

# **First Phase Study on Tenure Options**

**For**

**The SA Homeless Peoples Federation/ uTshani  
Fund/ People's Dialogue Alliance**

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**By**



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## Summary of key issues

The Alliance has debated the question of tenure options for some time, and asked that LEAP do an analysis of the strengths, weakness, costs and implications for SAHPF members of going the individual ownership or group ownership route.

We approached this by taking a step back and looking at different aspects of tenure, to provide the background to the task. Both the legal options for tenure and the actual tenure practices of people are important to look at. The reality is that we have ‘formal systems’ and ‘informal systems’ that exist together in ways that are often undermining of each other. We look here at both, and at their interaction.

When considering the implications of the two tenure forms (group and individual ownership), it is helpful to consider at different stages of tenure, which can be thought of as being points along the tenure road. People start out with a history and needs and practices to be considered. As people travel along the tenure road they are met by different concerns and questions. The stages the report uses are: accessing or GAINING land, housing and services; keeping and using property rights or MAINTAINING them; and passing them on DISPOSING of them, or changing them to something else: CONVERTING.

In comparing the implications of tenure form at these stages, on a number of key issues to do with security of tenure and to development, we see (as is familiar to the Alliance) that there is no clear answer as to which is “best”. Rather there are clear indications as to what needs to be worked on to strengthen whichever option is selected to better meet groups’ needs.

The SAHPF CPAs are providing support and security to their members, but do need to strengthen individual rights of members, and their governance systems. The CPAs can do this by creating written evidence of property rights; setting up systems for maintaining these records; and by setting up agreements and systems for land administration. CPAs have no support, and they do need some inputs to compensate for this if they are to work for their members over time, as they have many demands made on them, and are vulnerable to the strength or weakness of the committee. The report makes some practical suggestions about how to tackle these issues with CPAs, and suggests there is learning to be had from the experience with housing co-ops.

Individual ownership does have state support to back-up tenure rights, in the form of records of title deeds and the systems around this. The challenge for groups going the individual ownership route is rather the protection of family members rights; the expense of keeping title deeds up to date every time there is a transfer of ownership; and the desire for group oversight for social support and community building. In the report we make suggestions about being careful about whose name goes onto the title deed; making sure people understand how title works; and we highlight where people with individual title may become vulnerable.

We make our recommendations from the idea that the choice is not simply “either individual or group”, but that whichever tenure form people choose, they need to construct, through both formal and informal processes, a tenure that comes closest to meeting their needs.

# 1. Introduction

## 1.1 What led to this report?

The Alliance has a number of projects with members of the SAHPF to secure land and development housing. An important part of these projects is the question of tenure, or who holds the land and how they hold it.

These questions about tenure are important because different ways of accessing and holding land can affect:

- (a) people's security of tenure
- (b) what people can do on and with the land, and
- (c) what services they can get and how they pay for these.

The Alliance has debated this question for some time by looking at the strengths, weaknesses and costs of individual versus group ownership. People's Dialogue has actively encouraged the SAHPF to own land collectively in the spirit of the Alliance's objectives of building a social movement and building assets owned and controlled by the poor. The Alliance chose to use Communal Property Associations (CPAs) as the legal vehicle for group ownership. Some projects have followed the individual ownership model, and over time some PD staff and some groups began to favour individual ownership to prevent delays and the problems some CPAs experienced.

Reasons include:

- The subsidy format favours individual ownership
- Many of the projects have been RDP-type projects, where houses were built after tenure upgrades to individual ownership.
- Because officials are more familiar with individual ownership than CPA ownership they found it difficult to implement CPAs and there have thus been serious delays with accessing the social subsidies
- Some cases were not accepted as qualifying for the social housing subsidy.
- Problems developed within some CPAs: problem of internal conflict and people pushing in difficult directions, and regarding access to and payment of services.

In July 2002, a workshop was held with various SAHPF groups to look at group versus individual tenure, the implications and demands of living with each and the pro's and con's of each. The outcome was that there were differing views from participants regarding individual and group tenure, but people were eager to access sufficient information to make informed choices, and for those living in CPAs to continue to make these CPAs work.

LEAP<sup>1</sup> was appointed by People's Dialogue to draw together research and experience on the tenure options available and applicable to the types of projects initiated by the Alliance. The purpose is to enable leaders and staff to assist groups more effectively

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<sup>1</sup> The Legal Entity Assessment Project (LEAP) has worked since 1999 on rural CPAs and tenure, and in 2004 started to explore tenure in both rural and urban situations. This contract came out of conversations between LEAP and the Alliance on tenure, and sought to draw on the experience of LEAP in looking at the questions and issues.

in finding the most appropriate and sustainable tenure model for their project. LEAP was tasked to summarise lessons from documents written in the past few years, as well as to interview a few people from the Alliance in order to draw on the realities of their experience. The report refers mainly to CPAs, which is the Alliance experience, also refers to housing co-operatives at the suggestion of Rooftops Canada / Abri International and the Canadian International Development Agency. The content and opinions expressed in the report are those of the consultants, LEAP.

## 1.2 What are the issues?

How people hold and use land in South Africa can be secured in many different ways. These ways include laws, government support in the form of Deeds Offices and city rental offices, and the courts when there are disputes. They also include recognition of one's rights from the community or community leaders. These different ways of securing rights to land and housing take shape in forms of tenure, such as ownership, rental or site allocation in rural traditional communities and informal settlements.

Many government departments and professionals prefer ownership that is registered in the Deeds Office to site allocations that are recognised by the community. They also tend to prefer this formal ownership to be registered in the name of one or two people rather than a whole community. This is because individual ownership is the system they are most familiar with and many municipal procedures and services have developed around this system. However, this type of tenure form doesn't always work well for poor people, and there have been attempts since 1994 to bring people's own tenure systems into the law.

In 1996 government passed the Communal Property Association Act to give recognition to the way many people hold land in groups. Peoples Dialogue encouraged the use of CPAs as this was a new tenure option for group ownership specifically designed for a new South Africa in support of poor people. In addition to the new CPA option, there are also other ways of arranging group ownership. Some organizations that support poor people in housing have chosen these other options, such as co-operatives, in preference to CPAs. The CPAs have experienced a number of problems and challenges, which has raised questions in the Alliance about this tenure form.

### **Box 1. Did you know?**

Some tenure options are more suitable for certain kinds of housing. There has been a recent review of these tenure options by Development Works, and the key outcomes are set out in a report, called "Tenure Options for Social Housing Projects". There is discussion on CPAs, co-ops, sectional title, social rental and share block schemes. This report is available from the Social Housing Foundation, who commissioned it in 2004.

The Alliance is asking which tenure form is best for poor people's needs for land, housing and services. Is it individual ownership or group ownership? This report tries to help the Alliance with some answers to these questions. It does this by asking: what do different choices of tenure form mean in practice for poor people, i.e. what are the real lived **implications** of choosing a particular tenure form? The report makes recommendations to the Alliance regarding its approach to tenure options. It

also identifies questions that people at the point of choice need to think about, so that they can make better-informed choices.

There are limited tenure options available to people now, and these do not easily meet to the mix of needs poor people have. LEAP suggests that the Alliance look at the challenges regarding tenure being on the one hand *“how to better meet our objectives within the existing options and frameworks?”*, while on the other it ask *“how can we add to what exists to get more appropriate options for poor people in place?”*.

Rather than continuing to see the choice as an “either / or” between individual and collective tenure, recognise that whichever option is chosen there will need to be work to construct, through formal and less formal processes (both of which are important) the tenure that comes closest to meeting peoples’ multiple needs. We recommend that you see the product of your task as not to achieve either individual or group ownership but sets of arrangements for gaining, maintaining and disposing of property rights that work sustainably for (poor) people.

As LEAP, we suggest that the Alliance considers this approach within a broader understanding and critique of the way government has structured tenure choices; and to ask not only how we improve things in the short term but what would work better for poor people in the longer term.

### **1.3 How did Leap do the research?**

LEAP met with PD and uTshani staff, and gathered and read what has been written on this topic of tenure and housing. LEAP then met some members of the Federation who are at different points along the road to building better houses and a better life. Some were still in informal settlements, trying to identify land to build better houses and were not yet ready to make the choice of tenure form. Some had identified land and were at the point of choice about tenure form. Others had experience of living with communal ownership for some time, i.e. they are further down the tenure road and have experience of what happened after they made their choice of tenure form and got land. LEAP then drew on all these sources to examine what we read and heard, using a framework that we find helpful to draw out the implications and using this and our own experience to develop the recommendations.

### **1.4 How is this report structured?**

In the next part of the report (Section 2: Tenure security and rights) we take a broad look at tenure and securing tenure so that it is clear what we are all talking about when we look at the different tenure forms.

Section 3 of the report (Tenure Stages) looks at tenure and the detailed experience and implications of tenure choices at different stages of getting land and housing (“**gaining**”); holding and managing land (“**maintaining**”) and selling or moving on from the land (“**disposing**”).

Section 4 sets out a summary of implications that arise in these stages to highlight key concerns and challenges.

The report concludes with Section 5, which is a set of recommendations. These are not intended to tell the Alliance what to do but rather to provide a focus for discussion on practical considerations related to choosing.

In an appendix at the end is an outline of questions to assist communities to make a choice about tenure form.

## 2. Tenure security and rights

### 2.1 What is tenure?

Tenure is the way people hold land. In South Africa, colonial property systems were introduced and then sat alongside African indigenous systems – both have changed over time and there are now many tenure traditions that affect how people hold land here. We can refer to there being on the one hand **ownership within the formal state-supported system**, while on the other we have tenures, including traditional communal systems and informal settlements, that remain **off-register or informal**. These two systems do not yet sit easily with each other and many people find themselves being pushed into the formal system although its requirements are complicated and expensive. The CPA Act was an attempt to bring the two together, but it has been given very little state support and resources. Security of tenure is affected by the way the country's laws and government departments are set up to administer tenure, and the tenure form you choose may be negatively affected if the government does not provide the necessary administrative support.

There are number of different ways to unpack tenure so we can understand it and work with it better.

#### 2.1.1 Tenure and rights I: the who, the what and the which/where

One useful way to understand tenure is that it answers the question **who** has **what** rights to **which** piece of land – these define some of the content of rights

##### **The Who**

The **who** can be many things – it can be one person, a few people together or a group of people organized into a legal form such as a CPA, a trust or a co-operative. It can also be a third party, like a bank if the holder of the right has a mortgage, or a municipality if a servitude is put over the property to allow a water pipe to be built. Different people have different vulnerabilities, and in considering the “who” we should think about men and women, and about how HIV Aids affected people and families, and also children's tenure needs. The “who” also relates to relationships between people, which is an important element of tenure security.



## The What

The way the land is held will dictate **what** rights (and duties) a person or people have and don't have. These rights also depend on the resources on the land, the uses that people make of them and internal rules or government laws determining what people may and may not do in using the land. These rights can include the right to:

- ✓ live on and use the land to support people livelihoods,
- ✓ develop the land by building houses on it or extending existing houses,
- ✓ develop the land by putting in or extending services,
- ✓ sell or rent the land and/or structures,
- ✓ bequeath the land and structures,
- ✓ participate in making decisions about the land and/or structures.

Or there may be rules and regulations that prevent certain uses, such as informal trading (eg shebeens) or industrial development in residential areas

## The Which or Where

**Which** piece of land is about being able to identify the portion of land so that it is clear to everyone **where** exactly the land is, how big it is and where it's boundaries are. When this information is held in a public office like the Surveyor Generals Office, then it is available to all government departments, banks and professionals as well as to the community one lives in. This is to try to prevent more than one person or group claiming the same rights on the same piece of land. In the case of collective ownership, the "which" would relate to identifying firstly the outside boundaries of the group and secondly who has what rights to which property within these boundaries. In the informal system, people reach agreements together on where the boundary of the property is and neighbours usually witness these boundaries as proof of where they are.

### 2.1.2 Tenure and rights II: real and personal rights

In addition to the who, what, which (or where), countries have different ways of organizing their tenure, which affects what government departments and others find acceptable. In South Africa, the legal and official system recognizes and works most easily with two main ways of defining property rights. These are **personal** and **real** rights.

**A real right** is a form of tenure that is registered in the Deeds Office. Types of real rights include ownership, long leases and servitudes. If a CPA owns the land, it has a real right because it is registered as the owner of the land in the Deeds Office. Real rights can be bequeathed or mortgaged. Mortgaging in turn limits these real rights because it means giving up some of your rights to a third party.

**A personal right** is an agreement between a holder of a real right and another person. It is flexible because it can include any legal agreement that the two parties want to reach with each other. The rights of members of CPA are personal rights. These rights are recognised in law but they are not registered in the Deeds Office. The rights die with the person holding them, or when the agreement comes to an end, and they cannot be bequeathed unless this is part of the agreement reached.

Real and personal rights exist only in the formal system. Having a “real” right does not necessarily mean that rights are secure, especially for people who may not be able to afford the costs of keeping their rights both “real” and secure. In other words, they are only secure if the person with the real right can afford to hire a lawyer to register the property at the Deeds Office whenever they want to sell it or bequeath it. The law regards the legal owner to be the person in whose name the title deed is registered in the Deeds Office, and not other persons who may have bought or inherited the property informally without registering it.

### **2.1.3 Tenure and rights III: Procedural rights**

Tenure is not only about rights and form of tenure. It is also about getting those rights (GAINING), keeping and using them (MAINTAINING) and passing them on or changing them to something else (DISPOSING AND CONVERTING). These other aspects of tenure are concerned with procedures. We can therefore distinguish between the **tenure rights** that people have through the **form** of tenure, such as ownership (a real right) or member’s use rights (a personal right) and the **procedural rights** to fair administration of the tenure form.

The formal system has very clear and set procedures which means that people have to work through professionals every time the property is transferred. This makes it expensive and thus relatively inaccessible for poor people. In group ownership it is more up to the group to set up and follow the procedures by which members of the group get, use and pass on their property. The CPA Act does put in place some principles and procedures the group is supposed to follow. In CPAs people have procedural rights to participate in decision making. In co-ops co-operative principles apply and members also have rights to participate in decision making. In the informal systems there is more emphasis on following social procedures than on having written records. Sometimes people create their own written records in informal systems.

For tenure to be and feel secure to people these procedures need to be known, understood and accessible to people. If they are not, it may mean that the state or the community cannot enforce the rights and then tenure becomes insecure

### **2.1.4 Tenure and rights IV: What proof is there that our tenure is secure?**

Proof or evidence of land rights can take many forms, such as a title deed, the constitution or use agreement, the pegs on the ground showing the corners of a residential site, or the testimony of neighbors. These different kinds of evidence serve as evidence of who, what and where, and have different strengths and weaknesses.

People mostly use evidence of their land right when:

- there are disputes about who, what or where,
- there is a threat that the land right will be taken away from them
- they want to mortgage, sell or bequeath the land.

Evidence is used by an authority or professional to decide which of the disputed claims is correct. The structure best able to help a person in dispute depends on the

form of tenure and the procedures that go with that form, as well as what the rights holder and the person with whom s/he has a dispute believes will work. For example, a person with a title deed might call on lawyer (particularly a conveyancer) if there is a dispute about the who or the what of the rights, or a surveyor if the dispute is about boundaries. A person with an allocated site in an informal settlement may call on the committee or a councilor to assist in the dispute. Similarly, a person in group ownership could also do this or, if they have enough money, they could ask a lawyer to assist them to go to court. It is unfortunate that the only adjudication system that we have in South Africa is the formal surveying and conveyancing system. There should be a system that also adjudicates rights within group or communal systems.

### **Box 2. Tenure security**

Tenure security depends on having a form of tenure that is supported by a system that has clear, fair and accessible procedures that can be enforced. Our government works with some forms of tenure and systems more easily than with others.

## **3. Tenure Stages**

When considering the implications of the two tenure forms, it is helpful to look at the different stages of tenure, which can be thought of as being different points along the tenure road. As people travel along this road they are met by different concerns and questions.

Facilitating a choice requires a process in which people work through questions. It is extremely difficult for people to make choices about, and plan for, things they have no experience of. This is why it is so important to start from what people do know about, and build from there. It is not always easy to make the space for these processes, but time spent early on can prevent problems later on that are extremely difficult to fix.

However even before the point of choice there are issues to consider, and to work through with people:

### **Local history, livelihoods and current tenure arrangements**

- **What is the history of this group, in terms of its social relations and leadership structures?**
- **How do people in this group make a life now – what are their livelihood strategies that need to be supported and strengthened?**
- **What are their tenure arrangements now? What are the aspects of their tenure that work for the individual, the family and the group now and that we therefore want to hold onto in the future?**

People in informal settlements in urban areas come to live in one place from many different places and at different times, and do not necessarily have a long history of working together as a group using the same familiar rules and authorities. A situation

which Federation members talked to us about is one where they have to settle with a mix of Federation and non-Federation members who may have very different views on how development should happen, on the kinds of rules that should operate, and on democratic decision-making. The tenure form that people choose needs to work with local and external experience and realities.

People in informal settlements rely heavily on informal business opportunities and on low paid formal employment to make an income. A real difference between urban and rural situations is that a lot of people in urban areas are highly mobile, and some may be able to return to rural areas if opportunities in urban areas fail them altogether. The tenure arrangements in informal settlements fit the way in which people make a life and what they can afford. In Piesangs River people described an informal market in single rooms in *izitimela* where people can buy and sell not land but “three walls and a door” for R10 or R50.

Having an understanding of history, and means of making a life and current tenure arrangements becomes important in thinking about future tenure arrangements. So as people consider questions for the future such as “do we allow sales and rentals, and if so how?” it is important to understand what the need is in people’s lives that sales and rentals meet, and whether this need will be removed by a move to better housing, and if not, what is it in the current arrangements for sales and rentals that works and that we want to hold onto into the future.

A huge change that happens with housing developments is that tenure arrangements become more formal, and people become more visible to the formal system. This brings both opportunities and threats. The box below sets out some key questions that come up in doing this.

### **Box 3: Questions for tenure stages**

#### **GAIN**

The questions here are:

Who and what drives which choice of tenure form? Which tenure form do influential stakeholders support? What does this mean for me?

and

How does the tenure form affect .....

- The subsidy I can get?
- My access to land, housing and services?
- The quality, standard and amount of land, housing and services I can get?
- Costs of getting land and housing and services
- The evidence I get of my land right?
- The protection of the vulnerable, e.g of women and orphans?

#### **MAINTAIN**

The questions here are:

How does the tenure form affect.....?

- What I may, and may not, do with my land and my house (*e.g. whether I can run any kind of business I like; whether I can make improvements; whether I can use my property to raise credit; whether I can rent out my house*)
- How infrastructure is maintained and services delivered and paid for (*e.g. who mends the roads and collects the rubbish; how do I pay for services*).
- The responsibilities I have to meet in order to keep my land, housing and services (*e.g. the rules I have to keep; the payments I have to make*)
- The protection I have against having land and housing taken away from me and the evidence I need to make this work.
- Who makes decisions, and how, about these things, and how I can participate.
- How conflicts and disputes about matters related to holding land, housing and services are sorted out and where I can go for help (recourse).

#### **DISPOSE**

The questions here are:

How does the tenure form affect.....

- Selling the land and house, including improvements I have made (*whether I can do this, under what conditions, how this happens – i.e. by what procedures, and the evidence I need to make this work*).
- Bequeathing the land and house (*what happens when I die, and what evidence I need to make this work, how are vulnerable people, such as women and orphans, tenure rights protected*).

#### **CONVERT**

The questions here are:

How does the tenure form affect.... ?

- Whether I can convert to another tenure form.
- What the implications are for GAIN, MAINTAIN and DISPOSE when I convert.

### 3.1 Gaining Land, Housing and Services

Once Federation members have identified land they move into negotiations to secure it, by sale or donation or making an availability agreement with municipalities, and they apply for subsidies. At this point the “who” question comes up “In whose name will the land be secured?”

There is a choice to be made regarding this question. The municipality, individual members of the Alliance, or the group of Alliance members could own the land, i.e. hold the real rights to the land. If the municipality owns it, Alliance members will have personal rights as tenants. If a group of Alliance members own the land, they would need to form a juristic person, which they can do by registering a CPA (or co-operative), which will hold the real rights. Members will also have personal rights that are written down in the constitution, in a use agreement and in community rules.

- Issues to be considered in GAINING land, housing and services include
- ✓ Which tenure forms do the various stakeholders support, and what influence do they have to force their choice?
  - ✓ How does the tenure form affect my access to a subsidy, housing and services and the quality and the cost of land, housing and services?
  - ✓ How does the tenure form affect the evidence I get of my land right?

#### 3.1.1 Influences and choice

Different stakeholders support different tenure forms and can influence the outcomes of choices by enabling or blocking access to resources that people may want. The key stakeholders that have influenced Alliance members’ choices are sellers or donors of land, PD-Utshani, the municipality and the Provincial Housing Department or Board. According to Alliance members such pressure has come up in various ways, including:

- ✓ Refusal to approve institutional subsidies and approving individual subsidies.
- ✓ Describing one type of tenure as having mainly advantages and another as creating problems.
- ✓ Presenting the choice between collective or individual ownership in such a way as to privilege individual ownership with respect to the delivery of municipal services – in other words there is the threat of having no municipal services if people opt for communal ownership.

Officials push tenure forms that they are familiar with and therefore trust, and that fit the systems that they work with everyday. For urban housing projects, town planning regulations and the housing subsidy programme assume, and are tailored for, individual ownership. By contrast, in land reform projects in rural areas, officials push CPAs.

Alliance members do not have complete freedom to choose what they really want, for only limited options are available and some Alliance members of CPAs feel they did not really understand the implications of the choice they were making when they opted for a CPA. There are also PD staff who acknowledge they do not yet properly understand the implications of different options over time. This, combined with a

strong political intervention, can mean people do not make choices that are necessarily the best they could make for themselves.

People's Dialogue has actively encouraged the SAHPF to own land collectively in the spirit of the Alliance's objectives of building a social movement and building assets owned and controlled by the poor. Mutual support and building social assets for poor and vulnerable people was an important factor in choosing communal tenure.

#### **Box 4. Alliance experience: Influence on choice of tenure form**

In Alliance projects in the Eastern Cape PD staff who strongly supported the CPA route noted that *“Province said that if they [project members] insisted on going the CPA route, it would give the communities a hard time as they would have to pay ‘rent’ and warned that ‘it is a long route’ ”*. Members of an Alliance project in the Eastern Cape have discussed the question of tenure forms but do not yet have experience of owning land, so that they have to rely on what they are told by others. *[At first] we all loved the communal ownership [but] later we were made aware of the problems with the CPA and some advantages of the PHP's [which people understood to mean individual tenure] so we decided to change*. A factor in changing from a CPA was that *“each beneficiary wanted to have their own title deed”*. *“Now there aren't any problems, people are happy with individual titles”*.

### **3.1.2 Subsidies**

Group ownership allows the group to apply for an institutional subsidy, which means that households are all eligible for the highest subsidy amount, irrespective of what they earn. This can end up being bigger per household than an individual subsidy because it is not differentiated across income bands.

*See Box 5 to explain the different subsidies.*

### **3.1.3 Services**

In subsidy housing developments with individual ownership the developer (which may be the municipality) takes responsibility for providing services and installing the infrastructure to standards required by the municipality. In the case of group ownership the picture is much more complex. In providing services to households that hold land as a group, municipalities face a dilemma. In law, land owned by a CPA (and the same is true for a co-operative) is private land, so that the CPA as a legal entity is responsible for providing services to individual families living inside its boundaries and for maintaining service infrastructure. However, if the CPA can't afford to do this, the legal obligation of the municipality to provide services comes into play, because some land is always set aside as public land, e.g access roads, land for utilities owned by the municipality, state land for schools, etc

## Box 5 Project-linked, institutional and consolidation subsidies

Within the housing subsidy scheme option, a range of alternative subsidy instruments exist .

The project-linked subsidy is applied to housing projects and provides for individual ownership. This subsidy gives individuals access to a housing subsidy to acquire ownership of, or upgrade an existing property, or to purchase/build a new property.

Institutional subsidies are allocated to an institution (e.g.a co-operative or a housing association) as opposed to an individual and provide for alternative forms of tenure (e.g group ownership or rental).

Consolidation subsidies are available to individuals who have received housing assistance under the previous government in the form of a serviced site.

The Discount Benefit Scheme (being phased out) allows long-term tenants of public rental stock to receive a discount on the historic cost of a property. The Hostel Upgrading Programme provides assistance for the upgrading of publicly owned hostels.

Criteria for subsidy qualification are based largely on income. Anyone earning less than R3,500.00 per month and meeting a range of other criteria (age, dependants, not received assistance before) is eligible. The subsidy is stepped and the lowest income earners qualify for a higher subsidy.

Although the subsidy amounts were revised upwards in 1999, they did not keep up with inflation. It was only in May 2002 that the government announced an increase in the subsidy amounts to align the value of the subsidy with the effect of inflation. In future, this is to be reviewed annually on the basis with a formula to be developed for this purpose.

The present value of R16,000 in 1996 has been calculated at R20,058. The construction industry estimated the cost of the 30m<sup>2</sup> house at R13,418. It is the latter amount that was selected to increase the amount of the subsidy (Department of Housing, 2002). Cabinet also approved the principle of a beneficiary contribution, to be made either in terms of a financial contribution, or through participation in the People's Housing Process. The beneficiary contribution has been set at R2,479. Therefore, the new amount is R22,819, minus the beneficiary contribution of R 2,479, or R 20,340.

The breakdown per subsidy band is presented in the following table.

### *Housing subsidy scheme instruments and income bands*

Monthly beneficiary income	Project-linked capital subsidy	Consolidation subsidy	Institutional subsidy
up to R1,500	R20,340.00	R10,940.00	R27,000.00
R1 501 – R2,500	R12,700.00	-	R27,000.00
R2 501 – R3,500	R7,000.00	-	R27,000.00

. Note: From April 2005 all earning below R3,500 can access a uniform subsidy amount.

Old age, disabled and indigent households will be able to claim the full R22 800.00 subsidy. In addition, the subsidy amounts for medium density housing- primarily developed through the institutional subsidy has been increased to R27 000. 00.

*Note: A new housing policy “Breaking New Ground” was adopted in Sept 2004, and this has implications that this report has not explored. Suggestions are:*

- *Funding for acquisition of land separately form the subsidy is likely to further encourage individual ownership.*
- *A new funding mechanism for developing community facilities could help build a greater sense of community in individual ownership housing subsidy projects.*



Servitudes<sup>2</sup> need to be created where the municipality is to take responsibility for providing services. They can be created over land held in group ownership and provide a way to bring services such as roads and bulk water supply closer to families in the group. Creation of super-blocks provides a way to do this systematically during planning. Usually subdivision is to individual sites, which is a smallish block on a map. A super-block is when individual site sub-division but something larger than that, within which individual sites are located but are not surveyed.

*See figure 1. Comparison of three options*

In some group ownership situations, people have managed to get services put in, or at least some services, for example in Victoria Mxenge, who did not even have approved plans. It depends on what can be negotiated with the particular municipality, how open they are to this and how powerful the connections of the group with the municipality are. Not all groups can easily create and maintain such connections on their own.

Municipalities prefer to have one quality of infrastructure that they put in, and this is usually a high standard that is expensive to put in and cheaper for the municipality to maintain. However, many Federation members would rather put their subsidies and loans into a better house than into providing high standards of service infrastructure in the beginning. Group ownership means that they may be able to decide on the quality of services and reduce costs at the start of the project, but this will need to be negotiated.

#### **Box 6. Experience elsewhere: Services under group ownership**

The *Tenure Options for Social Housing Report* contains two examples of the way that services issues have played out in cases of group ownership. One is from Newlands West near Durban, where a CPA was established with support from PD-Utshani, and the other from the Afesis-Corplan project at Amalinda, where a co-operative was established and the land then divided into superblocks with a network of servitudes running between them.

*The water services in Newlands West are of the same level as the council, while the sewers are a lower standard and cost savings have been made on sewers.*

*In Amalinda, the co-operatives that own the land set standards, not the municipality. Importantly, the argument was won that everything up to the edge of the super-block is connector infrastructure, including the main road. As a result Consolidated Municipal Infrastructure Programme Programme (CMIP) funds will cover these costs, leaving more left over from the subsidy than usual.*

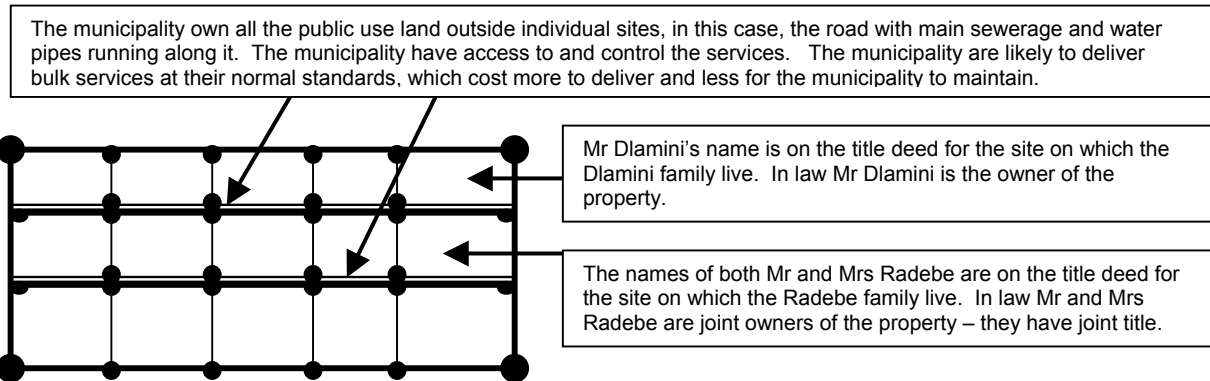
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<sup>2</sup> A servitude is a real right over another person's property, which is registered on the title deed of that property in the Deeds Office. For example, a municipality may have a servitude over a property so that it can install, maintain and control a water pipeline supplying people who live on that property or nearby.

**Figure 1. Comparison of arrangements for tenure, survey, and delivery of services.**

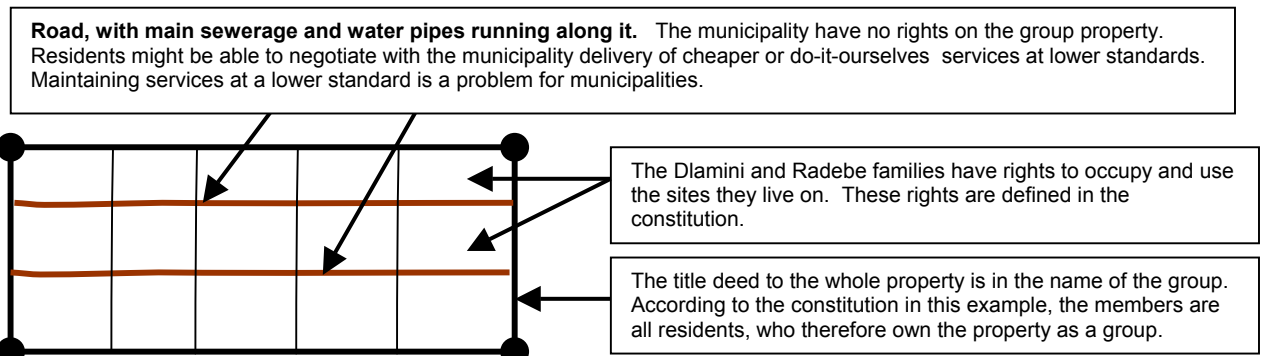
● ● indicates survey beacons

**Option 1: Individual ownership**



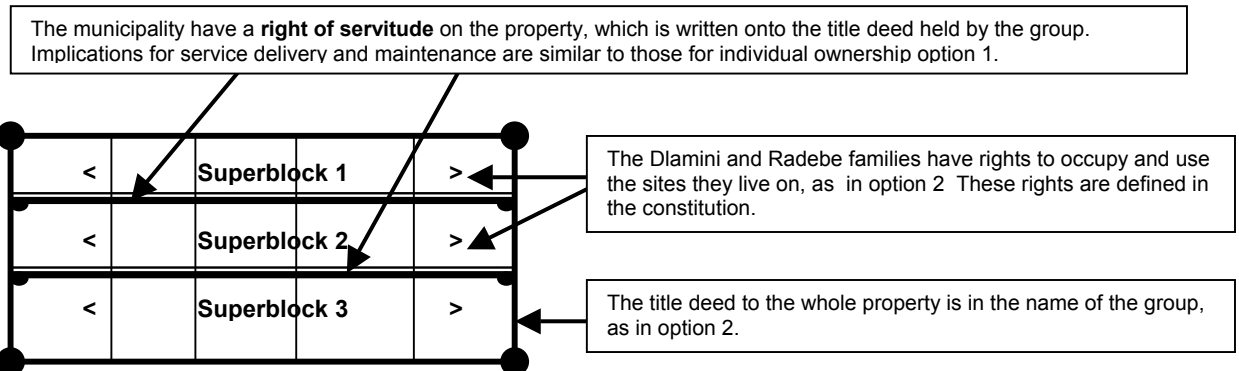
**Survey:** The boundaries of individual sites and of public use land are surveyed and registered.

**Option 2: Group ownership**



**Survey:** Only the outer boundary of the property is surveyed and registered. Individual sites are not surveyed.

**Option 3: Group ownership with servitudes and super-blocks**



**Survey:** In this example there are 5 sites in each superblock (note that the number of sites is often larger). The outer boundary of the property, the boundaries of the super-blocks, and the boundaries of the servitudes are surveyed and registered. Individual sites are not surveyed.

### 3.1.4 Costs of title

At both Vukuzelele, where some members of the CPA would like to change from group to individual title, and at Duncan Village, which plans to take individual ownership in the future, people had either not considered the cost aspect of individual title or were unaware of it.

In registration of transfer of land into both individual and group ownership, the main costs are survey and the costs of registration. It is not possible to give an average per site cost of registering transactions, because a number of fees are involved - transfer duty, property rates, registration fees and conveyancing fees – and these are linked to the value of the property and/or the sale price. There are different costs for different transactions and costs vary enormously.

If the people in a group trying to get land want individual ownership, the boundary of every plot has to be surveyed; if they want group ownership, only the outer boundary of the property has to be surveyed. This means that the total survey and registration costs for individual ownership are much higher than for communal ownership in the stage of getting land.

If people decide on individual ownership, there are ways to save on survey and registration costs. If a large number of surveys on adjacent plots are done at the same time (i.e. it can be dealt with as a bulk operation), the per site survey costs can be greatly reduced.<sup>3</sup> Per site costs, especially conveyancing costs, are also lower if individual properties are dealt with in bulk at the same time rather than one by one, for example if they are dealt with as a new township development. This is why so many developers prefer transfer to individual ownership right from the beginning of the project.

What does it mean for costs if people choose group ownership now, but want to keep open the option to convert to individual ownership later? If surveying of individual sites is done at the time that people are engaged with government in a housing project, it will be covered by the subsidy and a cheaper quote can be negotiated because survey can be done as a bulk operation. If surveying is done later, each owner has to pay these survey costs. Also, unless people decide to have survey done together, they lose the benefit of reduced costs from a bulk operation.

To get round this, one option for group ownership is to survey superblocs rather than individual sites at the time of the project. Formal layout within the superbloc can be done so that it is easier and thus cheaper to survey if people decide on this later.

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<sup>3</sup> Survey costs are higher when there are already buildings in place; when the ground is very hilly; or where the boundaries wiggle instead of being straight; or where overlapping rights or boundaries have to be adjudicated

**Box 7. Experience elsewhere: Effects of superblocks on costs of individualizing**

How does this play out in practice? The Tenure Options for Social Housing Report notes that “...going the superblock route first and individualizing later would in fact be slightly more expensive than undertaking full, individual survey, subdivision, registration and transfer of erven up front. In the case of Newlands West, it was estimated at about R100 more per site, excluding transfer.....

**3.1.5 Is it clear who has the land right, what the land right is and where it is?**

**Box 8. Alliance experience: Concerns about evidence**

Not having evidence (like a title deed) is a concern for people at Vukuzenzele, who agreed in 1998 to communal title, although many now think they would prefer individual title. “*The only proof I have that this is my house is my electricity card*”.... *I cannot make a will to leave my house to my son, as the lawyer will ask ‘But where is the proof that it’s your house?’*”.

Title deeds are issued for both individual and group ownership as explained above. In law it is completely clear who has the land right, what the land right is and where it is. In group ownership the boundaries of the property as a whole are surveyed and pegged on the ground and a title deed is issued to the legal entity, i.e. to the group which is holding the land. The title deed specifies the name of the legal entity (who, but only for the group as a whole) and the outer boundaries of the property (which/where), but only for the property as a whole.

The problem for group ownership is that the information on the rights of people inside the group may be limited, uneven or non-existent. The constitution and the list of members has to be submitted before the title deed is issued and are supposed to provide some additional evidence of who has what rights inside the group. In practice however membership lists often don’t reflect who are the real holders of rights and are never updated, and constitutions are usually written in such a way that they are not much use as evidence. Members of the group can decide to create further evidence themselves. This may be in the form of a use agreement, which is a contract between the CPA or co-op and the members setting out rules that make clear what the rights are for people inside the group (see Box 8).

In individual ownership the rights are largely with the person whose name is on the title deed, so thought should be given to whose name goes on. It does not have to be only one person, but can be a couple or some family members. This is one mechanism to protect women’s or other family members’ rights to the property.

### 3.1.6 How easy is it to get or confirm evidence of a land right?

Long delays in getting title deeds are normal, and worse in some places than others. A number of requirements have to be met before a transaction can be registered, for example:

- Resolving financial arrangements;
- Payment of municipal, and government taxes, prior to registration;
- Obtaining approvals for the subdivision/consolidation/opening of a township register;
- Sorting out deceased estates;
- Complying with legislation relating to the particular property involved (There are more than 300 statutes relating to land and ownership).

These can cause long delays in lodging documents for registration. Once documents have been lodged in a Deeds Registry, registration itself takes a few days, and then a title deed can be issued. The complex process means that getting a title deed can be a very slow process both for individual and for group ownership. Delays are worst in the former homeland areas.

The state holds evidence only of some land rights, and only title deeds are updated, and easy to locate and inspect. The Deeds Registry holds copies of title deeds and here they can't be tampered with, and it is easy for a member of the public to inspect them or get copies.

#### **Box 9. Experience elsewhere: Creating alternative forms of evidence**

*Individual ownership does have problems for poor people and for groups who wish to maintain group or community cohesion. There are experiments happening on alternatives and on how to overcome some of the problems with existing options. Two examples:*

The City of Cape Town is exploring (in New Rest) an idea of giving people rights on land that the city owns that are recorded in written agreements with the city. These rights will include nearly all the same rights as ownership but won't carry the same costs associated with registration. Credit institutions are not likely to lend money against them because they are not registered at the Deeds Office.

In the Ekuthuleni CPA in a rural area of KZN, CPA members are clear which family has the land right, what the land right is and where it is but they want written records of these rights. They don't want individual ownership because it is too expensive to maintain and will damage the sense of community. Instead, they have prepared maps that show where each family holds land, and documents that show who has the right. They have also developed the rule that each family has to put forward who will make decisions on their behalf if the family wants to transfer land permanently to anyone else. A great problem for Ekuthuleni is that it has been difficult to make links into the formal system for registration of land rights, which they need for external recognition of their land rights.

The Department of Land Affairs has the responsibility for maintaining a register of approved constitutions and lists of members of CPAs, but in practice it is very

difficult to get copies of these documents. The state holds no independent copies of records created by members of CPAs for their own use. For co-ops member lists are kept by the Registrar of Co-operatives, who must be informed quarterly about changes in membership.

## 3.2 Maintaining Land, Housing and Services

Maintaining is about the issues of how I can use my land to support the way I live, and having got land and housing how I keep them. Having and making use of land, housing and services is almost always subject to rules, and involve responsibilities as well as rights. Land, housing and services can be taken away under certain circumstances.

The issues here are How does the tenure form affect.....?

- What I may, and may not, do with my land and my house (*e.g. whether I can run any kind of business I like; whether I can make improvements on my house and land; whether I can use my property to raise credit; whether I can rent out my house*)
- What I must know about the dangers and obligations involved if I mortgage my property
- How infrastructure is maintained and services delivered and paid for (*e.g. who mends the roads and collects the rubbish; how do I pay for services*).
- The responsibilities I have to meet in order to keep my property (*e.g. the payments I have to make*)
- The protection I have against my property being taken away from me and the evidence I need to make this work. What I must do to keep the evidence of my property ownership up to date, whether I have individual ownership with a title deed or I am part of a CPA
- How conflicts and disputes about matters related to land are sorted out.
- Who makes decisions, and how, about these things, and how I can participate.
- Where I can go for help (recourse).
- Costs

### 3.2.1 Renting out: Can I rent out my property, or a room, or a shack on the property?

In group ownership, group rules should determine whether rental is allowed or not, i.e. it varies between groups. In practice people sometimes rent out even if this is not agreed in the group rules.

In individual ownership, the owner decides this and the formal system has clear procedures and enforcement for rental options where the ownership is clear.

In both cases the municipality may have laws (*e.g. that do not allow for renting of backyard shacks*) that also need to be taken into account.

### 3.2.2 Economic activities: Can I carry out activities that help me to make an income?

Municipalities draw up Town Planning or Land Use or Zoning schemes; which are plans to say what land uses can be allowed on public and private land. The plan identifies the permitted use of each surveyed property in the municipality e.g. residential, business, light industrial, industrial. This is usually called “zoning”. An owner has to apply to the local authority to get permission to change the use, e.g. from residential to business. Neighbouring owners and other interested parties have to be served notice of the proposed change and have a chance to object if they think the change will be bad for one or several reasons. These land use schemes restrict the right of the owner to do whatever they like on the property and the municipality has to enforce these regulations. These use rights are also referred to as “development rights”, meaning that the owner has the right to develop the land only in ways that fit the permitted land use in terms of the zoning regulations. Such planning schemes are supposed to apply to both individual and group ownership situations.

In practice, municipalities sometimes do and sometimes don't enforce such schemes. Where there is collective ownership of a property, that is, one title for a group of households, the zoning scheme still applies, although in practice it is more difficult to apply to the various individual owners, so this becomes a something to be regulated by the group.

In group ownership what may or may not be done also depends on agreements people have reached in each place. In group ownership using the land and house to generate income or help the household's livelihood are mostly allowed as the group recognises peoples' need. Usually groups restrict land uses that are seen to affect other members in a negative way. This includes the running of shebeens, brothels or gang activities. These aspects are generally well controlled in group ownership schemes. Successful enforcement depends on the strength of the group and its leadership.

#### **Box 10. Alliance experience: Rules about what people may and may not do**

That people have and follow rules is important to people at Duncan Village in the Eastern Cape, who plan to move to Amalinda. They started off with the idea of a CPA but have since been convinced to take individual ownership. They explained how they were thinking about **regulation**, and what should be allowed and not allowed in terms of land uses and activities. They want to “*encourage people to use sites for businesses, like selling vegetables, spazas and hawking*”; they want to control who comes in and out “*only one entrance to be able to enforce social control*”; *no gatherings without knowing why they are there, e.g. for a ritual or party, the community must be informed about it*; and they want to control who lives among them “*If someone wants to rent [to tenants], would have to approach the community as a whole – the problem is renters may not abide by our rules so renters must be approved by the community as a whole*”. They don't want activities which are criminal or have a negative social effect “*not any form of liquor – no shebeens, taverns and bars*”; *no drugs or drug dealers*; and are concerned about the kind of neighbourhood they will live in and health issues “*no shacks – the Municipality said it*

*doesn't want any shacks there, only houses; no noise and no poultry and small animals for health reasons."*

They have also thought about mechanisms to do this, recognizing that an important advantage of communal ownership is the possibility of community rules. They plan to have individual ownership but *"Although we have title, we want to keep our constitution. We asked Utshani to look for a lawyer so that after the agreement, every beneficiary must sign a form that will be attached to the agreement and the constitution will be attached. Each will have to sign the form – sign that people will abide by the rules. And the Municipality will have a copy of the Constitution."*

People at Victoria Mxenge have lived experience of working with community rules in a CPA. There is a strict rule – NO SHEBEENS – this is non negotiable. Other small businesses can just trade, there is no regulation (for example, welding or selling chickens) – *"they don't have to get agreement from the municipality – if someone wants to do something, they can just do it!"* Spazas are regulated. There is one community spaza shop and one other person has been granted permission to run a spaza shop privately. There is also regulation of sub-letting, this is also strictly not allowed – *"we don't want shacks behind houses!"* Some have done this, but have had them demolished.

Regulation has costs and benefits. *"As a squatter you can do as you please, but the conditions are bad"* (Duncan Village). People in the Vukuzenzele CPA commented that *"It's nice living here, we are strict about drink and drugs. I can send my boy down the street to another house late at night with R100 in his hand and he will be safe. It's not like the townships"*.

### **3.2.3 Credit: Can I use my property as collateral for credit?**

Some CPAs specifically restrict people from using the property as collateral. Some people see this restriction as a benefit, because it is designed to prevent distress sales and downward raiding, i.e. when poor people sell to more middle income people, thus changing the income profile of who was intended to benefit. Others complain that they cannot use their property as security to raise loans.

It is not easy to raise loan finance from low cost houses. Getting credit is highly dependent on factors other than tenure: risk profile (income, employment status, and the geographic area in which people live), are all important in getting or limiting access to credit. Individual ownership does not guarantee access to finance from formal lending institutions if owners are poor.

It is very important that people understand both the benefits and the dangers of using their property as collateral. It means they are giving up some of their rights to a third party who lends them money, but it means they could lose their land if things go wrong with their income and they cannot keep up the loan repayments.



**Box 11. Alliance experience: People want to use property as collateral for loans**

For people in the CPA at Vukuzenzele, one of the problems of not having title is that “I cannot get credit on the basis of having a house”. Collateral for credit, with shops or for cash loans, is one of the benefits of ownership people hope for.

**3.2.4 Maintaining and paying for infrastructure and services**

It is the landowners both in group and individual ownership who are responsible for payment for services.

The group ownership choice can enable greater freedom in choosing standards of services and therefore cost savings on service infrastructure at the outset. However, projects which made this choice in the GAIN phase, have had problems in the MAINTAIN phase with **maintenance** of infrastructure and some services, and with **billing**.

Groups are responsible for providing and maintaining services because the land they own is technically private land, including that inside superblocks. Some municipalities will service inside superblocks, but will not take responsibility for maintaining them.

**Box 12. Alliance experience: Problems with service maintenance and further development under group ownership.**

In Victoria Mxenge the CPA at first managed refuse collection internally: *We used to have women who cleaned up the place, but that system broke down and we don't do it anymore.* The municipality now delivers water, refuse collection and sewerage. There is still confusion about the billing, as Council was using the wrong erf numbers, and have not liaised clearly with the Committee to sort this out. *They first gave us an estimated bill but we challenged this. We have a bulk meter now [for water] and we are to note the data. We didn't do this continuously, but now the billing looks more reasonable. They are supposed to train us to read the individual meters so we can collect from people to pay the bulk bill.*

Victoria Mxenge is built on an old landfill site. People did their own layout, taking care to avoid bad places when putting in roads and houses; they worked with standards that were acceptable to them. They achieved cost savings on capital infrastructure, although the municipality wanted them to wait 5 years before building. Now they want to place all the roads under servitudes to the municipality, *not just the one road as it is now.* They are struggling to get approval of their layout from the municipality. *We targeted the politicians – saying ‘use us as an example’.* *The mayor was concerned, and we targeted the Ward Councillor as elections are coming up. But they still have not approved the layout.* This is holding up approval of further services like streetlights.

**Bulk bills** for services are a particular problem for Federation CPAs. Victoria Mxenge have had to work hard to get bills that at least feel reasonably correct. A bigger problem for CPA leadership is that of the administrative burden of managing household contributions to a single large bill and dealing with non-payment. Individual metering and billing is preferred. The Cape Town Federation CPAs do not have the same administration problems with electricity because pre-paid electricity metering has been installed.

**Box 13. Alliance experience: Problems with bulk billing under group ownership.**

Vukuzenzele CPA in Cape Town has individual water meters, but the Council insists on billing the CPA collectively:

*“ We get a bulk water bill from Council, and we do not pay this. As it’s a bulk bill no one cares, you can’t tell who has used what, some use a lot, some very little, people from the informal settlement come and use this water. We owe R18,000. We are waiting for council to approach us and then work out with them what to do. We hope they do not cut our water off.”*

In individual ownership schemes refuse collection, water provision and electricity provision are billed to the individual landowner. It then becomes the responsibility of each household to sort out problems they may find with billing or payment (see Box 10 below).

Problems are being experienced with implementing **free basic services** for each household unless each unit is metered.

### 3.2.5 Responsibilities I have to meet

**Box 14. Experience elsewhere: Rates, billing and threatened evictions**

Pietermaritzburg has recently introduced a consolidated billing system in which landowners are sent monthly bills covering both their rates and services. A spokesperson of the Eastwood Community Forum described the situation. *“When it comes to electricity our lights get cut if we have not paid within 30 to 32 days.... And you are then forced to pay a reconnection fee. Johannesburg... gives people up to 90 days.... There are 7500 houses on the eviction list in Eastwood... We don’t even know how they did the [rates] evaluation. We want a re-evaluation, we don’t think many of the houses are worth more than R40 000. He told the gathering that they are not alone. He has been in touch with community forums in Durban, Cape Town and Johannesburg, where poor people are experiencing similar problems. Caught in a web of unemployment and poverty, many also face eviction from their homes... (The Witness, “Amid chaos over evictions, rates... the poor unite to fight for their homes” 31 August 2004).*

*“It’s double trouble for Imbali residents – as they battle to raise the money to settle their rates bills, they have been dealt another blow with regard to water bills. Several*

*residents in Unit 2 last paid for water 10 years ago, as they were involved in the boycott on service payments and have not received a water bill for 10 years. They say that now, without any prior discussion of explanation, they have received water accounts which require them to pay amounts ranging from R5000 to R16000 to the Msunduzi Municipality... Echo, "Shock as residents told they owe thousands for water" September 23 2004*

Landowners in both individual and group ownership are liable to pay rates. Land reform communities are exempted for 10 years, but this is not true for urban housing CPAs. There is a new law on rates that allows each municipality to set its own policies. This is new so there is not much experience yet of just what this means in practice. However the approach of municipalities is that there is one bill for one landowner. In larger municipalities rates rebates are being applied to properties below a certain value and in Cape Town for example, the maximum property value eligible for exemption is R60 000. Rates are a concern for landowners because municipalities can seize and sell properties if rates are not paid.

Indigent families having individual ownership have to apply for rates exemption. Where municipalities have weak administration systems and unclear policies, poor people under individual ownership have been threatened with eviction.

There are two issues that relate to rates and group ownership. Land and houses held in group ownership count as one property for the purposes of rates assessment and the CPA or co-op is the landowner. If eligibility were based on the value of individual family holdings, then exemption would apply. However groups as landowners usually do not qualify for exemption as the collective property value exceeds the maximum value for which exemption would be granted. This will need to be urgently negotiated with each municipality.

The second issue is that if groups have to pay rates then the collection of rates from members adds to the administration burden of the committee.

### **3.2.6 Protection against having property taken away and the evidence I need to gain such protection**

In groups rights and obligations are set out in constitutions, statutes and members agreements and this is where people's legal protection lies. However it is very common in CPAs that constitutions are weak or unclear on protection issues, and that people are not familiar with their constitutions or do not or cannot follow them in a number of respects. These factors undermine protection. Good governance is also very important in protection - it is very difficult for individuals and families to defend or enforce tenure rights where the structures are not working or are operating in undemocratic ways. Even where there are problems experienced with governance, as in Vukuzenzele, people experience benefits of group oversight in providing support and security to the community and its members.

Federation members and leaders need assurance that members' individual rights are strong and enforceable; but how they will be defended and enforced has not been worked out in detail in the Federation CPAs. The threat is not so much that within the

group one member would take away the property of another, as much as that CPA properties could potentially be at risk if the CPA does not meet payments. If some members do not pay, then other start not to pay too and this can become a growing problem. When conflict arises between members and factions then who makes what decisions becomes unclear. This undermines the authority of the leadership and can lead to the group pushing in different directions rather than being unified and doing what is necessary to protect the group and its members.

Section 12 of the CPA Act offers some protection against the loss of CPA (group) property due to mortgages and sales by individuals. Neither the whole nor any part of the immovable property of a CPA (which would include the all land, including residential sites and the houses on them) can be mortgaged or sold without the consent of the majority of members in a general meeting. Not every transaction needs this consent – and a general meeting could legally make a rule allowing sales under certain conditions, an example of which is the pre-emptive clause used in the constitutions and/or use agreements in Federation CPAs. However, any mortgage or sale which does not have such consent could legally be set aside. To get this clause to work in practice, a member would have to take action.

In individual ownership there is in legal terms a high level of protection as long as a landowner continues to meet obligations.

In the Eastern Cape there is a long history of title for individual ownership to poor people. Many mortgaged their properties, not understanding that when they took up a mortgage, it was registered on their title deed in the Deeds Office as evidence that their creditors could use, and that they only continued to have ownership rights on the condition that their debt was repaid. After repeated failures to repay their debt they lost their land.

There are “economic evictions” that take place when people cannot pay their bills or loans. There are now some mechanisms in place such as Free Basic Services and property rates rebates (in some provinces) which protect people to a degree against not being able to afford the costs that come with formalisation and ownership. What actually happens depends to a large extent on municipal implementation.

Ownership protection will be high for the person or people whose name/s appear on the title deed – this can be an individual or a couple or a small group. So not everyone inside the family may have the same level of rights and therefore protection. This may be affected by relations of power in the family. If a man’s name appears on the title deed but his wife’s name or his elderly parent’s name or his children’s names do not appear, the man could legally decide to mortgage or sell the property in despite of their interests. This is a common problem that needs to be guarded against.

### **3.2.7 Governance, participation and decision-making**

Having a title deed does not mean “I can do as I please” – it is more about some level of decision-making within a huge framework of other laws and conditions. The decisions of the title holder in both individual and group ownership are legally limited by national, provincial and municipal laws and regulations, by zoning schemes, by

contracts that the title holder has entered into, and by servitudes and mortgages which appear on the title deed. People in both individual and group ownership systems have a responsibility to abide by rules that apply locally.

In group ownership situations, there is some group authority over internal decision-making. How this happens should be governed by the constitution or members' agreements. In the case of CPAs these are set up in terms of the CPA Act, which requires certain principles in constitutions to hold and manage land including fair and inclusive decision-making, democratic processes and accountability and transparency, and puts in place certain mechanisms for monitoring and intervention if the law is broken. In co-operatives members collectively own the institution through the shares they hold in it. The rights of membership include the right to vote at general and annual meetings, and to elect representatives to perform management functions

Whether internal governance, members' participation and enforcement work in practice depends upon the internal workings of the structures set up to hold land, as well as the external back-up there is for the structures and for members.

Majority decision-making does bind individual members, so there is a balancing needed between group and individual rights and duties. For good internal governance:

- people must know the rules and accept responsibility to abide by them;
- if the rules are broken they must be enforced, which may involve punishment of offenders;
- and to make these happen authority structures and procedures must be working.

Enforcement is always a difficult issue in group ownership situations because people have to continue to live together. One possibility is strong leadership and broad support inside the group - getting illegal shacks demolished suggests that both leadership and support inside the group are strong at Victoria Mxenge, but this is unusual. Where local leadership is weak or divided, enforcement needs back-up support by an outside authority, which could be different for different kinds of enforcement problems and might involve drawing on good local relationships, or on recourse offered by the state.

Group ownership models envisage a high level of participation. To function well, members should be very active and challenge each other and the committee. If the structures and procedures are not working, (e.g. committees or members' meetings do not meet regularly or are run in undemocratic ways), this will threaten the ability and enthusiasm of members to participate and will make it very difficult, and sometimes impossible, to get outside intervention to help solve the problems.

Implementing the legal requirements of CPA's is difficult because there is very little back-up support from the state. Support from NGOs such as Legal Resources Centre is limited to what they can manage to take on.

With individual ownership the title holder has authority over decision-making, within the limits explained above. There are other things that might limit this such as a

marriage contract, which may include agreements regarding the property, which is why marriage contracts are always checked when property is formally transferred.

### 3.2.8 Conflicts, disputes and recourse

In group ownership if there is a dispute between members, they would usually start by going to the committee. If members are in dispute with the committee in theory CPAs should be able to go to DLA for help. A very small number of rural CPAs have sought help from DLA and got it. Most do not seek such help unless they are desperate, and their experience is that DLA has a serious lack of capacity, and that it is difficult to mobilize help without legal assistance (for example, from Legal Resources Centre).

In individual ownership it is up to the individual to get a lawyer.

## 3.3 Disposing of Land and Housing

This is about **changing who has rights to the land or the house**: by selling it, bequeathing it, or putting a mortgage on it

The questions here are:

How does the tenure form affect.....

- Selling the land and house, including improvements I have made (*whether I can do this, under what conditions, how this happens – i.e. by what procedures, and the evidence I need to make this work*).
- Whether I can benefit from investments I make in the property.
- Bequeathing the land and house (*what happens when I die, and what evidence I need to make this work how are vulnerable people, such as women and orphans, tenure rights protected*).
- Costs of changing who has rights to the land or the house

### 3.3.1 Selling my property

In group ownership options, selling the land and house may be restricted by previous agreements under which subsidies were used for land or housing, by the requirements of laws like section 12 of the CPA Act, and by agreements in constitutions and members' agreements.

For group ownership options that drew on the institutional subsidy, there is a requirement that the Department of Housing should have first right of refusal within the first eight years, and this influences the formal sale of properties. In group ownership, when subsidies have been granted, the incoming rights-holder must be eligible in terms of the subsidy criteria. These pre-emptive clauses are included in constitutions or use agreements in SAHPF CPAs. Once the eight-year period has elapsed, the CPA will retain a pre-emptive right in respect of sale. This means that even after eight years, no-one may legally sell their property without CPA approval.

An important difference from individual ownership is that internal sales of rights in CPAs are not registered in the Deeds Registry. It is up to the CPA to keep its internal records. CPAs are supposed to report changes in membership to the DLA, but it is well known that this is not done nor is it demanded. The Federation reportedly plans to develop a simple form as evidence that rights have been sold which would be legally binding.

For individual ownership options that draw on the project linked subsidy the owner can sell, but they will not be able to get a subsidy again.

Where land and houses are bought and sold in the formal system, a number of requirements have to be met before the transfer can be registered in the Deeds Office. The seller has to have outstanding rates bills paid up and get rates clearance from the municipality. A mortgage either has to be paid up (in which case the bond comes off the title deed) or the new owner has to take on responsibility for paying it. Also, a servitude registered on a title deed will continue to apply under the new owner.

The delays and costs associated with formal transfer of ownership mean that many sales happen without getting approval and without paying a conveyancer and getting registration of the change in ownership on the title deed in the Deeds Office. This means that there is no external evidence of the transfer of ownership. Some people try and compensate for this by getting the sale witnessed at a police station; however this may not be recognised by a court as valid evidence.

### **3.3.2 Bequeathing my property**

The issue of inheritance comes up regularly for people. In group ownership, the mechanisms governing the sale and bequeathing of rights depend on the group's agreements and rules in the constitution, statute or in the use agreements. One of the benefits Alliance members identified to group ownership is that orphans can be protected from having their houses taken by relatives. The Federation plans to develop simple mechanisms to witness and record agreements within the CPA with regard to inheritance that would be legally binding, i.e. to create evidence of such agreements would be helpful to people. Even without this group ownership is providing some protection to vulnerable people in terms of inheritance.

In individual ownership situations the owner, i.e. the person or people whose name/s are on the title deed can bequeath the land and house. This may leave vulnerable family members whose names are not on the title deed without a home. Bequeathing ownership requires that the new owner is registered at the Deeds Office otherwise the deceased person is still the legal owner.

### **Box 15. Alliance experience of contested inheritance**

Patricia Matolengwe described what is happening at Victoria Mxenge:

*We have had 4 cases now (of contested inheritance). Our Constitution says that the houses belong to the children. 2 cases are giving us difficulty, where the extended family is trying to take over. One woman had no child, but she said in a minuted meeting that her house should go to the Association. The extended family got legal advisors to challenge this. We allocated the house to a landless person. In another case a woman did call me when she was very sick to say she wanted her boyfriend to stay in the house until he wanted to go. Her son had died already. We called witnesses including the social worker and her employer. We used all that evidence. She was very sick and could not talk easily. The family wanted to take over the house. We preferred the house go to one of her sisters who is blind. We are together on these things in the community. We want people to write wills.*

### **3.4. Converting From Group to Individual Ownership**

This is about changing from one tenure form to another.

People come back to the point of choice and need to consider the questions under GAIN, MAINTAIN and DISPOSE. The answers may look different because things will have already happened on the land.

The questions here are:

How does the tenure form affect.... ?

- Whether I can convert to another tenure form.
- What the implications are for GAIN, MAINTAIN and DISPOSE when I convert.

The question of conversion comes up only in group ownership systems, where people want to convert to individual tenure. This is legally possible, although the majority of members would have to agree. The institutional subsidy regulations apply, which permit conversion to individual ownership after a period of four years has elapsed. There are cases in the Federation where people have changed their minds and opted for individual rather than group ownership before transfer of title. Where groups take group ownership, but plan to convert to individual ownership later, or want to keep their option open to do this, they can bring down the costs of conversion by survey of individual sites or superblocks before transfer as explained above under GAINING.

Where people have already taken title under group ownership, some are dissatisfied and would like to change to individual ownership. An investigation of what the costs and procedures will be will need to be worked out for each case. Also people should take the time to think through thoroughly if there are other ways they can meet their needs, as there are problems for poor people with individual ownership.



## **4. Implications**

The report has so far compared individual and group ownership options through the tenure cycle of gain, maintain, dispose etc. It now considers the implications of this comparison, drawing together and summarizing what has emerged.

### **4.1 Choosing tenure form**

Most people seeking housing do not have a free and open choice about the tenure form, although our policies say they do and should have. Those who people seeking housing work with (officials, ngos, professionals etc) have a strong influence on this choice. It is also not easy to present options with all their implications objectively and clearly to enable groups to make an informed choice. Moreover there is currently no option that does not have drawbacks for poor people. However there is now experience on the implications of options that was not available to be drawn on before. This can be used to create better understanding and to develop tools to inform and support choice making. The choice groups make will partly depend on the degree of support to alternatives to individual ownership that is available, either from the Alliance or from partnerships the Alliance may seek to develop.

In the short term, the question is not simply whether individual OR group ownership is the better option, but how poor people can best draw on the experience of BOTH to put together the best arrangements. If group ownership is the route, as people do want community oversight and the social support and protection this can offer, the challenge is how to strengthen individual rights, and support good governance. If the individual ownership route is chosen the question is how to create mechanisms for group oversight and collective action and support and community building.

The DLA has passed a new piece of legislation: the Communal Land Rights Act (CLARA), which is due to start implementation some time next year. This offers strong individual rights, registered in the Deeds Office, in a communal system, with community oversight. This will be worth watching as it may offer some solutions to CPAs, and widen options for new projects. Changes are being made to co-operative legislation specifically to take into account housing co-ops; this too should be assessed.

### **4.2 Back-up and support**

The government provides support to individual ownership in ways that it does not provide to group ownership. This support includes keeping a record of rights in the Deeds Office. The housing subsidy can be used to pay for the costs of surveying and registration the in the first place, but after that it is up to the owner to pay for the costs of re-registration when s/he wants to sell, bequeath or mortgage. If the owner does not do this, then the title deed has no legal force in securing the occupiers rights to the property since the owner remains the person whose name is on the title deed. People taking the individual ownership option must be helped to understand this.

The Alliance needs to provide or organise back-up to group ownership to compensate for the lack of state support, to support the CPAs in place and if the Alliance is going to pursue group ownership. This is needed at two levels. Firstly to help those people who want to use the group option to pursue it in the face of official resistance. Secondly to give good support to committees, because having functional structures in group systems is important in order to meet the objectives for tenure security and development. Groups need to set up and run land administration in their projects. We have included some detailed suggestions on what such back-up consists of in the recommendations section, in Section 5.1.1.

### **4.3 Services**

Group ownership choice can give groups greater freedom in choosing standards of services and what they provide and maintain themselves. They can save on costs in this way, but they need to decide how much responsibility they want to take and can manage. The group can create superblocks, and can give the municipality servitudes, so that the municipality can deliver and maintain services. All this will take a lot of thinking through and also negotiation with the municipality.

CPAs have experienced problems and in maintaining infrastructure and services, and with bulk bills. It is difficult for groups to manage when people do not pay. The group should seek options for payment that relieve them of as much burden as possible (e.g pre-paid electricity is a useful model). Strong leadership is needed to manage both the municipality (who are often unclear how to proceed with a group ownership option), and with the membership regarding payments.

In individual ownership, the responsibility for payment of services falls on individual families. Families may be threatened with eviction or forced sales if they cannot pay their service bills. Alliance groups that go the individual ownership route can provide the basis for collective action for mutual protection, or for collective bargaining with the municipality in such cases.

### **4.4 Rates**

Alliance CPAs are not yet having to pay rates, but they are a concern as landowners are liable to pay rates. Land and houses held in group ownership count as one property for the purposes of rates assessment, and the value of the property means they are unlikely to qualify for rebates. These will need to be actively negotiated. Rates are a concern for landowners because municipalities can seize and sell properties if rates are not paid

Poor families having individual ownership have to apply for rates exemption. Where municipalities have weak administration systems and unclear policies, poor people under individual ownership have been threatened with eviction

## 4.5 Evidence of property rights

The group ownership option can save money per site by not having each plot surveyed and registered. However if they decide to do individual subdivision and registration later it will be more expensive than it would have been to do it in the first place. People can choose to go the group ownership options and still have individual plot sites surveyed so that the information is there to strengthen individual property records and possibility of change is there for later. It would mean then only having to register the rights at the Deeds Office.

Members of groups need to create records in order to strengthen individual rights and evidence of this. This may be in the form of a use agreement, which is a contract between the group and the members setting out rules that make clear what the rights are where for who inside the group. These agreements can be used in court to assert rights. A less expensive method than survey is being pushed by some people, using methods such as GPS satellite technology for demarcating individual sites. These are not yet recognised by the Deeds Office.

In individual ownership the rights are largely with the person whose name is on the title deed, so thought should be given to whose name goes on. It does not have to be only one person, but can be a couple or some family members. This is one mechanism to protect women's or other family members rights to the property.

## 4.6 Land use and livelihoods

Municipalities draw up Land Use or Zoning schemes that say what the “use rights” or “development rights” in any area are. Such planning schemes are supposed to apply to both individual and group ownership situations, but municipalities are often not able to enforce such schemes in group ownership or informal systems.

In group ownership what may or may not be done also depends on agreements people have reached in each place. Using the land and house to generate income or help the household's livelihood are mostly allowed. Group rules should determine whether rental is allowed or not. Usually groups restrict land uses that are seen to affect other members in a negative way, including the running of shebeens, brothels or gang activities. These aspects are generally well controlled in group ownership schemes. Successful enforcement depends on the strength of the group and its leadership.

In individual ownership, the owner decides whether rental takes place, and is subject to the laws that govern this.

Access to credit is often what people ask about. Getting credit is highly dependent on factors other than tenure: risk profile is more important in getting or limiting access to credit than tenure is. Individual ownership does not guarantee access to finance from formal lending institutions if owners are poor.

## **4.7 Protection and decision making**

Decision-making falls within a framework of laws and regulations, zoning schemes, contracts that the titleholder has entered into, and servitudes and mortgages that appear on the title deed.

In group ownership rights and obligations are also set out in constitutions and members agreements. However constitutions are commonly not clear on key issues, and are often not well understood. Groups often do not follow what is in the constitution with regard to decision-making. What can undermine the authority of committees is non-payment by some members, which can lead to a growing problem. Conflict between members and factions that is not resolved undermines decision-making and authority. If the group starts pushing in different directions rather than being unified, it will no longer be able to do what is necessary to protect the group and its members.

The CPA Act has mechanisms for monitoring and intervention if a CPA experiences problems of this sort. If members are in dispute with the committee in theory they can ask DLA for help, although experience is that DLA has a serious lack of capacity, and it is difficult to mobilize help without legal assistance (for example, from Legal Resources Centre). If the structures and procedures are not working, (e.g. committees or members' meetings do not meet regularly or are run in undemocratic ways) participation by members and getting outside intervention to help with problem solving gets very difficult or impossible.

In individual ownership there is a high level of protection in legal terms as long as a landowner continues to meet obligations. "Economic evictions" do take place when people cannot pay their bills or loans. Free Basic Services and property rates rebates (in some provinces) are supposed to protect people to a degree against not being able to afford the costs that come with formalisation and ownership.

Ownership protection will be high for the person or people whose name/s appear on the title deed. Not everyone inside the family may have the same level of rights and therefore protection. A marriage contract can offer some protection. Decision making and degree of protection may be affected by and relations of power in the family. This is affected by the external environment, such as social and political attitudes and prejudices towards women or children owning or inheriting property. This is a common problem that needs to be guarded against.

## **4.8 Sale of property**

In group ownership selling the land and house is restricted by subsidies agreements, by the requirements of the laws governing CPAs and co-ops, and by agreements in constitutions and members' agreements. In most cases there are restrictions on sale by members.

An important difference from individual ownership is that internal sales of rights in CPAs and co-ops are not registered in the Deeds Registry. It is up to the group to keep its internal records.

For individual ownership options that draw on the institutional or the project linked subsidy the owner can sell, but the buyer must be eligible in terms of the subsidy criteria. For title to be transferred the formal process must be followed and this will be costly – the seller and buyer agree on who pays for this.

## **4.9 Inheritance**

In group ownership the mechanisms governing bequeathing of rights depend on the rules in the constitution or use agreement. There are examples in CPAs that the group is protecting the rights of vulnerable family members, and this is of great social benefit in the context where many people not write wills and HIV Aids is making children vulnerable. Mechanisms to witness and record agreements within the group with regard to inheritance can be done, and principles for the group can be agreed to, to guide decision-making.

In individual ownership situations the owner, i.e. the person or people whose name/s are on the title deed, can bequeath the land and house. This may leave vulnerable family members whose names are not on the title deed without a home. The formal process needs to be gone through for the title deed to be valid, and this is costly.

## **4.10 Changing tenure form**

Conversion is coming up where people want to convert from group to individual tenure. This is legally possible, although in group ownership, the majority of members would have to agree and pay for it. The institutional subsidy regulations apply, which permit conversion to individual ownership after a period of four years has elapsed. Where groups take group ownership, but plan to convert to individual ownership later, they can bring down the costs of conversion by survey of individual sites in the first place. Where people have already taken title under group ownership, and some are dissatisfied and would like to change to individual ownership, this will need to be carefully costed. Alternatives to strengthen individual rights could be considered. The newly passed Communal Land Rights Act may offer an avenue to explore in this regard.

## **4.11 The tenure people ask for**

Various groups have expressed a desire for a tenure option that will build on the group's strength that enabled them to secure the land and offer mutual support, but that will also provide members with strong and secure individual rights. Such options are not currently readily available but need to be crafted from existing options, and require external support to work.

The problems with tenure options that exist are their affordability and sustainability for poor people, and their impact on poor peoples' livelihoods and development possibilities. The current dominant approaches push the idea that the securest form of tenure is individual title. However in many urban housing projects where individual

title deeds were issued, further registration of transfers in title due to death or sale often does not take place (due to e.g. access, expense, restrictions or conflicts) Informal land sales take place on a large scale, and then the benefits of individual ownership in delivering strong enforceable individual rights start to fall away.

The alternative to individual title is group tenure. This requires structures to function well to be able meet the many demands that are made on them; internally and from municipalities. There is no real support from government to this form of tenure, so it needs to come from elsewhere. However group ownership has many advantages for poor and vulnerable people, providing for social networks and support as the experience of the CPA members indicates.

## 4.12 Co-operatives

There are different tenure forms for group ownership than CPAs. Co-operatives are the other form of group ownership that is being tried for group ownership of housing in South Africa. Co-ops have been used in other parts of the world for housing. The legislation co-ops fall under in South Africa does not cater explicitly for housing co-operatives, although this is changing. However, support to the co-operative “movement” is available from the Social Housing Foundation, Rooftops Canada and COPE Housing Association. In particular, COPE Housing Association has spear-headed the formulation of statutes, provides housing management services and Norad and Rooftops Canada provide financial and technical support.

The Registrar of Co-ops does require quarterly reports on changes in membership. NGOs supporting co-ops provide them with formatted forms and administrative systems, to help them keep records.

In co-ops members have shares in the co-op, which gives them memberships rights; mainly the right to vote and elect, and to occupy a housing unit, as defined in a “use agreement”. Most of the issues that come up for group ownership in all the tenure stages as described above, are true for co-ops too. The NGOs that work with co-ops have developed a number of systems and forms to assist them in property management. The co-op management is given a lot of support by the NGO. There are some different models for co-ops run by the different NGOs.

Co-ops do not offer simple solutions to problems faced by CPAs, but there are practical lessons in terms of support mechanisms offered to co-ops that the Alliance could draw from, such as record systems. Co-ops have on the ground support from some NGOs and funders, although this is limited. Locations where this may seem a useful way for particular Alliance projects to go, and where there is existing experience nearby and a partner to draw on, could be potential action learning sites. There is potential for sharing training materials, ideas and political strategies with those advocating co-ops.

**Figure 1: Comparing CPAs and Co-operatives**

<b>Dimension:</b>	<b>CPA</b>	<b>Co-operatives</b>
<b>Property ownership</b>	CPA owns property; members have what are called legally	Co-operative owns property; members own shares in co-

<b>Dimension:</b>	<b>CPA</b>	<b>Co-operatives</b>
	“members interests” in the CPA	operative
<b>Occupation</b>	Members occupy property, rules govern whether member can rent / lease	Co-operative members have the right to occupy a unit in the co-operative. Usually members are resident in the co-operative. Therefore, occupants are also owners of the co-op. It is usually illegal for occupants to be non-members (Board approval is required for sub-letting)
<b>Means for administering occupancy</b>	CPA constitution; an agreement between members and CPA	The Co-operative Statute; a use agreement with each resident
<b>Decision-making authority</b>	Group authority over decision-making “Group” = members, roles and responsibilities, including decision making, governed by constitution and/or members’ agreement	Group authority over decision-making “Group” = shareholders, via board, roles and responsibilities, including decision making, governed by statute and use agreement
<b>Property rights</b>	Members have personal rights	Members have personal rights

*See the Social Housing Foundation report by Development Works. “Tenure Options for Social Housing Projects”, Social Housing Foundation Research Series, 2004. for more detail on co-operatives. This table is extracted from that report.*

## **5. Recommendations**

The current reality is that there are limited tenure options available to people, and are not geared to meet to the mix of needs poor people have, and so are not by themselves accessible, effective and sustainable. LEAP suggests that the Alliance look at the challenges regarding tenure being on the one hand *“how to better meet our objectives within the existing options and frameworks?”*, while on the other it ask *“how can we add to what exists to get more appropriate options for poor people in place?”*.

### **5.1 Work within what we have now/ existing options**

There are projects already in the MAINTAIN phase of tenure, and others busy entering the GAIN phase. These clearly have to be supported within the limitations that exist. Rather than continuing to see the choice as an “either / or” between individual and collective tenure, recognise that whichever option is chosen there will need to be work to construct, through formal and less formal processes (both of which are important) the tenure that comes closest to meeting peoples’ multiple needs.

Most people thinking about tenure are stuck on the idea that the goal is ownership We recommend that you try and see differently the product of your task: not to achieve either individual or collective/group ownership but sets of arrangements for

gaining, maintaining and disposing of property rights that work sustainably for (poor) people, and accommodate the constraints of subsidy and town planning implementation. The task and challenge is to construct such arrangements.

### 5.1.1 Group ownership

In CPAs individual rights needs to be strengthened, as does management. Look at what is needed for effective land administration and this shows us what to work on:

- Procedures for **application**: i.e. for people to make a formal request to get or give property; to change land use; or to get help in resolving a land dispute
- Identifying and geographically defining properties to **create evidence** about where the property is, who is its owner, the what the rights include and exclude – for internal administration and adjudication, and to use externally (e.g. in a court, or to prove one has property to an official or service provider or business)
- **Adjudication**: procedures for, and evidence needed, to resolve any doubts about the rights held
- **Recording systems** for transfers: when property changes hands, or when the one occupying it changes hands (e.g. through sale or on death, new family member moving in to take over).
- Setting out agreements between the member and the CPA **defining rights and duties**, including agreements on payment for services
- Agreements (rules) and procedures about how members can **use their property** or limits on this
- Mechanisms for **enforcement** of agreements (rights and duties)
- Mechanisms for **making or changing decisions**, for questioning decisions and for resolving disputes about decision making.
- Agreed procedures and places people can use for **recourse**, and **external mediation** agreed.

In addition to the above additional helpful support would be on:

- Organising collective action with others, or **support to negotiating agreements** with municipalities on services and rates;
- Exploring the possibility of keeping duplicate records with an external authority (ideally the municipality) and a system for keeping these up to date.

The challenge is to develop agreements that members thoroughly understand and accept, and to record the agreements in accessible language and form (e.g. summarised major principles in a poster or pamphlet); and to then develop procedures and systems so that they are user friendly and practical. It is very important to work from peoples' own practice and understanding, otherwise however good the systems we design are, people will not to use them.

Note: There is work that others have done on developing records that could be drawn upon: e.g. on cooperatives, in the Ekuthuleni project, and for the New Rest informal settlement by the City of Cape Town (both the last two are referred to above in Box 9).



The Communal Land Rights Act may offer a route that is attractive to CPAs for strengthening individual rights while keeping community ownership and oversight.

### **5.1.2 Individual ownership**

For a group that wants individual ownership with collective rules and oversight, this could be best done by working out the rules from existing informal practices and writing them down. Think through the stages in the tenure cycle to build from and add to these rules. Then thinking through how to best support their enforcement. Consider the costs and benefits of getting conditions put on the title deeds, or drawing on the municipality for help with enforcement. Consider collective structures, but be careful people do not place unrealistic expectations on a committee. Because you are drawing on informal processes, the options and ingenuity can be wide.

### **5.1.3 Choosing between options**

The Alliance can improve its support to group decision making and the choice between options in projects. We recommend that you develop materials, taking what's in this report and presenting it as a method for thinking through tenure processes and their implications to enable informed decision making, and helping to build group cohesion. This provides the base for the work in building the mix of group oversight with strong individual rights that is generally wanted whichever tenure option is selected. It also identifies clearly where the group needs to negotiate with authorities

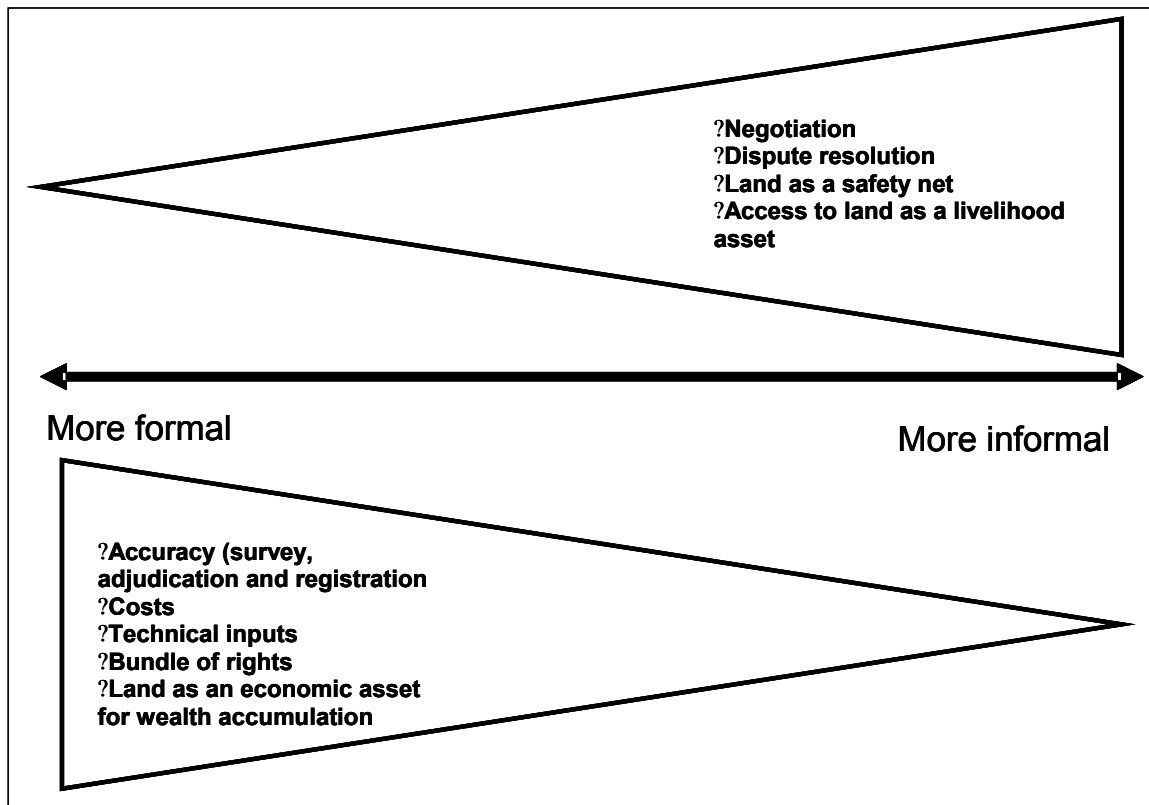
## **5.2 More appropriate tenure options**

### **5.2.1 Increasing options along the tenure continuum**

The housing sector increasingly acknowledges that current tenure options have shortcomings and recognizes that over time this creates problems for poor people as well as for formal systems. There are experiments starting to take place (as in New Rest) There are currently discussions about alternatives to CPAs by the DLA. The legislation governing co-ops is changing to take account of housing co-ops needs. These may provide opportunities for the Alliance to seek better support to existing projects as well as developing more appropriate alternatives or adjustments to current options.

We believe that one of the most significant tenure challenges is the split of “informal” and “formal”. LEAP will be working on this and is seeking partners to join us. Our suggestion can be best summarised using the idea of a continuum (see diagram below). The diagram shows tenure systems on a continuum in which the extreme ends are individual ownership and communal tenure. Ownership is highly technical and expensive, while communal tenure requires greater negotiation and dispute resolution support but is more appropriate for land that is to be used as a livelihood base in a set of social relationships. The major gap is options in the middle that enable people to move along the continuum.

The proposal is to implement the notion of bridging the informal and the formal divide not by “formalising the informal” but by finding more appropriate ways to link them so that the various interests, of for example municipalities and residents, can be addressed. Examples would include appropriate land management support, local registers of land rights and intermediate forms of tenure. The key to the approach is to facilitate a tenure continuum along which people can move from more informal to more formal.



Note: CPAs have title which is formal, but only for the boundaries, while what is “inside” falls within the “informal”.

We suggest an approach of partnering with existing role-players (in province, municipality) to develop and implement a more appropriate approach at project level which could then be monitored and expanded. This would coincide with implementing the shifts contained in the informal settlement upgrading policy of the National Department of Housing.

### 5.2.2 Working with Local Government

There are opportunities to include municipalities in the learning experience of making tenure secure for poor people. Municipalities can become important partners in improving tenure security if their own capacities can be developed to understand tenure in informal or formalising contexts. For this to happen, municipalities need to develop more appropriate land management tools that are pro-poor. For this they need to have an institutional environment that can support informal or formalising contexts

and to move away from only supporting the formal system. Municipalities can also be encouraged to develop alternative land information management systems that include evidence about land ownership that may be outside the formal Deeds registration system. This will provide a framework for co-management of group tenures so that the whole burden of managing land under collective ownership does not fall on the poor land rights holders within these systems. For this to happen there would need to be lobbying and engagement with local government stakeholders. This is something the Alliance should consider as a strategy for improving land tenure security for the poor.

### **5.3 Sharing this report with Alliance members**

While we worked to make this report useful and readable, the issues are not simple, and there are no easy solutions. Preparation of this report has been harder and taken longer than anticipated, and thus carrying out a feedback and interaction with Alliance members has not been possible. LEAP has made a start at putting together some summarised material that could be developed into sharing and learning materials, and these are attached separately. They are in a very draft format and so we hesitate to include them in the final report formally; but they do suggest how this material could be shared. It is recommended that the Alliance make the time and resources available for developing these and engaging in a process of sharing with their membership.

### **5.4 Specific project support and action learning**

Action learning is about working with people on real questions and at the same time broadening understanding of issues for wider sharing. We suggest the Alliance consider identifying projects to work with in this way.

Project type 1: (existing options) A CPA project (perhaps Vukuzenzele?) where work is needed to help it work better, help people take a hard look at individualizing as an option, or undertaking work to strengthen individual rights, institution building, support in negotiating with municipality, etc

Case type 2: (existing options) an individual ownership project where work is needed to support group oversight, and perhaps to strengthen internal family rights within households to protect vulnerable family members.

Case type 3: (seek new options) an informal situation where attempts can be made to pioneer an alternative along the continuum.

LEAP would be interested to work as a learning partner on such projects, and others may well be as well. It would be ideal to have municipalities as learning partners too.

## Appendix one: Working on tenure with people

Facilitating a choice requires a process in which people work through questions. It is extremely difficult for people to make choices about, and plan for, things they have no experience of. This is why it is so important to start from what people do know about, and build from there. It is not always easy to make the space for these processes, but time spent early on can prevent problems later on that are extremely difficult to fix.

### Before the point of choice – local history, livelihoods and current tenure arrangements

- **What is the history of this group, in terms of its social relations and leadership structures?**
- **How do people in this group make a life now – what are their livelihood strategies that need to be supported and strengthened?**
- **What are their tenure arrangements now? What are the aspects of their tenure that work for the individual, the family and the group now and that we therefore want to hold onto in the future?**

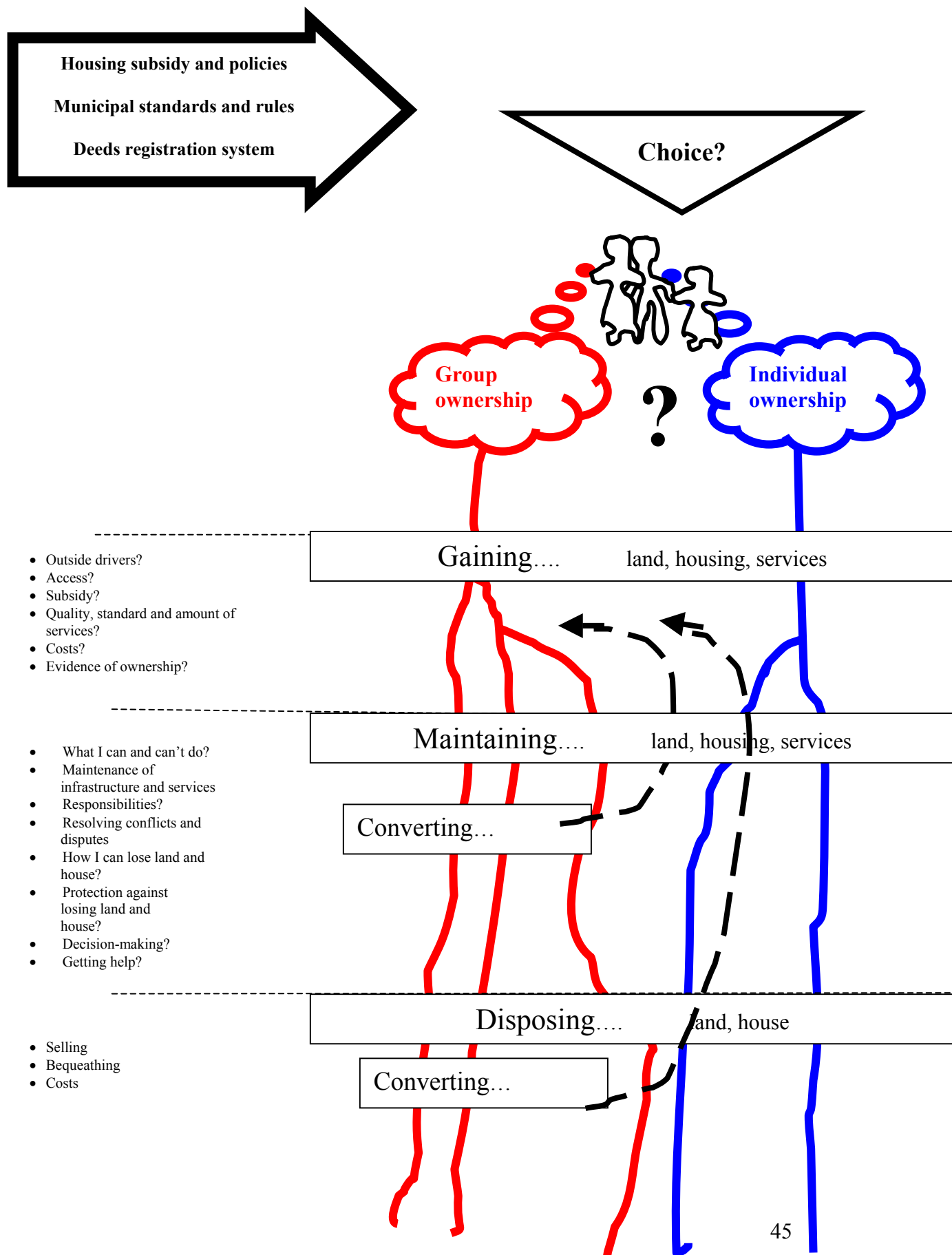
People in informal settlements in urban areas come to live in one place from many different places and at different times, and do not necessarily have a long history of working together as a group using the same familiar rules and authorities. A situation which Federation members talked to us about is one where they have to settle with a mix of Federation and non-Federation members who may have very different views on how development should happen, on the kinds of rules that should operate, and on democratic decision-making. The tenure form that people choose needs to work with local and external experience and realities.

People in informal settlements rely heavily on informal business opportunities and on low paid formal employment to make an income. A real difference between urban and rural situations is that a lot of people in urban areas are highly mobile, and some may be able to return to rural areas if opportunities in urban areas fail them altogether. The tenure arrangements in informal settlements fit the way in which people make a life and what they can afford. In Piesangs River people described an informal market in single rooms in *izitimela* where people can buy and sell not land but “three walls and a door” for R10 or R50.

Having an understanding of history, and means of making a life and current tenure arrangements becomes important in thinking about future tenure arrangements. So as people consider questions for the future such as “do we allow sales and rentals, and if so how?” it is important to understand what the need is in people’s lives that sales and rentals meet, and whether this need will be removed by a move to better housing, and if not, what is it in the current arrangements for sales and rentals that works and that we want to hold onto into the future.

A huge change that happens with housing developments is that tenure arrangements become more formal, and people become more visible to the formal system. This brings both opportunities and threats. The rest of this section looks at questions that come up in doing this.

**Figure: Tenure stages.** Showing the stages of tenure, with the questions that people should think about for each stage, in order to inform their choice. (See Box 3 for the questions in detail)



## **Tips for constitutions/ documents for agreements**

All group ownership options require participatory processes to build group understanding and agreement on structures and operating rules, so that founding documents and other evidence build on and from existing understanding and practice to something new and collective.

Leap has learned some lessons about developing constitutions with people. There is a lot of poor practice in this regard, which results in documents that people cannot relate to and do not use. It is common e.g. for pro forma documents to be simply copied or “cut and pasted”. This short cut leads to a document that is not tailor made to each situation and has little ownership by groups. What is described below would be true of any documents that capture group agreements.

Better practice:

**Starts** by understanding peoples’ practice around rights’ land rights administration processes and recourse and adapts these.

**Recognition:** The gap between what the document says and actual practice of what people do is small. The document reflects people’s agreements.

**Guidance:** The document has clear land rights administration procedures and principles to deal with common questions and situations for this group.

**Appropriate:** In its level of detail and complexity to the needs of the group

**Language:** Written in plain language in the vernacular

**Form and arrangement:**

- Economical – no irrelevant detail
- Easy to find information – important ideas first; connected ideas grouped
- Consistent – the same word is used for the same idea throughout – no internal contradiction.