

# The Role of Secure Land Tenure Policy and Practise on Economic and Social Development: Lessons from Edendale and Ambleton, City of Pietermaritzburg

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## 1 ABSTRACT

Land is a valuable resource which contributes towards the economic and social well-being of communities, and secure land tenure is therefore a crucial factor towards addressing poverty and inequality. This paper examines the role of secure land tenure policy and practice in relation to the socio-economic development of communities and sustainable human settlement planning in South African cities. It explores the statutory mechanisms in place for the enablement of secure land tenure which addresses the negative effects of the fundamental structural challenges left by the apartheid planning regime on the current urban policy context. It draws lessons from the Edendale Unit H and Ambleton Townships, Pietermaritzburg, as well as case studies at Msunduzi Local Municipality in the KwaZulu-Natal province. A qualitative case study design was employed, and primary and secondary data were gathered through open-ended interviews with key stakeholders responsible for land tenure restoration. The findings highlight efforts to formalize ownership and engage communities, but challenges persist. For Ambleton's unauthorized occupants, the upgrading of the Land Tenure Rights Act should be used to formalize ownership. It is recommended that Edendale's boundary disputes can further be addressed through an approach which integrates the Systematic Theory. The Adaptation Theory can ensure that fair community involvement, and eviction procedures should align with the Prevention of Illegal Eviction Act. Regular monitoring and evaluation will enhance its implementation, where integrating legal and theoretical frameworks, adjusted for subsidized housing, can lead to a just and secure tenure system for Ambleton and Edendale Unit H.

Keywords: Land Tenure Policy, Sustainable Human Settlements, Land Tenure Restoration, Spatial Planning, South Africa

## 2 INTRODUCTION

There are various types of legislation established in South Africa as a backbone for Title Deed Restoration, Land Reform, provision of housing, and Security of Land Tenure Rights. Access to housing and ensuring the security of tenure rights is part of the government's strategy to eradicate poverty and improve the lives of all South Africans through providing socio-economic related opportunities (Hull and Whittal, 2018). A land audit report conducted by the Department of Land Affairs in 2017, showed that a total of 30% of individuals (1 579 543 ha) in KwaZulu Natal own private and secured land compared to the 39 % (37 031 283 ha) in the rest of South Africa. The South African Institute of Race Relations (IRR) also published a report in March 2018 indicating that "114m ha of 122m ha of land in South Africa is registered with the Deeds Office", with urban land constituting of 3,2m ha. Therefore, in KZN, 39,5 % of Africans on urban land and 3.5 % in rural areas are registered individual landowners. There exists slow progress of securing land tenure rights with the main focus being placed on agricultural land but not individual properties. Government is also providing more RDP housing without title deeds, while there is still a huge number of households who have not received title deeds since 1994. The aim of the study is to examine the impact of the South African Urban Policy governing land tenure security and restoration on the economic potential of people in the Edendale and Ambleton areas in Pietermaritzburg. The study also identifies the strategies used by the government to implement this policy and secure land tenure rights in these areas. The objectives of the study are firstly to evaluate, the effects of secure land tenure in the Edendale and Ambleton areas within the framework of the South African Urban Policy for land tenure security and restoration. Secondly, it examines the effectiveness of the government strategies used to secure land tenure rights in the Edendale and Ambleton areas and identifies the challenges and opportunities for improvement in the implementation of the policy within Pietermaritzburg. Finally, it provides recommendations for improving the strategies and informs policy development and implementation in other similar contexts for the benefit of the residents.

### 3 CONCEPTUAL SYNOPSIS

Secure land and property rights play a crucial role in reducing poverty and promoting economic development, while mismanaged land can lead to conflicts and disruptions, causing land degradation and loss of socio-economic opportunities (UN-Habitat, 2014). Therefore, ensuring land tenure security is internationally recognized as a key factor in positioning a country for global competitiveness (UN-Habitat, 2014). Land tenure systems encompass both customary and statutory rights that exist between land, society, and people, and each country develops its own land tenure concept based on historical and current legislation (UN-Habitat, 2014). To understand this concept, it is important to break down the meanings of land tenure and tenure security. Land tenure refers to the rules and institutions governing land use and property rights, and it encompasses the allocation and control of natural resources in society (UN-Habitat, 2008 cited in Kasimbazi, 2017). Tenure security, on the other hand, is challenging to measure as it depends on the landholders' perceptions of security for their property. It generally includes rights that allow property owners to use their property as collateral and which provide legal protection against eviction (Barnes and Enemark, 2020; Aliber and Popoola, 2018). It involves land administration processes that protect land tenure security and allow for dispute resolution and adjustments of rights (Aliber and Popoola, 2018; Pienaar, 2013). Land tenure security also ensures individuals have the legal right and confidence to transfer their properties, leading to social stability and economic opportunities (La Croix, 2002; Pienaar, 2013). Thus, tenure security relates to land ownership and the protection of landholders' rights. South Africa's Constitution commits to rectifying historical land injustices, establishing a foundation for secure land tenure. Key policies like the Land Reform (Labour Tenants) Act 3 of 1996 protect labor tenants, while the Interim Protection of Informal Land Rights Act 31 of 1996 shields communities in resource-rich areas. The 1998 Prevention of Illegal Eviction Act balances property owners' rights with those of occupants, and the Upgrading of Land Tenure Rights Act 112 of 1991 formalizes traditional land ownership. Together, these policies represent South Africa's comprehensive approach to addressing land rights and tenure security.

#### 3.1 Overview of the South African land tenure system

In the context of South Africa, ensuring that people have secure rights to their land is also a crucial goal for reducing poverty, boosting the economy, and maintaining social stability. This is a challenging task due to the country's historical background. Having proper ownership and rights to land is now recognized worldwide as a key factor for any country's competitiveness (UN-HABITAT, 2014). Looking back at how land was lost and regained in the past can give us useful information about how stable land ownership is today (Sunderlin and Holland, 2022). Moreover, to comprehend the current challenges of the land tenure system in South Africa, it's essential to consider the enduring repercussions of apartheid-era policies. For example, the impact of the Natives Land Act of 1913 and the 1936 Native Trust and Land Act remains evident in the form of "Trust Land," characterized by insufficient surveys and the restrictive "permission to occupy (PTO)" system (Ntsebeza, 1999). Kloppers and Pienaar (2014) emphasize that these Acts entrenched inequality and denied black individuals ownership rights, shaping the landscape for post-apartheid land reform.

Following 1994, South Africa embarked on ambitious land reform initiatives aimed at addressing historical injustices. This reform seeks to strike a balance between land redistribution, restitution, and tenure security, a complex endeavor with far-reaching implications (Adams, 2000). Nevertheless, despite progress in land reform, obstacles persist such as inadequate funding and limited private sector involvement which hinders effective implementation (Lekaba, 2016). The major challenge is misunderstanding the role of these land reform initiatives in securing land rights. For example, in a study conducted by Makombe (2018) the government aimed to redistribute 30% or 24,5 million ha by 2014. Anseeuw and Mathebula (2008) cited by Makombe (2018) mention that between 1995 to 1999 about 41 restitution claims were made on 112 919 ha, between 1999-2004 about 56679 claims were settled and in 2012 about 32% of the target was met. However, Makombe (2012) mentions that Land reform in South Africa between 1994 and 2010 progressed slowly, with about 3 million hectares redistributed for land reform, and tenure to 189,633,000 individuals. Costs exceeded R29 billion, split between redistribution, restitution, and compensation. While redistribution made strides, land tenure security lagged, impacting economic growth. South Africa has been dealing with land challenges since 1990, and they still existing within the democratic developmental state in terms of the need to address disparities in land distribution, tenure security and ownership conflicts. Kingwill et al. (2017)

highlight that land tenure remains problematic in South Africa, particularly for farm workers and their families on privately owned land, as well as individuals residing in areas established under the Group Areas Act. As from observations from working at Human Settlement dealing with tenure related matters, many properties are still registered under deceased great grandparents, complicating the transfer of ownership due to family disputes and document accessibility issues. The sluggish pace of land reform, lack of clear vision, and misalignment with pro-poor initiatives further hinder progress. This indicates that despite efforts, the land tenure situation in South Africa remains complex and inadequately addressed.

### 3.2 Exploring theoretical frameworks shaping land tenure security

Understanding the different theories guiding land tenure security in South Africa offers insights into how the country manages its land ownership systems. For example, the Conservation Theory supports the idea that customary land ownership provides the most effective tenure security. It emphasizes that land holds social, political, and economic importance, especially in African countries where land plays a pivotal role in socio-economic development. The theory suggests that land titling overlooks the social dynamics within rural communities and proposes that "de facto" tenure security, rooted in land control rather than legal formalities, holds greater significance. Traditional leaders are significant in this context, as they allocate land in rural areas, however, it's worth noting that historical practices show that traditional leaders may not have always prioritized community interests. This theory tends to align well with subsistence agriculture but might face challenges in commercial farming, where economic interests and traditional leadership might conflict (Hull et al., 2018). Secondly, the Adaptation Theory is important for justice and government accountability. It aims to find a balance between South Africa's customary and statutory land tenure systems. Its goal is to safeguard people from abuse by traditional leaders while protecting the rights of poor rural and urban individuals facing illegal evictions. This theory also addresses the issue of traditional leaders perceiving land as their possession and sometimes benefiting themselves over the community. The study by Buthelezi and Yeni (2016) highlights the need to rectify this perception. There's a distinction between formal rules, which establish legitimate land tenure systems, and informal rules based on community values, and the challenge lies in harmonizing these rules. The theory also emphasizes community involvement in formalizing property rights and tenure security, which is vital for subsidized housing. This approach encourages practical solutions that provide secure housing for those in need (Hull et al., 2018).

Thirdly, the Replacement Theory suggests replacing outdated land management methods with new approaches. It advocates for private property rights supported by clear title deeds and registrations. While this approach seems promising, critics argue that its applicability to South Africa might be limited. There's concern that it could exacerbate existing power imbalances, potentially granting more control to those already in influential positions. Historically linked to apartheid-era practices, the theory hasn't fully resolved land security issues and might not be ideal for attracting investments. Moreover, the failure of land titling can be attributed to government's lack of support for community development and poor alignment with national policies (Muchechete and Kurwakumire, 2020). Fourthly, the Systematic Theory advocates for an organized and clear land ownership system. It emphasizes replacing customary land ownership with systematic rules to enhance economic opportunities for the poor. However, this approach acknowledges the need for flexibility, as solutions that work in developed countries might not suit developing nations like South Africa. It raises important questions about whether people are willing to use their land as collateral for loans and whether banks are ready to support them. This theory requires consideration of various factors and contexts to find the right approach, much like piecing together a puzzle that fits its unique shape (Weeda and Butt, 2018).

These theories present different avenues to tackle the issue, each with its own advantages and limitations. They help us navigate the complex puzzle of land tenure security in South Africa and more specifically Ambleton and Edendale Unit H, considering historical, political, and economic factors that shape the landscape.

## 4 RESEARCH METHODOLOGY

This study on land tenure security employed a qualitative case study design, and primary and secondary data sources were utilized. Primary data collection involved the use of open-ended interviews administered to key stakeholders responsible for land tenure restoration. These interviews were carefully designed to elicit





**Objective 2:** To examine the effectiveness of government strategies used to secure land tenure rights in the Edendale and Ambleton area and identify challenges and opportunities for improvement.

The municipality's adoption of a range of policies, guidelines, and mechanisms reveals their comprehensive approach to secure land tenure rights. For example, the use of Immovable Property Market Valuation Guidelines and the Benchmark Report showcases their adaptability to diverse acquisition scenarios. This also ensures efficiency in resolving land invasion disputes within the study area and it aligns with the policy's focus on effective strategies. Furthermore, the use of the Land Title Adjustment Act and the Rates Exemption on Private Land Initiatives demonstrates the municipality's recognition of complex scenarios, such as deceased estates, and the financial challenges posed by invasions. The engagement of organizations and private firms, appointed through the Municipal Supply Chain process or funders furthermore reflects collaboration, technical support, and alignment with the policy's goal of effective implementation. However, the interviewee's mention of challenges such as beneficiaries refusing to provide information, non-compliant properties, and conflicts arising from ownership indicates areas that may require improvement.

In Ambleton, the information reveals that 60% of the area's properties have obtained title deeds, indicating a considerable level of achieved land tenure security. However, a notable 20% of this comprises individuals who did not originally qualify as beneficiaries, having acquired occupation through illegal sales or without the proper beneficiary claims. This aspect highlights the complex nature of tenure security, where legal and rightful ownership is challenged by unauthorized actions. Additionally, 10% of the properties are under regulation through existing policies, suggesting a structured approach to ensuring land tenure security.

In Edendale, specifically in unit H, the land tenure situation appears more challenging. Only 10% of properties have acquired title deeds, indicating a lower level of tenure security compared to Ambleton. One of the prominent challenges is encroachment over property boundaries, implying disputes over land ownership and utilization. This situation requires a comprehensive approach to rectification of illegal tenures, including an expropriation process and dispute resolution mechanisms. The need to amend the existing general plan further emphasizes the complexities of land tenure security in this area.

### 5.1 Integration of legal framework and theoretical components

The interview data from Edendale and Ambleton highlights the integration of the legal framework and theoretical components for land tenure security, showcasing a proactive approach to address historical land injustices. The municipality has effectively utilized policies, guidelines, and mechanisms such as valuation guidelines, benchmark reports, and the Land Title Adjustment Act of 1993 to secure land tenure. However, challenges persist in policy implementation, evidenced by cases of non-compliant properties and conflicts arising from unauthorized occupations.

Objective	Challenge	Consequence	Implementation Steps
Ambleton: Address Unauthorized Occupancy (20% properties)	Unauthorized occupants on subsidized properties	Insecurity of tenure, potential conflict among rightful beneficiaries	1. Identify properties with unauthorized occupants through GIS database and community engagement. 2. Conduct thorough beneficiary verification. 3. Utilize the Upgrading of Land Tenure Rights Act to formalize ownership for rightful beneficiaries.
Edendale: Define Clear Property Boundaries and Address Encroachment	Boundary disputes and encroachment	Insecurity of tenure, potential conflicts, lack of property value	1. Survey and demarcate property boundaries. 2. Implement a comprehensive expropriation process where necessary. 3. Utilize the Systematic Theory to establish organized land ownership system.
Community Involvement: Address Perception of various stakeholders and Ensure Equitable Participation	Potential bias and lack of community input	Discontent, mistrust, exclusion	1. Engage with community representatives to ensure their unbiased involvement. 2. Conduct awareness campaigns to educate occupants about their rights. 3. Implement community feedback mechanisms. 4. Utilize the Adaptation Theory to ensure justice and community protection.
Eviction Management: Ensure Fairness and Protection during Evictions	Eviction-related conflicts	Human rights violations, legal disputes	1. Implement the Prevention of Illegal Eviction Act for eviction procedures. 2. Establish a transparent process for eviction based on legitimate reasons. 3. Provide legal assistance to occupants during eviction procedures.
Monitoring and Evaluation: Continuous Oversight and Improvement	Implementation challenges, potential gaps	Incomplete outcomes, inefficiencies	1. Establish a monitoring and evaluation framework. 2. Regularly assess progress and challenges. 3. Make necessary adjustments based on evaluation results.

Considering that Ambleton and Edendale are not rural areas, and that the properties are government-subsidized housing, the integration of the legal framework and theoretical frameworks remains relevant but with a focus on urban contexts and subsidized housing challenges. In Ambleton, where 20% of properties have unauthorized occupants, the Upgrading of the Land Tenure Rights Act of 1991 could be employed to

formalize ownership and address the issue of illegitimate occupancy. This would involve legal mechanisms to rectify property ownership, ensuring that rightful beneficiaries obtain secure tenure. The Prevention of Illegal Eviction from and Unlawful Occupation of Land Act, 1998 could be used to manage evictions while safeguarding occupants' rights. In Edendale, where boundary encroachment and disputes prevail, the Systematic Theory gains importance. By implementing an organized land ownership system, property boundaries can be clearly defined and legally enforced. The legal framework should incorporate the principles of this theory to enhance tenure security within subsidized housing projects. Additionally, the Adaptation Theory remains significant, emphasizing community involvement and rectifying perceptions of various stakeholders involved. In the context of subsidized housing, community engagement is vital to ensure that the needs and rights of occupants are upheld. Below is table 1 of integrating the legal framework into the Edendale Unit H and Ambleton security of tenure system:

## 6 CONCLUSION

In the context of South Africa, securing land tenure rights has emerged as a pivotal issue that intertwines historical legacies, current challenges, and aspirations for socio-economic progress. The complexities surrounding land tenure security are particularly evident in areas like Edendale and Ambleton, where a blend of legal measures and theoretical frameworks is being employed to tackle issues rooted in the apartheid era and post-apartheid land reforms. The findings reveal the hurdles faced by Msunduzi Municipality in its pursuit of securing land tenure rights in urban contexts. Despite notable advancements, issues like unauthorized occupancy and property boundary disputes persist, necessitating tailored approaches for resolution. The suggested recommendations for Ambleton and Edendale, such as using the Upgrading of Land Tenure Rights Act to address unauthorized occupants and applying the Systematic Theory for defining property boundaries highlights the importance of customized solutions. Additionally, effective management of evictions, inclusive community engagement, and consistent monitoring play pivotal roles in ensuring successful policy implementation. In conclusion, South Africa's journey towards achieving secure land tenure and facilitating restoration is a dynamic and intricate process. It calls for a careful equilibrium between acknowledging historical injustices, fostering economic growth, and providing legal safeguards. By weaving together legislative frameworks, theoretical insights, and community involvement, South Africa aspires to address the complexities of land tenure, stimulate all-encompassing development, and extend the benefits of secure land tenure to its populace.

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