge the dynamic quality of customary law and ensure that evolved practices reflect modern principles that people embrace in their everyday lives, radically changed material and social circumstances from pre-colonial days.

In the absence of clear content of ownership under customary or 'living law', statutory measures are adopting common law approaches to property rights, arising from cases being heard by the Constitutional Court. Gender discrimination in inheritance, in particular, is being addressed by way of interim solutions that apply blanket measures to property succession for all South Africans, moving away from discriminatory, racially-based measures that applied in the past under the guise of customary law. For example, in the absence of a will (the more common scenario) statutory amendments provide for mandatory equitable division of property among spouse and children. But this approach is derived from the common law.

What are the implications for registration? Evidence shows that property seldom gets registered when it passes from one generation to the next, this would imply proprietary rights. What could be more compelling evidence of one's rights than the registration of the property in the name of your deceased ancestor, through whom you trace your relationships to other members of the family and to the property? But this is at odds with the property law, which is dogmatic in its insistence on currency of ownership status, and its legality depends on it. Sales of property, too, tend to be informally witnessed, property transfers not being conveyed as required by law, by conveyancers. In Rabula, land is informally subdivided among siblings, without formal surveys. These are not registered but recorded in memory through local witnessing, and easily adaptable to changing generational circumstances.

The lack of currency of ownership records means that the inter-linked components of the 3-D cadastre, described above, is thrown into disarray. For example, there are obstacles to recovering municipal bills when the property is owned by the dead! Pragmatic approaches are being found, such as charging the occupiers for services, and focusing on current, discounted monthly bills. But in Fingo Village it is not unusual for historic arrears to be five-digit figures, which remain recorded in property records and obstruct future transactions.

The 'compound eye' of the registration system is able to tolerate these excesses. Its composite structure means it is possible to 'pass the buck'. A properly surveyed property, identified with a specified owner (one or more people, or a corporate body) can be registered, whether or not the owner understands the implications. The high costs associated with the registration are now subsidised for poorer first-time homeowners, but this merely masks the administrative disjuncture. Would-be owners are screened from costly and time-consuming legal checks and performances by property mediators, planners, surveyors and conveyancers, the costs of which are borne by the state (i.e. taxpayers), but only first time around. Although the system can turn a blind eye to the deeper workings of ownership once the property is registered (what happens in the interstices is not the business of the Deeds Office), associated property issues surface further down the line, triggering a snowball effect. These anomalies tend then to be blamed on symptoms of poverty or lack of education, rather than more deep-seated issues of social values and moral standards.

A more sustained solution from law reform is needed. Hybridity rather than difference needs to be recognised. The Constitutional law expert, A.J. van der Walt, has talked in terms of transforming the present hierarchical system of rights into a flatter system that accommodates 'use rights'. Van der Walt (1999) draws attention to the problem of the clenched fist of ownership as a legacy of Roman law in South Africa. Because of the focus on ownership, title and use tend to be united in one hand in the ownership-oriented systems, rather than being spread over a range of right holders. The idea of use rights could potentially be linked to 'family titles', where the title itself is registered, perhaps separated from a current register of users. Use rights could also help salvage rights in rural common property regimes, where family properties are situated within a broader community of property owners and accommodate spatially overlapping boundaries and nested rights.

Annex: Brief to evaluator

Managed Land Settlement Review

Brief for consultant

Afesis-corporation

September 2012

1. Introduction

Afesis-corporation has been involved in a Land Access project for the last 3 years.

- iCwili is a managed land settlement project where about 100 households in the iCwili township in Kei Mouth have been assisted to move onto a planned piece of land prior to government housing subsidies being made available: and
- FEDUP (federation of the urban and rural poor) is a group of more than 500 households from East London who are organised into savings schemes with the intention of getting land and housing subsidies for their members. The members have been unsuccessful in finding land up to now.

2. Output

A) A case study report that addresses, 1) the iCwili phase 2 project, 2) the FEDUP project and 3) the broader land access work of Afesis-corporation. The following is a guide for the report but the report does not have to be restricted by these questions.

2. For pilot projects (iCwili phase 2 and FEDUP)

- a. Has the original purpose of the pilot project work been met? What has been the impact of the pilot projects?
- b. What happened in past and what is happening now in relation to implementing the pilot projects?
- c. What role did (is) Afesis-corporation, the community and other role-players play(ing) in the pilot projects?
- d. How did the community participate in the process?
- e. What were (are) challenges and opportunities faced?
- f. What lessons can be learnt from each project?
- g. What recommendations can be made for continuing to develop each project?

3. For broader Afesis-corporation land access work

- a. Broadly, in summary, what has been the impact of Afesis-corporation's work with the LANDfirst network and the development and promotion of the of the Managed Land Settlement model?
- b. What broad challenges and opportunities has Afesis-corporation faced in carrying out its work?
- c. What broad lessons and recommendations can be made for how the managed land settlement model can be improved?
- d. What broad options can Afesis-corporation consider for how it could intervene in similar or new land access work?

B) Two short articles for Afesis-corporation transformer reflecting on research findings from the two pilot projects.

3. Activities

A. Collect data

1. Read reports/ documents on the land access work of Afesis-corporation and on the iCwili and FEDUP pilot projects
2. Interviews and focus groups
 - a. For both projects and broader Afesis-corporation land access work , interviews with
 - i. Afesis-corporation
 - ii. Provincial government x 2
 - iii. GIZ funders
 - iv. Urban LandMark representative
 - b. For iCwili
 - i. iCwili Sanco leadership / Housing beneficiary leadership / Ward councillor
 - ii. Great Kei Municipality (Housing manager)
 - iii. ADM engineering (electronic communication – budget/ time permitting)
 - c. For FEDUP
 - i. Local FEDUP support officer
 - ii. BCMM x 2
 - iii. FEDUP sample of beneficiaries
 - iv. FEDUP national (electronic communication)

B. Analyse data and write reports

1. Write draft report drawing lessons from iCwili and from FEDUP experiences and drawing more general lessons
2. Prepare and give presentation on case studies of final draft report at meeting (organised by Afesis-corporation) to invited role-players
3. Write short articles for Transformer Journal.

4. Time frames

	<i>Milestone</i>	<i>deadline</i>
1	Review documentation & interview setup	End of October 2012
2	Interviewing and focus groups	Early November 2012
3	Produce draft report	End November 2012
4	Presentation	End November 2012
5	Submit final case study report	Mid December 2012
6	Submit transformer articles	Mid February 2013

5. Budget

R45 000.for all time and disbursement costs (excluding VAT)

Note: Afesis-corporation will

- Assist to set up interviews and focus groups in consultation with consultant
- organise and pay for meeting to present draft report