

# Reducing Spatial Inequalities through Better Regulation

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**Report to the High Level Panel on the assessment of key legislation  
and the acceleration of fundamental change**

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# Reducing Spatial Inequalities through Better Regulation

## Summary

Stark spatial divides have persisted post-Apartheid, despite government efforts to undo the damage of the past by creating a unified, national regulatory framework. This report discusses two of the many dimensions of spatial inequality: (i) the physical separation of people from productive activity, and (ii) the under-development of informal settlements and enterprises. It identifies key legislation that appears to inhibit more equitable and integrated development. This includes rules and procedures related to land-use planning, housing, environment, business licencing, building regulations and public procurement. They create difficulties through their complexity, rigidity, poor alignment and associated costs. These are not the only obstacles to shared prosperity, and they do not operate in isolation. They are compounded by other economic, social and institutional processes. Therefore, simple deregulation is unlikely to be the solution. *Better* regulation is more important, i.e. rules and procedures that are more consistent, less burdensome, more responsive to socio-economic realities and more developmental in orientation. The balance of emphasis should be tilted from bureaucratic mechanisms designed to restrict and control social and economic actors, towards more flexible, problem-solving systems to enable balanced and inclusive development.

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## 1. What is spatial inequality and why does it matter?

South Africa (SA) is one of the most unequal and unevenly developed countries in the world. This is patently unfair and destabilising. Spatial gaps in material prosperity and subjective well-being are stark and deeply inscribed in the landscape. In the same cities and towns, exclusive business precincts and upmarket suburbs with outstanding amenities are juxtaposed against overcrowded townships and squalid informal settlements. In rural areas, remote villages with mud schools and no electricity contrast with luxurious private game lodges and affluent country estates. Conspicuous spatial inequalities give rise to perceptions of injustice and deep resentment. Growing up in different worlds with incomparable opportunities shapes people's life chances profoundly and corrodes social trust. Many poor communities feel left behind with no stake in the country's success. This is destabilising and dangerous for the future. Entrenched geographical divides may also be a source of economic inefficiency and a brake on aggregate growth. For example, they may cause the wasteful use of land, impose sizeable costs on the movement of people and goods between areas, and create artificial barriers to business interaction and trade.

The existence of extreme spatial disparities is of course a legacy of racial separation imposed under colonialism and then reinforced under Apartheid through an all-encompassing regime of residential segregation, influx controls, forced removals, separate public administrations, differentiated education systems and so on. However, a range of other factors are also responsible for persistent unequal development, including powerful economic forces, uneven natural resource endowments and continuing disparities in institutional capacity, essential infrastructure and public services. This is reflected in the perpetuation of geographical divisions post-Apartheid, and further widening in some respects. Polarisation persists despite a welter of universal legislation, uniform policy frameworks, common institutions, inter-regional fiscal transfers and national programmes intended to promote social justice, urban integration, rural development and township upliftment. Spatial gaps also continue despite many constitutional rights, including freedom of movement within the country. This suggests that spatial inequalities have multiple dimensions - economic, social, environmental, institutional and psychosocial – and that these defy simple solutions. It also indicates that undoing the distortions of Apartheid to reconfigure spatial patterns is likely to be a long-term endeavour requiring greater creativity, coordination and sustained commitment all-round. There are many dilemmas and trade-offs involved that require difficult choices to be made, and that require a much stronger evidence base to inform decisions.

This report focuses on two fundamental and inter-related features of spatial disparities in SA: (i) the physical separation of people from productive activity, and (ii) the under-development of informal settlements and enterprises. These impede more equitable and integrated spatial development. The report identifies key government legislation that appears to hamper progress towards socio-economic improvement through spatial change. This includes rules and procedures related to land-use planning, housing, environment, business licencing, building regulations and public procurement. It is a preliminary

assessment based mainly on key actor interviews, in the absence of substantive research on the impacts and costs of these regulations.

**(i) The physical separation between people and productive activity.**

There is a damaging spatial divide between where most people live and where jobs and resources are located. The economy is much more concentrated geographically than the population, resulting in extensive unemployment and poverty for people living in the periphery, and imposing an imposing extra cost on their mobility (an 'Apartheid tax'?). This spatial mismatch applies at both the regional scale (between the major cities and well-populated rural areas) and at the urban scale (between the main business districts or industrial centres and the largest townships). Economic forces of agglomeration and institutional inertia tend to reproduce this pattern as success breeds success and established strengths generate additional resources that get reinvested locally. This cumulative process has far-reaching implications for living standards and human development prospects in different places. Uneven economic performance also influences the revenues available to municipalities and their capacity to deliver decent and dependable services.

Despite the existence of common constitutional rights, national socio-economic policies, a unitary system of provincial and local government, uniform regulatory frameworks and universal social protections, sharp spatial gaps persist. Relatively affluent localities have superior public and private schools, nurseries and healthcare, more reliable physical infrastructure, safer and more liveable public spaces, and a wider range of consumer services, shopping facilities and social amenities. These positive externalities (or 'neighbourhood effects') improve people's living conditions and enhance their chances of success in life. Conversely, poorer localities offer fewer economic opportunities, inferior social infrastructure and mediocre services. These communities tend to experience greater insecurity, worse social and health problems, higher risks of disaster and more crime and violence. Growing up in harsh and inhospitable environments makes it far more difficult for people to realise their potential and restricts their prospects of social advancement. This may also hamper their contribution to the economy as workers and consumers.

There are dangers in various aspects of SA's policy and regulatory framework that most people are obliged to live in places where it is relatively cheap and easy to build, rather than in places with stronger economies, higher productivity and more jobs. In cities this may be because housing policies favour low cost land, poor households can only afford peripheral sites, and land-use and environmental controls are more relaxed the further one is away from affluent suburbs. Outside the cities this may be because poorer municipalities are more desperate for development, needs-driven government grants fund housing and social infrastructure in lagging regions, and housing is one of the few tangible benefits that politicians can deliver to hard-pressed communities.

**(ii) The under-development of informal settlements and enterprises.**

The concentration of poverty in some localities and regions is also reflected in extensive informality. The existence of informality is both a symptom of hardship and exclusion, and a

cause of further disadvantage and insecurity. It reflects the spontaneous efforts of poor people to improve their lives and overcome their adverse conditions by engaging in simple income-generating activities and limiting their outgoings on shelter. They often choose not to abide by official rules, legal procedures and by-laws because they are too complex, demanding and unaffordable for their own, bottom-up solutions. Yet their informal status and existence outside the purview of the state can also hold them back and ensure they remain vulnerable in various ways. Hence informality can be seen as a sign of 'under-development', i.e. low investment in physical and human capital reflecting limited forms of human organisation and fragmented social relationships. The spatial dislocation between informal activities, on the one hand, and more affluent consumer markets, employment centres and formal enterprises, on the other, is one of the obstacles to their growth and development.

Many government policies are ambivalent about informality, despite the poor living standards and lack of social protection available. Public entities are uncertain how to respond to it, how to regulate it, and whether it is appropriate to provide positive support. This partly reflects a lack of understanding of the drivers and dynamics of informality, and a hope that these marginal activities will gradually disappear with the overall development of the economy and society. There is some recognition that informality represents individual endeavour, resourcefulness and self-determination, but also a reluctance to sanction activities that lack official authorisation and bypass many established regulations. They also appear to avoid paying taxes and provide inferior living and working conditions for citizens.

Consequently, there is a spectrum of state responses to informality that range from piecemeal 'pro-poor' assistance to hard-hearted evictions and enforcement of by-laws under the guise of cutting crime and grime. There is growing policy support for township economies, often without acknowledging the informal character of most local enterprises. Elsewhere, efforts to clear informal activity from older urban districts are often intended to attract major private investment, affluent consumers and tourist spending, yet there may be more effective and inclusive ways to achieve renewal and regeneration. This illustrates one of the dilemmas surrounding responses to spatial divides – should policy respond to immediate needs, protect existing livelihoods and seek to gradually upgrade these activities (especially if they are informal), or rather impose high standards from the outset and create space for new activities that demonstrate the potential to transform conditions more dramatically?

It is well-known that location is crucial to the prospects of success for many types of business. There are dangers in various aspects of SA's policy and regulatory framework that informal enterprises are obliged to trade in places that are easy and expedient to operate from, rather than in places with better infrastructure and support services, access to customers with greater spending power, and assets that facilitate the growth and development of the business. In cities this may be because business licences, trading permits, health and safety regulations, land-use controls and building regulations are enforced more stringently in central cities and suburbs than they are in townships and informal settlements.

## 2. Recent trends in spatial inequality

Spatial inequality can be analysed at different spatial scales (from the regional to the local); using different geographical units (functional systems or administrative boundaries) as the basic building blocks; and employing different socio-economic indicators. There are many forms and permutations of spatial analysis possible, depending on the purpose of the exercise, the conceptual framework and the availability of suitable data. Space constraints mean that this section offers a partial, high-level and straightforward assessment of spatial disparities rather than a comprehensive treatment. Different considerations are balanced to present some analysis using provinces (for the regional scale), municipalities (for cities and other sub-regions) and districts or neighbourhoods for analysis within cities. The underlying causes of spatial gaps are identified where relevant, but once again there is insufficient scope for a rigorous discussion of causal processes and mechanisms.

### (i) Overview

Looking at SA's spatial economy, one of the most striking features is the large concentration of wealth-generating activity in Gauteng. The province generates more than a third of SA's economic output, despite covering only 2% of the land area. The province is also the most productive part of the country in terms of GDP per capita and average incomes. Relatively high productivity is one of the reasons why the growth in jobs in Gauteng has outpaced other provinces for the last two decades. Productivity is high partly because of the economic density of the region, which reduces transport costs, facilitates face-to-face communication, increases economies of scale, promotes specialisation and enables knowledge spillovers and learning. Strong employment growth helps to explain why the rate of poverty is lower than elsewhere. It has also made the region a magnet for in-migration from the rest of the country and from other parts of southern Africa. The main concentrations of employment within Gauteng are in the three metros of Johannesburg, Tshwane (Pretoria) and Ekurhuleni (East Rand).

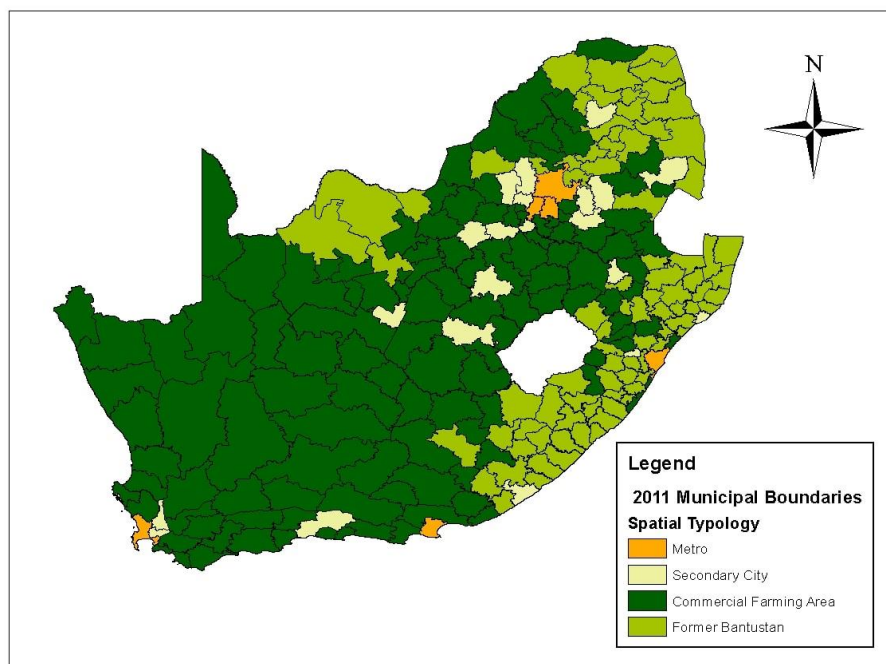
The other major concentrations of economic activity in SA are in the Western Cape (centred on Cape Town) and KwaZulu Natal (centred on eThekweni (Durban)). Secondary cities include Nelson Mandela Bay (Port Elizabeth), Buffalo City (East London), Mangaung (Bloemfontein) and Msunduzi (Pietermaritzburg). The economic performance of all these cities has lagged behind Gauteng, although their growth has outpaced the rest of the country.

Outside the cities, the population is surprisingly unevenly distributed across the countryside. There is a particularly important distinction between the former homelands/bantustans and commercial farming areas. Under Apartheid the 'natural' population of the homelands was inflated by removals from the cities and towns, and by restrictions on out-migration. In contrast, the commercial farming areas experienced de-population following the mechanisation of agriculture and farm evictions. These historic territorial distinctions remain important sources of social and economic differentiation today.

Figure 1 shows a map of the main settlement categories used in the following statistical analysis. It distinguishes between four settlement types:

1. The six metropolitan municipalities that were designated in 2000;
2. Eighteen secondary cities (including Buffalo City and Mangaung that were designated metros in 2011);
3. Commercial farming regions, and
4. Former homelands.

Figure 1: Spatial framework by local municipality



Source: Census 2011 boundaries; authors own estimates

This is a mixed functional and administrative classification of settlements, indicating different economic structures and demographic make-up. Provincial boundaries also have an important bearing on the distribution of financial resources across the country, and they influence living conditions too through the standard of public services. There is some correspondence between settlement types and provincial boundaries. For example, Limpopo is comprised almost entirely of the former homelands of Venda, Gazankulu and Labowa. In contrast, the Free State consists mostly of commercial farm land, with a few secondary cities. The Eastern Cape is split between the large homelands of the Transkei and Ciskei in the East, and the coastal cities and farming regions to the West. KwaZulu-Natal contrasts the developed urban areas of eThekweni and Richards Bay with the former homeland regions of Kwa-Zulu. The Western Cape has no former homelands, but consists of large agricultural areas in the hinterland of Cape Town. Gauteng is the most urbanised of all the provinces.

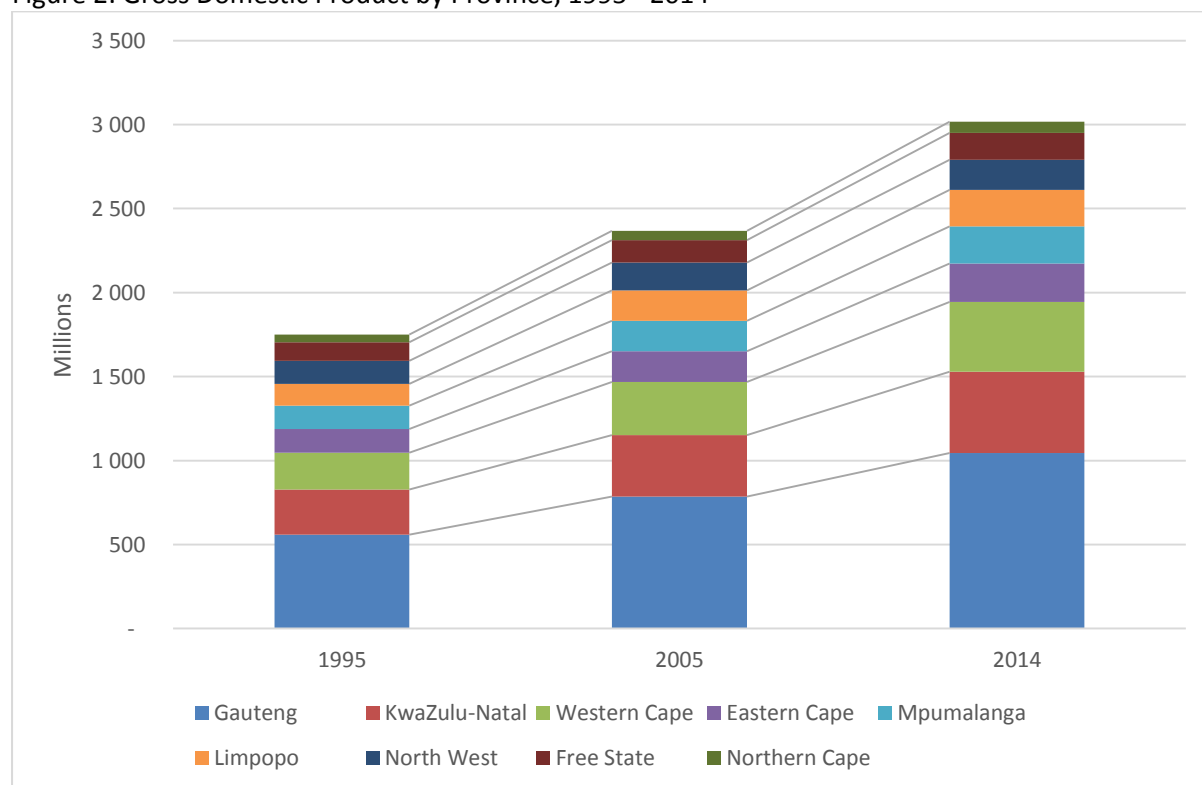
## (ii) Uneven provincial growth patterns

The highly concentrated spatial economy of SA is apparent from the fact that almost two-thirds of output is produced by just three provinces – Gauteng, KwaZulu-Natal and the Western Cape (figure 2). These provinces have relatively diversified economies, and



Gauteng and the Western Cape have lower rates of unemployment than the rest of the country. Another three provinces account for only about 10% of aggregate output – the Northern Cape, Free State and North West. Their economies are relatively dependent on mining and agriculture. The economies of the Eastern Cape, Mpumalanga and Limpopo are roughly similar in size to each other and rank in the middle of the nine provinces.

Figure 2: Gross Domestic Product by Province, 1995 - 2014

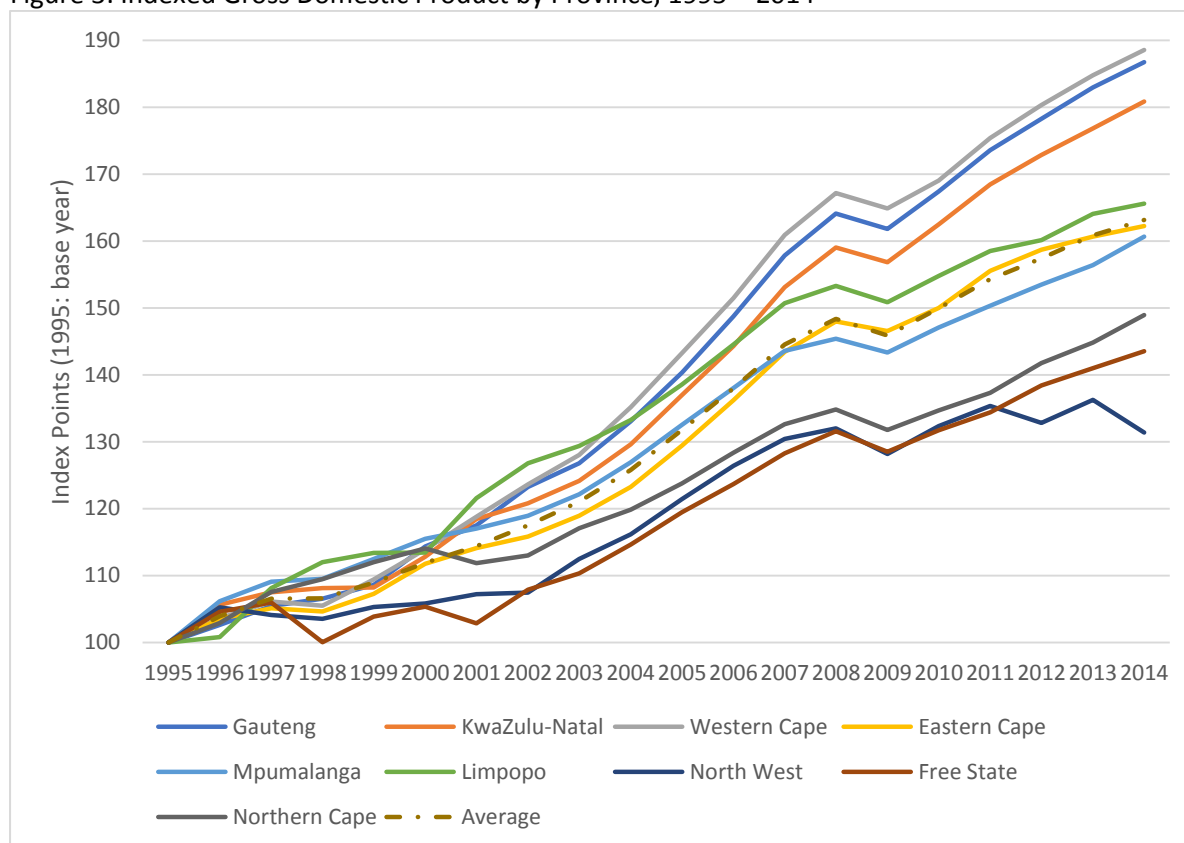


Source: Statistics South Africa; Indicator P0441

Notes: Constant 2010 prices

Over the last two decades, the share of national GDP accounted for by the three largest provinces has increased. These provinces have gradually pulled away from the rest, causing the economy become more concentrated over time. Gauteng's share of total GDP has risen from 32% in 1994 to 34.7% in 2014. In contrast, the contribution made by the Northern Cape, Free State and North West has diminished. Hence the smallest provincial economies have contracted in relative terms. Figure 3 (overleaf) shows the index of GDP for each province according to its baseline in 1995 in order to compare their relative performance over time. The general stability in the pattern is striking, suggesting considerable inertia and path dependency in provincial economic trajectories. This may be a reflection of a more general lack of dynamism and diversification within the national economy over the last 20 years. It also indicates something about the difficulties that are involved in seeking to develop new industrial paths and transform established economic systems, including spreading prosperity beyond the core regions to places that consistently lag behind.

Figure 3: Indexed Gross Domestic Product by Province, 1995 – 2014



Source: Statistics South Africa; Indicator P0441

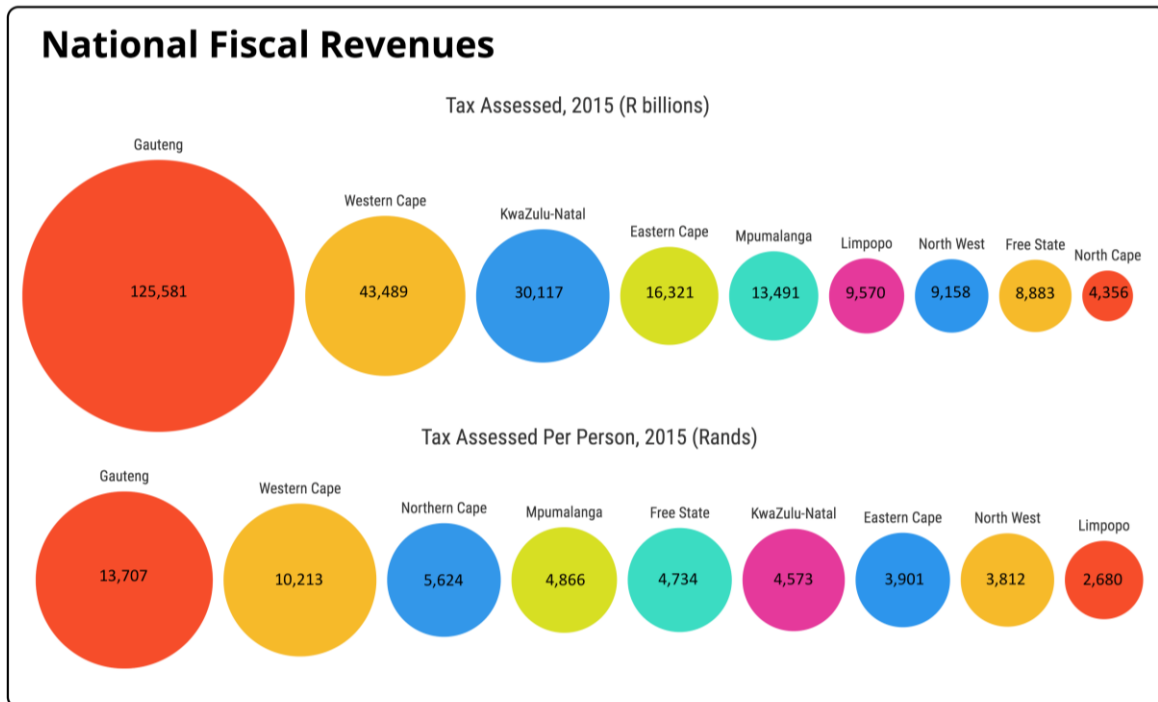
Notes: Constant 2010 prices

Persistent disparities do not mean that there have been no resource flows, population shifts or other interactions between the provinces. One of the main ways in which some of the benefits of uneven growth get transmitted to lagging regions is through fiscal transfers by the state. The government takes a share of the tax revenues generated in the most productive regions and redistributes it to the less-developed areas. It does so in the interests of national unity and social justice, and can be seen as an expression of solidarity between relatively well-off and poor communities. This is major policy shift from the past, when privileged areas retained their tax earnings. Most of this funding is spent on social programmes, such as education, healthcare, social grants, housing subsidies and basic services. The poorer regions benefit disproportionately because they have relatively high social needs, reflecting the scale of poverty and infrastructure backlogs. Current national debates about inclusive growth and social transformation neglect the large spatial redistribution of resources from the leading regions to the rest of the country.

The most important single source of taxation in SA is personal income tax (PIT). The share of national PIT accounted for by Gauteng, the Western Cape and KwaZulu-Natal is 75%. Gauteng alone accounts for 46.2% of national PIT, i.e. nearly as much as all the other provinces combined (see figure 4 overleaf). This is partly because Gauteng is a relatively populous province and generates more economic output than the other provinces (hence there are more jobs and more taxpayers). However, it is also because Gauteng's economy is more productive in terms of the kinds of functions it undertakes and its sectoral composition. There are more high-level occupations and advanced tasks carried out, and

more highly-skilled jobs that pay higher salaries and therefore higher taxes. Figure 5 (overleaf) shows that nearly a third (29%) of Gauteng’s jobs are professional, technical or managerial, compared with only one-seventh (14%) in the Northern Cape. Some of these are in the public sector and include senior officials and legislators.

Figure 4: Personal income tax generated for each province

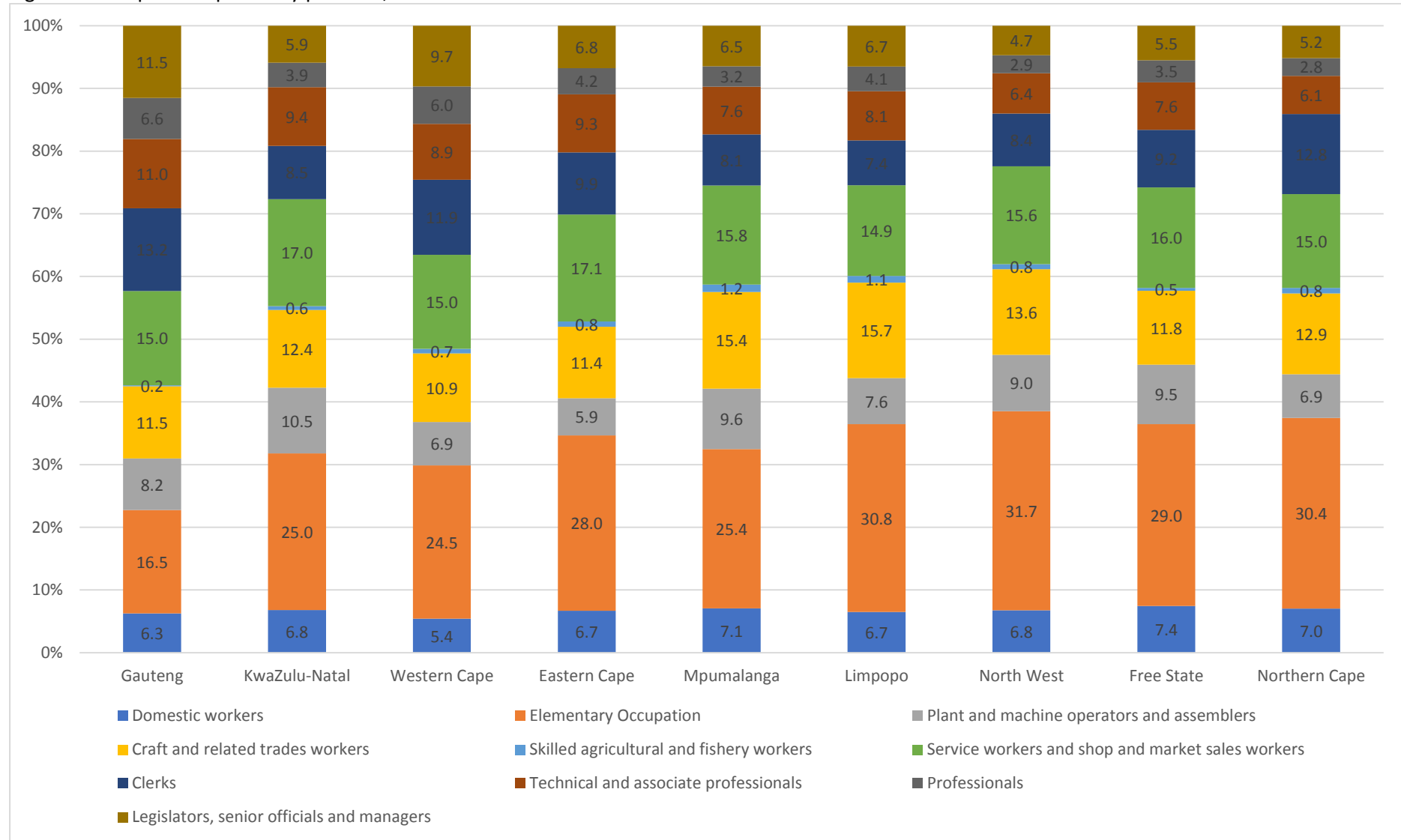


The disproportionate contribution of Gauteng residents to national tax revenues is also apparent from figure 4. The average amount of tax paid by the people living in Gauteng is nearly 25% higher than the residents of the Western Cape and nearly 300% higher than the people living in Limpopo. Gauteng residents pay more than twice as much tax as the residents of every other province except the Western and Northern Cape. This indicates that average earnings and employment levels in Gauteng are higher than elsewhere. Taxes paid in other provinces are hampered by lower salaries, less-skilled occupations and higher unemployment rates.

The extent of fiscal redistribution between the provinces and municipalities is shown in figure 6 (overleaf). This reveals the average financial allocation per person for each of the provinces and for different categories of municipalities. The Northern Cape receives more than half as much again government funding per capita as Gauteng, while the equivalent figure for the poorest rural provinces of Eastern Cape and Limpopo is more than a quarter. This is despite the fact that Gauteng pays so much more in taxes than the other provinces.

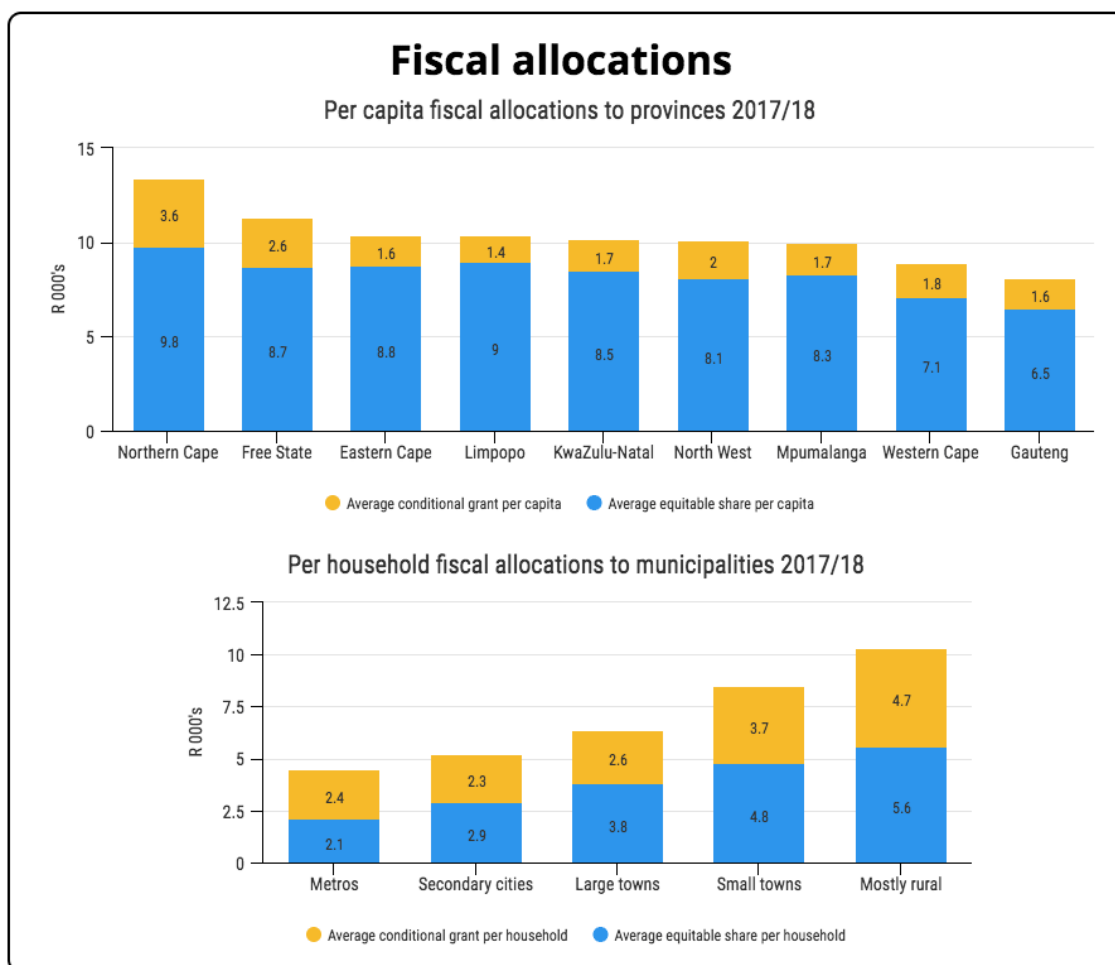
There is an even bigger disparity between municipalities. The Treasury allocates more than double the funding per capita to rural municipalities than it does to the metros. This is partly because the metros have a tax base that enables them to generate their own revenues, unlike many rural municipalities. The current level of fiscal redistribution between the municipalities can be summarised in the following way. The eight metros generate 70% of PIT and receive 31% of local government transfers, while the 61 rural municipalities also

Figure 5: Occupational profile by province, 2015



Source: Statistics South Africa, Quarterly Labour Force Survey (annual averaged)

Figure 6: Fiscal allocations to provinces and municipalities



receive 31% of transfers, but account for only 5% of PIT (National Treasury, 2017). The extent of redistribution from urban to rural areas should be regarded as a major achievement of the post-Apartheid government, since it has enabled essential services to be extended to hitherto neglected communities. However, there are also question-marks about whether this level of redistribution continues to be appropriate, especially in a low growth environment when the major cities are under acute strain from expanding populations, infrastructure bottlenecks and backlogs. There are also questions about whether the spending in rural areas could be repurposed to achieve a bigger and better return beyond service delivery in terms of enhancing the skills and other assets of poor people, diversifying and strengthening local economies, and creating livelihoods to lift people out of poverty and promote dignity and self-determination.

Rural-urban migration is an important household response to unequal development, and a means of reducing some of the excess supply of labour in the countryside. It was strictly regulated under Apartheid, but remained a vital mechanism for people to seek economic opportunities in the urban centres and then to remit some of their resources to their families remaining in the rural areas. The rate of migration accelerated following the withdrawal of influx controls in the 1980s, but subsequently appears to have slowed down. This may be linked to the deterioration in the availability of employment throughout the country since the late 2000s. Apart from the jobs shortfall, another obvious obstacle to

migration is the shortage of affordable housing in the cities. One of the consequences of the uncertainty and insecurity facing migrants is the phenomenon of circular migration, whereby people retain a base in their rural area, return periodically and do not commit fully and permanently to moving to the city.

Migration flows illustrate the contrasting economic fortunes of the provinces (figure 7 overleaf). Gauteng has consistently been the biggest recipient of net migration flows between 2001 and 2016, with over 1.5 million individuals. The Western Cape came next with 450,000 net migrants. KwaZulu Natal has experienced equivalent numbers of in-migrants and out-migrants, reflecting its weaker economic performance than Gauteng and the Western Cape. The North West and Mpumalanga are the only other provinces with net in-migration, reflecting the continuing role played by the mining industry. Overall, the broad pattern of migration does not appear to have changed very much since 2001. The biggest sources of net out-migration have been the Eastern Cape and Limpopo, reflecting the relative population size of the former homelands within these provinces.

The rate of unemployment provides a measure of the relative strength of regional economies. Figure 8 shows that unemployment in Gauteng and the Western Cape are relatively low, despite the level of net in-migration. Unemployment is particularly high in the Eastern Cape, Limpopo and the North West, i.e. provinces with large former homelands. High unemployment tends to be a 'push' factor encouraging out-migration. Figure 8 also shows that unemployment is relatively low in the major cities of Johannesburg and Cape Town, despite continuing in-migration adding to the supply of labour. This indicates that the demand for labour is relatively strong in these cities, reflecting their more robust economies.

### **(iii) Uneven population distributions**

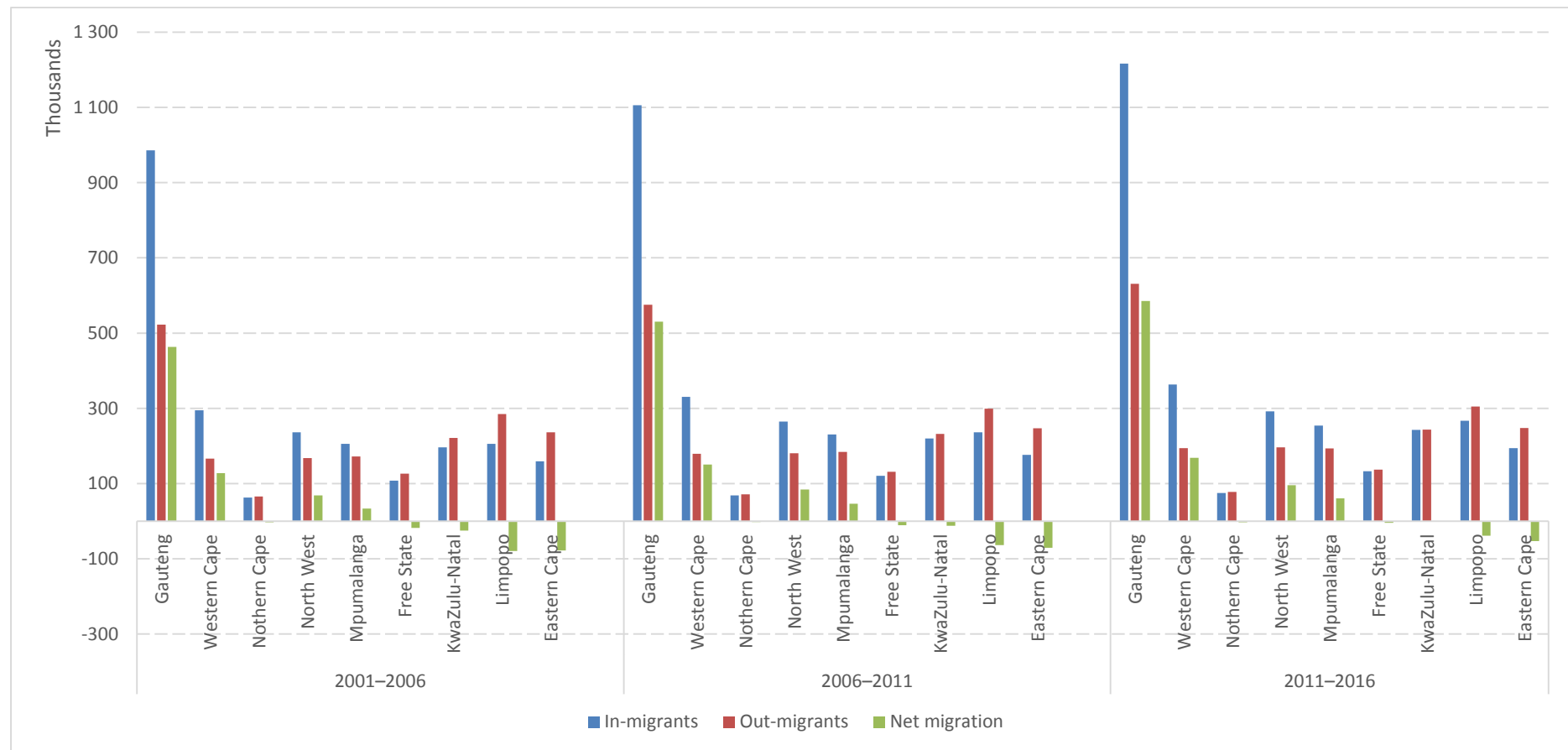
One of the legacies of Apartheid is the continuing poor correspondence between the geography of the population and the economy, despite the migration flows. This is best illustrated by looking within the provinces at the four-fold urban/rural settlement typology described earlier. Table 1 shows the changing distribution of the population between these categories over the period 2001 to 2016. The metros category is subdivided into Gauteng and the coastal metros.

Table 1: Share of population by region; 2001, 2011 and 2016

		Gauteng metros	Coastal metros	Secondary cities	Commercial farming	Mostly former Bantustan
Total	2001	7 790 054	6 986 652	6 959 327	8 729 250	14 303 404
	2011	10 535 183	8 332 283	8 961 386	9 601 388	14 340 321
	2016	11 626 385	8 781 707	10 321 573	9 727 756	14 437 645
Total (row percent)	2001	17.4%	15.6%	15.5%	19.5%	31.9%
	2011	20.3%	16.1%	17.3%	18.5%	27.7%
	2016	21.2%	16.0%	18.8%	17.7%	26.3%

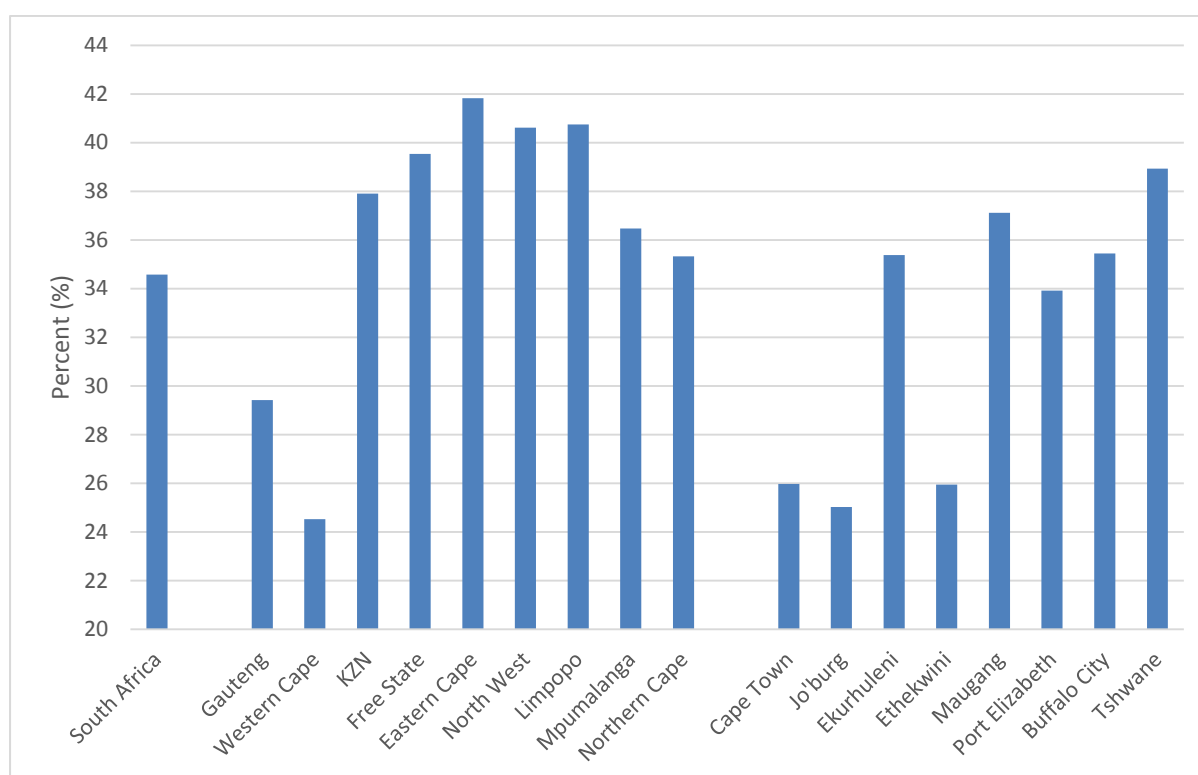
Source: Census 2001, Census 2011, Community Survey 2016; authors own estimates

Figure 7: Migration patterns by province, 2001 – 2006; 2006 – 2011; 2011 – 2016



Source: Statistics South Africa: Mid-year population estimates 2016 - P0302

Figure 8: Unemployment Rate (expanded definition) per Region, 2014Q4



Source: Statistics South Africa, Quarterly Labour Force Survey

One of the striking features of Table 1 is the persistent large population residing in the former bantustans. Over 14 million people live in these regions, despite the paucity of livelihood opportunities there. This constitutes more than one in four citizens of the country. The total population of the former bantustans has been stable over the last 15 years.

Another prominent feature is the relatively strong growth of the population living in the Gauteng metros. This has increased by nearly four million (49%) over this period. People living in Gauteng now constitute more than one in five citizens of the country. The population has also increased in the secondary cities and coastal metros, although not to the same extent as in Gauteng.

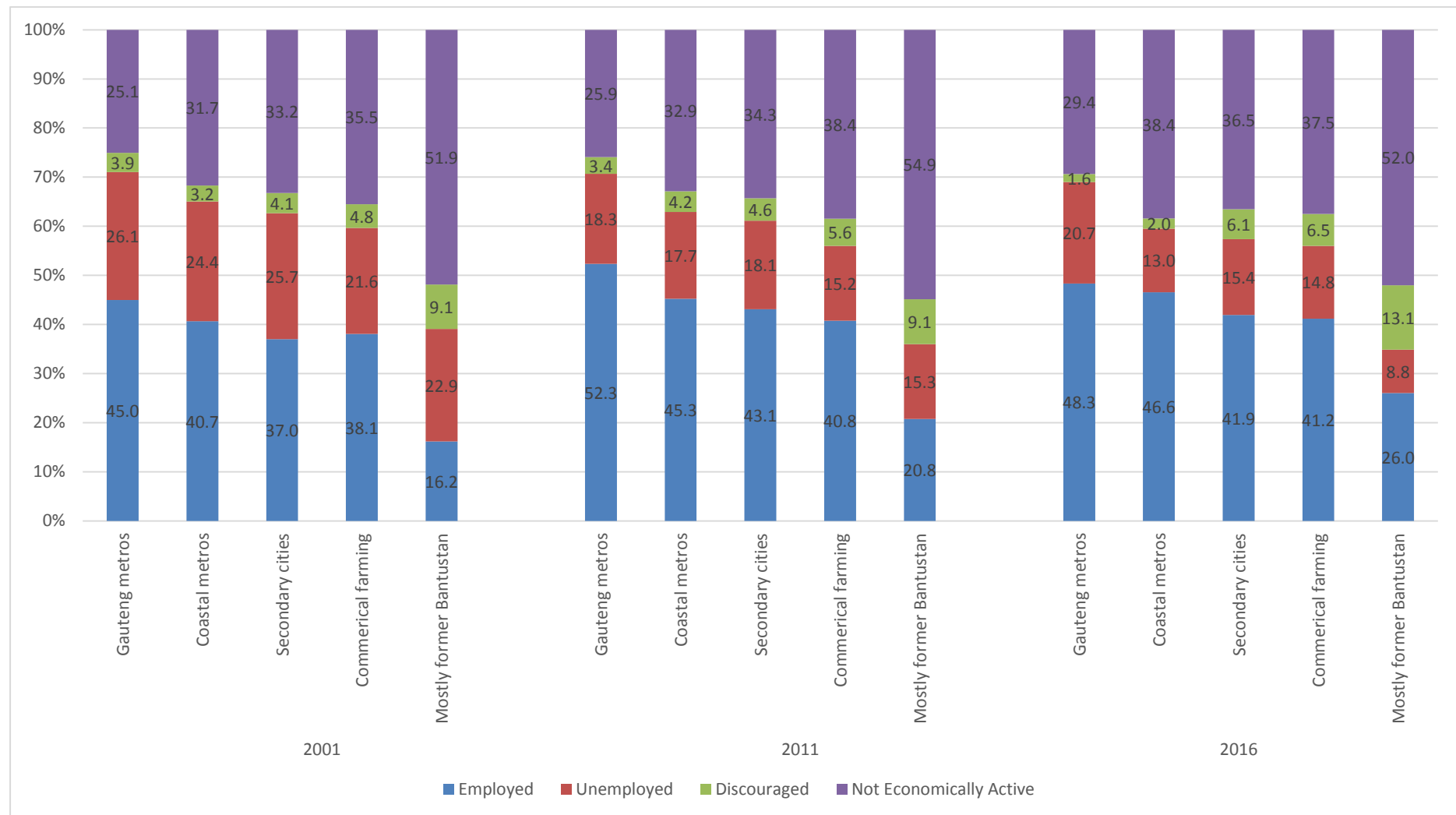
The changing distribution of the SA population between 2001 and 2016 is broadly consistent with the uneven spatial pattern of economic growth over this period. The relative strength of the Gauteng economy has been reflected in a growing population, while the weakness of rural economies has been mirrored in their population standing still (in the former bantustans) or growing slowly (in the commercial farming areas).

#### **(iv) Poverty and deprivation in the periphery**

The economic weakness of peripheral regions is reflected in high unemployment, low household incomes and relatively poor public services. The changing state of the labour market in the different settlement types is shown in figure 9. The most striking feature is the



Figure 9: Labour market status by region; 2001, 2011 and 2016



Source: Census 2011, Census 2011, Community Survey 2016; authors own estimates

unfavourable and unhealthy position of the former bantustans. Only one in four (26%) working age adults were in employment in 2016, implying they were economically independent. More than half (52%) of working age adults were not economically inactive, reflecting some combination of domestic responsibilities, early retirement, disability or sickness. The rest were either unemployed or discouraged from seeking work by the lack of opportunities available. Interestingly, the situation in the former bantustans appears to have improved since 2001, with fewer people unemployed and more in work. The 2001 Census found that only 16% of adults were in employment at that time.

Aliber et al (2016) suggest that livelihood opportunities have improved in these areas as a result of increased consumer spending associated with the expansion of social grants and public sector jobs in the provinces and municipalities. The heavy reliance on fiscal transfers from elsewhere raises questions about the long-term sustainability of this consumption-based activity. The growth of the minibus taxi industry has both created jobs and improved connectivity between the homelands and urban areas. The construction industry has also expanded as a result of state infrastructure investment and individual house-building. It has created backward and forward linkages to the local economy, including supplying building materials. Meanwhile, the agriculture sector has not performed well, despite being the main focus of government attention. The consolidation of dispersed rural communities around denser economic nodes and along transport corridors could perhaps help to create more viable settlements that are easier to service and generate greater economies of scale in consumption and production.

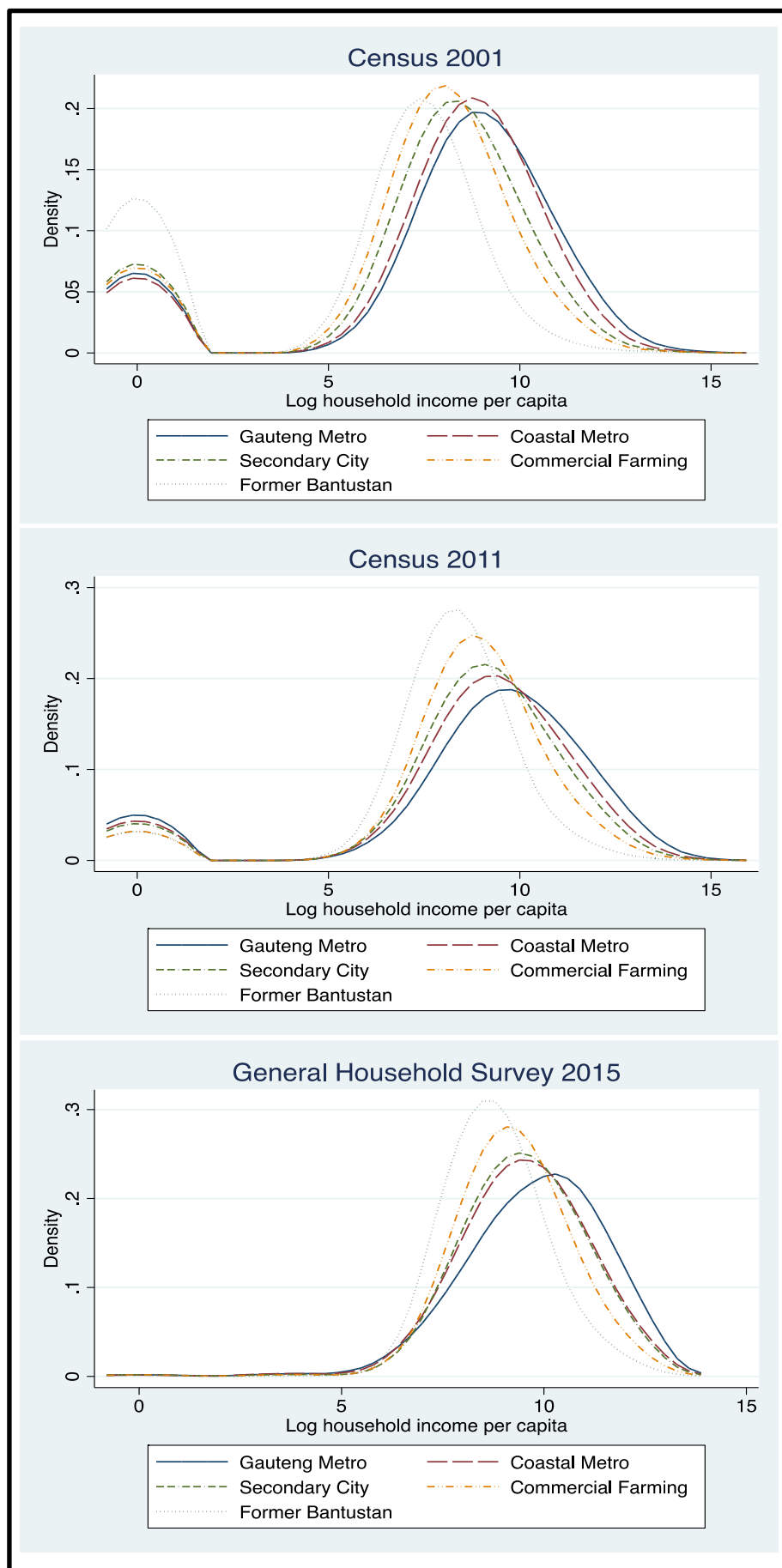
Labour market conditions are quite different in the metros, where a much higher proportion of working age adults were in employment in 2016 (48%), and therefore actively contributing to family incomes. This was also slightly up on 2001. Overall, there is little sign of any narrowing of the gap in labour market circumstances between the different settlement types over the period 2001-2016.

High unemployment and economic inactivity in the rural areas is reflected in lower average incomes. Figure 10 shows the distribution of household incomes across the different categories of settlement for 2001, 2011 and 2015.<sup>1</sup> The consistent ranking of settlement types that has emerged from the above discussion is also apparent in this data, with Gauteng metros having the highest incomes and the former bantustans the lowest. Household incomes appear to have risen in all types of area between 2001 and 2016, apparent in the shift to the right of their income curves. However, the gap between the Gauteng metros and the former bantustans appears to have widened over this period, with incomes in Gauteng pulling ahead of other types of area. In other words, spatial disparities in income seem to have increased over time. This is consistent with the findings of other studies (e.g. Noble et al, 2013) and with work recently undertaken by the Poverty

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<sup>1</sup> Data on household income is difficult to collect because it is sensitive. The 2015 General Household Survey asked each respondent questions about their various sources of income (wages, social grants, remittances, dividends etc) to capture total household income. The Census 2001 and 2011 relied on a simpler but weaker approach by asking the household head a single question about total household income. Consequently, the income data are difficult to compare across the time. Figure 10 provides a density plot (distribution) of the log of household income per capita (note: the log of income transforms the x-axis scale into a manageable size).

Figure 10: The spread of income by region; 2001, 2011 and 2015



Assessment team of the World Bank (as yet unpublished). This shows that the rate of poverty is lowest in Gauteng and highest in Limpopo, followed by the Eastern Cape and KZN.

One of the defining features of the post-Apartheid government has been its commitment to universal basic services. Considerable energy and resources have been devoted to extending the delivery of water, electricity, sanitation and waste removal to hitherto neglected townships and rural communities. This is important because of the large inequalities in access to essential services, apparent in figure 11. The settlement type with the best access to services seems to be the coastal metros, with Gauteng not far behind. This always appears to have been the pattern, perhaps because population growth is higher in Gauteng so it is harder for municipalities to keep pace. The settlement type with the worst access to services is the former bantustans, reflecting their historic neglect. Secondary cities and commercial farming areas lie somewhere between the metros and former bantustans.

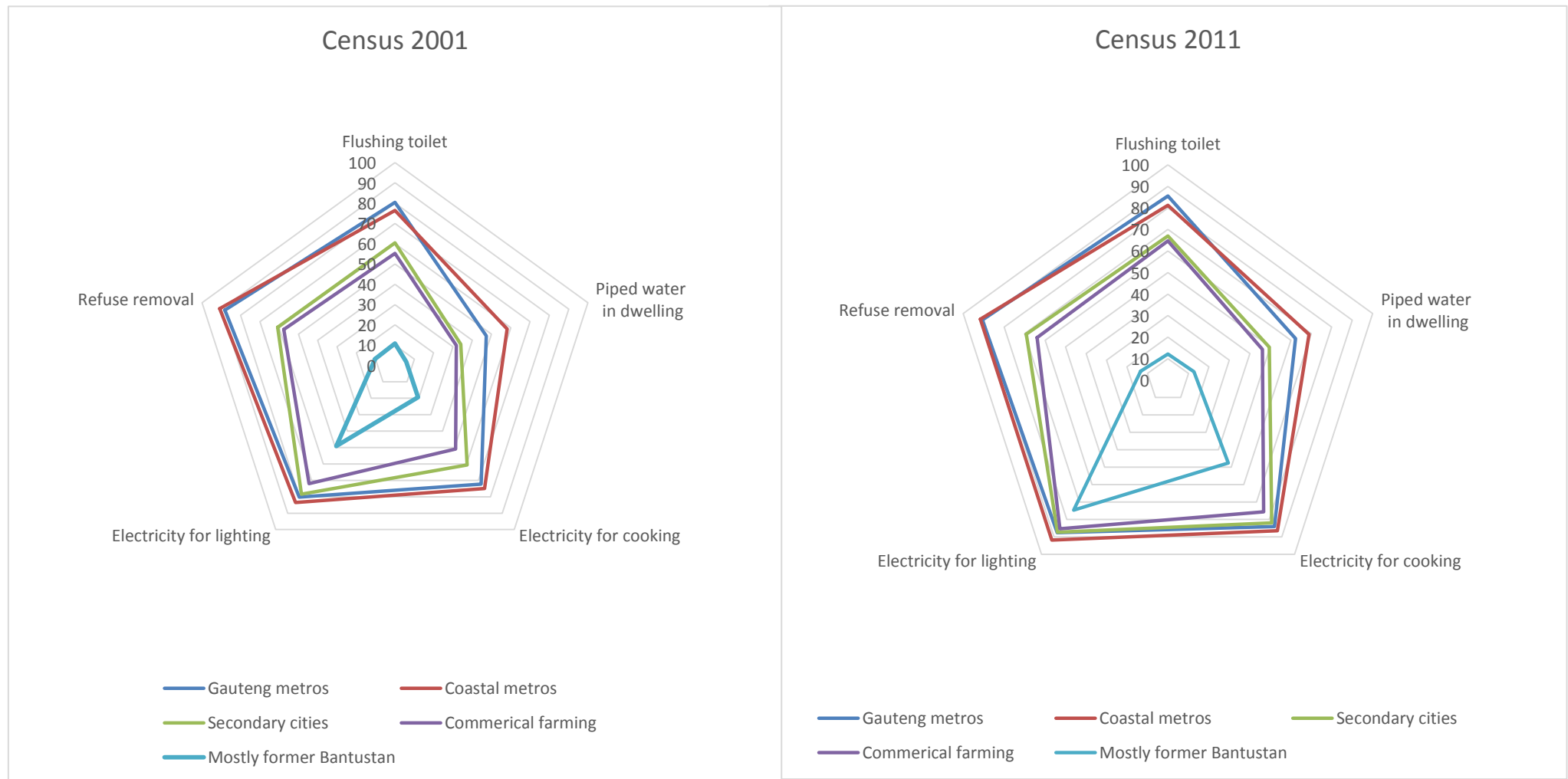
Between 2001 and 2016, there appears to have been widespread improvement in access to services. Furthermore, the gap between the metros and the rest of the country may have narrowed slightly through these other areas catching up with the level of services available in the metros. The closing of the gap seems to have been greatest between the metros, on the one hand, and the secondary cities and farming areas, on the other. The improvement in the former bantustans has been very patchy. Access to electricity has improved dramatically, whereas access to water, sanitation and refuse collection does not seem to have improved by much.

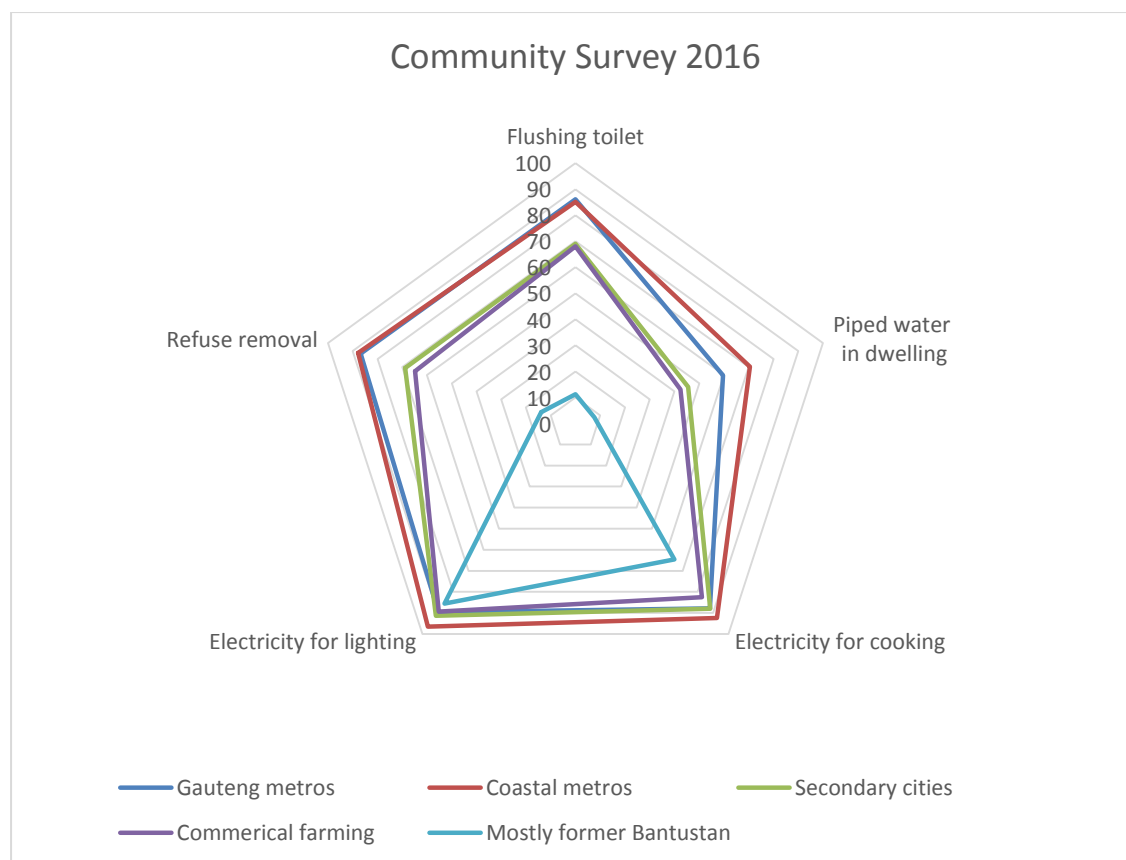
The biggest single service improvement in the other three types of settlement also appears to have been in rolling-out electricity. Access to water has improved to a lesser extent, followed by sanitation and refuse removal, where progress has been modest. Summing up, there are major disparities in access to public services between different parts of the country. These gaps have narrowed since the 1990s in some respects – particularly electricity – but less so in other respects – particularly sanitation and refuse removal.

Education and vocational skills ('human capital') are increasingly important for individual employability and productivity, for the success of new enterprises, and for the development of local and national economies. Figure 12 shows the level of education prevailing in the different settlement types for 2001, 2011 and 2016. The most striking feature is that only one in four people (25%) completed secondary school in the former homelands in 2016, compared with more than half (55%) in the Gauteng metros.

Similar disparities exist for other levels of education, and the same consistent pattern across the different settlement types (metros, secondary cities, farming areas and former bantustans) repeats itself throughout the period 2001-2016. The biggest improvement in educational outcomes seems to have occurred in the metros, rather than the rural areas. For example, the proportion who completed secondary school increased from 40% to 55%. This implies that the spatial gap in human capital has widened rather than narrowed since the 1990s. This is supported by evidence from other studies (Spaull, 2013). The more educated workforce in the cities is an asset for attracting investment, developing the local economy and improving individual earnings.

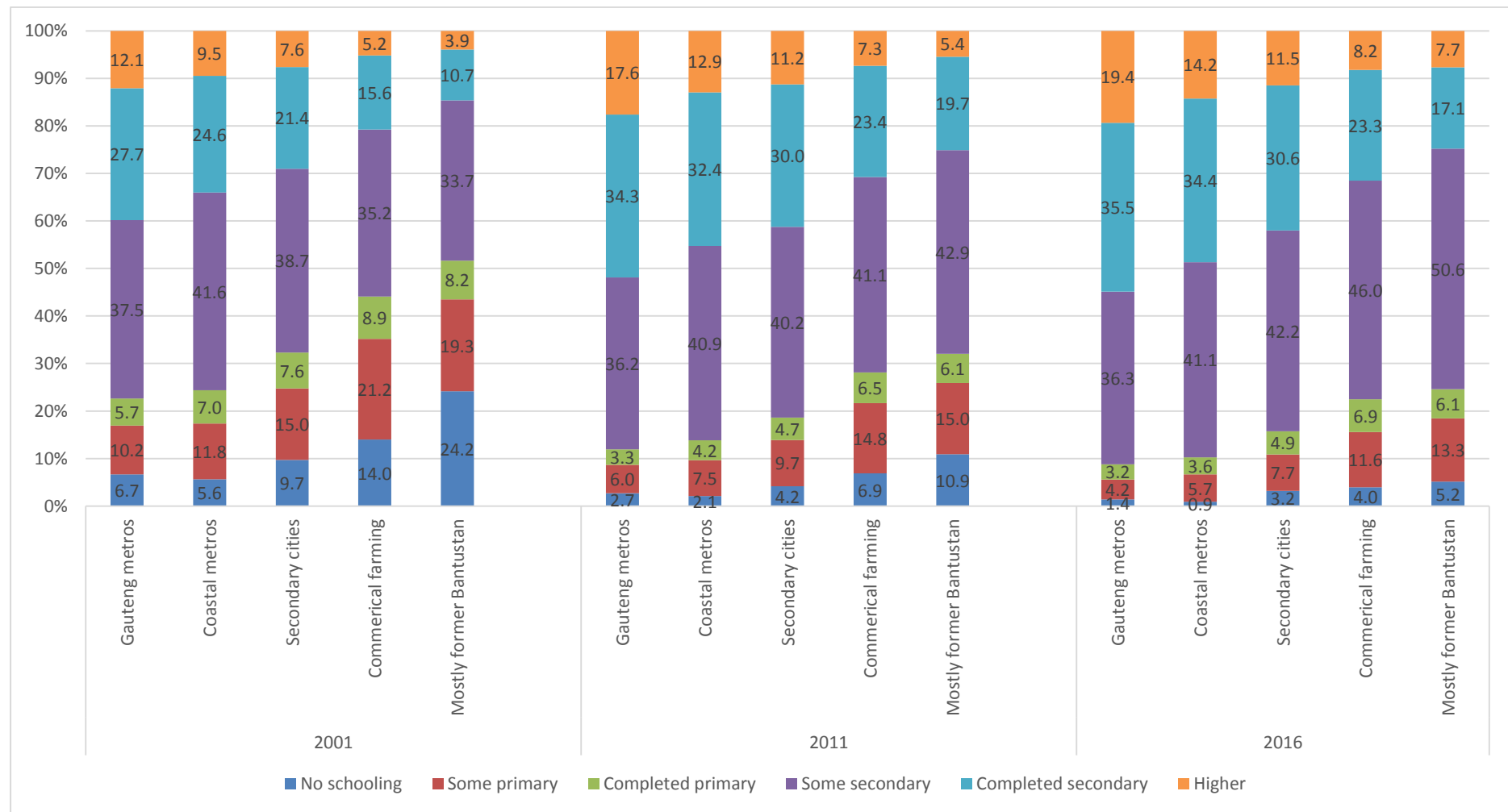
Figure 11: Share of household access to services by region; 2001, 2011 and 2016





Source: Census 2011, Census 2011, Community Survey 2016; authors own estimates

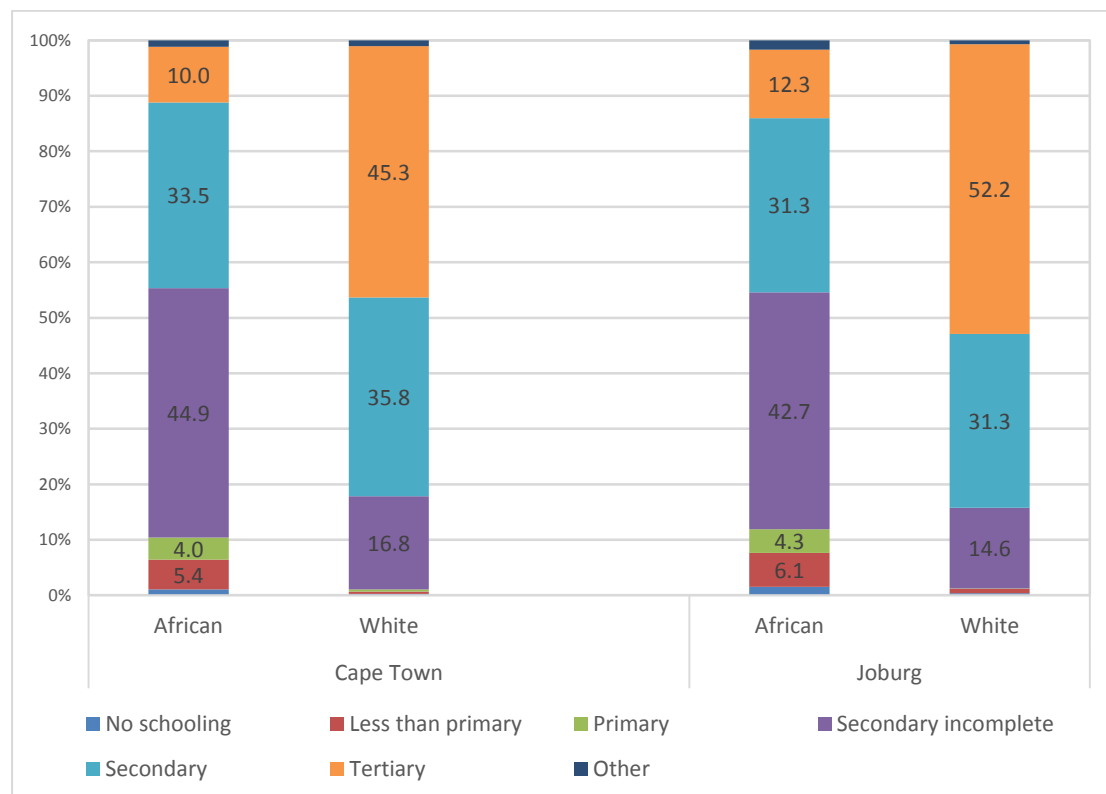
Figure 12: Share of highest educational category attained by region, workforce (aged 15 – 64); 2001, 2011 and 2016



Source: Census 2011, Census 2011, Community Survey 2016; authors own estimates

Skills and education levels are on average higher in the cities, although racial disparities persist. Figure 13 shows that roughly half of the white workforce in Johannesburg and Cape Town has a tertiary level education compared to 1 out of 10 African workers. Approximately 45% of Africans have not completed their secondary level education. This may partly explain why labour market prospects are much more favourable for whites than for Africans (see figure 14). The average unemployment rate amongst whites in the metros is 7.2%, which is in line with the average for OECD countries of 6.2% and even better than the average of the European Union (28 countries) at 8.2% (OECD indicators, 2017). But unemployment amongst Africans in the metros is chronic and has spiked to record levels of 30% in recent years – and this is still more favourable than labour market outcomes amongst Africans in rural and other urban areas. Whites are not pushed into the casualization of their labour, whereas 3 out of every 10 jobs amongst Africans in the cities are in the informal economy. In rural areas, informal work is an even greater source of livelihoods for poorer African households.

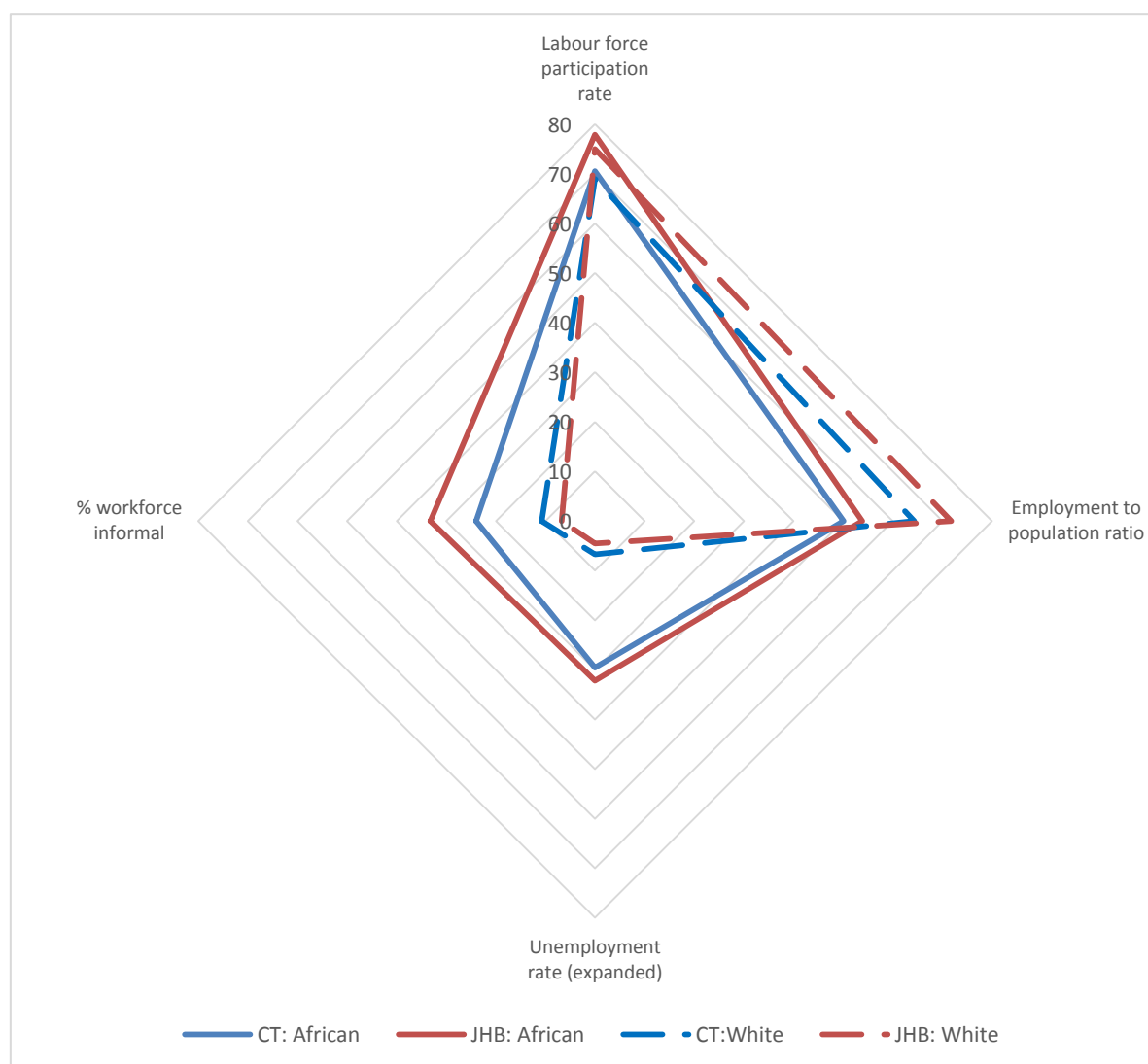
Figure 13: Education indicators by race



Source: own estimates; Labour Market Dynamics Survey 2015



Figure 14: Labour market indicators by race



Source: own estimates; Labour Market Dynamics Survey 2015

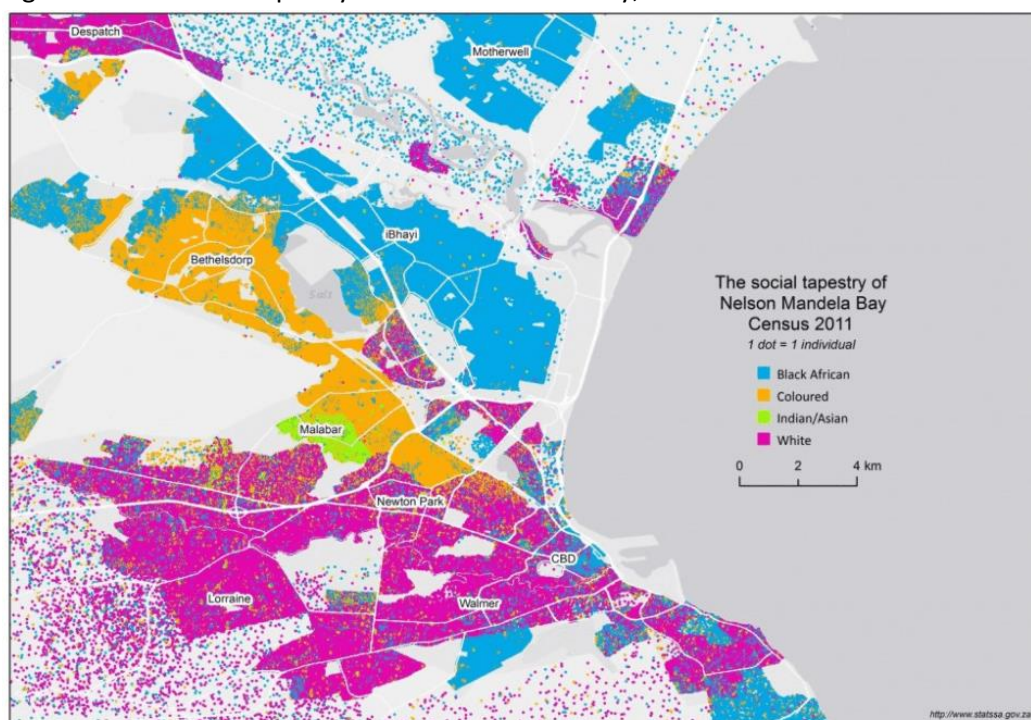
#### (v) Spatial inequalities within cities

The divided spatial form of SA cities with its inefficient use of land is infamous internationally. Economic mechanisms transmitted through the labour and land markets have replaced administrative controls on racial segregation as the primary drivers of spatial division. Hence lower income households cannot compete with more affluent households for well-located property, unless they occupy cramped spaces in run down urban areas. The vast majority of poor black households live in peripheral townships and informal settlements, with substandard services and long-distance commutes to jobs, colleges and other facilities. Most urban townships have not evolved much beyond dormitory settlements lacking formal business activity, employment and diverse consumer services.

The government's most substantial intervention in the built environment - the mass RDP house-building programme - has had the paradoxical effect of exacerbating spatial

inequality because it neglects the importance of the land market in shaping spatial development patterns. Private developers have also tended to reinforce the problem by disregarding the affordable housing segment and focusing on building exclusive residential and commercial precincts for well-off households. They do not pay the full costs of providing public infrastructure on the edge of city because there is no national framework of development charges in place to recover these costs. They also benefit from a windfall when schemes such as Gautrain or new freeways are constructed because of the lack of value capture mechanisms. Compared with many other countries, there have been few mixed-income, mixed-use, higher density developments that create more inclusive, convenient and liveable urban districts. The relocation and dispersal of formal businesses away from the old, accessible central cities has compounded the problems of urban sprawl and spatial mismatch.

Figure 15: The social tapestry of Nelson Mandela Bay, 2011



Source: StatsSA, Census 2011 (taken from a presentation by the Statistician General)

Figure 15 illustrates how race continues to characterise urban settlement patterns. Black African communities remain concentrated on the periphery of Nelson Mandela Bay, whilst coloured and Indian neighbourhoods buffer the white urban core. Yet there are some signs of socio-spatial change. The former white suburb of Summerstrand is home to the local university and has become more diverse, suggesting that such institutions can play a useful role. In addition, the Gqebera informal settlement is well-located in relation to the core urban area. However, this reflects spontaneous and unauthorised community action rather than deliberate planning. Most SA cities have done little to promote well-located, higher-density, affordable housing for low income groups to access economic opportunities.

Rough calculations of average incomes and house prices show how purchasing property is beyond the reach of most African or coloured households. If an average African household of four persons dedicates 30% of their gross income to paying off a mortgage, it would

typically take more than 30 years to pay back the debt interest-free. Only white households have feasible pay-off periods. This is not just a problem of buying property in affluent suburbs. Data from the First National Bank House Price Index suggests that property growth has been strongest in townships when compared to other suburbs in the city of Cape Town and Johannesburg in relative terms (albeit from a low-base). There is strong motivation for the state to intervene in the rental market to create affordable housing for low-income households close to urban nodes. Careful city planning is needed to create densified mixed-income communities along strategic urban corridors through tools such as land zoning, infrastructure and service provision, the creation and curation of public spaces and partnerships with NGOs and private-developers in the provision of social housing.

Table 2: Property affordability by metro and race

	Cape Town	City of Joburg	City of Ekurhuleni	City of Tshwane	City of eThekweni	Nelson Mandela Bay
Average house price	R1,456,354	R1,160,226	R988,872	R1,113,919	R970,824	R832,453
Total household income*	R14,496	R13,760	R14,676	R14,092	R7,888	R7,088
African	R8,608	R10,404	R11,096	R10,056	R4,912	R4,988
Coloured	R10,852	R13,304	R18,840	R16,836	R14,876	R8,248
White	R34,556	R32,844	R29,112	R29,556	R31,232	R18,928
Total Years Pay-off**	28	23	19	22	34	33
African	47	31	25	31	55	46
Coloured	37	24	15	18	18	28
White	12	10	9	10	9	12

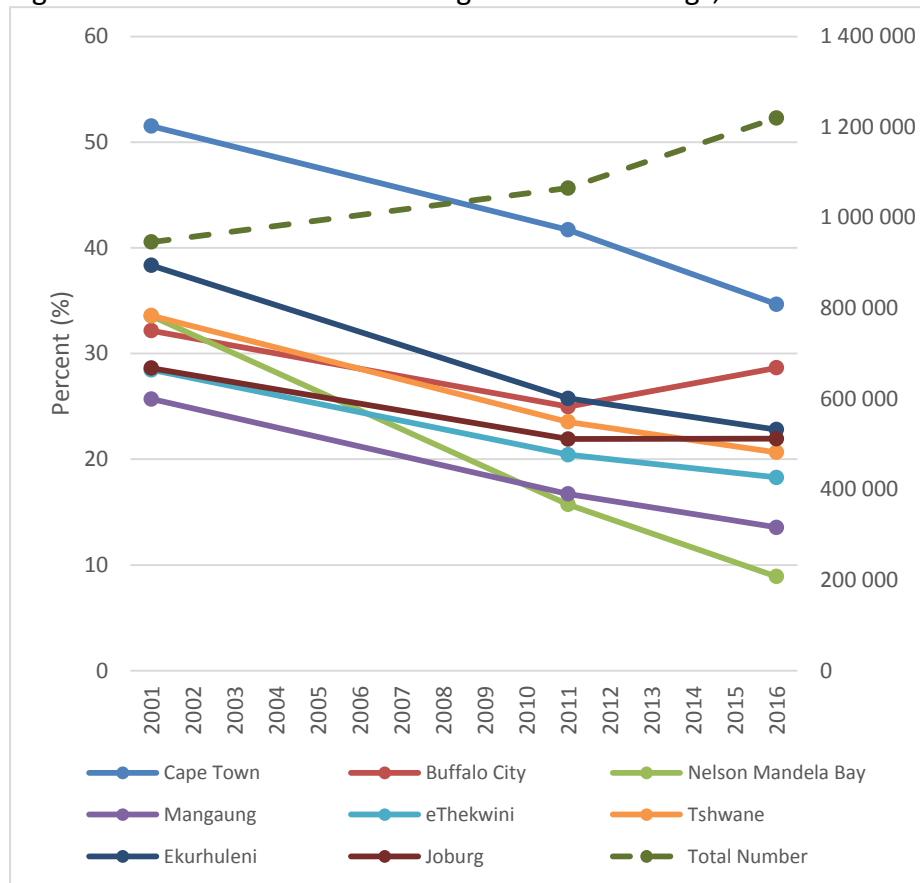
Source: own estimates; FNB house price index, General Household Survey

Notes: \*assuming a family of four

\*\* interest-free and dedicating 30% of total income

This also explains the growing prevalence of backyard dwellings. Figure 16 shows how the total number of African households living in shack accommodation is increasing within all the metros. Despite the massive expansion of low-cost RDP housing (and falling proportion of shack-dwellers) the supply is not fast enough to offset the growing demand for housing, partly as a consequence of rapid urbanisation. Poor rural migrants are predominately African (there is a negligible proportion of white and coloured households living in shacks) which means that the proportion of African households living in informal settlements is higher than commonly reported. For example, in Cape Town, more than one in three Africans lived in a shack.

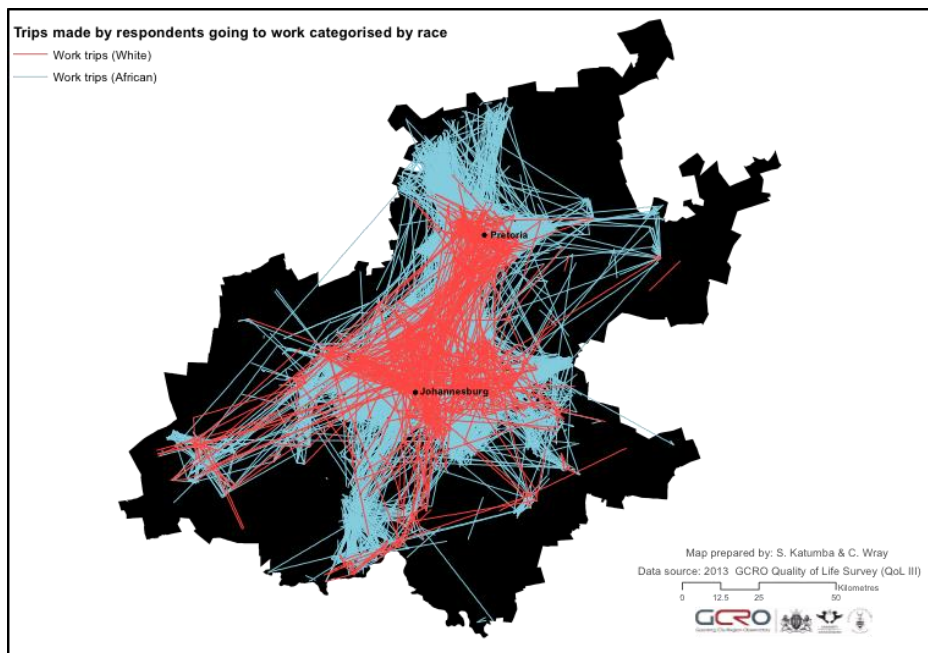
Figure 16: African households living in shack dwellings; 2001 - 2016



Source: own estimates; Census 2001, Census 2011, Community Survey 2016

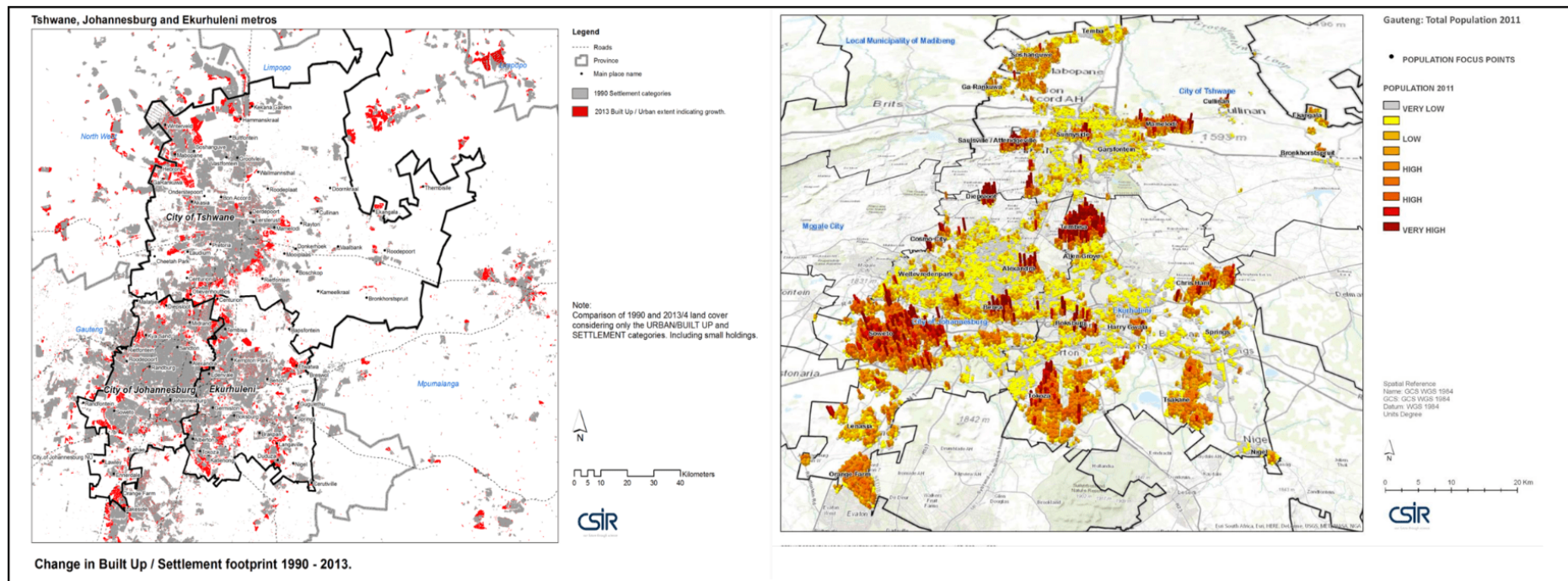
The distorted form of SA cities is also apparent in their inverted density gradients (density rises with distance from the centre), which is a major source of transport inefficiency. Figure 17 (overleaf) shows the uneven distribution of the population across the Gauteng city-region with very high population densities on the peripheries for poor communities such as Tokoza, Tembisa, Chris Hani and Mamelodi. Recent unpublished research by the World Bank shows that this pattern has not changed since the 1990s (see also Turok, 2016). Figure 17 also shows that the urban footprint expanded outwards between 1990 and 2013/14, rather than upwards or through infill development. A sprawling urban form means more costly infrastructure and service delivery, and more congested transport corridors. South Africans have some of the longest commutes in the world (National Treasury, 2017). Nearly three-quarters of the population (71%) (especially the poor) use minibus taxis, which receive less than 1% of public transport subsidies. The race-based segregation of cities is reflected in stark differences in the commuting patterns and distances of black and white workers (Figure 18). Average commuting times for black households have increased from 88 to 102 minutes a day over the past decade (Kerr, 2015). According to the National Treasury (2017), nearly two-thirds of the lowest income earners spend over 20%, and in many cases as much as 40%, of household income on public transport.

Figure 18: Travel to work by race and travel in search of work, 2013



Source: Quality of Life Survey, 2013; GCRO Map of the Month: October 2014

Figure 17: Expanding urban footprint (1990 – 2013/14) and Population Density (2011) in the Gauteng City-region

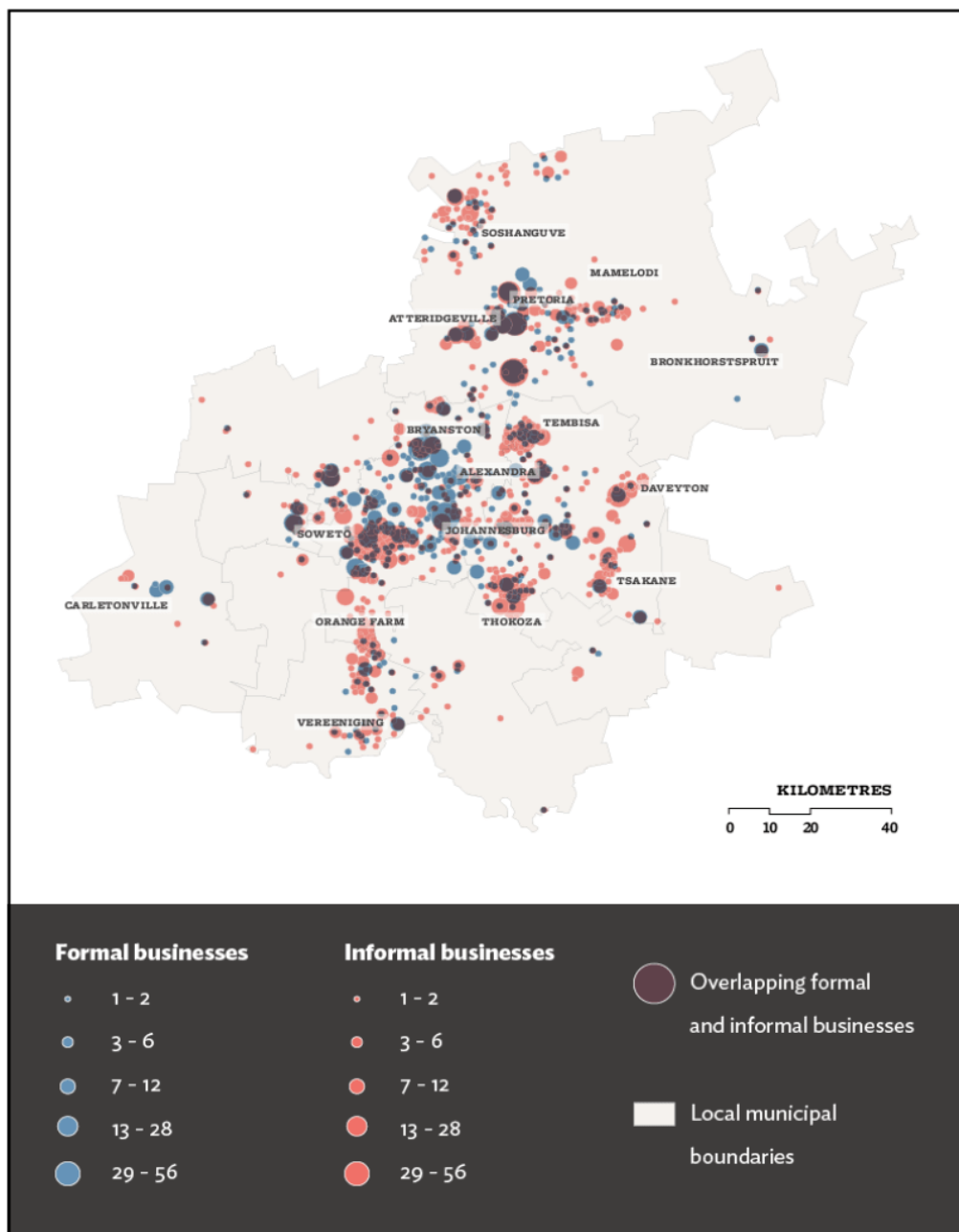


Source: Spatial and Temporal Evidence for Planning in South Africa (StepSA) Spatial Transformation Indicators





Figure 20: The location of formal and informal businesses and their suppliers



Source: Quality of Life Survey, 2015; GCRO Map of the Month: February 2017

An important new policy phenomenon has emerged in recent years described as housing 'mega-projects' (Turok, 2016). These are schemes driven predominantly by national and provincial governments, but also involving private sector investment where possible. Their main objective is to accelerate the delivery of new low- and middle-income housing, given the intense social pressures and escalating protests over housing backlogs and waiting lists. This is to be achieved through economies of scale in construction and by building on greenfield sites beyond the existing built-up urban area. This approach is intended to bypass some of the cumbersome procedural and regulatory burdens currently facing urban development, including opposition from nearby communities concerned about the impact on their amenities, congestion and crime. However, there is a price to pay for poor families



stuck on the periphery and having to bear the brunt of long and complex journeys to work and school. There is also a serious risk these mega-projects could exacerbate the fragmented form of SA cities and reinforce inequality and inefficiency.

The ability of major housing schemes and other 'catalytic' projects to contradict and undermine established spatial principles of urban integration and densification reflects, in part, the relative weakness of municipal spatial planning systems. They are generally disconnected from public infrastructure investment decisions and sectoral plans for housing, transport, industry, the environment and so on. There is also a strong and persistent tradition in land-use planning in SA of a reactive approach involving top-down bureaucratic controls and prescriptive regulation of private development, rather than a more forward-looking approach geared to working with investors, communities and other stakeholders to negotiate mutually-beneficial outcomes and thereby 'make things happen'. This is also apparent in municipal attitudes towards the management of the public realm in urban areas, including the difficulties faced in balancing different interests to achieved shared objectives. This applies most often to the treatment of informal traders and occupiers of informal settlements, where heavy-handed eviction seems to be more common than constructive engagement and negotiated problem-solving.

#### **(vi) The opportunity and challenge of informality**

Informality appears to be growing rather than diminishing in SA. It is difficult to be sure because statistical evidence on informal enterprises and settlements is scarce since these activities are below the radar screen and tend to avoid being counted. For example, informal urban settlements are generally unauthorised, they occupy land owned by other people or organisations, and the residents make no financial contribution to whatever public services they receive. Squatter settlements typically reflect the efforts and ingenuity of poor households to gain access to the economic and social opportunities located in cities and towns. They cannot afford formal housing, or are ineligible for state-subsidised housing. Most informal settlements consist of makeshift structures and have only rudimentary water supply, sanitation and other public services. Consequently they are exposed to risks of fire, flooding, disease, crime and other hazards. Squatters are often vulnerable to exploitation by local gatekeepers, stigmatisation by surrounding communities and eviction by public authorities because they lack legal protections. With no reassurance about the future of these places, many people behave as temporary residents and remit any spare money to relatives elsewhere rather than invest in local upgrading.

Informal enterprises reflect people's efforts to fashion livelihoods for themselves in the absence of sufficient formal-sector employment. They are generally not registered as businesses and avoid many other legal procedures and tax requirements because of the administrative burden. Their informal status usually reflects their low revenues and low profitability since they cannot afford to abide by the procedures required to formalise and regularise their operations. Their informal position has various adverse effects, including vulnerability to closure or harassment for failing to comply with the various legal requirements for running a business. They are easily driven out of well-located areas for doing business, such as central cities, transport hubs or the car parks surrounding shopping malls. Being informal also inhibits their ability to raise external capital for investment in

stock, equipment and marketing, to upgrade their premises and to expand their operations. Hence, most remain precarious, survivalist enterprises with low productivity, limited technology and existing at the margins of viability.

Informality is not a distinct and separate system of institutions and decision-making since informal enterprises interact in various ways with formal businesses (which supply them with goods and services), with customers (many of whom work in the formal economy and use money obtained from banks), and with the state (they comply with some regulations and municipalities supply some of them with basic services). Many informal settlements are also supplied with essential services, such as shared water, sanitation and refuse collection, so they don't exist in isolation either. Nevertheless, informal activities have a certain degree of autonomy from formal institutions, including the government. There is a varying level of tolerance of informality by the public sector because it serves a useful purpose given the shortfall in jobs and housing, and because it would be impossible or socially unacceptable to prevent or eradicate it completely. Yet tolerance and benign neglect does not support progression and incremental upgrading beyond the substandard, precarious existence to which people are exposed. There is also a history of intolerance, dispossession and displacement of poor people from cities that seems to keep recurring.

#### **(vii) Summary**

Summing up, a consistent picture emerges from this analysis of spatial economic trends in SA since the 1990s. First, there are stark and systematic disparities between different regions and localities. The core metropolitan areas are generally more productive and prosperous than the peripheral rural areas. Within the cities there are major gaps between suburbs and townships, and between formal and informal settlements. Second, the economic inequalities between places are matched by large gaps in education and public services, and hence in the quality of life. Third, the metropolitan regions have been growing more strongly than the rural areas, so regional disparities have widened rather than narrowed post-Apartheid. Fourth, many people have responded to these divisions by migrating from rural to urban areas, thereby offsetting some of the rural pressures and backlogs. Fifth, the government's main response to the spatial gap has been to redistribute tax revenues from the metros to rural communities. These transfers have compensated poorer locations for their economic weakness by meeting the costs of healthcare, education, social grants, free housing and basic services. Within cities, some policy responses to poverty seem to have complicated its solution by confining people to peripheral settlements.

An immediate question that arises for this report is whether the regulatory framework is helping or hindering progress towards socio-economic improvement through spatial change. In particular, is it helping to narrow the spatial divide between people and productive activity by enabling people to move closer to opportunities? And is it helping to upgrade and develop informal settlements and enterprises so as to reduce their precarious position, and to bridge the gap with the formal economy? The next section considers the issues facing informal enterprises and the impact of state rules and regulations on their growth and development. It considers whether altering some of these arrangements would help to improve livelihoods by enabling people to start and grow their own businesses.

### 3: Spatial integration of informal enterprise

In the context of mass unemployment, it is important to recognise that the informal economy performs a valuable function in providing jobs and livelihoods for several million relatively low-skilled people. It also offers many useful services for poor households and for the wider community. In the absence of social grants for unemployed adults there is a strong case for government acceptance of - and indeed active support for - informal enterprise as a form of self-reliance that helps to keep people out of poverty. In effect, people 'create their own jobs' by establishing micro-enterprises that succeed partly by finding niches and avoiding various forms of red tape. These enterprises could also be a nursery for people to learn many transferable skills and attitudes, a stepping stone towards getting a formal job, and a seedbed for growing larger and more productive businesses. Surveys reveal that relatively few people in SA aim to become entrepreneurs or believe they are capable of doing so, despite the acute need for a vibrant small business sector. A challenge for government is striking the right balance between recognising the positive contribution made by informal enterprises and protecting other interests in society, including consumers, formal businesses and their workers, and the residents of suburbs and townships, from any negative effects of unregulated activity.

The underlying argument of this section is that several government rules and regulations do not value informal enterprises and appear to be stacked too heavily against them, which inhibits their growth and limits their impact on poverty reduction. These laws and procedures, some of which are implemented by municipalities, exacerbate costs, discourage investment, reinforce fragility or prevent informal enterprises from operating legitimately. By pushing people out of strategic spaces, they reinforce the stark spatial divide between townships, suburbs and central cities. This is one of the barriers to the development of informal businesses. Of course, regulations are not the only, or even the most important, set of obstacles to the growth of this activity. However, there may be scope to revise, simplify and streamline some of them in the interests of supporting this useful segment of the economy.

The scale and nature of the contribution made by the informal economy in SA are not well understood. The next section provides a brief overview.

#### 3.1 The scale and nature of the informal economy

Reliable information on the informal economy is scarce, despite increasing efforts to understand its significance. The extent of informality seems to vary greatly across sectors and places. Policies and regulations affecting informal enterprises are also applied unevenly in different locations, making it difficult to establish a robust picture of the national situation. The following description draws on the best available sources and insights from recognised experts<sup>2</sup> to provide a thumbnail sketch of the informal sector.

##### *(i) The size, composition and impact of the informal economy*

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<sup>2</sup> A list of sources and interviewees is provided in section 5.

It is estimated that over 2.5 million people work in the informal economy (over 3 million including agriculture), comprising 17% of the total workforce. This is a sizeable contribution in a context where jobs are in short supply. About 1.5 million of them are self-employed and about 1 million are employees (Rogan and Skinner, 2017). The size of the sector does not seem to have changed much in recent years, except during the 2008-09 recession when informal jobs contracted more than formal jobs (ibid). This experience contradicts a common perception that informality is a cushion or shock-absorber for 'lost' formal employment during a downturn (NPC, 2012; Verick, 2012). Yet other evidence cited below suggests that in other respects the informal economy does act as some kind of substitute for formal activity, so the relationship between them is clearly not straightforward.

The informal economy is most significant for the poorest and most vulnerable sections of society. About 41% of informal workers had incomes below the poverty line in 2012, compared with 17% of formal workers (Rogan and Reynolds, 2015). About 37% of SA's working poor operate in the informal economy. While informal incomes are generally lower than formal incomes, they still assist people living on the margins. It has been estimated that informal self-employment typically generates 63% of the income of formal jobs (Cichello and Rogan, 2017). In other words, creating or safeguarding 100 typical informal jobs is equivalent to creating or safeguarding 63 typical formal sector jobs. Some studies suggest that women benefit more than men from informality, although this pattern may be changing (Rogan and Skinner, 2017). There is also considerable evidence that foreign migrants participate disproportionately in informal enterprises, because they struggle to secure formal jobs. This has sometimes had adverse consequences for government attitudes towards informality.

Besides jobs and incomes, the informal economy gives people self-respect and promotes social cohesion, illustrated by the words of one informal trader: *"I had a very long period where I was unemployed, but since trading here I must say I feel my dignity as a mother has been restored"* (cited in Sokanyile, 2016). Informal enterprises also offer many useful services, products and benefits to the country. For example, waste pickers and recyclers contribute to resource efficiency and environmental sustainability, as well as social welfare. The minibus-taxi industry ferries more commuters to work than any other mode of transport, despite not receiving any ongoing government subsidies. Against this, informal workers lack social protection and may be more exposed to health and safety hazards than workers in formal employment.

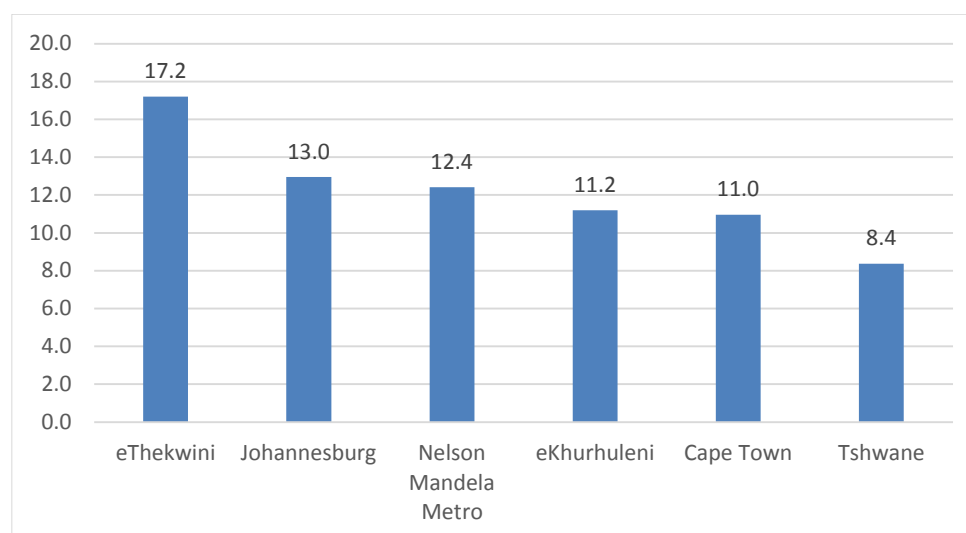
### ***(ii) The spatial distribution of the informal economy***

The informal economy is unevenly distributed across the country. The better-off provinces of Gauteng and Western Cape have only 12% and 10% of their non-agricultural workforce respectively in the informal sector, while the poorer provinces of Limpopo, Mpumalanga and the Eastern Cape have between 20-30% informal (Rogan and Skinner, 2017). This difference is likely to reflect the relatively high unemployment rates in the poorer regions. It could also be influenced by the stance of provincial and municipal authorities towards informal enterprises, in term of tolerance and positive support.

Sizeable differences are also apparent between cities and rural areas. Only 12% of the workforce in the metros is informal, compared with more than 20% of the workforce elsewhere. Johannesburg has the largest absolute number of informal sector workers

(estimated at 250,000), while eThekweni has the highest share (17% of its workforce) (Rogan and Skinner, 2017). An estimated 160,000 people in Cape Town work in informal trade, making it the city's second largest employment sector. It also appears to be growing strongly (Sokanyile, 2016).

Figure 1: Percentage share of informal sector employment in total employment by metro (excluding agriculture) (2014) (Source: Rogan and Skinner, 2017)



In marginal economic locations, such as traditional areas and informal settlements, informality accounts for 32% and 18% of the total non-agricultural workforce respectively. The Sustainable Livelihoods Foundation (SLF) recently undertook a detailed census of nine townships across the country and counted 10,842 informal businesses altogether. This means that there was one such enterprise for every 30 township residents on average (SLF, 2016).

### ***(iii) The diversity of the informal economy***

Recognising the diversity of the informal economy is important in policy-making, since there is a tendency to see it as homogeneous when in fact different segments face different growth opportunities and challenges. The main sectors are retail and wholesale trade (42% of informal jobs), construction (16%), community, social and personal services (16%), manufacturing (9%), transport, storage and communications (9%) and financial services (7%) (Rogan and Skinner, 2017). Construction enterprises tend to be relatively large (with about 3.5 employees on average) and those in trade relatively small. Retail trade is most important in the townships, suggesting low barriers to entry or relative profitability (SLF, 2016). Liquor, grocery and food services represent 54% of all township businesses, followed by services (34%), including hair salons/barber shops, traditional healers, mechanical/electrical repairs, recycling, churches and early childhood education (educare) centres. Micro-manufacturing plays a minor role with only 2% of all enterprises (SLF, 2016). There are also illegal activities such as drug-dealing, counterfeit goods, contraband cigarettes and sex-work that are not reflected in these statistics.

#### ***(iv) Formal-informal linkages***

Experts argue that the formal and informal economies are not distinct and separate sectors, but two segments of one economy, which are interlinked and sometimes dependent upon each other (Battersby et al., 2016; Chen, 2007). Relatively little is known about these connections and how they generate positive and negative outcomes in different industries. Many large retail and wholesale companies recognise the value of working with informal traders because of their access to low-income consumers. They supply them with specific products and services targeted at this market segment. Major breweries and soft drinks suppliers clearly work closely with township bars and shebeens. Plastow (2015) calculated that spaza shops make up approximately half of Massmart sales. Rogan and Skinner (2017) estimate that the informal food retail sector accounts for around 30% of national food retail sales.

#### ***(v) Assessing the potential of the informal economy***

There is some debate about the economic significance and growth potential of the informal economy. A popular view is that it is predominantly survivalist, in that most of the people involved would prefer a regular job and lack the skills and resources to run a successful formal business. Hence they operate in saturated markets and their products and services add little value compared with their competitors, so their margins are slim and they generate low earnings. Yet there is also a more positive perspective which suggests that the informal economy can serve important niche markets and add value to other activities. Ranis and Stewart's (1999) distinguished between 'Modernising Informal Enterprises', which are growth-oriented and have higher levels of productivity and value added, and 'Traditional Informal Enterprises', which are more survivalist (Rakabe, 2017; World Bank, 2014). The former are better able to grow and generate economies of scale, while the latter may make a bigger contribution to equity objectives and poverty relief among women, unskilled adults and other marginalised groups (Rogan and Skinner, 2017)

Apart from the aptitudes and aspirations of the individual entrepreneur, a key issue is whether the growth of informal enterprises is hindered by external constraints. These include access to more profitable markets, ease of access to working capital and investment finance, and the availability of physical premises and infrastructure. The role of government policy and regulatory frameworks is also critical to the growth prospects of such firms, including rules governing product markets, business registration, public procurement and the provision of public infrastructure and services. According to the Financial and Fiscal Commission: "*Structural constraints imposed by the urban spatial and economic arrangements thwart informal enterprises in any attempt to become growth drivers*" (Rakabe, 2017, p. 1).

The stark spatial divide between townships, suburbs and central cities is one of the barriers that hinder informal businesses. This divide is reinforced by several government laws and procedures, some of which are implemented by municipalities. Location is also important since home-based enterprises tend to be smaller and less growth-oriented than those located in a commercial or industrial environment. The next section analyses the constraints to the growth of informal economy, with a particular focus on the impacts of government policy and regulations.

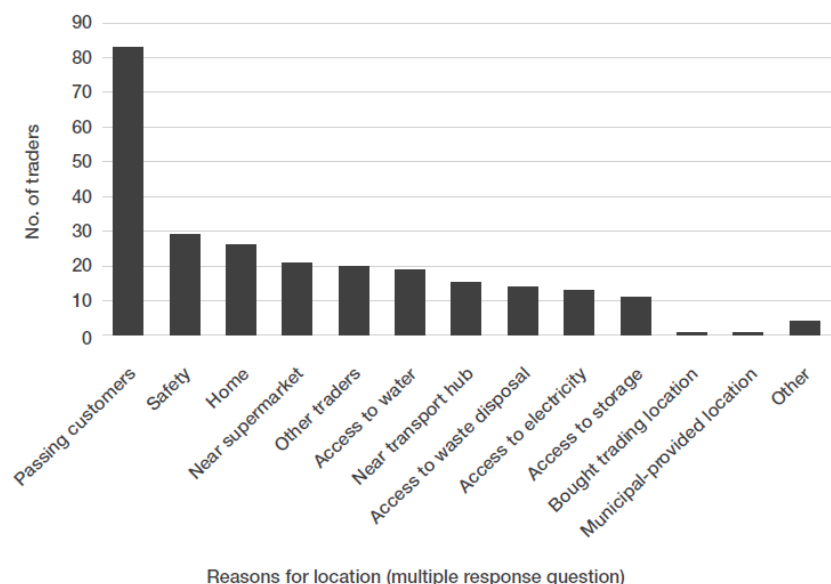
## 3.2 Structural and regulatory constraints

### *(i) Structural constraints to informal enterprises*

The determinants of business success are manifold and beyond the scope of this report to examine, including the personal qualities of the owner, their financial and other resources, their access to start-up capital and credit, proximity to customers, suitable infrastructure (transport, storage, electricity, waste disposal), security and government support services. Informal businesses are particularly susceptible to crime, negative perceptions, competition from large retail chains, insecure property, police harassment, xenophobic attacks and corruption (Crush et al., 2015; Rakabe, 2017; SLF, 2016; Willemse, 2011; World Bank, 2014). Many of these obstacles to growth reinforce each other and compound the significance of any particular constraint. The result can be a vicious cycle which prevents informal enterprises from growing and developing their capabilities over time.

Issues of physical location and market visibility shape the opportunities available to informal enterprises, as with most businesses. The following graph from a study of informal food retailers in Cape Town confirms the overwhelming significance of passing customers to the location choices of street vendors. They perform best at places with high footfall, such as public transport nodes, retail centres, key tourist sights and government buildings. This advantage is reinforced when they have established a permanent visible presence and built up a regular customer base. Street traders also benefit from designated markets with high volumes of visitors and appropriate infrastructure.

Figure 2: Reasons for choosing business location (Source: Battersby et al., 2016)



In the most popular and prosperous locations, such as many central cities, informal trade is often restricted to designated sites that can be some distance from the main business districts, transport nodes and high streets (Willemse, 2011). This reflects a desire to sustain the competitiveness of these places for established businesses, investors and consumers in

the face of threats from suburban business precincts and shopping malls. Meanwhile, there are few if any controls on informal enterprises in the townships. Yet these locations are less satisfactory in terms of their infrastructure, urban design and opportunities to connect with formal value chains (SLF, 2016). Inadequate transport infrastructure is a major stumbling block in the townships:

*The biggest issue in townships is the infrastructure. Townships would usually have only one main way in and one way out. There are many buffers between places. If you improve connectivity, you make townships more viable as centres of production and service offering (Senior official 3, eThekweni Municipality).*

Competition from foreign traders (Hartnack and Liedeman, 2017) and large supermarkets (Battersby et al., 2016) has been a growing challenge to local informal traders. The expansion of supermarkets into townships has provoked serious concerns about undercutting and displacement of trade, although there have also been some positive outcomes. Foreign owners of spaza shops themselves face high levels of crime, vandalism and xenophobic attacks that threaten their businesses (Crush et al., 2015).

### ***(ii) Policy and regulatory constraints to informal enterprises***

Government policy, regulations and practices exert a big influence on the growth prospects of informal enterprises (Hartnack and Liedeman, 2017; SLF, 2016; Crush et al., 2015; World Bank, 2014; Charman et al., 2012). Onerous bureaucratic processes and inappropriate regulations are sometimes the most significant hurdles to their development (SERI, 2015; SLF, 2016). According to one interviewee *“the regulatory obstacles are primordial, predominant, essential obstacles for informal enterprise growth”* (Academic, Johannesburg).

SA government policy over the last two decades has largely ignored or been ambivalent towards informal businesses, with more focus on formal SMEs (Rogerson, 2016). The DTI admits the *“absence of a nationally co-ordinated policy as well as an integrated legal and regulated framework, coupled with a lack of policy and regulatory alignment between local government, national and provincial departments”* (DTI, 2014, p. 9). Furthermore, there is *“no strategic focus by Government on informal businesses, but in certain instances there is over-regulation of the sector. In both cases the growth of business is stifled”* (DTI, 2014, p. 22). Government entities also act independently of each other without adequately communicating the processes of business registration and licensing to informal enterprises (ibid).

The lack of a coherent national policy on the informal economy has serious consequences for municipalities, which have to deal with informal enterprises on a daily basis. The policy vacuum has resulted in provinces and municipalities devising their own frameworks. The result is many inconsistencies in approach. Local government has often neglected and sometimes prevented such businesses from operating. There has been much more emphasis on enforcing regulations, rather than empowering informal enterprises through positive support and an enabling environment of suitable infrastructure and services (Rogan and Skinner, 2017; Rogerson, 2016; Battersby et al., 2016; Crush et al., 2015; SERI, 2015; SERI, 2011).



*“Politicians are ambivalent towards informality. A lot of the time there is insufficient engagement with the sector, with the needs and preferences. Instead we get a top down view, which is primarily regulatory based on a belief that regulations can be used to manage informality” (NGO 2, eThekweni Municipality).*

There have been many instances of municipalities demolishing and evicting informal traders (Crush et al., 2015; SERI, 2015). Operation Clean Sweep was a high profile case in late 2013, when the City of Johannesburg removed over 6,000 traders from inner city streets without any warning, resulting in the loss of valuable stock and livelihoods (Bénit-Gbaffou, 2016). As a result, the courts were highly critical of the City’s approach, although smaller scale confiscation of stock happens regularly in cities and towns throughout the country.

There have also been examples of a supportive approach. The most prominent was the upgrading of Warwick Junction in Durban, which has become a sought-after platform for 6-8,000 informal traders to supply citizens with affordable products and services in the heart of the city (Dobson and Skinner, 2009). The Municipality responded to the needs of these enterprises by providing them with low cost kiosks, cubicles and stalls with suitable infrastructure and storage space. This has raised incomes and generated improvements all-round. Arrangements have also been made with selected shopping malls and retail centres to provide informal traders with space and some equity participation.

One reason for the policy ambivalence is the tendency to perceive the informal economy as a problem rather than part of the solution to poverty. Suspicion and hostility arises because of the avoidance of tax, non-adherence to rules and periodic use of informality as a cover for criminal activities. The desire to raise norms and standards in society is another reason for scepticism about informality. Prescriptive standards of employment, public health, welfare, safety and traffic management can be unrealistic for informal enterprises operating at the margins of viability.

*“The intent of regulating is a noble one, it is not an unjustifiable pursuit. But you are taking puritan ethics without taking account of reality on the ground” (Academic, Bloemfontein).*

Poor coordination between state entities can frustrate arrangements to meet the needs of informal enterprises. Trivial issues sometimes hamper the provision of public services because inflexible and bureaucratic procedures prevent city officials from pursuing creative solutions.

*“Each government department looks after its own responsibility and follows its bureaucratic process, which prevents the creation of innovative and holistic solutions. In one case it was the challenge of who to register the electricity meter to that led to the abandonment of the infrastructure project for informal traders” (Senior official 2, City of Cape Town).*

The tensions between the desire to support informal enterprises while protecting other interests and maintaining standards play out quite differently in the central cities and suburbs compared with the townships. This results in many glaring anomalies and inconsistencies, and an unsatisfactory outcome all round.

### ***(iii) Policy and regulatory challenges in city centres and suburbs***

Municipalities play a major role in regulating city centres and suburbs, especially in the management of public spaces. They have to juggle competing land-use demands (for pedestrian and car movement, access to offices and shops, aesthetics and functionality) and stakeholder interests (property owners, occupiers, residents and developers). Competition for space and to attract large-scale private investment, affluent consumers and tourism encourage municipalities to restrict rather than support informal traders in key areas.

*“The main obstacle in the metros is that the overall take is restrictive, not developmental, at least in CBDs. This is in spite of progressive policy documents, which seem purely rhetorical statements, having no bearing on other policy instruments, institutions, budgets, resources, plans, municipal practices” (Academic, Johannesburg).*

*“Politicians are ambivalent about it. They want to see more modernist development. They think everybody must be neat and tidy in shops” (NGO 2, eThekweni Municipality)*

Municipalities stifle the informal economy by limiting the number and location of informal traders through developing trading plans, demarcating trading bays and enforcing by-laws. Mobile street trading is much more common in other countries than in SA, where traders are restricted to demarcated areas. Unfortunately there are no reliable statistics kept on the demand and supply of trading bays in central cities. Interviewees suggested that demand greatly exceeds supply in some cities, evidenced by the large number of ‘illegal’ traders, i.e. people without permits. One estimate suggests that Johannesburg has 3,000 bays, eThekweni 2,600, Tshwane 900 and Cape Town 500 (van Eeden, 2011). The shortage of trading places results in the criminalisation of traders, which creates conditions of insecurity and police harassment (SERI, 2015; Crush et al., 2015).

*“By-laws of the city are not responding to the informal sector. Traders want to be located where there is movement, where there is “feet”. But the by-laws do not want you to be situated in such areas. They want to situate you in areas with less traffic and movement” (Informal traders association, Johannesburg)*

Bureaucratic hurdles also delay the issuing of licenses and prevent informal traders from operating. The procedures to apply for permits and site allocations are sometimes opaque and unclear to traders (SERI, 2015). *“The process behind Smart card and registration of informal traders is not transparent” (Informal traders association, Johannesburg).* There are many restrictions on who is allowed to operate a trading stall, when they can do so, and what kind of goods they can sell. Health and safety standards are used to close businesses down, rather than providing suitable infrastructure and services to empower traders and enable them to grow in a safe and secure manner (Crush et al., 2015; SERI, 2015, 2011).

Some trading bays are designated in peripheral locations with limited footfall, which is a recipe for failure. Meanwhile, places with greater potential, such as train or bus stations, are no-go areas managed by parastatals. Johannesburg is considering shifting traders to side streets, old buildings and artificially created markets. Traders who obtain licences but then vacate their allocated bays to sell their products in better locations cause congestion and

conflict. They can become criminalised and vulnerable to police harassment, extortion and confiscation of their goods (SERI, 2011).

*“Because of the limited bays, there is illegal trading. Traders informally take over bays from others. Subletting to somebody else is a big challenge. Trading bays are traded for high prices” (Senior official 1, City of Cape Town).*

*“The approach by the metro police is aggressive. It is about by-law enforcement” (Senior official 2, eThekweni Municipality)*

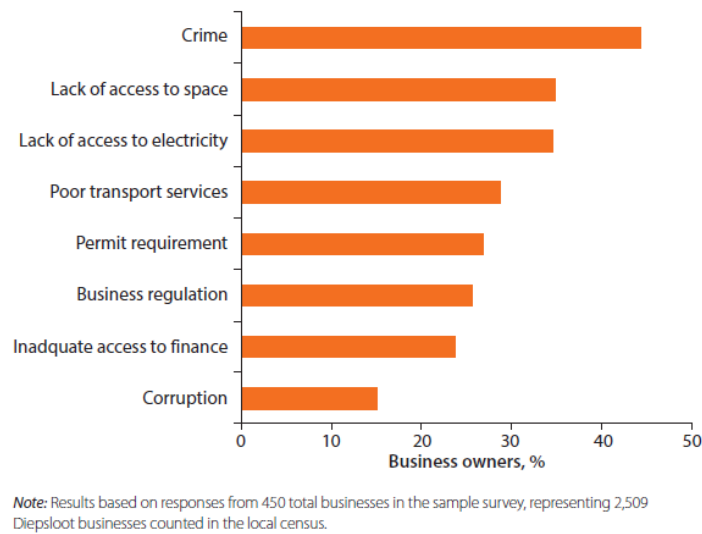
Restricting informal trading in some areas is clearly legitimate for various reasons. However, this is an inadequate approach to governing informality and addressing the underlying conflicts of interest. Limiting the number of trading bays may simply displace traders to other areas and expose them to intimidation and insecurity. They may end up in poorly managed spaces without basic infrastructure, which exacerbates the problems of ‘crime and grime’. Hands-on, pro-active management of the informal economy would be better than the status quo (SERI, 2015). Creating suitable environments for trading would increase confidence and encourage people to make longer-term investments. Some would grow, earn higher revenues and be converted into formal businesses. For example, many street traders deliberately retain a very limited range and quantity of produce for sale. They do not diversify their products and upgrade into higher value goods because *“if the cops come around and confiscate the stock, we won’t lose too much - we can replace it easily”* (Informal trader, cited by Academic, Johannesburg). This is a stark indictment of their predicament.

#### ***(iv) Policy and regulatory challenges in townships***

*“The current legislative environment does not encourage informal trading in the township. Some laws are too restrictive” (Senior official 1, City of Cape Town).*

There are generally no trading plans with allocated bays in the townships. Regulations related to health, welfare and safety are also less likely to be enforced. The main problems for informal enterprises are onerous bureaucratic processes, land-use requirements and standards that prevent them from formalising the business. A large survey of informal enterprises in Diepsloot found that nearly one in three owners listed formal permits and regulations as constraints (figure 3) (World Bank, 2014). Registration and licensing hurdles are the biggest constraints for enterprises in the liquor sector (Charman et al., 2013). Complicated registration systems and excessive standards prevent many educare providers in the townships from receiving government subsidies for infrastructure and teaching material (Hartnack and Liedeman, 2017). This is a good example of how well-intentioned regulations designed to raise the quality of service provision may actually result in inferior delivery in poor communities.

Figure 3: Business constraints cited by Diepsloot Business Owners, 2012 (Source: World Bank, 2014)



Land-use zoning is another challenge in the townships. The organic development of township economies has resulted in workplaces, public spaces and private homes becoming closely intertwined (Charman et al., 2012). The blurring of the lines between residential, commercial and public areas means that most informal enterprises fail to meet the requirements of official zoning schemes and land-use plans (SLF, 2016). This prevents them from obtaining business licenses and formalising their operations.

Where efforts have been made to simplify zoning requirements, other growth constraints can emerge. For example, the City of Cape Town's Single Zoning Scheme requires spaza shops to have a separate structure from the house for trading and stipulates that no area used for trading should open into a bedroom or toilet. It also limits their opening hours on Mondays to Saturdays from 7am to 9pm and on Sundays and public holidays from 8am to 1pm. As a result, 70% of spaza stores in the city are rendered illegal, according to the Western Cape Informal Traders Coalition (Battersby et al., 2016).

Other norms and standards also hamper business registration and formalisation. Township entrepreneurs tend to use low cost materials and makeshift structures to accommodate their businesses, including corrugated iron and zinc sheets, old shipping containers and rudimentary stalls. These materials do not comply with official building regulations, which excludes them from regularisation and access to government subsidies. Failure to comply means that these enterprises are rendered illegal and subject to closure, curtailment, bribery or other forms of police harassment (Charman et al., 2012).

Summing up, the overall impact of a restrictive regulatory framework is to hamper the growth of informal enterprises and livelihoods. Informal traders are excluded from many well-located areas with proximity to high- and middle-income income consumers. A punitive approach causes insecurity and discourages saving and investment in development, thereby perpetuating the fragile, marginal status of many operations:

*“We have people who have been selling their fruits and vegetables for maybe 30 years. They are still one person owned shop with only one assistant” (Senior official 1, eThekweni Municipality)*

In the townships, unsuitable land-use regulations, building standards and registration processes also discourage accreditation and marginalise informal enterprises. The costs of complying with procedures are prohibitive and expose entrepreneurs to the risks of extortion and closure. The incentive to grow and formalise the business is dampened, so people are caught in a vicious cycle involving a hand-to-mouth existence without the capacity to plan ahead or the resources to invest in the future.

*“Their uncertain legal status makes them targets for racketeering and more prone to violence from the police or from community groups. The uncertainty undermines entrepreneurs’ capacity for investment, diversification, and projection in the future” (Academic, Johannesburg)*

### **3.3 From a restrictive to a developmental approach**

#### ***(i) The policy environment***

There are some signs of change in policy towards the informal economy in recent years. The National Development Plan was an important milestone in recognising that there are nearly 3 million jobs in the informal economy. More importantly, it projected that it might create between 1-2 million additional jobs by 2030 (NPC, 2012, p. 121). It also expressed great concern that informal workers lack social protection and are vulnerable to occupational health, welfare and safety hazards. The NDP has not been followed through, with one exception. In 2012 the DTI published a National Informal Business Upliftment Strategy (NIBUS). This is the first national attempt since the advent of democracy to coordinate policy towards the informal economy. At the provincial level there are various informal and township economy strategies being developed. Most of the metros also have frameworks related to the informal economy and trading by-laws. Municipalities are crucial because of their role in providing infrastructure and creating the environment that can either facilitate or frustrate informal enterprises through zoning, by-laws, etc.

The NIBUS proposed an overarching strategy for the informal economy, based on enabling the formalisation and integration of enterprises into the formal economy. It identified a series of potential interventions to address shortcomings in informal and micro-enterprises, such as financing, skills development and infrastructure. The NIBUS also proposed a new Business Licensing Bill which would require every business to be licensed, no matter how small. This has been heavily criticised for being practically unworkable, potentially discouraging informal entrepreneurship and discriminating against foreign migrants by trying to exclude them (Rogerson, 2016; Crush et al., 2015). Although NIBUS may have benefited some informal traders, the general opinion among experts consulted is that it has not improved the operating environment on the ground appreciably. It needs further development and more systematic implementation. NIBUS has also not assisted municipalities with the real tensions they face between supporting the informal economy and protecting other societal interests.

A major shortcoming of all government initiatives concerned with the informal economy is their neglect of spatial divisions. They disregard the inconsistencies between areas and do not foster connections between formal and informal sectors and spaces. NIBUS and provincial and municipal strategies tend to introduce new policies and programmes in parallel with existing policies. They do little to revise, streamline or rationalise existing legislation that tends to constrain the growth of informal enterprises. The next section considers the most important legislation that impinges on such businesses.

### ***(ii) Major legislative constraints***

Several laws and regulations hamper the growth and formalisation of informal enterprises. They either do not suit the context of informality or their implementation is too restrictive.

#### **1. Business Act & Business Amendment Act**

The Business Act (No. 71 of 1991) is the main legislation governing informal businesses and informal trading. In some respects the Act is a progressive piece of legislation that supports the development of informal enterprises. However, municipalities have generally applied it in a conservative way, focused on limiting trading opportunities in cities and criminalising informal traders. Therefore the main problem is with the Act's implementation.

The Business Act regulates business activity and stipulates that certain types of firm need a business licence. The Act was a major step forward in recognising informal business activity. It transformed the situation under Apartheid when black people were not allowed to trade in cities. Street vendors were considered legitimate business people for the first time. As a result, street trading grew rapidly, which caused some congestion and conflicts with formal shop owners. The Business Amendment Act (No. 186 of 1993) and the Proclamation 18 of 1995 were therefore introduced. Municipalities were deemed Licensing Authorities and given the power to regulate, restrict and prohibit informal trading in certain demarcated zones. Trading without a license, or in non-designated places, or in contravention of the conditions stipulated in the permit, became 'illegal'.

Municipalities now have the power to supervise and control trading in many places. Trading in public gardens or parks, near government buildings, places of worship or buildings declared national monuments is automatically restricted. These places can attract large footfall and potential customers, but there is a blanket restriction on informal traders. This is not the case in similar places in many other countries. The Act also prohibits temporary trading opportunities for big events. *"People want to sell fruit and vegetables near hospitals but legally they are not allowed to do so" (Informal traders association, Johannesburg).*

The Business Act gives municipalities greater discretion to manage street trading. It also requires them to consider the impact of any restrictions on existing street traders, and to engage in a public participation process if this is negative. However, it has not helped to resolve the tensions between informal traders and other interests. As a result, informal traders' needs are often subordinated to the municipality's ideas about urban design, traffic flow and aesthetics, and many opportunities to keep people out of poverty are lost. *"There would be far more trading opportunities in the city, but councillors are very conservative. They try to limit trading. The local community in these areas often have a conservative mind-set as well" (Senior official 1, City of Cape Town).* The Act could perhaps encourage more

dialogue and interaction between different interest groups to raise awareness of the issues at stake and negotiate more inclusive and mutually-beneficial outcomes.

## 2. Business Licenses

*“It takes 9 to 10 layers of regulation to become a formal enterprise, which requires costs and time” (Academic, Bloemfontein).*

*“Different government departments do not work together effectively because they have different responsibilities. This creates a web of legislation and procedures that cannot be transcended” (NGO 1, Cape Town)*

The process of obtaining business licenses and permits is cumbersome and costly. Different departments and entities are responsible for different aspects, which causes confusion and delay. Procedures could be made more transparent, simplified and streamlined.

Some municipal trading policies and by-laws allow street trading without a business licence. However, the Business Act lists a wide range of activities that do require a licence, including those offering prepared meals, perishable foodstuffs, health and entertainment services:

- Item 1: Sale or supply of meals or perishable foodstuffs<sup>3</sup>
- Item 2: Provision of certain types of health facilities or entertainment<sup>4</sup>
- Item 3: Hawking in meals or perishable foodstuffs

The application procedure requires documentation that traders may not immediately possess such as proof of permanent residential and postal address, residence permit and ID. Different government agencies and line functions have to be consulted, including the land-use planning department, health and environment department, fire department, police service, National Liquor Board and other legal authorities. Enterprises that prepare food also have to get a permit from the municipal engineering department to comply with regulations regarding the disposal of industrial effluent. Poorly aligned bureaucratic processes create inordinate delays and frustration. One solution would be to create a one-stop-shop to facilitate easy access for the entrepreneur and coordination among public entities.

## 3. Health and safety regulations

*“Health and safety regulation is problematic. There are too stringent criteria, which translate into restrictive by-laws. You are not allowed to make fire in certain areas, but people love braai stands and roasted chickens in the streets” (Senior official 2, eThekweni Municipality)*

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<sup>3</sup> Perishable foodstuffs refer to items such as milk, meat, fish, fish spawn, molluscs and crustaceans, fruit, vegetables and any foodstuff that has to be refrigerated to keep its qualities.

<sup>4</sup> Item two refers to the carrying on of business by – (a) providing Turkish baths, saunas or other health baths; (b) providing massage or infrared treatment; (c) making the service of an escort, whether male or female, available to any other person; (d) keeping three or more mechanical, electronic or electrical contrivances, instruments, apparatuses or devices that are designed or used for playing any game or for recreation or amusement, and the operation of which involves the payment of any valuable consideration, either by insertion of a coin, token coin or disc therein or in an appliance attached thereto or in any other manner; (e) keeping three or more snooker or billiard tables; (f) keeping or conducting a nightclub or discothèque; (g) keeping or conducting a cinema or theatre; and (h) conducting adult premises referred to in section 24 of the Films and Publications Act, 1996 (Act 65 of 1996).

Health and safety regulations can impose excessive and unreasonable costs on informal enterprises. Those selling food need to comply with the general hygiene requirements for food premises and the transport of food regulations R962 of November 2012 promulgated under the Foodstuffs, Cosmetics and Disinfectants Act, 1972 (Act 54 of 1972). Informal business owners are required to apply for a certificate of acceptability from the municipal Department of Environmental Health, which sends an inspector to visit the premises. The Act sets out high norms and standards for transporting food, for displaying and storing food, for protective clothing and so on. Municipal by-laws concerning the use of fire or occupational health and safety can prohibit meat slaughtering in outside areas and preparing meals on open fires, which is a popular and profitable activity in the townships. There is scope for reviewing some of these more stringent regulations and allowing for greater flexibility and exceptions where conditions militate against their implementation.

#### **4. National building regulations**

*“Officials use building regulations to shut down fruit and vegetables stands at intersections” (Senior official 1, City of Cape Town)*

The National Building Regulations and Building Standards Act 103 of 1977 as amended (in terms of which the National Building Regulations, SABS 0400 have been developed) prescribes another set of unsuitable rules for the context of informal enterprises and townships. Many of its norms and standards related to fire safety, ventilation and building structures are too rigid and demanding considering the resources available to informal enterprises. Structures have to be built out of brick or timber, unless they have an Agrément certificate (and NBHRC approval) or ‘fit for purpose’ design.

It is impossible for entrepreneurs to formalize their business if the premises are constructed out of corrugated iron, zinc sheets, home-made bricks or other non-standard building materials. Enterprises operating out of old shipping containers also fall foul of these standards. Many social enterprises providing valuable community facilities and welfare support, such as children’s nurseries and educare centres, cannot receive government support if they do not meet these requirements. The way forward may be to allow greater flexibility and exceptions to the regulations in certain circumstances, and permit an incremental approach to adoption. Small scale enterprises could be incentivised to upgrade their premises progressively over time as their viability improved.

#### **5. Pollution, noise and tobacco regulations**

*“These regulations are completely out of touch with the realities of township life and culture” (Tavern association cited in AlgoaFM, 2014).*

Several other laws may be reasonable for central cities and suburban areas, but create difficulties in townships. They include:

- Tobacco Products Control Amendment Act, Act 12 of 1999 and Tobacco Products Control Act 1993
- Air Pollution Regulations (in terms of the National Environmental Management: Air Quality Act, Act 39 of 2004)
- Noise Control Regulation under section 25 of the Environment Conservation Act, 1989 (Act 73 of 1989)



Township entrepreneurs are particularly critical of the anti-smoking laws, which state that “No smoking is allowed in a public enclosed or partially enclosed space, unless it is a designated smoking area. Currently no more than 25% of any premises may be allocated to the smoking area.” This is a major constraint in small restaurants, bars and taverns without the luxury of separate areas. The laws also prohibit cigarettes from being sold individually, despite being a common practice among street traders and spaza shops. A new set of regulations developed by the Minister of Health proposes a ban on smoking in all indoor areas, any drinking or eating area, and within five metres of windows and doorways. This has provoked a strong reaction from tavern owners, who argue that townships simply cannot comply, which means that they will all be breaking the law.

## **6. National Road Traffic Act, 93 of 1996**

*“The focus of the road authority is on mobility. They are concerned with movement. They refer to the Road Traffic Act” (Senior Official 2, City of Cape Town).*

*“Regulations are there to stop congestion on sidewalks, but no-one asks how wide they should be. If you look at it from another perspective the requirements become different” (NGO 2, eThekweni Municipality)*

The National Road Traffic Act (No. 93 of 1996) prohibits informal trading along certain roads, including any public road outside an urban area. Within urban areas, trading is prohibited on roads within 180 metres of a level crossing, any road traffic sign denoting a blind corner, or within five metres of any intersection. Municipalities cannot designate trading areas alongside provincial roads without the Province’s approval.

These rules cause regular evictions and dislocation. For example, informal traders in the City of Mbombela had their roadside stalls next to the R40 highway demolished by SANRAL in October 2016 because this contravened the Act. There was no consultation between the municipality, the informal traders and SANRAL to avert the outcome. Pledges were subsequently made to provide suitable infrastructure for traders close to where they were relocated. However, the traders simply rebuilt their stalls the same location and began selling goods again (Hazyview Herald, 2016). The message is that to avoid conflict and mistrust, procedures need to be laid down to encourage meaningful engagement between the different interests to formulate more constructive and inclusive outcomes.

## **7. Land-use planning and management**

*“One of the main operational barriers to business start-up is the land management system and its regulatory barriers” (Academic, Bloemfontein).*

*“At the moment the land-use planning system does not serve our development needs or realities. It does not recognise the centrality of economic activities of people in townships. It treats townships as residential settlements but they are commercial areas and spaces of investment” (NGO 1, Cape Town).*

SA’s land-use planning and management system is designed to mediate the competition for urban land from alternative uses and to minimise the negative social, economic and environmental effects that arise from urban development. Land-use zoning is the main

mechanism to achieve this. It designates particular parts of the city for particular uses – residential, office, industrial, etc. The challenge for the system is greatest where the pressures for land are most intense – from urbanisation, informal settlements and informal enterprises – and where people’s ability to afford land and property are lowest. The system works best in the central cities and suburbs, where property rights are clear, the land market is well-established, households and businesses can afford reasonable space standards, and urban development follows an orderly procedure in line with the law.

Land-use zoning was a key instrument of Apartheid. Commercial and industrial areas were located within the jurisdiction of the white local authorities, thereby boosting their tax base. Black areas were only intended to be dormitory settlements and zoned purely residential. The provision of basic infrastructure matched the zoning. The main challenge for post-Apartheid planning has been to reverse this skewed spatial pattern, partly by encouraging industrial and commercial development in the townships. One of the difficulties has been the slow process of legislative reform, such that most of the townships were still regulated by old Apartheid legislation and zoning schemes until recently. This meant a severe shortage of land zoned for industry and commerce and serviced with the requisite physical infrastructure. Consequently, most township enterprises lack adequate infrastructure and zoning rights that legitimate their business operations.

Appropriate zoning is often a pre-condition for other approvals (such as a business license), which creates a vicious circle. Formalising an informal business requires a change in land-use rights or rezoning, which is a complex, slow and costly process. Businesses such as bars or taverns require the owner to obtain a consent use (municipal permission to operate a specific land-use on a site) in addition to general zoning rights to obtain liquor licences.

Zoning schemes that separate activities into discrete areas of residential, industrial or commercial use are unhelpful in the townships because of the pressure on land and the intertwined nature of business and residential activities, such as home-based enterprises. Few people understand the planning system and the significance of appropriate zoning and land-use rights. Yet this can prevent them from obtaining a business license or other permits. It can also prevent them from obtaining formal credit, government assistance or contracts from formal businesses. Lack of such approvals can also expose entrepreneurs to threats from municipalities and other public authorities.

*“No enterprises in the townships are completely legal because of the land-use restrictions. There is no pathway for person to formalise a business and lots of legal opportunities for municipality to harass” (NGO 1, Cape Town).*

The Spatial Planning and Land-Use Management Act (SPLUMA) (No. 16 of 2013) is the new regulatory framework that replaces all the old legislation. It strengthens the planning powers of municipalities and offers opportunities for new ideas and approaches to be introduced through municipal by-laws. For example, new zoning schemes could allocate rights to pre-determined locations, which could regularise existing practices in townships. Municipalities could also use new zoning schemes to mandate the integration of informal traders and micro-enterprises in new shopping malls, public transport nodes and public spaces in more affluent areas. Much depends on the appetite of municipalities to take advantage of the new provisions by introducing novel methods and procedures. Judging by recent experience, this is likely to be a slow process, given the uncertainties and capacity

constraints facing municipal planning. National government could play a more pro-active role in encouraging experimentation among municipalities and helping to identify better ways of tackling the problems faced.

## **8. Title deeds**

People applying for re-zoning or land-use approvals for a new building or an extension require proof that they own the property concerned. Yet many township entrepreneurs do not possess their title deeds or have a claim on the property on which they operate. One reason millions of property owners do not have title deeds is because of delays in registering these properties at the Deeds Office. The slow registration of RDP householders is a well-known and longstanding problem. In addition, many households renting backyard dwellings or living in informal settlements have no prospect of formalising an enterprise because there is no prospect of them getting full ownership rights to the property they occupy.

Another major problem in many townships is the poor correspondence that exists between the layout and extent of each property in the official register (the cadastre) and the reality on the ground, where many structures, boundaries and access routes have emerged over time that bear little or no relationship to the official plans. This is extremely complicated to resolve and prevents the granting of title deeds when properties are bought and sold. The process of establishing and proclaiming new townships in the Deeds Office is also critical to granting title deeds. In recent years this process has been governed by three different laws – Provincial Ordinances, Less Formal Township Establishment Act and the Development Facilitation Act. This has created enormous complexity and required different processes and systems to be followed. This has been compounded by capacity constraints in municipalities and Deeds Offices, and parallel systems governing traditional (tribal) land in many peri-urban areas that have caused legal uncertainties. A more systematic assessment of these problems is required before specific recommendations emerge. Nevertheless, the broad message is that a simpler and quicker system of property registration is required that the current procedure. This would be more practical for the millions of poor households who currently lack tenure security and therefore cannot register and regularise a business enterprise. A simplified system would recognise that the existing occupiers of land have some rights. It would define these through a process of local consultation and negotiation, drawing on established (informal) local practices and not simply ignoring and seeking to replace them (Hornby et al, 2017). A simplified system could be treated as an interim arrangement that reduced the burden on the current overloaded Deeds Offices.

## **3.4 Summary**

Informal enterprises make an important contribution to the livelihoods and social conditions of poor and low-skilled communities. Some informal activities are needs-driven and survivalist, while others are growth oriented. Informal enterprises are constrained by many factors, both internal and external. An unsupportive policy framework, unsympathetic regulations and hostile enforcement agencies are among the obstacles faced. As a result, many informal enterprises are fragile, insecure and driven by short-term horizons. Their precarious position discourages them from saving and reinvesting to develop their

operations for future growth. Many of them want to be considered legitimate and would be willing to pay fees or taxes in return for greater security and support services.

Government policy and practice towards informal enterprise is ambivalent and inconsistent. There are differences in attitude and approach across different government spheres and functions. In some cases there is an emphasis on control and restriction, while in others the tendency is towards tolerance and benign neglect. Many regulations and procedures are simply too demanding and costly for informal enterprises to conform with. There is little scope for flexibility to allow standards to be phased in and for activities to be upgraded over time so that they meet expectations in due course. The Business Act is implemented in a conservative way by many municipalities, which restricts traders from serving affluent markets and criminalises those who don't abide by the rules. National Building Regulations and Health and Safety requirements prevent informal enterprises from obtaining business licenses and permits, which stymies their growth. The land-use planning and management system is too cumbersome and slow to deal with the realities of informality in townships, so it is generally ignored.

Looking forward, various changes in the regulatory framework would help to improve the situation. First, there is a case for better coordination and consistency across different spheres and functions of government. The state needs to be clearer about its fundamental position on informality and align different policies and regulations accordingly. The punitive approach in some quarters should be replaced by a commitment first and foremost to 'do no harm' to avoid destroying jobs and livelihoods. Over time this should shift towards a problem-solving approach so that government works constructively to support the start-up and growth of new businesses.

Second, several regulations could be simplified to reduce the burden on informal enterprises and make it easier to regularise their operations. This could perhaps be done by introducing exemptions for new and micro-enterprises, or for enterprises engaged in particular kinds of activities and sectors that merit special support. Several business registration and licencing procedures could be undertaken jointly to streamline matters for enterprises.

Third, some standards and procedures could be phased in gradually to allow enterprises to build up their resources and capabilities. This would incentivise compliance rather than penalise non-compliance.

Fourth, special arrangements could be made for particular locations, such as townships, to enable certain regulatory procedures to be fast-tracked and simplified. This kind of pragmatic approach is essential to enable progress to be made where the challenges are formidable and cumulative.

Finally, more emphasis should be given to encouraging processes of dialogue and constructive engagement between different interests in conflictual situations (such as central cities and suburbs) to improve understanding and to negotiate outcomes that are more mutually-acceptable and generate creative solutions (such as informal trading hubs in shopping malls and business precincts). Many municipalities could and should be more responsive to the needs of informal enterprises and the enterprises could be more sensitive to the needs of the wider society.

## **4. Spatial integration through affordable housing**

Housing has a vital role to play in narrowing spatial divisions by helping to bring people closer to economic opportunities. At the provincial scale, its role is to accommodate people migrating from peripheral regions to major cities. At the city or municipal scale, its role is to house people within a reasonable distance of local employment centres and transport corridors, rather than at or beyond the urban edge. Both objectives require more radical shifts in the national policy and regulatory framework than were anticipated in 1994.

The inherited legislative framework emphasized the physical separation of different land-uses and social groups, resulting in a dispersed or fragmented urban structure. To reshape this into a more compact and inclusive urban form requires a different vision of cities involving integration and residential densification. The old approach was implemented through legal restrictions and controls governing the development of land. A more transformative approach requires smarter and more pro-active mechanisms to facilitate new forms of development, including urban consolidation and infill schemes, mixed-use and mixed-income projects, more intensive use of land and retrofitting of existing buildings. The post-Apartheid response to the legacy of sprawling, segregated cities has arguably been too rule-bound and reactive, and not sufficiently creative and concerted to reconfigure prevailing urban development patterns.

Pressures are mounting to shift the trajectory, besides the highly visible social grievances and protests. One is the growing realisation within government that the cost of installing and maintaining physical infrastructure to service urban sprawl is much higher than it is for compact forms of development. Another is the sizeable fiscal deficit of operating the recently introduced bus rapid transit systems when residential densities are so low and there are insufficient passengers to make the services anywhere near viable. This is encouraging the metros, with the support of National Treasury, to be much more active about promoting more intensive forms of development and more mixed-use neighbourhoods along selected transport corridors to boost ridership and more short-distance trips ('transit-oriented development'). Additional short-term measures are also being introduced to "ensure these losses do not break municipal budgets" (National Treasury, 2017, p.79).

This section discusses the legislative and regulatory obstacles to the provision of additional housing in SA cities, especially homes that are well-located and affordable. A substantial increase in the supply of formal housing is required to address the overall shortfall, coupled with a focus on property that is located within the urban core rather than on the periphery. This new approach to housing and human settlements is necessary for social stability as well as urban efficiency, financial sustainability and safeguarding environmental resources.

### **4.1 The role of regulations and the case for change**

There are strong reasons for regulating urban development and scrutinising private and public investment proposals very carefully. Cities are complex systems containing extremely valuable assets, amenities, public goods and common pool resources that need protection

from careless and self-interested decisions made by households, private businesses and state entities. Investments in the built environment have highly durable effects that last well beyond the short-term horizons of key actors, such as property developers. Cities are also highly contested environments and need to mitigate the risks arising from intense competition for land and related resources, especially in a context of continuing urbanisation. The pressure to build in well-located areas can easily have adverse spill-over effects on the health, safety, welfare and wealth of adjacent communities. Rampant and unrestrained development can also degrade the cultural heritage and damage the natural environment and important ecosystems. Major expenditure decisions by public entities also need to regulation to ensure prudence and value for money, and to avoid malfeasance.

Yet the regulatory framework needs to be fair and reasonable to avoid inhibiting economic development, household growth and progressive improvements in living conditions and public facilities. Highly prescriptive systems, labyrinthine procedures and multiple legal requirements can impose excessive delays and unjustified costs on the public and private sectors. Inflexible rules and targets prescribed from above may interfere with the ability of city authorities to make rounded decisions that balance different social, environmental and economic considerations. Unrealistic building standards may push the cost of new housing beyond the reach of particular income groups. Put simply, the obstacles to urban growth and transformation may be self-inflicted by zealous legislators out of touch with pressures and realities on the ground and national officials pursuing their particular mandate in line with sectional interests rather than city-level needs. They may insist on rules that are inappropriate or impractical, and that fail to anticipate various disadvantages that arise in practice, such as inhibiting well-located affordable housing.

Building a better evidence base about the drawbacks and unintended consequences of regulations is important for potential reforms to succeed. Ideally it should weigh up the benefits against the costs. This is complicated by the vast array of relevant legislation, policy frameworks, by-laws and procedures that impinge on urban development. Some of these rules change periodically, so the terrain is shifting. Difficulties on the ground may arise because of the way regulations are interpreted or applied in particular organisations, not the rules themselves. There may be insufficient administrative capacity to implement them, or the relevant personnel may abuse their discretion for ulterior purposes. Regulatory procedures may also be exploited by vested interests in civil society to promote their own their agendas, such as blocking unwanted development. All this makes it difficult to generalise about the impact of specific regulations across different cities and localities, especially since this impact is also conditioned by the prevailing state of the economy and the pressure of demand for development. Finally, regulations that are appropriate in one context may be unsuitable elsewhere because the circumstances are altogether different. Regulatory obstacles may not be too serious when considered individually, but the impact could be prohibitive when taken together.

This section draws mainly on two studies undertaken for the Cities Support Programme of National Treasury in 2016-17. They were prompted by growing concerns among the metro municipalities and private developers that the extent of government regulation and ‘red tape’ has increased in recent years as more stringent rules and additional, parallel procedures are introduced. More complex, poorly coordinated regulations are not

perceived to be adding much value, but rather to be hampering the delivery of urban infrastructure, housing and other forms of development. They are believed to cause excessive delays and unwarranted costs of compliance, thereby inflating the burden on some projects and making others unviable. Some regulatory systems, such as environmental procedures, land-use planning and zoning schemes, are also thought to be inhibiting efforts to reshape the urban form.

## **4.2 The qualitative evidence**

The first study (Turok and Scheba, 2017) sought to gain a better understanding of the various regulatory impediments to providing affordable housing on well-located land. It also explored the obstacles to upgrading informal settlements. It involved an analysis of municipal plans and reports, and interviews with 24 officials and external stakeholders in the Cape Town and eThekweni metros. At its heart was the question: why are there so few worthwhile examples of housing projects that illustrate how to integrate cities and neighbourhoods, despite many national, provincial and municipal policies and plans advocating urban restructuring and densification? It was a modest and somewhat preliminary exercise considering the scope and complexity of the issues addressed.

### ***(i) Urban housing is a vexed problem requiring a systemic solution***

The first major finding was that the dearth of inexpensive, well-located housing is not an isolated issue. It is not just about delivering more housing, and it is not just about location. Rather it is a symptom of a wider predicament with various economic and social dimensions. The 2016 Community Survey confirmed that the urban housing problem is growing, both in terms of scale and character. The housing backlog in Cape Town and eThekweni is estimated by both municipalities to be approximately 400,000 households and rising. The situation is not improving despite a sizeable 13% of the national budget being allocated to housing and human settlements. This alone suggests that some significant policy reform is required. An immediate concern is the lack of a coherent, well-resourced land and human settlements strategy for each city that is commensurate with the scale and scope of the challenge.

Given the shortage of low-cost formal housing, over a million households across the five largest metros have taken matters into their own hands by erecting makeshift structures on unauthorised and un-serviced land and backyards, and invading vacant and derelict buildings. Some of these are reasonably well-located, but many are not. These spontaneous, bottom-up solutions pose many hazards through overcrowded and squalid conditions. Congested single-storey shack settlements pose risks of flooding, fires, disease and discontent. Community unrest and violent protests have escalated alarmingly, especially when people are evicted from occupied land and inner-city buildings. These expulsions conflict with the Constitution, which sought incremental improvements in access to housing and an end to forced evictions.

The urban housing predicament resembles a wicked problem with multiple dimensions and intertwined root causes. Vexed problems cannot be solved through piecemeal projects, by government entities working in silos, or by self-interested behaviour by households.

Applying standard remedies and fixed rules and procedures won't work either. Adding more regulations and insisting on compliance can over-burden the system and causing dysfunction. Affordable housing requires a more creative approach recognising the unique value of urban land, in which issues of location, public space and neighbourhood are intrinsic. Realising its positive value requires an area-based perspective that incorporates these externalities. It also needs key stakeholders to work together to solve the problem by bringing diverse powers and resources to bear. This includes different parts of government, the private sector and communities themselves. There is enthusiasm and urgency to deliver affordable housing, if conditions can be created to harness a collective effort. Greater commitment on the part of government to work in partnership with other actors seems to be required.

***(ii) Some of the obstacles to affordable housing go beyond government***

The second major finding was that regulatory barriers are important but are not the only obstacle. Some constraints to providing inexpensive housing on accessible land are beyond the immediate control of government, including contrary economic forces and opposing social attitudes. Much of urban land is allocated through market mechanisms and the high prices in well-connected areas naturally exclude low income groups. Multi-storey structures that economise on the amount of land used are part of the solution, but poor households cannot afford their higher building costs. The main way to compete is to reduce the amount of private living space consumed. This is what happens in informal segments of the housing market, such as backyards and freestanding shacks. It is difficult in the formal sector because of building regulations designed to prevent overcrowding. Some of these regulations need to be reconsidered.

In addition, fearful sentiments on the part of higher-income communities provoke resistance to any attempts to accommodate low income households in the vicinity of their neighbourhoods. They may use whatever channels are available to block new construction. Financial institutions and private developers are generally cautious about the affordable housing sector, and about brownfield locations and infill sites when there are unrestricted greenfield opportunities available. Their short-term perspective is not compatible with the patience required to shift prevailing urban patterns. These obstacles can only be addressed with ingenuity, persistence, persuasion and countervailing power exercised by a purposeful public sector that engages constructively with other interests to understand their objections and to work together to chart the way forward. In practice there is a lack of suitable forums for such engagements to take place, either at the neighbourhood or the city-wide scale.

***(iii) Other obstacles to affordable housing are self-inflicted***

Third, a series of other constraints fall within the ambit of government. Some of them go beyond straightforward regulatory matters to include inappropriate policy frameworks and complex decision procedures. Some relate to the rigidity of key national policies and standards, and linked to that, the strong emphasis attached to meeting questionable quantitative targets. For example, the draft Housing White Paper, Outcome 8 of the Presidency's Delivery Agreement and subsequent Expenditure Frameworks all specify a very large number of housing units or opportunities to be delivered, irrespective of quality and location. This helps to explain the current predilection for housing mega-projects, as discussed earlier in section 2.



The inflexibility of the government's **RDP/BNG housing subsidy** continues to be a major blockage that inhibits higher-density projects on well-positioned land. The criticisms are well-known, so need no repetition here (Turok, 2016). It is less well-known that the subsidy includes almost no allowance for the cost of land. It also crowds out the provision of affordable housing by the private sector (Savage, 2014), and stands in the way of in situ upgrading of informal settlements and backyard dwellings, which require a more participatory and incremental approach. The government's **social rented housing programme** is much better suited to well-located affordable accommodation. It could be a valuable part of the solution to the conundrum because it avoids the problem of household displacement and gentrification with rising property prices. However, the government's failure to update subsidy levels and income thresholds for beneficiaries in line with inflation makes it very difficult for new projects to be viable. This is a serious lost opportunity.

Some environmental legislation requires time-consuming analyses, consultations and procedures to be followed before even the simplest infrastructure projects can commence. This is a particular challenge in upgrading informal settlements because it delays urgent engineering works to install storm-water drains, lay water pipes and construct emergency access roads. The **National Environmental Management Act (NEMA)** identifies a wide range of development activities that require authorisation, such as the construction of pylons, pipelines, roads and other infrastructure, and the clearance of undeveloped, vacant or derelict land for residential, retail, commercial, recreational or industrial buildings. To get permission requires a complex technical assessment to be undertaken to identify the scale and nature of the physical, biological, socio-economic and cultural impacts and what measures can be taken to mitigate them. Public consultation is also required to gauge objections to the development. Once the application has been prepared and submitted it can take at least 200-300 days to get a decision. The inflexibility of EIAs is a concern because there is no scope to exempt listed activities that have negligible environmental impact, so unnecessary time and money is spent on obtaining authorisation as a tick-box exercise.

**Environment impact assessment (EIA)** procedures raise several additional concerns. The distinction between basic and full EIAs is not as clear as it should be, resulting in confusion about when one is required rather than the other. This matter could be clarified without much difficulty and could reduce the number of full EIAs that take place. In addition, poor communication and coordination between national and provincial environmental departments is a major frustration that can cause all kinds of delays. Some delays are also caused by the poor quality of many EIA applications. This reflects the proliferation of unqualified environmental consultants. A basic registration scheme may therefore be useful to raise the quality of EIA applications and thereby accelerate the approval process.

Cumbersome requirements for **township planning** and **land-use zoning** also impede efforts to upgrade and regularise informal settlements. The provisions of SPLUMA should help to simplify matters in the future, but this is not a foregone conclusion as there are many uncertainties surrounding its implementation in practice. Many norms and standards stipulated in **building regulations** are unrealistic and unaffordable for poor households currently forced to live in shacks and exposed to acute health hazards and other risks. These

rules insist on housing units having off-street car parking, expensive fire doors, minimum room sizes, separate entrances and so on.

Another bottleneck for human settlements relates to the labyrinthine nature of government financial regulations and directives, especially those associated with the **Municipal Finance Management Act (MFMA)**. **Procurement procedures** and supply chain management are particular problems. Treasury rules designed to prevent fraud and corruption make it very cumbersome for municipalities to hire contractors and consultants to undertake the preparatory work required for housing and infrastructure schemes. A pressing problem is that competitive tendering is mandatory for contracts above R200k. Three separate municipal committees have to be involved in drawing up the contract specifications, evaluating tenders that have been submitted, and then making a decision on who should be appointed. This price ceiling is widely considered to be inappropriate and unreasonable. Simply raising it to something like R1m would expedite these essential tasks considerably.

In addition, officials complain that there is a disproportionate emphasis on price in the MFMA regulations, which makes it very difficult to appoint quality contractors. It is also very easy (and probably too easy) for failed bidders to appeal against successful bids. This is another source of undue delay for important projects to get started. Section 116 of the MFMA is also becoming a major obstacle. It allows for the conditions of contract to be amended after public consultation, but national approvals are slow.

**(iv) *Poor coordination across government undermines responsiveness***

Fourth, inconsistencies between government departments and spheres create coordination hurdles and undermine joint action. Poor alignment between transport, housing, land-use planning and infrastructure investment is a particular challenge. Different functions have different objectives and mandates, incompatible targets and inconsistent legislative frameworks. Aligning decisions at the city level can be extremely difficult if national policies are disjointed. Blatant examples come to light periodically of low cost housing schemes that have been built without water and sanitation, let alone schools, clinics and public transport. Differences in professional capabilities and training may also inhibit collaboration and compromise.

The culture of vertical control and the pervasive mindset of compliance within government inhibit the ambition and creativity required to overcome the problems discussed here. The overwhelming pressure on municipalities to meet targets, to spend budgets on time, and to secure clean audits favours the simplest, most routine, highly predictable options with the least risk of things going awry. Officials become scared to make decisions because they can be held personally accountable. Ticking the box is preferable to sticking your neck out! The result of a punitive approach is that many problems are displaced rather than resolved, and past practices tend to get repeated because they follow the path of least resistance. In this environment, it is hardly surprising that large, monotonous, greenfield housing schemes built by large contractors which deliver at scale and on budget are preferred to smaller, more original, socially-desirable brownfield projects involving a range of actors. The MFMA makes it difficult to form partnerships with developers to create more inclusive residential markets. For example, such arrangements could help to negotiate the provision of

‘inclusionary’ housing through various forms of cross-subsidisation from commercial to affordable units, in line with international experience.

Similar target-focused, compliance pressures discourage in situ upgrading of informal settlements in favour of replacing them with RDP/BNG housing, even though this requires relocation and disrupts the social fabric of communities. In situ upgrading requires engaging with communities to plan and negotiate how the process unfolds and working closely at the micro scale to address many detailed issues and obstructions. This is typically time-consuming, resource intensive and unpredictable because communities are often fragmented and can be fractious. The tough regulatory regime of targets, compliance and budget cycles within which municipalities operate militates against approaches based on participatory planning and implementation.

A particular area of concern for affordable new housing surrounds the acquisition and disposal of surplus public land. Land transactions differ from other public procurement systems and need not take place at full market prices. Public entities that own vacant land show little inclination to sell them to the metro municipalities and other housing providers for new residential development. Consequently there is huge frustration about their inability to obtain surplus land held by bodies such as Transnet, PRASA and Public Works. The **Government Immovable Asset Management Act** (GIAMA) offers an important statutory procedure that would allow the excess land holdings of public entities to be pooled and for the value to be maximised by applying a more systematic approach to the whole property portfolio. Reforming the **Public Finance Management Act** (PFMA) and statutes governing individual state-owned enterprises would also help to release strategic land parcels for affordable housing.

#### **(v) Conclusion**

The study concluded that there is scope to simplify and streamline several state regulations. The most compelling case is to align and integrate the planning, environmental and water licence procedures to reduce duplication of effort (e.g. for technical assessments and public consultation) and save much time in the processing of applications. A single approval process would also avoid the costs of aborted proposals. Current urban housing pressures make a compelling case for radical reforms of this kind. Some initiatives have already been taken to align procedures. These need to be scaled up and applied more widely.

For example, provincial Spatial Development Frameworks are allowed to include Environmental Management Frameworks (as provided for in NEMA). They may be able to avoid the need for EIAs altogether in certain locations by dealing with the issues more strategically. Gauteng is one of the first provinces to pursue this idea. It produced an Environmental Management Framework in 2014 to guide sustainable land-use management in the province. Its function is to identify locations where EIAs are not required for specified activities. It was followed by a draft notice in April 2017 which identifies excluded activities in two zones – one earmarked for infill development and densification, and the other for large-scale commercial and non-polluting industrial activities. The developers will be exempt from EIAs, and therefore benefit from time and cost savings, but will still have to comply with the prescribed environmental management standards relating to issues such as air quality, stormwater management, and the protection of water resources and biodiversity

(Thornton-Dibb, 2017). The idea of zones of exemption could usefully be applied to other types of location, such as informal settlements.

Another useful underlying principle would be to devolve stronger responsibilities for managing the built environment onto the metros. This would give them more flexibility to experiment with new approaches, and greater capacity to negotiate better outcomes with other parts of government, the private sector and local communities. This would be consistent with recent court decisions which recognise and reinforce the central role of municipalities in the sphere of land-use management and development. It would also reinforce the initiative of Built Environment Performance Plans being pursued in the metros. These are intended to coordinate public investment (particularly national grants) in well-located target areas and provide signals to private investors on the availability of bulk services and future development corridors (Turok, 2016; National Treasury, 2017).

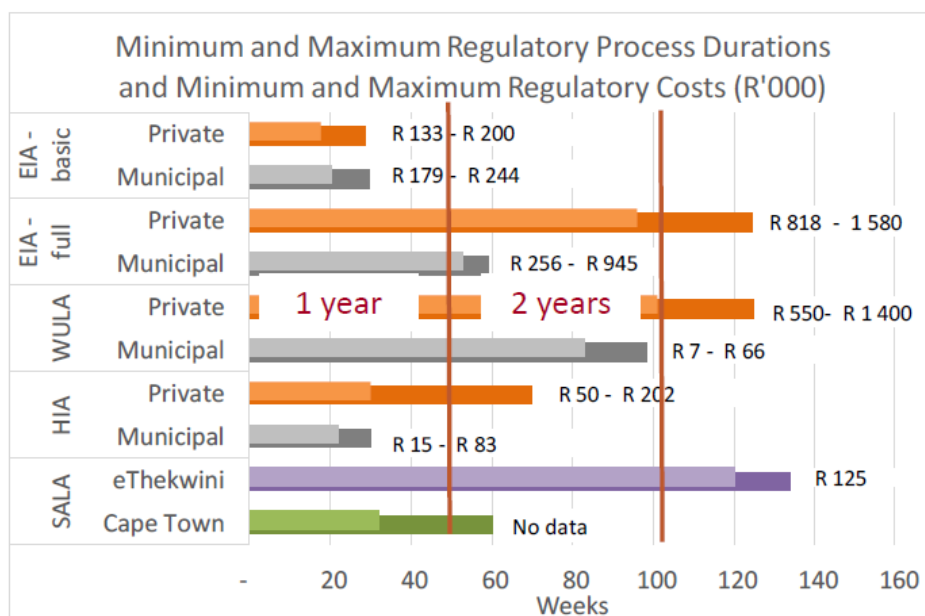
### 4.3 The quantitative evidence

The second study (Berrisford, 2017) sought to measure the financial costs and timescales required by several of the main regulations governing the provision of urban infrastructure and the development of land for housing and related purposes. It took a municipal perspective and made recommendations on “opportunities to streamline regulatory compliance ... to hasten the delivery of municipal infrastructure, or to reduce associated costs.” The researchers conducted 67 interviews with government officials and developers in Cape Town and eThekweni, and a desktop evaluation of legislative requirements.

They used five hypothetical project types in order to obtain reasonably consistent responses and they sought to quantify the costs of (i) **land-use planning and building controls**, (ii) **environmental regulations**, (iii) **procurement rules and procedures**, and (iv) **occupational health and safety regulations** governing construction sites. The task of quantifying costs and timescales proved to be challenging, partly because municipal officials found it hard to generalise about the timing of different procedures and some officials in national and provincial government were reluctant to cooperate.

#### *(i) Lengthy regulatory procedures*

The following figure shows some of the main findings.



The figure shows that three separate regulatory processes can each take over two years to complete. This is before any construction work can begin on site. It seems excessive at face value and is a source of considerable frustration within the private and public sectors, although a full assessment of the issue would include whether the time taken is reasonable and what the risks of harm are without the regulations. The three processes are:

- full **environmental impact assessments** (EIAs)
- **water use licences** (WULA), and
- **subdivision of agricultural land** (SALA).

These procedures tend to take even longer for private developers than for municipalities themselves, presumably because they are located outside the public sector and are less familiar or less able to exercise influence over the process. In addition, the process of **rezoning and subdivision of land** can take up to 12 months to complete. Standard **procurement procedures** take municipalities between five and 13 months. Obtaining special permission for projects lasting more than three years (**section 33 of the MFMA**) can take between three and nine months because of lengthy procedures required to allow for public comments and a lack of response from the Department of Cooperative Governance. Obtaining **occupational health and safety permits** for construction projects can take municipalities about nine months. Once the housing has been built, **transferring the title deeds** to the owners can take up to 18 months because of delays at the Deeds Office.

## (ii) *The cumulative impact*

When all the procedures are added together, most development schemes take a minimum of four years and a maximum of nine years to complete. RDP/BNG housing projects are the slowest of the five project types that were examined. They take between eight and nine years to complete. This is presumably part of the explanation for the level of frustration experienced by households on municipal housing waiting lists. It seems excessive considering the dire housing shortage and the quality and location of the final products.

The various regulatory and procurement procedures typically take about four years to complete before any building work can commence. The biggest single source of delay for all project types tends to be the **WULA**. This is a relatively new procedure and one that is heavily criticised by municipal officials and developers as a completely stand-alone regulatory process with very strict rules. Special permission is required for any development within 500m of a potential water body in order to minimise the risk of pollution of scarce water resources. This is a very onerous requirement. It means that any development within 80% of eThekweni's territory and 50% of Cape Town's require WULAs. In addition, the national Department of Water Affairs has not appointed a sufficient number of staff to process all the applications they receive! This has created a serious backlog and interminable delays. The whole process could have been aligned with the environmental impact assessment procedures to avoid duplication and to streamline decision-making.

**(iii) Stringent procurement rules**

The second biggest source of delay is the stringent **procurement rules** that municipalities have to follow to implement their own projects. The study estimated that there are about 900 separate procurement decisions being made each year in both Cape Town and eThekweni metros. The compliance costs of meeting the procurement regulations are therefore very high in terms of staff time and project delays. Raising the procurement threshold above R200k, as mentioned earlier, would achieve major efficiencies.

The third biggest source of delay is the **SALA process**. It can act as a lengthy brake on progress for greenfield projects. Many developers describe it as a nightmare because the outcome is so unpredictable. Some municipal officials warn against deregulation on the grounds that it can help to restrict unwanted development beyond the urban edge. It may therefore be one of the municipality's last resorts to prevent urban sprawl.

**(iv) Scope for improvement**

Taking everything into account, the research found that some obstacles could be reduced without great difficulty by improved institutional capacity (e.g. more qualified staff) and with clearer guidelines. Deregulation is not required across the board. Several regulatory reforms are also recommended. The priorities are:

- **WULAs** – these should be aligned and integrated with other environmental authorisations to streamline the whole process;
- **Procurement** – the threshold for price quotations should be raised from R200k to R500k or R1m in order to speed up tendering for relatively small contracts; and
- **Land-use planning and zoning controls** – these should be aligned and jointly authorised under the new SPLUMA dispensation.

In addition, the report recommended strengthening relevant municipal and national institutions to enable:

- i. faster processing of **section 33** applications
- ii. effective implementation of **SPLUMA-based land use management procedures**
- iii. faster **transfer of title deeds** for housing projects
- iv. the Department of Agriculture to streamline the requirements for **SALA**, and

- v. the Department of Labour to reduce the number of **health and safety permits** needed and to speed up their approval processes.

#### **4.4 Summary and conclusions**

There is little sign that spatial inequalities within SA cities are diminishing. Instead the housing shortage appears to be growing and the location of new development is reproducing past divisions. Continuity seems to be more pervasive than spatial change. The combination of quantitative delivery targets and a complex regulatory framework are encouraging a preoccupation with achieving crude outputs and ticking the box, rather than building more inclusive and prosperous cities and towns. Many regulations seem to complicate the process of managing urban growth and transformation rather than to add value and support government aspirations. They imply a lack of trust across government and with other sectors of society.

One of the consequences of government regulation is simply delay. It literally takes years for development proposals to obtain approval before building work can commence. The delay adds substantial costs, which have to be passed on to households and businesses. This can push affordable housing schemes out of reach of low income groups. Several procedures take two years in themselves, which penalise small developers without large reserves to rely upon. The complexity of government regulation also adds considerable uncertainty to the development process, which further discourages private investment. Another consequence is to favour larger, standardised housing schemes, which are low risk, relatively predictable and more manageable. These require large parcels of undeveloped land, which are mostly located on the urban outskirts. Cumbersome procedures also discourage creativity and diversity, since this requires flexibility and responsiveness to local contexts, rather than rule-bound standardisation.

These preliminary conclusions suggest that a shift in approach is required if spatial change through housing is to gather momentum. Top-down procedures need to allow for more responsive, bottom-up inputs that add value to decisions. Crude numerical housing targets need to be replaced or complemented by more qualitative objectives. Stringent rules need to be relaxed to permit more flexibility and responsiveness to diverse conditions on the ground. Regulations need to be more finely tuned to target the greatest risks of harm and to reduce the compliance costs where the risks are low. Cumbersome procedures that constrain initiative need to be replaced by more intelligent and pro-active systems that encourage ingenuity and bolder experimentation. Put simply, there needs to be a progression over time from prescriptive systems of control towards more sophisticated systems that strengthen intergovernmental relationships, build capacity and foster trust.

In addition, the inwardly-oriented framework of regulations needs to accommodate greater external interaction and collaboration. The government cannot deliver well-located affordable housing at scale on its own. A stronger emphasis on working in partnership with the private sector and with communities is vital to break down barriers and encourage constructive dialogue. This requires a willingness to engage in creative problem-solving rather than national regulation.

Overall, a sensible way forward may be to offer selective flexibilities to municipalities that have proved themselves to be competent, efficient and prudent in their use of public resources. This would give them greater scope and autonomy to innovate around the affordable urban housing agenda, leading to significant shift in the scale and nature of provision. This discretion could go hand-in-hand with more effective partnership working to accelerate investment in property development. Such rewards would also provide an important incentive to other municipalities to improve their performance.



## 5. Conclusions

This report has identified a variety of potential reforms to the regulatory framework that could help to address the spatial inequalities in SA. Two particular issues have been the focus of attention: (i) the physical separation of where people live from where they might work, and (ii) the under-development of informal enterprises through their exclusion from central cities and suburbs. There are several regulatory procedures that appear to exacerbate these problems and thereby reinforce spatial divides. They include the national housing policy, environmental regulations, land-use planning procedures, building regulations, business licenses and trading permits. A variety of proposals have been made for:

- (i) Greater consistency across key policies and procedures (e.g. more dependable and coordinated support for informal enterprises and informal settlements, and towards well-located housing). Political and administrative leaders need to send consistent messages across government and use inter-governmental forums such as the Minnecs to reiterate support for these objectives. More effective use of vacant and under-used land owned by different state entities is a good example. The GIAMA regulations should be used to insist that public entities formulate explicit plans for their surplus land that go beyond selling it to the highest bidder and recognise the wider social value of urban land. The starting point might be an audit of all well-located and under-used land in the cities to identify the opportunities for low- and middle-income housing development;
- (ii) Fine-tuning regulations to target the greatest risks and to reduce the compliance costs elsewhere (e.g. environmental impact assessments and water use licenses should be more discriminating about the types of development proposals that pose the greatest threats and reduce the administrative burdens on proposals that pose little risk to surrounding communities and the natural environment);
- (iii) Aligning specific procedures (e.g. environmental, water and planning authorisations). A single approval process to deal with these matters would reduce duplication of effort (e.g. on public consultation requirements) and speed-up the length of time required by the relevant authorities to make the decisions;
- (iv) Simplifying and streamlining certain regulations and procedures to reduce their complexity and cost (e.g. land-use zoning, building regulations, business registration, public procurement). Property registration through title deeds is an important example. An alternative arrangement to formal registration through the Deeds Office is required for people living in informal settlements, backyard accommodation and inner-city buildings. A simpler registration system would require the applicant to supply less information and would need fewer inputs from lawyers and other officials. They could secure rights in an incremental manner, and start by recognising that they have some rights of occupation at present. The system could be limited to special zones – such as informal settlements - rather than applying across the board.

This would give property occupiers greater security than at the moment and enable them to gradually regularise their status, invest in upgrading the property, and start a formal enterprise;

- (v) Allowing greater flexibility to be more responsive to diverse realities (e.g. land-use management in townships versus suburbs). It is important to simplify the land-use management system in the townships to enable enterprises to operate without the constant threat of being closed down or having their stock confiscated. A more flexible system would tolerate most types of enterprise operating in townships and other residential areas in recognition that many people are desperate to generate a livelihood, and government regulations should do little as possible to impede this activity. Simplified business licensing procedures would also be helpful for enterprises wanting to regularise or formalise their activities;
- (vi) Providing exemptions or fast-track arrangements in particular situations (e.g. upgrading informal settlements without having to follow all the usual environmental, township establishment and other planning procedures). Special zones could be established in and around certain low-income townships and informal settlements to encourage private investment in productive activity. Different zones could offer different management arrangements, types of infrastructure, financial incentives and relaxed regulations as an experiment to support investment, enterprise and job creation;
- (vii) Phasing in certain standards and procedures to allow the build-up of capabilities and resources (e.g. health and safety provisions for small-scale enterprises);
- (viii) Raising awareness and capacity-building within the relevant public administration and in the wider society and development sector (e.g. environmental authorisations and water use license approvals);
- (ix) Shifting from a punitive approach and a compliance culture towards a smarter, more pro-active, problem-solving culture (e.g. to support the growth and development of informal enterprises rather than evictions and confiscation);
- (x) To find more creative approaches to mixed-income (inclusionary) housing. The national department of human settlements (in consultation with other government departments and with provincial and municipal authorities) should formulate a policy to support mixed-income housing projects. This should include a requirement that all private sector developments above a certain size should make provision for a specific proportion of the housing units to be within a pre-determined affordable price bracket. The policy should draw upon the experience of cities in South Africa and abroad to identify appropriate targets, thresholds and delivery mechanisms. It should include proposals for public-private partnerships to be created that will negotiate and deliver practical solutions to the residential segregation that currently exists. It should also formulate proposals to limit gentrification and the displacement of low income households from well-located neighbourhoods;

- (xi) To encourage higher-density housing in well-located areas. The national department of human settlements (in consultation with other government departments and with provincial and municipal authorities) should formulate a policy to support higher-density housing in and around economic nodes and along public transport corridors. This should take into account the higher costs of land and construction for multi-storey buildings. More flexibility in housing subsidies may be required and more explicit support for rental housing rather than ownership may also be important. Careful alignment with transport, education and land-use planning policies may be important on matters such as requirements for car parking, school playgrounds and floor area ratios. Land-use zoning schemes could also be relaxed in designated areas to permit second and third dwellings to be built by property owners without having to apply for permission;
- (xii) Rewarding success by offering greater freedoms and flexibilities to government entities that have a track record of efficiency, effectiveness and exemplary use of public resources. National departments could relax selected rules governing other entities to permit greater discretion and experimentation, e.g. around public-private partnerships for mixed-use, mixed-income development.

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## Appendix: Spatial Classification of Local Municipalities\*

Local Municipality	Classification	Local Municipality	Classification
Nelson Mandela Bay	Metro	Tokologo	Commercial farming area
Umzimvubu	Mostly former Bantustan	Tswelopele	Commercial farming area
Matatiele	Mostly former Bantustan	Matjhabeng	Secondary city
Camdeboo	Commercial farming area	Nala	Commercial farming area
Blue Crane Route	Commercial farming area	Setsoto	Commercial farming area
Ikwezi	Commercial farming area	Dihlabeng	Commercial farming area
Makana	Commercial farming area	Nketoana	Commercial farming area
Ndlambe	Commercial farming area	Maluti-a-Phofung	Commercial farming area
Sundays River Valley	Commercial farming area	Phumelela	Commercial farming area
Baviaans	Commercial farming area	Moqhaka	Commercial farming area
Kouga	Commercial farming area	Ngwathe	Commercial farming area
Koukamma	Commercial farming area	Metsimaholo	Commercial farming area
Mbhashe	Mostly former Bantustan	Mafube	Commercial farming area
Mnquma	Mostly former Bantustan	Albert Luthuli	Mostly former Bantustan
Great Kei	Mostly former Bantustan	Msukaligwa	Commercial farming area
Amahlathi	Mostly former Bantustan	Mkhondo	Commercial farming area
Buffalo City	Secondary city	Seme	Commercial farming area
Ngqushwa	Mostly former Bantustan	Lekwa	Commercial farming area
Nkonkobe	Mostly former Bantustan	Dipaleseng	Commercial farming area
Nxuba	Commercial farming area	Govan Mbeki	Secondary city
Inxuba Yethemba	Commercial farming area	Victor Khanye	Commercial farming area
Tsolwana	Mostly former Bantustan	Emalahleni	Secondary city
Inkwanca	Commercial farming area	Steve Tshwete	Secondary city
Lukhanji	Commercial farming area	Emakhazeni	Commercial farming area
Intsika Yethu	Mostly former Bantustan	Thembisile	Mostly former Bantustan
Emalahleni	Mostly former Bantustan	Dr J.S. Moroka	Mostly former Bantustan
Engcobo	Mostly former Bantustan	Thaba Chweu	Commercial farming area
Sakhisizwe	Mostly former Bantustan	Mbombela	Secondary city
Elundini	Mostly former Bantustan	Umjindi	Commercial farming area
Senqu	Mostly former Bantustan	Nkomazi	Mostly former Bantustan
Maletswai	Commercial farming area	Bushbuckridge	Mostly former Bantustan
Gariep	Commercial farming area	Richtersveld	Commercial farming area
Mbizana	Mostly former Bantustan	Nama Khoi	Commercial farming area
Ntabankulu	Mostly former Bantustan	Kamiesberg	Commercial farming area
Ngquza Hills	Mostly former Bantustan	Hantam	Commercial farming area
Port St Johns	Mostly former Bantustan	Karoo Hoogland	Commercial farming area
Nyandeni	Mostly former Bantustan	Khai-Ma	Commercial farming area
Mhlontlo	Mostly former Bantustan	Ubuntu	Commercial farming area
King Sabata Dalindyebo	Mostly former Bantustan	Umsobomvu	Commercial farming area
Letsemeng	Commercial farming area	Emthanjeni	Commercial farming area
Kopanong	Commercial farming area	Kareeberg	Commercial farming area
Mohokare	Commercial farming area	Renosterberg	Commercial farming area
Naledi	Commercial farming area	Thembelihle	Commercial farming area
Mangaung	Secondary city	Siyathemba	Commercial farming area
Mantsopa	Commercial farming area	Siyancuma	Commercial farming area

Masilonyana	Commercial farming area	Mier	Commercial farming area
<b>Local Municipality</b>	<b>Classification</b>	<b>Local Municipality</b>	<b>Classification</b>
!Kai! Garib	Commercial farming area	uPhongolo	Mostly former Bantustan
//Khara Hais	Commercial farming area	Abaqulusi	Mostly former Bantustan
!Kheis	Commercial farming area	Nongoma	Mostly former Bantustan
Tsantsabane	Commercial farming area	Ulundi	Mostly former Bantustan
Kgatelopele	Commercial farming area	Umhlabuyalingana	Mostly former Bantustan
Sol Plaatje	Secondary city	Jozini	Mostly former Bantustan
Dikgatlong	Commercial farming area	The Big Five False Bay	Mostly former Bantustan
Magareng	Commercial farming area	Hlabisa	Mostly former Bantustan
Phokwane	Commercial farming area	Mtubatuba	Mostly former Bantustan
Joe Morolong	Mostly former Bantustan	Mfolozi	Mostly former Bantustan
Ga-Segonyana	Commercial farming area	uMhlathuze	Secondary city
Gamagara	Commercial farming area	Ntambanana	Mostly former Bantustan
Ekurhuleni Metro	Metro	Umlalazi	Mostly former Bantustan
City Of Johannesburg	Metro	Mthonjaneni	Mostly former Bantustan
City Of Tshwane	Metro	Nkandla	Mostly former Bantustan
Emfuleni	Secondary city	Mandeni	Mostly former Bantustan
Midvaal	Commercial farming area	KwaDukuza	Commercial farming area
Lesedi	Commercial farming area	Ndwedwe	Mostly former Bantustan
Mogale City	Secondary city	Maphumulo	Mostly former Bantustan
Randfontein	Commercial farming area	Ingwe	Mostly former Bantustan
Westonaria	Commercial farming area	Kwa Sani	Commercial farming area
Vulamehlo	Mostly former Bantustan	Greater Kokstad	Commercial farming area
Umdoni	Commercial farming area	Ubuhlebezwe	Mostly former Bantustan
Umkhumbi	Mostly former Bantustan	Umkhumbi	Mostly former Bantustan
uMuziwabantu	Mostly former Bantustan	eThekweni	Metro
Ezingolweni	Mostly former Bantustan	Greater Giyani	Mostly former Bantustan
Hibiscus Coast	Commercial farming area	Greater Letaba	Mostly former Bantustan
uMshwathi	Mostly former Bantustan	Greater Tzaneen	Mostly former Bantustan
uMngeni	Commercial farming area	Ba-Phalaborwa	Mostly former Bantustan
Mpofana	Commercial farming area	Maruleng	Mostly former Bantustan
Impendle	Mostly former Bantustan	Musina	Commercial farming area
Msunduzi	Secondary city	Mutale	Mostly former Bantustan
Mkhambathini	Mostly former Bantustan	Thulamela	Mostly former Bantustan
Richmond	Mostly former Bantustan	Makhudutamaga	Mostly former Bantustan
Emnambithi/Ladysmith	Commercial farming area	Fetakgomo	Mostly former Bantustan
Indaka	Mostly former Bantustan	Ephraim Mogale	Mostly former Bantustan
Umtshezi	Commercial farming area	Elias Motsoaledi	Mostly former Bantustan
Okhahlamba	Mostly former Bantustan	Greater Tzaneen	Mostly former Bantustan
Imbabazane	Mostly former Bantustan	Makhado	Mostly former Bantustan
Endumeni	Commercial farming area	Blouberg	Mostly former Bantustan
Nquthu	Mostly former Bantustan	Aganang	Mostly former Bantustan
Msinga	Mostly former Bantustan	Molemole	Mostly former Bantustan
Umvoti	Commercial farming area	Polokwane	Secondary city
Newcastle	Secondary city	Lepelle-Nkumpi	Mostly former Bantustan
eMadlangeni	Commercial farming area	Thabazimbi	Commercial farming area
Dannhauser	Mostly former Bantustan	Lephalale	Commercial farming area

eDumbe	Mostly former Bantustan	Mookgopong	Commercial farming area
<b>Local Municipality</b>	<b>Classification</b>	<b>Local Municipality</b>	<b>Classification</b>
Modimolle	Commercial farming area	Matzikama	Commercial farming area
Bela Bela	Commercial farming area	Cederberg	Commercial farming area
Mogalakwena	Commercial farming area	Bergvliet	Commercial farming area
Moretele	Mostly former Bantustan	Saldanha Bay	Commercial farming area
Madibeng	Secondary city	Swartland	Commercial farming area
Rustenburg	Secondary city	Witzenberg	Commercial farming area
Kgetlengrivier	Commercial farming area	Drakenstein	Secondary city
Moses Kotane	Mostly former Bantustan	Stellenbosch	Secondary city
Ratlou	Mostly former Bantustan	Breede Valley	Commercial farming area
Tswaing	Commercial farming area	Breede River Winelands	Commercial farming area
Mafikeng	Commercial farming area	Theewaterskloof	Commercial farming area
Ditsobotla	Commercial farming area	Overstrand	Commercial farming area
Ramotshere Moiloa	Commercial farming area	Cape Agulhas	Commercial farming area
Kagisano/Molopo	Mostly former Bantustan	Swellendam	Commercial farming area
Naledi	Commercial farming area	Kannaland	Commercial farming area
Mamusa	Commercial farming area	Hessequa	Commercial farming area
Greater Taung	Mostly former Bantustan	Mossel Bay	Commercial farming area
Lekwa-Teemane	Commercial farming area	George	Secondary city
Ventersdorp	Commercial farming area	Oudtshoorn	Commercial farming area
Tlokwe	Secondary city	Bitou	Commercial farming area
City Of Matlosana	Secondary city	Knysna	Commercial farming area
Maquassi Hills	Commercial farming area	Laingsburg	Commercial farming area
Merafong City	Commercial farming area	Prince Albert	Commercial farming area
Cape Town	Metro	Beaufort West	Commercial farming area

Source:

- See Municipal Infrastructure Investment Framework developed by Municipal Demarcation Board in 2010; adapted in alignment with Magetla (2010).

Notes\*:

- Maungang and Buffalo City are classified as secondary cities due to their relatively small size (although they are administratively classified as metros).
- King Sabata Dalindyebo (Mthatha) could be classified as a secondary city but remains categorized as a former homeland