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## Between a Shack and an RDP House: Alternative Forms of Tenure Security

Homeless people in South Africa are caught between a 'shack' and an 'RDP' house. If they take matters into their own hands by invading and occupying land illegally, they face the prospect of eviction with nowhere else to stay. If they wait for government to build them an RDP (Reconstruction and Development Programme) or BNG (Breaking New Ground) 'starter' house, they may have to wait in their present housing environment in rural areas, or in their parent's house, or in overcrowded backyard rentals, until government gets around to building a house for them and providing them with tenure security. If past housing delivery rates are projected into the future, some people will still be waiting for their RDP houses in 2032.



[1]

There is simply not enough money and resources available to quickly provide everyone who needs a house with a full RDP house. In the absence of any alternative, households have not much choice but to occupy illegal informal settlements. There is an urgent need for the South African government to expand the number of alternative ways for the poor to access tenure security and basic services.

### Channels of supply

Additional channels for the supply of land and housing need to be developed and provided that do not just rely on government providing full individual ownership as part of an RDP housing project or people taking matters into their own hands. Somewhere between state allocation via subsidy provision and self allocation through illegal occupation, there is a range of potential options for the poor to access urban land in ways that achieve official recognition and the wide variety of benefits that arise from this. As Urban LandMark [2] stated in the Land Rights to Property Markets conference report, October 2008, the challenge is to "increase the points of entry into the urban land market" for the urban poor and "multiply the channels of supply" for accessing alternative tenure security options.

### The law and eviction

According to the United Nations Habitat programme, security of tenure is defined as “the right of individuals and groups to effective protection by the state from unlawful evictions.” Under international law, forced eviction is defined as “the permanent or temporary removal against the will of individuals, families and/or communities from the homes and/or land which they occupy, without the provision of, and access to, appropriate form of legal or other protection.”

One way to start to unpack these additional channels of supply is to conceptualise tenure security as a continuum between land tenure insecurity - for example, when people face the threat of eviction as they have no permission to be on the land - to ‘full’ security where households have title deeds provided through the formal township establishment processes and the deeds registry.

### **Responses to land occupation**

The perception of tenure security on the part of the land occupant depends on how the authorities and/or land owners respond to people occupying the land. The following list provides an initial attempt to start to place tenure options along this continuum from ‘no’ to ‘full’ tenure security. Options for how authorities and/or land owners could respond to people settling on land include:

1. Proceed with eviction procedures to remove households from the land. In such situations, the occupiers have no to very little tenure security.
2. Allow people who have occupied the land for more than six months to stay on the land until alternative arrangements are made to accommodate these households.
3. Turn a ‘blind eye’ and simply ignore the occupation of the land. Such tenure security is weak in that the authorities and/or land owners can at any time decide to take action to evict the occupiers of the land.
4. Make a statement simply acknowledging the occupation of the land. The authorities publicly confirm that the people can stay on the land, but the state and land owner does nothing more in support of tenure security. This relies on the good will of the authorities and land owners who can still change their minds and proceed with eviction processes in future.
5. Provide basic services to the occupiers of the land, but do not provide any written confirmation that people can stay on the land. The community should feel more secure in the knowledge that it is unlikely that the authorities and/or land owners will evict them after they have invested in basic services in the area.
6. Provide the occupants of the land with some form of paper that indicates that they have permission to occupy the land under certain conditions. For example, households must not allow more people to occupy the land, or households must pay monthly fees towards the provision of services to the area, etc.
7. Formally mark out the outer boundary of the piece of land where a number of households are or will be staying and enter into a lease agreement with a voluntary association or formal group representing the occupiers of the land indicating that the members of the group can stay on the land. This agreement does not necessary have to indicate where in the ‘super block’ individual households will be staying.
8. Informally mark out portions of land within a formally marked out outer boundary and enter into lease agreements with the occupiers of the land that they can stay on that

informally marked out plot on condition that they pay rent to the authority and/or land owner.

9. Formally sub-divide the land and enter into lease agreements with individual households confirming that they can continue to stay on the land as long as they abide by the lease agreement rules.
10. Formally register and transfer individual title to heads of households. This individual ownership is often referred to as full tenure security.

The challenge is to move people along this continuum list towards the more secure forms of tenure. Addressing tenure security should not be simplified to an all or nothing approach where people are only allowed to jump from 'no' tenure security to 'full' tenure security. Many of the tenure security options along this continuum may provide for a more appropriate and interim tenure arrangement.

### **Setbacks in full tenure security**

There are a number of reasons why full tenure security may not be appropriate. It costs a lot of money to employ professional town planners, land surveyors and lawyers (conveyancers) to establish individual plots and transfer title deeds to households. It takes a long time for formal township establishment processes to be undertaken and for formal title deeds to be transferred to individuals. Households may not need full tenure security as they do not want to use their house as collateral for a loan.

The recent global credit crunch, brought on by lending practices of banks in the United States of America providing bonds to households that could not pay back their mortgages, highlights that it is not always prudent to provide bonds to households that have little chance of paying back their loans. In any event, there are alternative micro finance arrangements that households can use to get loans without mortgaging property. Households also may not be able to pay the rates and service charges associated with owning property; and municipalities may not be totally reliant on these taxes and fees to provide municipal services. Many people may be happy with some form of tenure security, rather than none, and may not want the extra responsibilities and costs that go with 'full' title. (See the box below for a more detailed explanation as to why full individual ownership may not be appropriate in all instances.)

### **The LANDfirst approach**

A tenure system that works for the poor would be one that is affordable to establish and maintain, so that the poor can gain access to tenure security now and in the future. It should compensate people for the investment they make on the property, thereby encouraging on-going improvement and maintenance. The LANDfirst approach advocated by Afesis-corporation, Urban LandMark and a number of other civil society organisations, provides an example of how such an alternative tenure system could work.

The outer boundary of an existing informal settlement earmarked for future upgrading, or a new piece of land identified for phased and incremental settlement, is identified. The land owners or authorities and the community determine how many households will be allowed to occupy this piece of land. As a minimum, a record is kept of who can occupy this land

without necessarily specifying where each household must stay within this outer boundary. If a slightly more tenure secure arrangement is sought, it may be appropriate for individual plots to be marked out on the ground and on a map, but not necessary to formally register these internal plot layouts with the Surveyor General. This layout needs to take into account how the area will be upgraded in the future, including new roads and sewer pipes. The municipality and/or a local community residents association can then keep a record of which households are occupying which plots and manage any changes in occupation of the plots. The right to settle on a plot can be accompanied by permission to build certain types of structures, undertake certain types of activities and follow agreed processes when transferring the right of occupation. Clear procedures and rules need to be in place that outline how households will be compensated for any improvements they may make on the plots they have occupied when they decide to move.

There are many ways that such basic and interim tenure arrangements between a shack and an RDP house can be provided. The South African government needs to support pilot and demonstration projects that explore these different tenure arrangements so that homeless households can have more opportunities and choices in how they can access land for settlement purposes.

### **Reviewing motivations for private ownership**

A number of motivations have been given as to why it is important to encourage individually owned private property over other forms of tenure security. This section explores to what extent these motivations are valid.

**Full ownership provides tenure security:** It is argued that if households have individual title deeds, they will not be evicted from the property. They will have proof that they are the official owners of the land. However, other forms of titling, such as recognition of occupation certificates, also provide similar levels of tenure security. If the process of transferring ownership is complicated and expensive, formal transfers may not occur. Over time the name of the person who formally owns the title deeds in the deeds registry may be different from the name of the person who is actually staying on the property. Full ownership does not lead to tenure security for households who have lost their property due to being unable to pay back loans or bonds where they have used their property as collateral.

**Full ownership encourages investment in housing:** If a person owns her or his own property, they have more of an incentive to invest in maintaining and improving the property. When they sell the property they will be able to get a market-related price for the property, which takes into account any improvements made. Rental and other forms of tenure do not encourage people to use their own money to make improvements, because when they leave they cannot get compensated for what they have invested. However, in instances where government has put in some form of services, without transferring official individual title to households, experience shows that these households still invest in their properties. It may not just be individual ownership that encourages investment in housing, but other factors as well, like communities having a sense of security through municipal investment in basic services in the area. There are other forms of tenure security besides individual ownership that can take into account the previous investments made by

households when tenure is transferred.

Full ownership allows owners to make money: Homeowners that have full title are able to make a profit from their property when they sell it, because land is in scarce supply and people are willing to pay a good price for it. This is premised on the fairly rational assumption that property prices will continue to rise. Households can lose if no one is willing to buy at a seller's breakeven price. Usually, if a land owner's property value is increasing, it means that most other property values are also increasing. The value of well-located properties tends to rise at a higher rate than those in less prime areas. Households are tempted to sell their property at high prices to the highest bidders – usually high-income households. This makes it difficult for low income households to buy property in these locations as the prices are too high. Prime locations become inaccessible to the poor.

Full ownership allows for households to access formal credit: If a person owns a house they can use the title deeds as security for a loan (or bond) that can be used to improve the house, buy another house, or start a business. However, most low income households who have individual title to their houses are not using their houses as collateral for loan. Housing micro finance, that does not involve using housing property as collateral, may be more appropriate for many poorer households. In such instances, if the micro finance loan is not repaid, the lending institution does not repossess the land or property. Lenders are only issued loans once they have demonstrated a commitment to save, and they are ineligible for further loans until they repay previous loans. Other savings group members can also stand security on behalf of fellow group members. If one group member fails to repay their loan, then none of the other group members are eligible for further loans until this loan is repaid.

Full ownership increases municipal government revenues: If a person owns a house, the municipality can collect rates and taxes on the property. This can be used to improve the local neighbourhood, which will increase the value of the property and a virtuous spiral develops of more revenue, more public investment, increasing property values, more taxes, and more government revenue. Government can also collect other forms of tax, like capital gains taxes when the property is transferred to inheritors on the death of the owner. These taxes and services, however, place high demands on new property-owning households to start paying additional rates and services. Municipalities also have the unenviable task of having to repossess property if households are unable to keep up with rates and service payments. Municipalities receive large amounts of finance from equitable share transfers based on the number of poor households in their jurisdictions. They do not rely solely on income from local taxes and service charges. There is also not a clear link between the government department that collects taxes and the department that spends the income on upgrading the neighbourhood. It is often very difficult for households to see how their taxes are being used to improve the local neighbourhood.

*Ronald Eglin is a senior projects coordinator at Afesis-corplan, overseeing the Co-operative Housing, LED and Planned Land Access projects. This article first appeared in the Transformer [3], a bi-monthly journal published by Afesis-corplan*

**Author(s):** Ronald Eglin [4]

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[1] <http://www.ngopulse.org/image/between-shack-and-rdp-house>

[2] <http://www.urbanlandmark.org.za>

[3] [http://www.afesis.org.za/images/stories/pdf/journal/October November 2009.pdf](http://www.afesis.org.za/images/stories/pdf/journal/October%20November%202009.pdf)

[4] <http://www.ngopulse.org/person/ronald-eglin>