



Addressing the crisis of **Planning Law Reform** in South Africa



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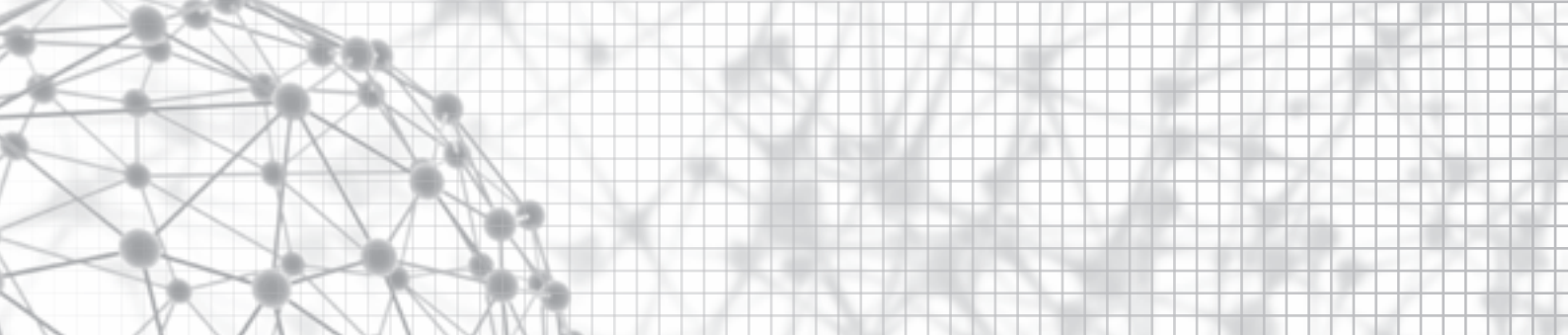
About this project

This project emerged out of a collaborative effort between the South African Cities Network (SACN) and the national Department of Co-operative Governance, looking into the status of spatial planning and land use management practices across the country. Through an examination of SACN member cities as well as key economic hubs across all nine provinces, an accurate picture of how spatial planning and land use management is carried out emerged. It also included an evaluation of important legal issues to be taken into account when designing new provincial legislation covering spatial planning and land use management. This report is a summary of these findings and makes important recommendations on how to tackle the vexing question of nationwide legislative reform going forward. The project had a series of other outputs including nine reports detailing practice, based on research and a series of provincial workshops, and a report setting out important legal issues and a framework legislation for provinces. These are available on the SACN website.

January 2012



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Acronyms and Abbreviations

| | |
|----------------|--|
| AT | Appeal Tribunal |
| BCDA | Black Communities Development Act, No. 4 of 1984 |
| DCGHSTA | Department of Co-operative Governance, Human Settlements and Traditional Affairs |
| DFA | Development Facilitation Act, No. 67 of 1995 |
| DLGTA | Department of Local Government and Traditional Affairs |
| IDP | Integrated Development Plan |
| LeFTEA | Less Formal Township Establishment Act, No. 113 of 1991 |
| LUPO | Land Use Planning Ordinance 15 of 1985 |
| MEC | Member of the Executive Council |
| MPRDA | Mineral and Petroleum Resources Development Act, No. 28 of 2002 |
| MSA | Municipal Systems Act, No. 32 of 2000 |
| NCPDA | Northern Cape Planning and Development Act, No. 7 of 1998 |
| NEMA | National Environmental Management Act, No. 107 of 1998 |
| PAB | Provincial Appeal Board |
| PDA | Planning and Development Act |
| PPA | Physical Planning Act, No. 125 of 1991 |
| RoD | Record of Decision |
| RSA | Republic of South Africa |
| SACN | South African Cities Network |
| SALGA | South African Local Government Association |
| SDF | Spatial Development Framework |
| SPLUMB | Spatial Planning and Land Use Management Bill |
| TB | Townships Board |
| TBVC | Transkei, Bophuthatswana, Venda and Ciskei |



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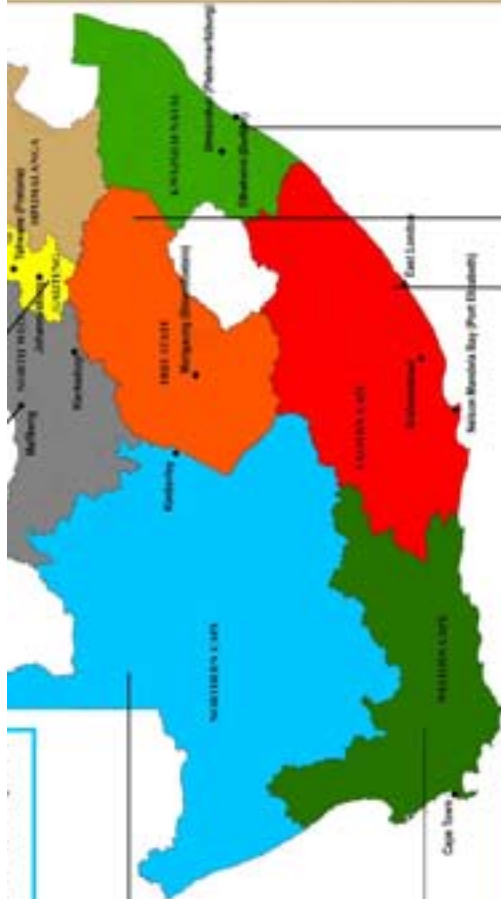


List of Legislation

Advertising on Roads and Ribbon Development Act, No. 21 of 1940
Black Administration Act, No. 38 of 1927
Black Areas Land Regulations Proclamation R188 of 1969
Black Communities Development Act, No. 4 of 1984
Bophuthatswana Land Control Act, No. 39 of 1979
Ciskei Land Regulations Act, No. 14 of 1982
Ciskei Land Use Regulations Act, No. 15 of 1987
Ciskei Township Amendment Decree 44 of 1990
Conservation of Agricultural Resources Act, No. 43 of 1983
Constitution of the Republic of South Africa Act, No. 108 of 1996
Development Facilitation Act, No. 67 of 1995
Division of Land Ordinance 20 of 1986
Free State Townships Ordinance 9 of 1969
Gauteng Planning and Development Act, No. 3 of 2003
Gauteng Removal of Restrictions Act, No. 3 of 1996
Gauteng Transport Infrastructure Act, No. 8 of 2001
Heritage Resources Act, No. 25 of 1999
Ingonyama Trust Act, No. 3 of 1994
KwaZulu-Natal Planning and Development Act, No. 6 of 2008
Land Use Planning Ordinance 15 of 1985
Less Formal Township Establishment Act, No. 113 of 1991
Mineral and Petroleum Resources Development Act, No. 28 of 2002
Municipal Ordinance 20 of 1974
Municipal Systems Act, No. 32 of 2000
National Environmental Management Act, No. 107 of 1998
Northern Cape Planning and Development Act, No. 7 of 1998
North West Local Government Laws Amendment Act, No. 7 of 1998
Peri-Urban Ordinance 20 of 1943
Physical Planning Act, No. 125 of 1991
Regulations for the Administration and Control of Townships in Black Areas Proclamation R293 of 1962
Removal of Restrictions Act, No. 84 of 1967
Subdivision of Agricultural Land Act, No. 70 of 1970
Township Ordinances 33 of 1934
Venda Land Control Act, No. 16 of 1986
Venda Proclamation 45 of 1990







ENTIRE WESTERN CAPE PROVINCE
Physical Planning Act No. 89 of 1957 & 125 of 1991
Less Formal Township Establishment Act No. 113 of 1991
Removal of Restrictions Act No. 84 of 1992
Municipal Systems Act No. 32 of 2000
Sub-division of Agricultural Land Act 70 of 1970
Sub-division of Agricultural Land Act 72 of 1970

FORMER CAPE
Municipal Planning Ordinance No. 20 of 1974
Land Use Planning Ordinance 15 of 1985

Black areas legislation applicable in township areas in cities:
for example Black Communities Development Act No. 4 of 1964 & Regulations

ENTIRE EASTERN CAPE PROVINCE
Less Formal Township Establishment Act No. 113 of 1991
Development Facilitation Act No. 67 of 1995
Physical Planning Act No. 89 of 1957 & 125 of 1991
Sub-Division of Agricultural Land Act 70 of 1970
Removal of Restrictions Act 84 of 1992

FORMER CAPE
Municipal Planning Ordinance No. 20 of 1974
Townships Ordinance No. 33 of 1924
Land Use Planning Ordinance 15 of 1985

FORMER TRANSKEI
Black Communities Development Act No. 4 of 1964 & Regulations
Black Areas Administration Act No. 38 of 1927 & Regulations
Proclamation R. 25 of 1936 Location regulations
Unsurveyed districts, Transkeian territories

FORMER Ciskei
Black Communities Development Act No. 4 of 1964 & Regulations
Black Areas Administration Act No. 38 of 1927 & Regulations
Ciskei Land Regulation Act No. 14 of 1992
Ciskei Land Use Regulations Act No. 15 of 1987
Ciskei Township Amendment Decree No. 44 of 1990
Ciskei Township Amendment Decree No. 17 of 1993
Ciskei Township Regulations - Proclamation R203 of 1992

Black areas legislation applicable in township areas in cities:
for example Black Communities Development Act No. 4 of 1964

FORMER TRANSVAL
Transvaal Town Planning and Townships Ordinance No. 25 of 1965
Town Planning and Townships Ordinance No. 15 of 1986 & Town Planning Schemes
Transvaal Board for the Development of Peri-urban Areas Ordinance No. 20 of 1943
Agricultural Holdings (Transvaal) Registration Act No. 22 of 1919
Physical Planning Act No. 77 of 1967
Local Government Ordinance No. 17 of 1939
Division of Land Ordinance No. 20 of 1986

FORMER LEBOWA
Black Communities Development Act No. 4 of 1964 & Land Use Regulations
Black Administration Act No. 38 of 1927 & Land Use & Planning Regulations
Homeland Laws : Lebowa

FORMER KIBA NDEBELE
Black Communities Development Act No. 4 of 1964 & Land Use Regulations
Black Administration Act No. 38 of 1927 & Land Use and Planning Regulations
KwaNdebele Town Planning Act No. 10 of 1992

FORMER KANGUENE
Black Communities Development Act No. 4 of 1964 & Land Use Regulations
Black Administration Act No. 38 of 1927 & Land Use & Planning Regulations
Homeland Laws : Kanguene

FORMER GAZANULU & FORMER BOPHUTHATHWANA
Black Communities Development Act No. 4 of 1964 & Land Use Regulations
Black Administration Act No. 38 of 1927 & Land Use and Planning Regulations

Legislation applicable in areas outside the Transvaal Town Planning
and Townships Ordinance No. 25 of 1965 not clear.

ENTIRE KWAZULU-NATAL PROVINCE
KwaZulu-Natal Planning and Development Act No. 6 of 2006
Physical Planning Act No. 88 of 1967 and No. 125 of 1991
Development Facilitation Act No. 67 of 1995
Less Formal Townships Establishment Act no. 113 of 1991
Municipal Systems Act No. 32 of 2000
Ingonyama Trust Act No. 3 of 1994
(only in Ingonyama Areas)
Natal Town Planning Ordinance No. 27 of 1948
(only section 67 (b)(i))

ENTIRE FREE STATE PROVINCE
Development Facilitation Act No. 67 of 1995 (never used for land development)
Physical Planning Act No. 88 of 1967 and No. 125 of 1991
Removal of Restrictions Act No. 84 of 1992
Municipal Systems Act No. 32 of 2000
Sub-Division of Agricultural Land Act 70 of 1970
Less Formal Townships Establishment Act no. 113 of 1991

FORMER ORANGE FREE STATE
Physical Planning Act No. 88 of 1967 and 125 of 1991
Orange Free State Townships Ordinance No. 9 of 1969 and Town Planning Schemes
Free State Townships Ordinance No. 9 of 1980

FORMER QWAZIWA & FORMER BOPHUTHATHWANA
Black areas legislation applicable in these areas repeatedly repeated
Black areas legislation applicable in township areas in some cities:
for example Black Communities Development Act No. 4 of 1964 & Regulations





01 Executive summary of recommendations

The conclusion of the study is that planning is in dire straits...

The South African Cities Network (SACN), together with the national Department of Co-operative Governance, commissioned a study in early 2011 on provincial legislation dealing with spatial planning and land use management. The study team reviewed the implementation of planning laws across all nine provinces, drawing on practices in identified metros and cities in each province. It also included an evaluation of important legal issues to be taken into account when designing new provincial legislation covering spatial planning and land use management. This additional content is provided in separate reports and publications, all available on the SACN website. The conclusion of the study is that planning is in dire straits and much of this has to do with the complex legal and institutional arrangements, the difficulties in undertaking urgently required planning

legislative reform especially in line with the requirements of the Constitution (Constitution of the Republic of South Africa Act, No. 108 of 1996), and capacity constraints.

The report identified recommendations for interventions for each sphere of government to address the critical problems currently facing planning.

A. National government interventions

1. **A strong intergovernmental process to drive and lead planning law reform:** national government needs to co-ordinate legislative reform and a forum or body such as the former Development and Planning Commission, set up under Chapter Two of the Development Facilitation Act, No. 67 of 1995 (DFA) is suggested
2. **Bring key provisions of laws dealing directly with planning into one integrated law:** this requires a review of the Municipal Systems Act, No. 32 of 2000 (MSA) that regulates Integrated Development Plans (IDPs) and importantly, Spatial Development Frameworks (SDFs)
3. **Provide guidance in the form of model provincial planning legislation:** all provinces have struggled to implement new planning legislation and while some provinces grapple with unique circumstances, all need guidance on fundamental aspects such as informal settlement upgrading and land use management systems in rural areas
4. **Provide guidance in the form of model municipal bylaws:** although municipalities have the powers to enact their own planning bylaws, in the interests of consistency and in the face of low capacity in municipalities, national government should guide this process
5. **Develop guidelines on rationalising assigned legislation:** much of the complexity in planning results from these assigned laws and while some provinces have attempted different approaches to dealing with the rationalisation and modernisation of these laws (sometimes with unintended consequences), there is no consistency, indicating a strong and urgent need for guidance on this



6. **Providing guidance on key planning processes/approaches:** many of the planning laws are outdated and do not sufficiently deal with the current realities of, for example, informal settlements and development in rural and traditional areas. Each province is trying to fit these processes into their old ordinances. What is needed is clear national direction to provinces on these processes.

B. Provincial government interventions

1. **Provinces to establish a forum to drive provincial planning reform:** it must include local government, key sectoral provincial departments and provincial offices of national departments involved in planning/housing/environment
2. **Provinces to compile a comprehensive audit of all planning laws still active in the province:** this would include identifying old laws that are still on the statute books and providing an indication of the implications of their repeal to guide provincial planning departments in the rationalisation of planning laws
3. **Take monitoring and support of municipal planning seriously:** the performance of laws should be monitored, especially if new laws are introduced. Constitutionally, provinces and national government must support the capacity building efforts of local government to undertake planning and mechanisms such as shared services could be explored.

C. Local government interventions

1. **Establish a cities forum:** this could act as a platform to share experiences and needs for legislative reform, especially around local bylaws
2. **Improve or establish recording and reporting systems for land use management:** this is critical for strategic planning, monitoring and improving performance
3. **Strengthen the capacity to undertake municipal planning effectively:** municipalities need to employ more planners, and provide more support and mentoring, ideally with backing from provincial and national government
4. **Re-think planning appeals structures:** current formulations are constitutionally suspect (provincial government taking local planning decisions) and it is in local government's interests to drive the process developing inter-municipal approaches and ensure that the solutions find their way into provincial and national legislation.

In summary, planning contributes to the economic base of municipalities by zoning land and generating property rates revenue, it regulates development in line with government's strategic goals and it can protect and support the poor and vulnerable, especially to obtain secure, legal rights to land. The enormous problems that we face need considered, prompt and effective solutions involving all spheres of government.

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02 Background to report



These findings are set out in this report with a view to providing a knowledge resource and think piece to all participants in the process of revising and reforming planning laws in South Africa.

In the course of this project, the study team reviewed the implementation of planning laws across all nine provinces, drawing on practices in identified metros and cities in each province. A wealth of information from the nine provincial reports is reflected in this cross-cutting report and includes aspects such as the diversity of laws, implementation difficulties, attempts at rationalisation of existing legislation and any new provincial laws that have already been introduced. While researching the planning landscape in the nine provinces many common themes emerged, but many differences were also evident. Equally, while some red flags were raised, some encouraging innovations were also found.

These findings are set out in this report with a view to providing a knowledge resource and think piece to all participants in the process of revising and reforming planning laws in South Africa. All spheres of government will benefit from a deeper and more detailed understanding of the impact and implementation of planning laws on a province-by-province basis. This study provides information on what current practices are in provinces and identified municipalities. Without this, it would be difficult to gauge the impact of drafting new laws or the repealing or amending of old laws.

The main outputs from the study were:

1. A provincial report for each of the nine provinces that looks at the history of planning law evolution and reform in the province as well as its current impact both at a provincial scale as well as at the scale of selected municipalities
2. A legal report identifying the important issues to be taken into account when designing new provincial legislation covering spatial planning and land use management.

These reports are complementary to this overview report.



03 The planning law problem: an overview

This study is important because it confirms that there are major problems looming in the spatial planning and land use management sector. While the province-by-province reviews reveal that there are practices from which positive lessons can be learned in proceeding with law reform, the most important findings are that the problems are substantial and the impact of these are only going to grow, and that the only effective solution is one that is multi-faceted and flows from an integrated intergovernmental process. The process must be one where all spheres and sectors are represented and able to contribute their respective knowledge and experience, as well as share their particular interests and concerns.



3.1 The unchanged nature of land use management legislation since 1994

After 1994, South Africa underwent fundamental provincial and local government reform – new laws, new configurations of provinces and local governments and many new policies, heralding a complete paradigm shift in government. The existing land use planning laws, however, remained largely intact through this transition and the four provincial Ordinances continued to apply in those areas that formerly were part of the four provinces. Similarly, former homeland legislation remained applicable in those areas that had formed part of the homelands. Only the DFA was introduced as post-apartheid legislation dealing with spatial planning and land use. The DFA's key chapters were however declared unconstitutional in 2010, leaving the legislative scene in 2011 almost exactly the same as it was in 1995¹.

3.1.1 Instruments are inappropriate

The laws in operation today were designed explicitly to form part of the apartheid scheme for a racially segregated and unequal South Africa. These laws also evolved in a time when the *control* of land use and land development was seen as the predominant purpose of planning legislation. In line with the inherent inequality of apartheid, the laws applicable in formerly White areas were detailed, complex and implemented by well-resourced municipal planning departments. The rest of the country was effectively

The laws in operation today were designed explicitly to form part of the apartheid scheme for a racially segregated and unequal South Africa.

¹ In the case of *City of Johannesburg v Gauteng Development Tribunal* 2010 (6) SA 182 (CC) the Constitutional Court found that chapters five and six of the DFA, the chapters that provide the 'fast track' development approval process via provincial development tribunals, are unconstitutional because they intrude on the power of local government to make decisions on land development applications.



abandoned from a planning perspective. Today, the laws in force, all of which date back to that era, are thus inappropriate.

They promote the principle of *control*, when the emphasis of a developmental state must be on *facilitation* of land development. They perpetuate an unequal spatial order by promoting a higher quality environment in formerly White areas and providing only rudimentary planning instruments in the formerly Black areas, when the Constitution obliges the state to promote equality and redress. They do not provide legal mechanisms to tackle many of the pressing spatial governance problems of contemporary South Africa, such as informal settlement regularisation, inner city or township renewal, management of land use in areas under African Customary Law, or the integration of areas formerly segregated under apartheid.

There is increasing dissatisfaction with the applicability of the existing planning laws. The Ordinances are seen as 'business as usual' and catering more to private sector developers; while legislation such as the Less Formal Township Establishment Act, No. 113 of 1991 (LeFTEA) were seen as creating "lesser" forms of development management and supporting former apartheid development goals. With a growing appreciation of the need to deal equitably with informal settlements, large housing projects, inner city overcrowding and backyard shack developments, the tools planners had at their disposal were increasingly inappropriate. Development procedures are expensive and lengthy and do not produce appropriate controls and forms of development outcomes. For example, while LeFTEA has been used to fast track low-income housing developments, most township establishment processes under that legislation have never been completed and consequently housing beneficiaries have not been able to receive title deeds².

Table 1 below sets out the main legislative instruments applicable in the country, with a summary of the problematic issues pertinent to each.

² Recent research by the Finmark Trust has shown that more than a one million subsidy houses have not yet received title deeds, primarily because of incomplete township establishment procedures.

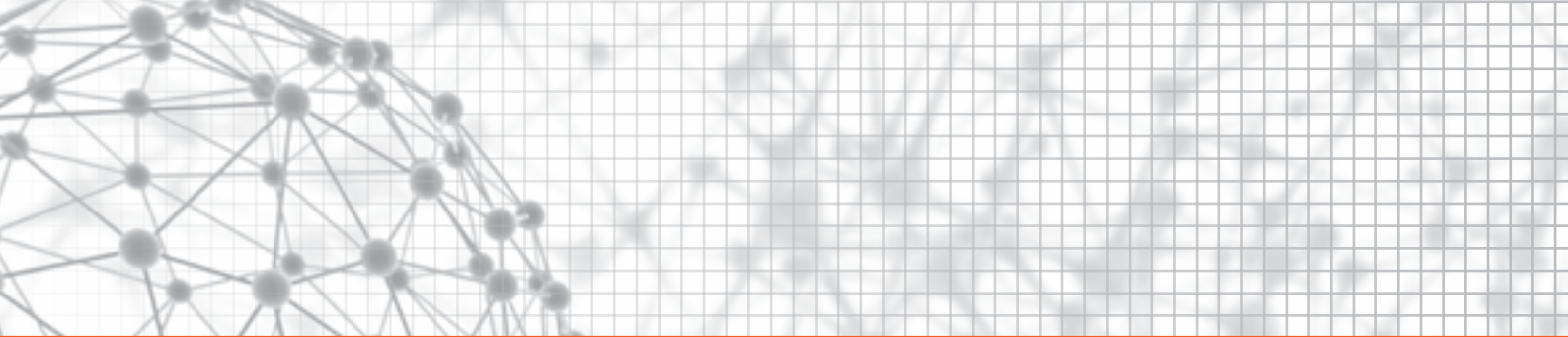


Table 1: Summary of different legislative instruments

| Town planning law | Key problem areas |
|--|---|
| 1. The four provincial Ordinances | <ul style="list-style-type: none"> Do not apply evenly throughout a province Only 'authorised' municipalities may make planning decisions, and these can be taken on appeal to provincial structures In municipalities that have not been authorised, decisions have to be made by the provincial administration Key elements of the system introduced by the Ordinances are likely to be unconstitutional in the light of the DFA judgment³ Not considered suitable for new integrated land use management schemes Do not have development procedures suitable for upgrading informal settlements or fast tracking the settlement of land. |
| 2. Regulations for the Administration and Control of Townships in Black Areas, e.g. Proclamation R293 of 1962 | <ul style="list-style-type: none"> Seen as apartheid (racial), homeland legislation Very control-oriented legislation Has differential application in the different former homelands, so many local variations Decisions are removed from local government and taken by provincial and national government departments, thus likely to be unconstitutional Does not provide for appropriate land use management |
| 3. LeFTEA | <ul style="list-style-type: none"> Assigned to provincial housing Members of the Executive Council (MECs), so not within the institutional ambit of Planning Departments generally Provincial government makes decisions on development applications, so removed from local government May be considered constitutionally suspect in the light of the DFA judgement While intended as fast track legislation for low-income housing (subsidy) projects, it has not delivered secure tenure in these areas as the final stages of opening township registers has been slow Many of the procedures in the legislation are at the discretion of the MEC, making for law that is not transparent and participative as required by more recent legislation promoting these aspects. |
| 4. The DFA | <ul style="list-style-type: none"> Chapters 5 and 6 (land development procedures) have been declared invalid and the Act must be amended, repealed/replaced by mid-2012 Municipalities do not support the DFA as a general rule as its decisions are difficult to assimilate and it takes decisions away from local government It requires a high level of expertise and it has become standard practice to use attorneys and advocates in hearings Was not used for initial ownership as intended and also very few low-income housing developments actually used the DFA – so it has not performed on those aspects it was initially intended for. |

³ See the case of the *City of Johannesburg Metropolitan Municipality v Gauteng Development Tribunal* 2010 (6) SA 182 (CC). This is because according to the court, "municipal planning" which encompasses the zoning of land and the establishment of townships is the exclusive realm of municipalities. The Ordinances, by purporting to authorise the exercise of these inherent municipal powers potentially fall foul of this exclusivity.





3.1.2 The instruments outstrip the available capacity

Prior to 1994, the provincial planning Ordinances were designed to provide a set of rules to maintain high quality environments in formerly White areas. They created and protected the

There is thus an inescapable mismatch between the capacity demanded by the outdated legal frameworks and that demanded by the constitutional imperatives of the post-apartheid state.

land use rights that form the basis for municipal property rates. They required high levels of professional and administrative capacity. They continue to demand that level of capacity, yet the post-1994 state has to plan and manage the entire country, not just the formerly White areas. There is thus an inescapable mismatch between the capacity demanded by the outdated legal frameworks and that demanded by the constitutional imperatives of the post-apartheid state. The severity of this mismatch is compounded by the decline in status and numbers of the planning profession over the same period of time, as well as the growing number of planning problems that have to be resolved.

Among planning officials there is a unanimous view that the planning profession is severely constrained by insufficient and inadequate

professional capacity. National and many provincial planning departments that according to the Constitution should support and build capacity in local and provincial planning departments, themselves lack capacity. All efforts to build capacity are made more difficult by the multiple legal frameworks within which competent planning professionals have to implement plans in any one municipal area.

3.1.3 There are too many laws to manage effectively

... there are too many laws to be managed effectively, especially in a context of weak and stretched professional and administrative capacity.

The combined effect of the apartheid fixation with separate legal systems for areas allocated to different races, the re-demarcation of local and provincial boundaries and the absence of meaningful post-1994 law reform, creates a situation in which there are simply too many laws applicable in any one municipality or province regulating the same activities, i.e. land use and development. Some provinces are worse off than others, but the fundamental commonality is that there are too many laws to be managed effectively, especially in a context of weak and stretched professional and administrative capacity.

Table 2 below provides a broad overview of the number of laws that have to be administered on a province-by-province basis. It is striking that, with the exception of Gauteng, those provinces that have the greatest implementation burden are those with the weakest capacity: Eastern Cape, Limpopo, Mpumalanga, and North West. It is also striking to note that the laws listed in the table are not necessarily all the laws in force in a province, but those which are in daily use. In almost all provinces there are other laws that are theoretically applicable but which are, practically speaking, dormant.



Table 2: Town planning and related laws actively administered by provinces

| Province | Old Republic of South Africa (RSA) provincial | Old homeland | New provincial | Old national, assigned to provinces | New national, assigned to provinces (DFA) | Total |
|---------------|---|--------------|----------------|-------------------------------------|---|-------|
| Eastern Cape | 1 | 8 | - | 3 | 1 | 13 |
| Free State | 1 | - | - | 4 | - | 5 |
| Gauteng | 7 | 2 | 2 | 4 | 1 | 16 |
| KwaZulu-Natal | 1 | 4 | 2 | - | 1 | 8 |
| Limpopo | 7 | 4 | - | 2 | 1 | 14 |
| Mpumalanga | 7 | 5 | - | 5 | 1 | 18 |
| Northern Cape | 1 | - | 1 | - | 1 | 3 |
| North West | 9 | 2 | - | 3 | - | 14 |
| Western Cape | 2 | - | - | 4 | - | 6 |

3.2 Sectoral legislation has overtaken planning legislation

While the process of updating, rationalising and modernising planning law has been slow, and remains substantially incomplete, the number of sectoral laws that operate parallel to planning laws has increased. This increase is characterised not only by new legislation, but also by the tendency for the authorities responsible for administering the legislation to be better resourced and politically more powerful than the authorities responsible for the devolved functions. The emerging policy framework for co-operative governance highlights that sectors create legislative demands on local government without following the governance procedures set out in the MSA regarding capacity and skills assessments, differentiation regarding municipal status, or the fiscal realities of implementing the devolved function.

The emerging policy framework for co-operative governance highlights that sectors create legislative demands on local government without following the governance procedures set out in the MSA...



Consequently, planning legislation has, in practice, tended to take a backseat in relation to national sector laws. Three examples of these laws are listed below.

3.2.1 National Environmental Management Act, No. 107 of 1998 (NEMA)

NEMA specifies a list of land use changes that require an environmental authorisation in addition to any planning permission. Where one of these land use changes is envisaged there is effectively a duplication of procedures, one in terms of NEMA and another in terms of the applicable planning legislation, both requiring considerable public participation and engagement with relevant authorities. In approving development applications, municipalities and provinces tend to require an environmental authorisation from provincial Departments of Environment before processing planning requirements. In some ways this is a sensible strategy to keep planning capacity back until it is clear that there is an environmental authorisation, but it is also a tacit acknowledgement of the secondary status of planning legislation in the approval of land developments.

3.2.2 Mineral and Petroleum Resources Development Act, No. 28 of 2002 (MPRDA)

Recently this Act and its relationship to planning laws has been prominent. At issue is the question of whether a new mining activity also requires planning permission. Initially, the Act was interpreted to exempt the applicant for a mining permit from also having to obtain planning permission for the change of land use. However, the courts are increasingly arguing that, as with NEMA, it is a parallel approval: a new mining endeavor must have both a mining permit in terms of the MPRDA as well as planning permission in terms of the applicable planning regulations.

3.2.3 Subdivision of Agricultural Land Act, No. 70 of 1970

Although this legislation was repealed by parliament in 1998, the repeal Act has not come into effect⁴ with the consequence that this 40-year old law remains in place. It requires the approval of the Minister of Agriculture for the subdivision of any agricultural land. Thus, again, there is a parallel process for an applicant wanting to develop farmland or agriculturally zoned land in urban areas, who has to get approval from both the Minister of Agriculture, via an application to the provincial Department of Agriculture, as well as the relevant planning authority. This parallel process was confirmed by the Constitutional Court

⁴ Since the time of the repeal the then Department of Agriculture has requested that the repeal Act not be signed by the President until such time as the department has completed the drafting of legislation to update and modernise the Conservation of Agricultural Resources Act, No. 43 of 1983. To date, there has been little progress in this regard and hence the Subdivision of Agricultural Land Act remains in place.



in *Wary Holdings (Pty) Ltd v Stalwo (Pty) Ltd*⁵ when the Supreme Court of Appeal's earlier decision that the Act no longer applies was overturned.

3.3 Provinces struggle to enact new land use and spatial planning laws

In the face of considerable constitutional uncertainty and in the absence of firm direction from national government, provinces have generally taken one of two approaches - proceed with efforts to write their own legislation or wait for national direction either in the form of a policy framework or national legislation. Those that have proceeded have struggled and expended considerable resources over many years, with limited success to date, as the examples below illustrate.

... provinces have generally taken one of two approaches - proceed with efforts to write their own legislation or wait for national direction either in the form of a policy framework or national legislation. Those that have proceeded have struggled...

3.3.1 Provinces that have post-1994 legislation in operation

Only two provinces have post-1994 legislation in operation. The Northern Cape was the first province to grasp the nettle and promulgate provincial planning legislation. This was back in 1998 and consequently the Northern Cape Planning and Development Act, No. 7 of 1998 (NCPDA) has been in force for more than ten years. It was drafted shortly after the DFA was introduced and integrated many of its provisions with those of that Act, even to the extent that the Appeal Tribunal is set up in terms of the DFA. While the Northern Cape legislation works effectively, its dependency on the structures and procedures of the DFA is a vulnerability that is now exposed with the striking down of key chapters of the DFA⁶.

The other province to enact and implement its own legislation is KwaZulu-Natal, where the KwaZulu-Natal Planning and Development Act, No. 6 of 2008 came into operation in 2010. This is an ambitious and comprehensive overhaul of the entire legislative framework for planning and land use management in the province. In its first year of operation the new legislation has encountered substantial teething problems. Developers have not succeeded in getting any land development applications to the point where a new township can be proclaimed in terms of procedures under the new Act. Already there is a list of well over 100 proposed amendments to the Act. There is a high level of dissatisfaction with the legislation's impact in practice, despite widespread appreciation of the intentions behind it.

⁵ [2008] ZACC 12.

⁶ For example, the Northern Cape depends on the DFA development tribunals and development appeal tribunals to exercise decision-making in the province. If the DFA is repealed as envisaged in the 2011 Spatial Planning and Land Use Management Bill, there will be a complete breakdown of the system in the Northern Cape that now works adequately.



The Western Cape and Gauteng also enacted planning and development acts, in 1998 and 2003 respectively, but neither law was ever brought into operation. More recently the two provinces have revived efforts to finalise new legislation but these are some way from completion. The North West drafted a bill that was ambitious in scope, particularly in relation to integrating planning and environmental approvals, but it was not accepted by the province's legislature.

It thus becomes very clear that the task of conceptualising, drafting, enacting and implementing new legislation in this area is immense. If a new system is predicated on provinces being able to do this, then they will require substantial support, guidance and advice from national government in terms of both human and financial resources. In addition, there is crucial legislative clarity that needs to be provided by national government if provinces are to be able to fulfil this role.

3.3.2 Uncertainty as to constitutional powers and functions

Since 1995 there has been uncertainty among the three spheres of government as to where the various elements of the legislative and executive authority⁷ for land use and spatial

planning reside. The 1996 Constitution did not clarify matters, leaving the three spheres to puzzle over the meanings to be associated with a number of terms that appear in Schedules 4 and 5 of the Constitution⁸. These include: urban and rural development; municipal planning; regional planning and development; and provincial planning. Each of these represents a functional area of legislative competence, denoting the particular rules that will apply firstly as to whether or not a particular sphere may make the laws concerned and secondly to clarify which sphere gets to exercise executive powers on a day-to-day basis.

Clarity as to the meanings of each of these areas of competence has come from the courts. The 2010 Constitutional Court case of *City of Johannesburg v Gauteng Development Tribunal and others*⁹ (DFA judgment) has been the most significant of the cases that are slowly shedding more light on how the powers of the different

The 2010 Constitutional Court case of City of Johannesburg v Gauteng Development Tribunal and others (DFA judgment) has been the most significant of the cases that are slowly shedding more light on how the powers of the different spheres should be arranged.

⁷ The different meanings of legislative and executive authority are centrally important. Legislative authority is the authority to make (or enact) legislation, which can be national or provincial legislation or municipal bylaws. Executive authority is the authority to make decisions as a sphere of government and in terms of the applicable legislation.

⁸ Schedules 4 ('Functional Areas of Concurrent National and Provincial Legislative Competence') and 5 ('Functional Areas of Exclusive Provincial Legislative Competence') set out the different areas of legislative competence for provincial government, in relation to the legislative powers of national government and, indirectly, local government as well.

⁹ 2010 (6) SA 182 (CC).



spheres should be arranged. This case tackled the meaning of 'municipal planning'. The court was unequivocal that this term encompasses not only spatial planning but also land use management. Because municipal planning is a Schedule 4B competence in the Constitution, this means that it is an area in which executive functions have to be exercised by municipalities. Consequently, legislation such as the DFA and LeFTEA are unconstitutional because they create conditions in which executive functions, i.e. the approval of land use applications, are carried out by provincial authorities. The clarity in relation to municipal planning, while certainly welcome and long awaited, is insufficient. Similar clarity is therefore beginning to emerge for provincial planning. In the subsequent case of *Lagoon Bay Lifestyle Estate (Pty) Ltd v The Minister of Local Government, Environmental Affairs and Development Planning of the Western Cape and Others*¹⁰ it was held that the DFA judgment does not mean that all questions involving zoning of land and the establishment of townships invariably, regardless of the circumstances, fall exclusively under the rubric of municipal planning, or that all such questions must be determined exclusively by municipalities.¹¹ Instead, provincial government can exercise executive authority under matters akin to municipal planning in various instances. The court agreed with the argument that such areas constitute "a category of planning decisions which will have an impact beyond the area of a single municipality and will have effects across a larger region" and fall into such a category because of, among others, "size and scale".¹²

3.3.3 Complexity of inherited legislation

Not only were numerous planning laws inherited; but also the institutions, procedures and tools they established made for a very complex planning environment. Table 3 below is an example of the main planning laws applicable in the Eastern Cape province – a province with very low planning capacity.

¹⁰ [2011] ZAWCHC 327 (31 August 2011).

¹¹ para 14.

¹² para 10.



Table 3: Example of legal complexity in the Eastern Cape

| Planning Laws applicable in the Eastern Cape province | | | |
|--|--|-----------------------------|---|
| Planning laws | | Former homeland laws | |
| 1967 (first promulgated) 1991 | The Physical Planning Act, No. 125 of 1991, as amended | 1927 | The Black Administration Act, No.38 of 1927 Black Areas Land Regulations Proclamation R188 of 1969 |
| 1974 | Municipal Ordinance 20 of 1974 | 1934 | Townships Ordinances 33 of 1934 |
| 1984 | The Black Communities Development Act, No. 4 of 1984 | 1982 | Ciskei Land Regulations Act, No. 14 of 1982 |
| 1985 | The Land Use Planning Ordinance 15 of 1985 (LUPO) read with 1934: Townships Ordinances, No. 33 of 1934, where applicable | 1987 | Ciskei Land Use Regulations Act, No. 15 of 1987 |
| 1991 | The Less Formal Township Establishment Act, No. 113 of 1991 | 1990 | (The Ciskei) Township Amendment Decree, No.44 of 1990 |
| 1995 | Development Facilitation Act, No. 67 | | |
| Key national laws related to planning | | | |
| 1967 | Removal of Restrictions Act, No. 84 of 1967 | 1999 | Heritage Resources Act, No. 25 of 1999 |
| 1970 | Subdivision of Agricultural Land, No. 70 of 1970 | 2000 | Municipal Systems Act, No. 32 of 2000 |
| 1998 | National Environmental Management Act, No. 107 | 2002 | Mineral and Petroleum Resources Development Act, No. 28 |

Provinces with former homeland areas have inherited a range of old homeland laws. Most of the responsibilities allocated in terms of these laws are now exercised by the provincial governments, but are generally spread between the various departmental mandates for local government, land administration, housing (or human settlements), or environment.

Historically, all African (planning) matters were governed in parallel to 'white South Africa' in terms of national legislation, until homelands and self-governing territories were given varying degrees of legislative independence. The Black Administration Act, No. 38 of 1927 gave rise to Proclamation R293 (the Regulations for the Administration and Control of Townships in Black Areas, 1962) and Proclamation R188 (the Black Areas Land Regulations, 1969) that are still in force in most former Black urban and rural areas. The independent homelands of Transkei, Bophuthatswana, Venda and Ciskei (TBVC) were empowered to amend these two laws for application in their territory, creating a mosaic of similar laws applicable in specific geographic areas within the new provinces that were created after 1994 (e.g. Ciskei, Venda, Bophuthatswana, Transkei all have variations of Proclamation R293). The national Minister (of the then Land Affairs Department) assigned these laws to provincial MECs when the



new provinces were created. However, Proclamation R188 was generally assigned to the Agriculture MEC whereas Proclamation R293 was assigned to Local Government and Planning MECs, adding further institutional complexity in administering these areas.

Such areas are now within municipalities and are subject to SDFs and efforts have been made in some instances to introduce land use management schemes. Some provinces are ignoring these homeland laws in favour of using the Ordinances. These attempts at 'squeezing square pegs into round holes' (i.e. fitting local circumstances into preferred planning tools and procedures) have not been entirely successful and more attention needs to be given to how best to manage planning in the former homeland areas. For example, in the North West the province's Local Government Laws Amendment Act, No. 7 of 1998 suspended the operation of all the land use regulations in force in the former Bophuthatswana in the hope that the applicable provincial Ordinances would fill that void. In practice though the procedures of the Ordinances have been wholly unsuited to application in the context of the former Bophuthatswana areas, and they have been firmly rejected by traditional leaders. Consequently there is effectively a legal void in relation to approving land development applications outside of the former RSA areas in the province.

3.3.4 Changing messages from national government

In the build up to the 2001 White Paper on Spatial Planning and Land Use Management the message from national government appeared to be that provinces would continue to develop their own provincial legislation. The White Paper then suggested a much higher degree of national uniformity, to be achieved via a national land use management bill that would replace provincial legislation. Over the years since 2001 the position seems to have returned to one of distinct provincial legislation enacted within a legal framework provided by a national Act, as reflected by the 2011 draft of the Spatial Planning and Land Use Management Bill (SPLUMB). In the middle of these processes of change the national MSA required mandatory IDPs and SDFs from local government. This effectively imposed a uniform national standard for local planning, albeit one with very limited impact on land use management because of the unclear linkages between the MSA and the numerous other laws regulating land use management.

3.4 Implications of the DFA judgment

The findings of the Constitutional Court in 2010 in the DFA judgment have had a profound impact on the constitutional distribution of powers and functions, especially those related to land use management, i.e. the consideration and approval (or rejection) of applications for land use change and land development. These are explained below¹³.

¹³ These issues are canvassed in considerably greater detail in the *Important Legal Issues for Provincial Legislation* Report.





3.4.1 New configuration of powers and functions

A key element of the confusion over constitutional powers and functions that emerged from the 1996 Constitution was clarified in this judgment. This was the question of what *municipal planning* means. Prior to the 2010 judgment the view of provincial governments was that *municipal planning*, in which executive functions are reserved for local government, only covered so-called forward planning, i.e. the making of plans such as IDPs or SDFs. The regulation and control of land use, on the other hand, was seen as a part of *urban and rural development*, in which it was possible for executive functions to be exercised by any one of the three spheres of government. In the DFA judgment the Constitutional Court unambiguously rejected this distinction and held that both forward planning and the regulation and control of land use are part of municipal planning. Consequently, this means that local government must carry out all executive decision-making, in relation to either forward planning (at the local scale) or the regulation and control of land use. While both national and provincial government are entitled to make legislation affecting *municipal planning*, that legislation may not take away from local government the power to control and regulate land use.



3.4.2 Many legislative provisions are now unconstitutional

The underlying paradigm that has guided South African planning legislation since the mid-twentieth century has been that all planning powers reside with provincial governments, but that where appropriate these powers can be delegated by the provinces to qualifying municipalities. The DFA judgment turns this paradigm on its head. Now these powers are firmly located at the local level. While there are situations in which a provincial role is both appropriate and lawful, the generally applicable position is that the system must be designed around local decision-making. This is a dramatic change. It is also at odds with almost all the applicable planning legislation in provinces. The entire system of appeals against local decisions to provincial appeal structures or MECs is, for example, invalid. In the case of the Free State, where there has never been any delegation of planning powers to local government, all planning decisions are now vulnerable to Constitutional challenge. LeFTEA and Proclamation R293 also fall foul of this paradigm shift.

The entire system of appeals against local decisions to provincial appeal structures or MECs is, for example, invalid. In the case of the Free State, where there has never been any delegation of planning powers to local government, all planning decisions are now vulnerable to Constitutional challenge.

Unless there is urgent and co-ordinated legislative intervention, there is the potential for substantial uncertainty to be introduced into the planning system. This intervention will have to be multi-faceted and include: unambiguous national legislation to clarify the manner in which provinces deal with assigned legislation; clear policy guidance from national government on the scope of the different spheres' respective powers and functions in relation to spatial planning and land use management; concrete suggestions as to how the issue of multiple sectoral approvals are managed and integrated at all three spheres; as well as a substantive legislative framework that identifies norms and standards for the practice of spatial planning and land use management across the spheres.

3.4.3 Long-term absence of national guidance, clarity or support

It has been well over a year since the Constitutional Court handed down its decision, a decision that confirmed the 2009 judgment in the same matter by the Supreme Court of Appeal. There has been limited indication from national government as to how provinces or municipalities should approach the problems. The national SPLUMB, published for comment in mid-2011 is insufficient for this purpose,¹⁴ although it was undergoing a comprehensive review, hopefully to resolve these issues, at the time of publishing this report.

¹⁴ See SACN comments on the 2011 draft SPLUMB.



04 The provincial reviews: key findings

4.1 General findings

There were a number of key findings and trends that emerged in several of the provinces, while all have some uniqueness given their local circumstances and history. The general or common observations are noted first, followed by a summary of findings that stood out for each province.

4.1.1 Apartheid geography reflected in the application of planning legislation

In many cases the planning laws that applied to different territories under apartheid, remain in force in those areas.

In many cases the planning laws that applied to different territories under apartheid, remain in force in those areas. Plainly put, areas in which Blacks traditionally have lived are governed by the planning laws designed for those areas by the apartheid government, while the same applies to the areas in which Whites lived under apartheid. This is not only hugely inefficient at both the provincial and local scale (because of duplication of systems, institutions and procedures), but also patently inequitable.

4.1.2 As it stands, local government is set up to fail in its planning

The combination of having to implement overlapping, conflicting and inappropriate legislation with the new expectation of having to plan an entire municipal area rather than simply the built-up part of a town or city makes effective implementation of the current planning legislation almost impossible for municipalities. Local government therefore has to use inappropriate tools to tackle a problem that would be daunting even with the best tools. The town-planning (or zoning) schemes that have been traditionally used to manage land use in urban areas are singularly unsuited to the task of managing land use in rural and wilderness areas, yet few alternatives are offered. Moreover, the clearly evident tendency for provincial governments to use their powers under the old order planning legislation to second guess local government decisions aggravates the plight of municipalities. Local governments' tasks are immense, especially in the light of the DFA judgment. The local sphere is not capable of fulfilling its constitutionally assigned role without the support of provincial and national government as demanded by the Constitution.

4.1.3 DFA and LeFTEA in retreat

LeFTEA is no longer being used widely. The reasons include that it is difficult to get to the end of the township development process and have titles transferred to house owners. Indeed, many LeFTEA townships, consisting almost entirely of subsidy houses, have hundreds of thousands of 'beneficiaries' occupying houses but without any prospects of obtaining



registered ownership. Decisions and the administration that follows are difficult to integrate into existing municipal systems. But most importantly, the application process and decision-making lies with provincial government and municipalities want to take a more direct role in applications within their area. The Act is also administered by the provincial Human Settlement (housing) departments, adding to institutional complexity. So, municipalities have tended to encourage and favour development applications using the provincial Ordinances instead. LeFTEA is, however, still used in areas that do not have strong municipalities or where provincial Housing departments drive low-income housing developments.

The DFA usage has declined too. This has been mostly in the stronger municipalities where local autonomy over applications is valued, prompting the City of Johannesburg to challenge the DFA right up to the Constitutional Court. This legal battle and subsequent victory by the City has resulted in national uncertainty over its use. It is, however, still used in provinces like Limpopo and Mpumalanga and parts of Gauteng for applications in areas like the former homelands. This is because it is efficient in its decision-making in the face of institutional and legal difficulties with alternative legislation.

4.1.4 Increased reliance on the Ordinances

Given the array of inherited laws and the need to rationalise them, many provinces are moving to standardise procedures in line with the provincial planning Ordinances as the mainstream development and land use change procedure. The Ordinances tend to be the legal instruments with which officials are most familiar. The town planning and zoning schemes set up under them play a key role in managing the urban core areas on which many municipalities depend for municipal property rates revenue. In the minds of both municipal and provincial officials the Ordinances have tried and tested systems and procedures for managing development applications. Extending the application of an Ordinance-based system is also appealing because it involves minimal changes to institutional arrangements that have, over decades, been made to fit the procedural requirements of the Ordinances. The rationale that sustains the Ordinance-based systems is one in which municipalities expend substantial human and financial resources in managing a comprehensive scheme for development control. The zoning conferred by the scheme generates land value and hence municipal revenue via municipal property rates. This leads to a system that is essentially self-funding. That rationale, however, breaks down instantly in a context of widespread informality, combined with deep levels of poverty and

The Ordinances tend to be the legal instruments with which officials are most familiar. The town planning and zoning schemes set up under them play a key role in managing the urban core areas on which many municipalities depend for municipal property rates revenue. However, the tendency towards greater reliance on the Ordinances is not unproblematic.



low levels of property ownership. There is no prospect of municipal property rates being levied and in any event the control of development is not the most important objective in areas where facilitating development is clearly a greater priority.

The tendency towards greater reliance on the Ordinances is not unproblematic. First, since the DFA judgment, the Ordinances are increasingly being challenged as unconstitutional and so uncertainty clouds the validity of these procedures. Second, the Ordinance-based systems are patently not suitable to manage very many of the planning challenges facing the country, such as informal settlement upgrading, managing land use in areas under African Customary Law and in the integration of apartheid race zones.

4.1.5 Added complexity of legislation for former Black areas

Across the board there has been a tendency to ignore the laws and regulations governing those parts of South Africa set aside under apartheid for Black people. In many provinces there is not even a proper record or copy of the applicable legislation. In practice, and in the short-term, this is not necessarily as negative a finding as it first appears. In these areas there is a widely acknowledged appreciation that the relevant laws are inappropriate and that the areas may well be better off without these laws being enforced. Nevertheless, the legislation, irrespective of its tainted history and inappropriateness to modern conditions, creates and protects tenure, use and development rights, all of which have a legal status and legal implications. Moreover, in many cases this legislation provides procedural routes to approve land development in these areas that are not otherwise provided, especially in the light of the demise of the DFA.

The weakness of public sector planning capacity - purely in terms of the numbers of planners employed - in some provinces is startling.

4.1.6 Weak professional capacity

The weakness of public sector planning capacity - purely in terms of the numbers of planners employed - in some provinces is startling.

In no province is there a sense that the capacity is adequate to the demands imposed on it by the legislation. Over and above the numerical weakness of the professional capacity, i.e. purely in terms of the numbers of planners and support staff, there is also a widespread sense that the available capacity is not equipped or trained to confront the very substantial challenges facing it. On the whole, the experience of planners (and their support staff) is with the implementation of the Ordinances and the experience with the other legislation is generally minimal.



4.1.7 Repealing the Physical Planning and Removal of Restrictions Acts is risky

There is a widespread tendency to call for the immediate repeal of the Physical Planning Act, No. 125 of 1991 (PPA) and the Removal of Restrictions Act, No. 84 of 1967, as is reflected in the latest draft of the SPLUMB. Clearly these are two laws that, in many respects, have long outlived their usefulness. However, this study has shown that a high degree of caution is needed when proceeding with these repeals.

Given the strong reliance by municipalities and provinces on the Removal of Restrictions Act it would be inadvisable to proceed with its blanket repeal. For example, if it were repealed, many Free State town planning applications would come to a halt. In other provinces the implications may not be as extreme, but certainly serious, in many cases forcing applicants to resort to common law remedies through the courts where they need to remove restrictive conditions of title.

Likewise, in the more rural provinces, there is still heavy reliance on the PPA to issue land use permits. If repealed, some provinces would have no alternative suitable legislation to manage land use change in areas outside of former municipalities. Likewise, some structure plans approved in terms of the PPA, which are still in use, would leave decision-makers without a basis to approve applications for land use change.

Hence, each province's particular legislative circumstances must be borne in mind if the national sphere is to repeal these laws.

4.1.8 Inconsistent institutional arrangements for managing legislation

Across the provinces there is a prevailing phenomenon of inconsistent and inefficient institutional arrangements for managing legislation affecting spatial planning and land use management.

Table 4 below illustrates the responsible decision-making bodies for planning- related decisions in two provinces. It shows how, on the one hand, the North West has to manage a diverse array of bodies whereas, on the other, the Northern Cape has attempted to streamline their laws and hence decision-making bodies. Despite these efforts the Northern Cape still does not escape the inherent institutional complexities associated with having to implement planning decisions in line with the applicable legislation.



Table 4: Institutional arrangements - comparing North West and Northern Cape

| Legislation | North West | | Northern Cape | |
|--|--|---|--|---|
| | Authorised municipality | Non-authorised | Authorised municipality | Non-authorised |
| Township establishment in terms of the applicable Ordinances | Municipality: LUPO and North West Ordinance areas | Dept of Local Government and Traditional Affairs (DLGTA) | Municipality | Provincial Dept of Co-operative Governance, Human Settlements and Traditional Affairs (DCGHSTA) |
| Re-zoning | Municipality | DLGTA | Municipality | DCGHSTA |
| Ordinance Appeals | Provincial Townships Board and Planning Advisory board (ex – LUPO) | Provincial Townships Board (incorporating both Provincial Appeal Board and Townships Board) | DFA Appeal Tribunal | DFA Appeal Tribunal |
| Regulations for the Administration and Control of Townships in Black Areas Proclamation R293 of 1962 | Repealed – but have North West Local Government Laws Amendment Act and Bophuthatswana Land Control Act, No. 39 of 1979 DLGTA | DLGTA | N/A | N/A |
| Proclamation R293 Tenure certificates | DLGTA | DLGTA | N/A | N/A |
| LeFTEA | Not used | Dept of Human Settlements, if used | N/A | N/A |
| Black Communities Development Act, No. 4 of 1984 (BCDA) – Annexure F | Municipalities | DLGTA | | |
| DFA land development applications | North West Development Tribunal | North West Development Tribunal | N/A | N/A |
| DFA Appeals | DFA Appeal Tribunal | DFA Appeal Tribunal | N/A – but do have DFA Appeal Tribunal (AT) for Ordinance appeals | N/A – but do have DFA AT for Ordinance appeals |
| Removal of Restrictions Act No. 84 of 1967 | Different process in LUPO and Ordinance areas Municipality comments and MEC of DLGTA decides | MEC of DLGTA | DCGHSTA On recommendation from municipality | DCGHSTA |
| Removal of Restrictions Appeals | Provincial Townships Board | Provincial Townships Board | DFA Appeal Tribunal | DFA Appeal Tribunal |



| Legislation | North West | | Northern Cape | |
|--|---|---|---|---|
| | Authorised municipality | Non-authorised | Authorised municipality | Non-authorised |
| PPA Permits | Township Board makes recommendation to the MEC | Township Board makes recommendation to the MEC | N/A | N/A |
| MSA – SDFs | Municipality | Municipality | Development plans: Municipality but approved by DCGHSTA | Development plans: Municipality but approved by DCGHSTA |
| NEMA | Provincial Dept of Environment | Provincial Dept of Environment | Provincial Dept of Environment | Provincial Dept of Environment |
| Subdivision of Agricultural Land Act | Provincial Dept of Agriculture makes recommendation to National Minister of Agriculture | Provincial Dept of Agriculture makes recommendation to National Minister of Agriculture | Provincial Department of Agriculture makes recommendation to national Minister of Agriculture | Provincial Department of Agriculture makes recommendation to national Minister of Agriculture |
| Advertising on Roads and Ribbon Development Act, No. 21 of 1940 | Provincial Dept of Public Works, Roads and Transport | Provincial Dept of Public Works, Roads and Transport | N/A | N/A |
| Minerals | Dept of Mineral and Energy Affairs | Dept of Mineral and Energy Affairs | Dept of Minerals and Energy | Dept of Minerals and Energy |
| Other | | Former Transvaal areas: DLGTA decides on Peri-Urban Ordinance; Division of Land Ordinance | | |

4.1.9 Sectoral national legislation trumps planning legislation

Increasingly, decisions on major land use changes or other related sectoral demands, such as in the sector plans of the IDPs, are taken in terms of sectoral national legislation such as NEMA or the MPRDA. The role of planning law, or of procedures governing the assignment and distribution of powers and functions in influencing the outcome of these decisions, is seldom taken into consideration, or is declining. Significantly though there have been a number of recent court cases that have affirmed the need to obtain approvals for land use change in terms of planning legislation, in addition to the permissions obtained under the sectoral legislation. Nevertheless, the requirement of multiple approvals for individual projects is clearly inefficient and time-consuming. This is often referred to as the joint decision-making trap, and it significantly undermines effective intergovernmental co-ordination.





4.1.10 Weak, inadequate or absent monitoring and record keeping

All the provincial studies revealed poor record keeping and reporting by municipalities on land use applications and their outcomes. In addition, systems for internal management of the allocation of land use and development rights have collapsed in numerous municipalities which gravely undermines municipal capacity to undertake even basic urban management tasks. The overall absence of reliable records then makes it almost impossible for provinces to fulfill their constitutional role of monitoring of, and support to, local government in this specific area.

All the provincial studies revealed poor record keeping and reporting by municipalities on land use applications and their outcomes.

4.1.11 Weak IDPs

IDPs are widely acknowledged to be inadequate, in practical terms, as instruments for forward planning. Their contribution to land use management is tenuous at best. IDPs are, legally speaking, the cornerstone of the planning system, yet in all provinces – albeit to varying degrees – they are routinely described as poorly done and not fulfilling their role of providing strategic or useful guidance. The second major problem is that budgets are poorly aligned to plans, leading to poor planning and execution of many service delivery priorities.

4.1.12 Poorly conceptualised approaches to land use management

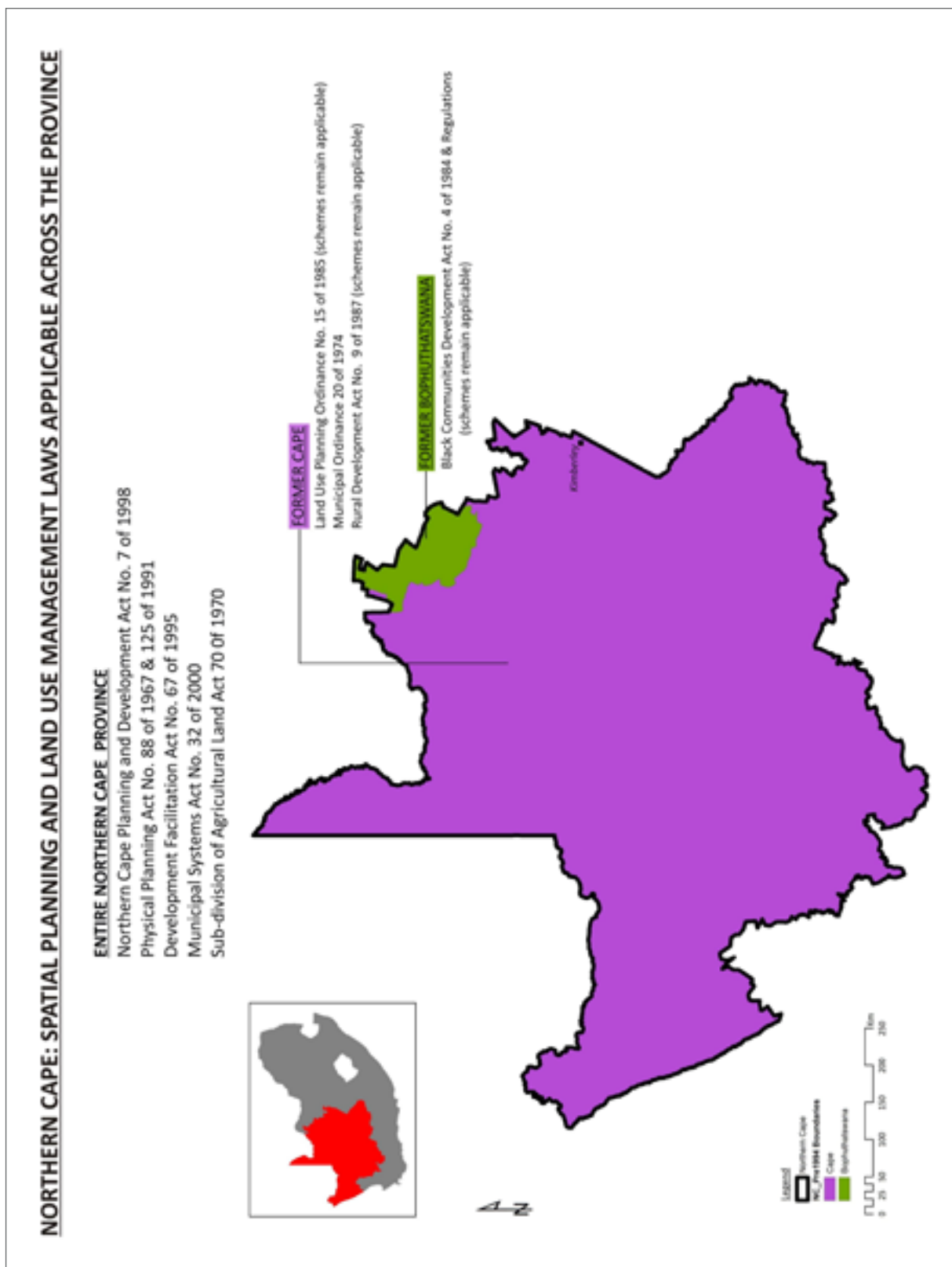
A key consequence of the tendency to mainstream the provincial Ordinances as the dominant planning law in provinces is that the needs of those areas that were traditionally ignored or neglected by the Ordinances continue to be marginalised. Therefore, land use and development in informal settlements and rural areas (especially in former homeland areas), as well as in former African townships in towns and cities, are now expected to be regulated by legislation designed expressly to exclude these types of areas. The tendency evident in many provinces is to apply the inappropriate legislation to these areas in the hope that matters will somehow improve. On the contrary, however, the practice of imposing inappropriate and unworkable laws into these areas only results in the conditions worsening there, and discrediting the role of planning.

4.2 Specific findings

Due to the specific needs either of individual provinces or distinct groupings of provinces it is useful to group the provinces according to their specific and, where applicable, shared conditions and needs. Provinces that have unique conditions that only apply to them are listed first.



4.2.1 Northern Cape



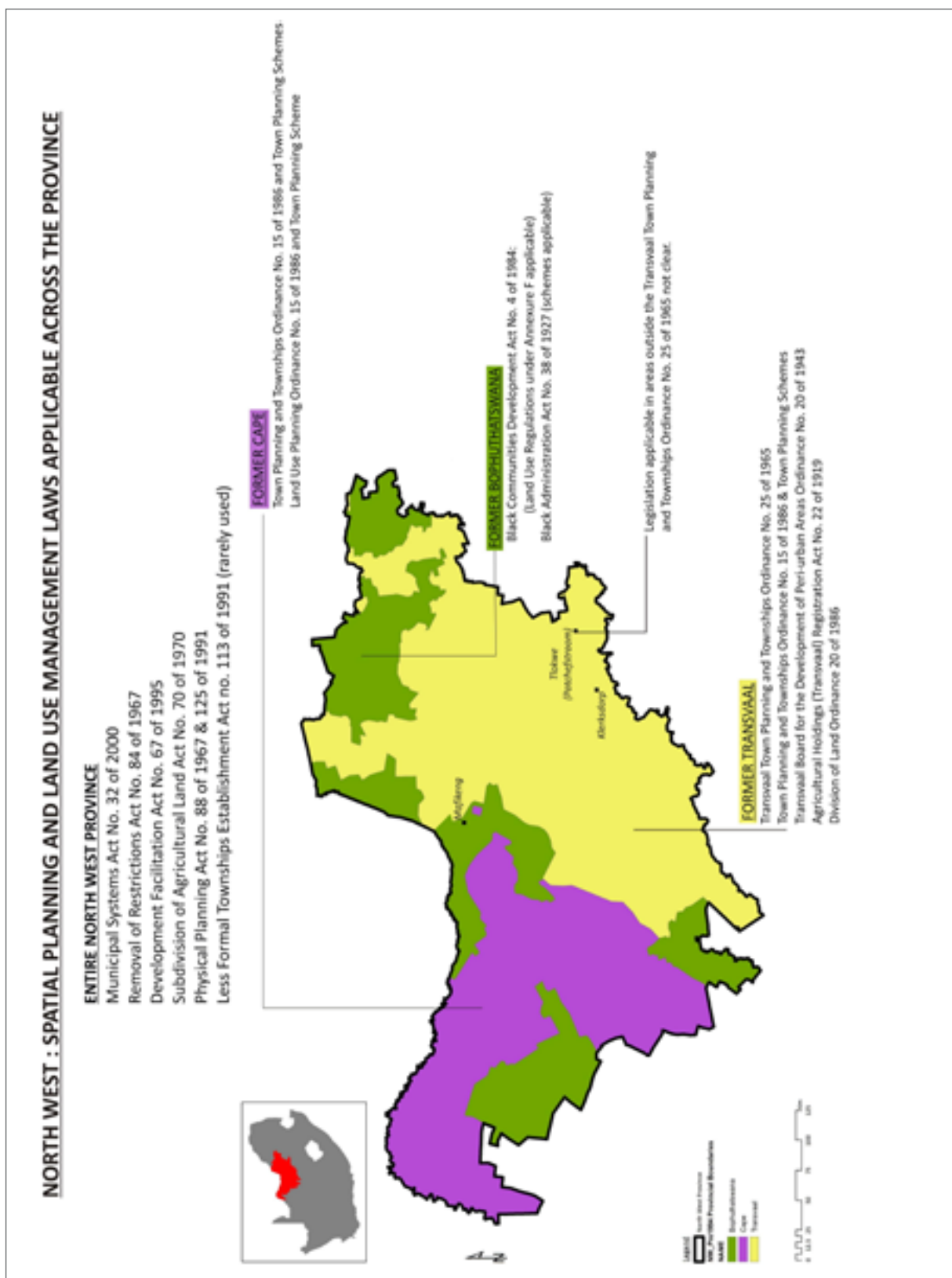
This was the first province to have unitary provincial legislation after 1994 when the NCPDA was finalised in 1998 and assented to by parliament in June 2000. By all accounts it has been implemented without many glitches. It has the following features that other provinces can learn from, as well as some shortcomings that will need amendment in the next round of reforms:

- It repealed LeFTEA and other laws
- It did not include a provincial Appeal Tribunal but relied on the DFA for this, so the Appeal Tribunal hears appeals from municipal decisions
- Even though it pre-dated the MSA, it made provision for Land Use Development Plans for spatial planning and has evolved a comfortable arrangement for SDFs, allowing them to be approved in terms of the MSA, but having more detailed guidelines for them in the Act
- It has delegated powers to municipalities that have SDFs/Development Plans and Schemes that are approved by the MEC
- It retained the schemes prepared by LUPO and Annexure F, but allows them to be amended in compliance with the Planning and Development Act (PDA)
- Has developed land use management regulations to guide municipalities to prepare integrated schemes.

The Northern Cape is a province with very low planning capacity, with only one planner in the Department of Co-operative Governance, Human Settlements and Traditional Affairs (previously the department of Local Government and Housing) and an estimated 35 planners in the province. Yet, implementation of their PDA seems to have gone smoothly in the last decade, although the deadlines stipulated in the Act are not being strictly adhered to.



4.2.2 North West



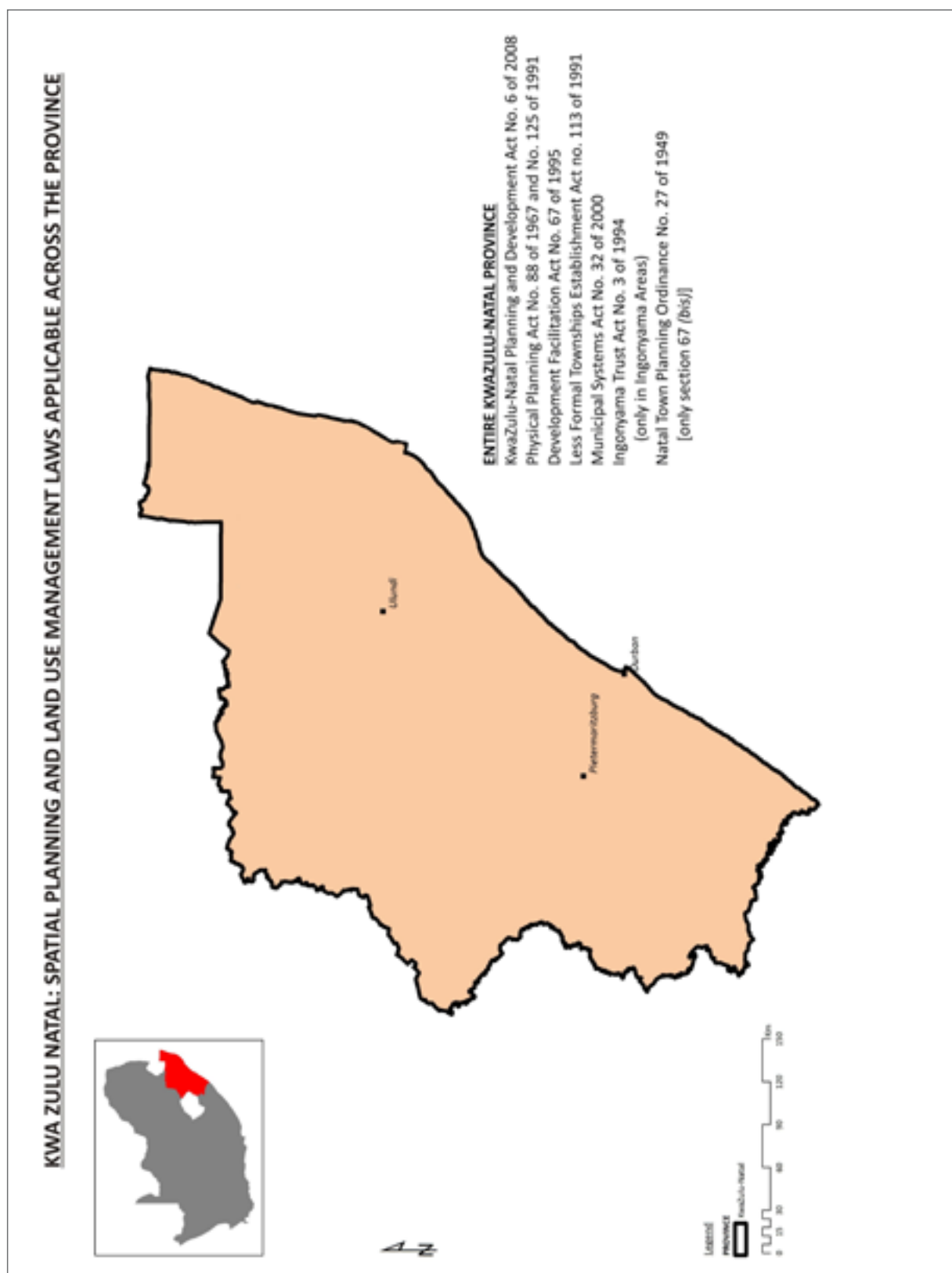
This is a province that has inherited two old provincial Ordinances (former Transvaal and Cape LUPO) and the former homeland of Bophuthatswana, applicable in these geographic areas. Each law also has its own institutional arrangements. The main findings are:

- LUPO has a Planning Advisory Board to decide applications while the Ordinance has a Townships Board. These have now been rationalised and the Townships Board undertakes all the decisions.
- Having been part of the former Transvaal, it also inherited a number of laws that were applicable in that geographic area, such as the Peri-Urban Ordinance 20 of 1943 and the Division of Land Ordinance 20 of 1986. The LeFTEA is also applicable but not preferred any longer. The DFA was used quite widely, especially with the confusing legal environment, but the North West Development Tribunal has not been functional this year, rendering the DFA ineffective.
- Bophuthatswana amended Proclamations R188 and R293 and these were taken over by the provincial government until 1998 when they were suspended by the North West Local Government Laws Amendment Act. While one of the first provinces to try to dispense with these homeland laws, this has created a void as the Ordinance applies in areas with town planning schemes. The DFA is not functional and LeFTEA is not preferred.
- The PPA is still used to issue land use permits in rural areas.
- The Removal of Restrictions Act is widely used in the province but it too has variations in procedures in the former LUPO and former Transvaal Ordinance areas. For example, in the former LUPO areas the removal of restrictions application must be approved before the planning application is considered.
- The North West made a concerted effort to draft new provincial planning legislation, but it was not approved. The Bill that was drafted adopted an integrated, sustainable development approach and so is different from the other draft provincial planning Acts and Bills.
- Capacity in the provincial DLGTA (sub-directorate: Spatial Planning and Land Use Management) is extremely low with five staff and only two professional planners to serve the entire province.

The North West is a province with legal complexities, institutional challenges and capacity constraints. In practice it has tried to channel all applications along the Ordinance routes, but these laws are not suitable for areas that are largely rural or which fell within former homelands.



4.2.3 KwaZulu-Natal



The former KwaZulu and the former Natal each had their own applicable planning legislation until 2010 when the KwaZulu-Natal Planning and Development Act was introduced. This rationalised all the previous Ordinances but left the Ingonyama Trust Act, No. 3 of 1994 intact (earlier drafts of the PDA included the rationalisation of former homeland legislation but this initiative was subsequently abandoned), continuing this historic geographic separation of planning laws. KwaZulu-Natal was the second province to implement new provincial planning legislation.

Some key aspects of this new legislation that are instructive include:

- Efforts at drafting a provincial Act began back in 1996 indicating a long and painstaking drafting process before it was promulgated
- It is very comprehensive
- It dispenses with the old Town and Regional Planning Commission in favour of a broader Planning Commission
- It introduces specific requirements, such as that certain facts must be verified by registered professional planners
- It is strong on enforcement aspects
- It makes provision for a hierarchy of SDFs and land use management schemes
- It establishes provincial appeals tribunals
- Its introduction has been accompanied by manuals and training workshops.

In KwaZulu-Natal, the Department of Co-operative Governance and Traditional Affairs was the main driver and drafter of the new Act, indicating capacity in-house to tackle this difficult task. They have been actively involved in providing training to municipalities and planning practitioners on the new Act.

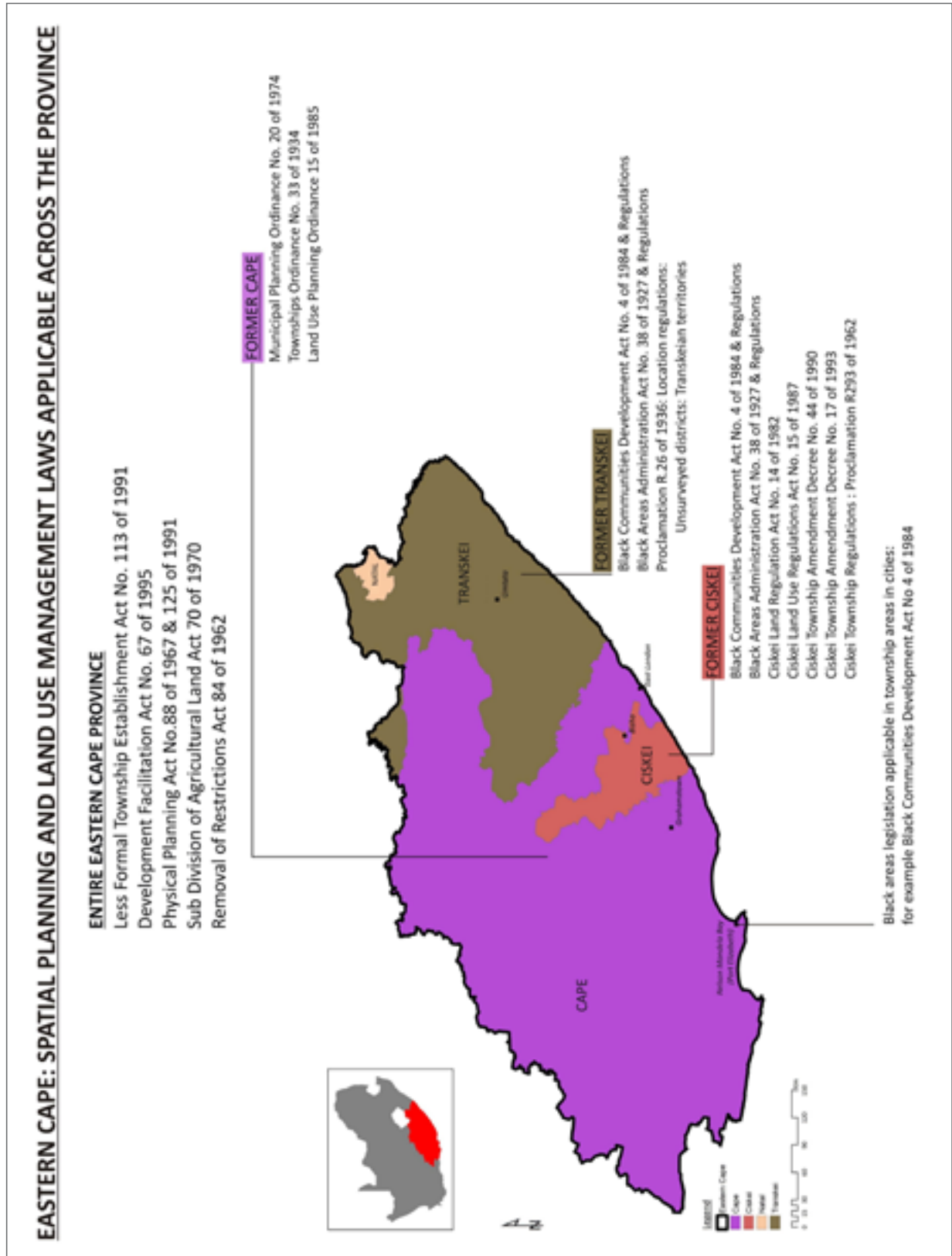
Other planning legislation still remains intact in the province, notwithstanding the PDA, including the LeFTEA, remnants of the Natal Ordinance and the Ingonyama Trust Act. This confirms how difficult it is to repeal all planning legislation in favour of one universally applicable Act. In fact, KwaZulu-Natal went through a prior process of rationalising all the homeland legislation and the Ingonyama Trust Act. represents a streamlined version of legislation in that area, indicating that an incremental process of law reform is sometimes the most sensible approach.

4.2.4 LUPO provinces (Eastern Cape and Western Cape)

While both these provinces are governed to a great extent by the LUPO, the Eastern Cape is more complex because it has inherited homeland laws from the former Transkei and Ciskei.



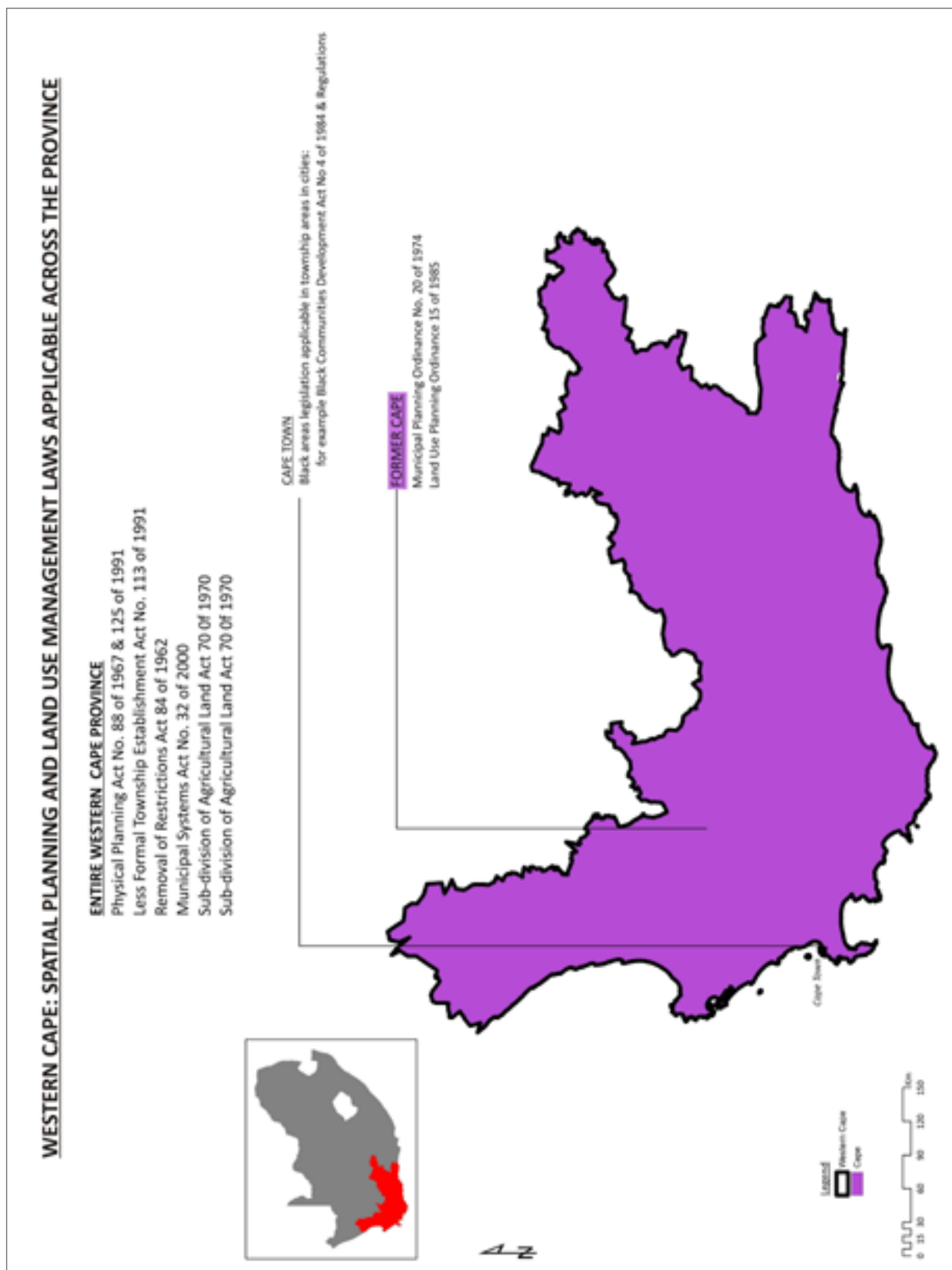
Eastern Cape:



- LUPO applies in all the former White towns of the Eastern Cape, while the former homelands have legislation derived from the Black Administration Act – Proclamation R293 and its homeland variations, as well as Proclamation R188. The Ciskei actively modified these laws and a full list of Decrees is testament to this; as is the Ciskei Land Use Regulations Act, No. 15 of 1987 (based on and similar to Proclamation R293) which is still applicable in that territory today. In 1997, the Eastern Cape Regulation of Development of Rural Areas was also promulgated in an effort to accommodate the land development needs of the province's rural areas.
- Applications in terms of these laws are made to the municipality where it is assessed and a recommendation is made to the Department of Co-operative Governance and Traditional Affairs, which makes the final decision.
- The LeFTEA is not used much, especially not in the metropolitan areas, but is still used in some rural areas (11 applications in the past year). Province (Housing Department) makes decisions on these applications.
- The DFA was embraced in this province and 40 applications have been processed.



Western Cape:



- The LUPO authorised municipalities to make local planning decisions, so most municipalities have planning capacity.
- However, the provincial administration still makes decisions on LeFTEA (delegated legislation), the PPA and the Removal of Restrictions Acts.
- LUPO makes provision for the preparation of Structure Plans and this can cause conflicts with the Municipal System Act's SDFs and the PPA Structure Plans.
- LUPO is quite different from the northern provinces' Ordinances and does have some flexibility around zoning for informal settlements, sub-divisional areas and so forth.
- The institutional arrangements are complex in the Western Cape as different provincial departments have responsibilities for laws related to and impacting on planning. For example, the Department of Transport and Public Works is responsible for the Advertising on Roads and Ribbon Development Act.
- There are emerging practices where environmental authorisations are integrated with planning processes (using the LeFTEA) given that the provincial Department of Environmental Affairs and Development Planning is a combined department.
- LeFTEA is not used much and the DFA was never implemented.
- The City of Cape Town has 70 town planners on their staff along with 150 administrative staff. However, planning decisions are still made by the Portfolio Committee on Planning and Environment, whereafter the Mayoral Committee ratifies the decision and sends it to full Council for information. The City has to accommodate the administration of 27 town planning schemes, prompting the preparation of an integrated scheme which has been awaiting approval from the provincial department¹⁵.

It is worth noting that in the old LUPO provinces the Ordinance continues to predominate, but it is also noteworthy that the Townships Ordinance of 1934, which pre-dated LUPO, is still not completely off the statute books. This is evident in town planning schemes in the areas that were in the Transkei before its 'independence' and parts of the Western Cape that are still governed by this old legislation. Even with the plethora of laws and the institutional complexity, the Eastern Cape has tried to make the existing system work as best it can, but against tremendous odds.

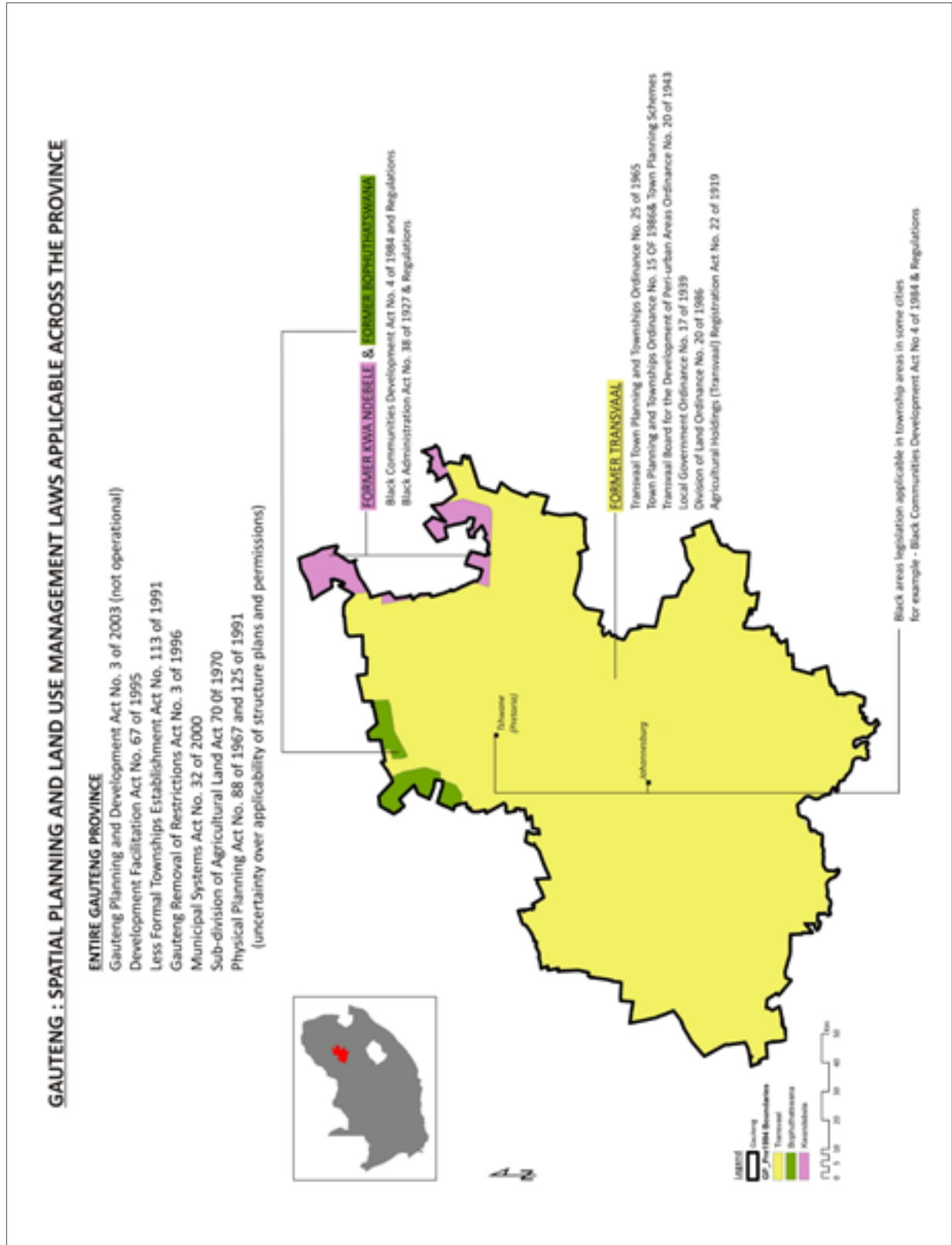
4.2.5 Former Transvaal (currently Gauteng, Mpumalanga and Limpopo provinces)

While the Transvaal Town Planning and Townships Ordinance applied in all these three provinces, there have been differences in how each province has implemented the legislation that it inherited. A brief summary of the key findings for each province includes:

¹⁵ It is worth noting that in the light of the Constitutional Court's ruling in the DFA judgment this requirement that schemes be approved by the province probably falls away.



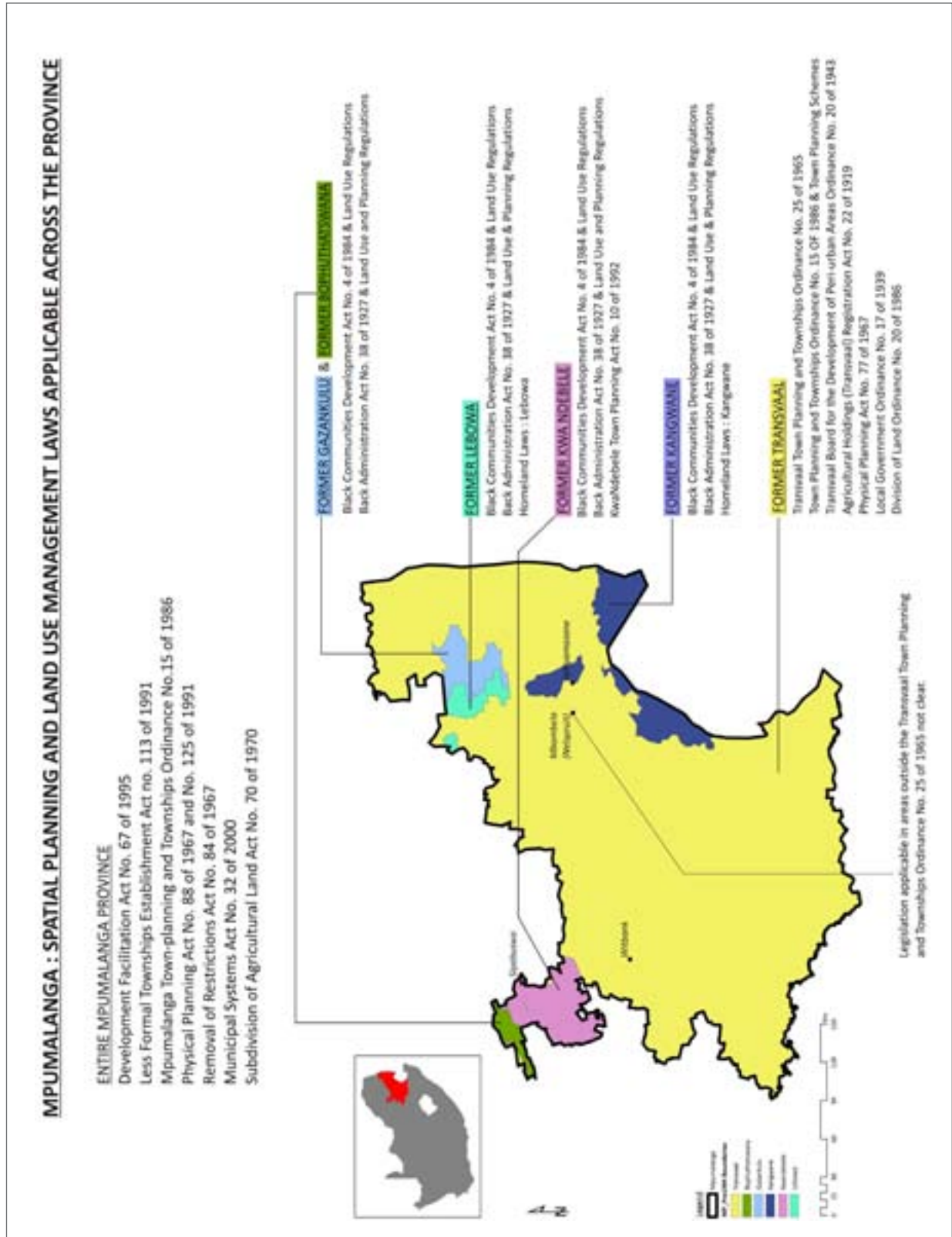
Gauteng:



- The 1986 Ordinance is the dominant town planning legislation used in this province.
- The 1965 Ordinance that preceded the 1986 Ordinance, however, still cannot be completely repealed as there are at least 500 township applications in terms of this old Ordinance that cannot be transferred to municipalities as there is no legislative mechanism to do so and province (instead of municipalities) has to process amendments to these townships.
- Unlike many of the other provinces, Gauteng has a number of its own laws that impact on town planning applications, such as the Gauteng Removal of Restrictions Act, No. 3 of 1996; the Gauteng Transport Infrastructure Act, No. 8 of 2001; as well as the older Division of Land Ordinance of the former Transvaal.
- The Black Communities Development Act was also widely used in what is now Gauteng. This means that there are many townships with land use management schemes developed in terms of that Act's Annexure F and that are not integrated into municipal schemes or otherwise rationalised yet.
- LeFTEA was also widely used for low-income housing projects, but many never got to the stage of opening township registers and conferring freehold title to residents (44 applications are still in process, while only two new applications were received in 2010, indicating the scale of the problem).
- Only small parts of the province are affected by former homeland legislation and here Proclamations R293 and R188 are used. Generally, Annexure F is used for land use management in Proclamation R293 areas.
- Gauteng embraced the DFA and has had the largest number of DFA applications nationally. However, the City of Johannesburg grew increasingly uncomfortable with its use in its area of jurisdiction, culminating in the legal challenge of the Gauteng Development Tribunal.
- Since the late 1990s the province has been involved in a process to draft new provincial planning legislation and promulgated the Gauteng Planning and Development Act, No. 3 in 2003. It was never implemented, as it did not have regulations. A revised draft Bill has been out for public comment along with new draft regulations. The new draft Bill intends repealing all the Ordinances – the Peri-Urban and Division of Land Ordinances, the Gauteng Removal of Restrictions Act, the Advertising on Roads and Ribbons Development Act and LeFTEA, thereby rationalising all the planning legislation.



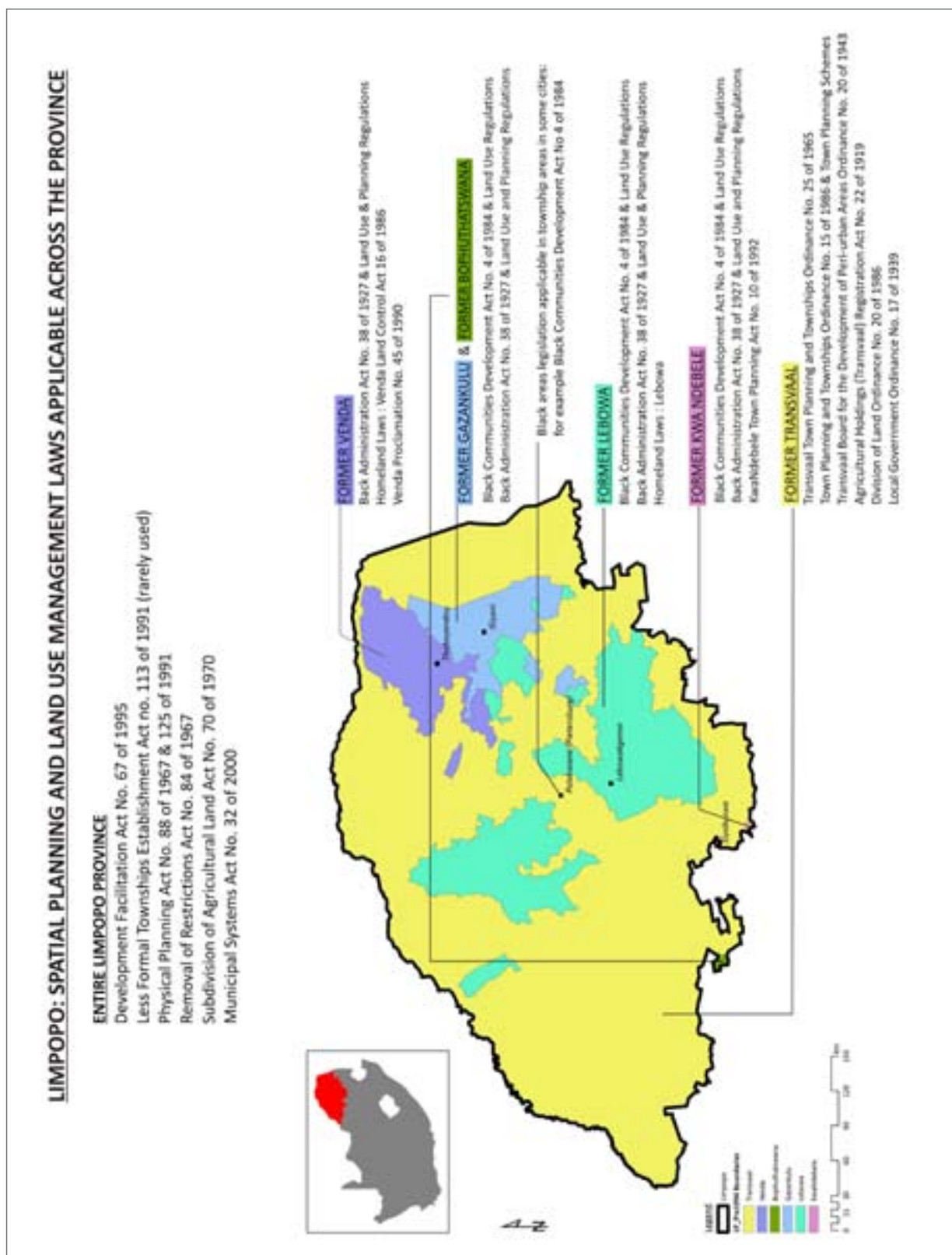
Mpumalanga:



- Here the Ordinance applies and all but two municipalities have been authorised to make local decisions.
- While the Ordinance is applicable in the former White areas, there is some debate as to its universal applicability because Mpumalanga adopted the old Transvaal Ordinance (now the Mpumalanga Town planning and Townships Ordinance) after the new province was constituted. The view therefore exists that it is applicable across the province; however, this does not seem to be applied in practice.
- LeFTEA was assigned to Mpumalanga in 1994 and has been widely used for low-income housing developments.
- The PPA has also been widely used for issuing land use permits outside of areas with town planning schemes. Again, the validity is questioned as they are meant to be issued only in areas outside of municipal boundaries, but this no longer applies in wall-to-wall municipalities.
- The very first application in terms of the DFA was submitted and heard in Mpumalanga. The DFA has been widely used in areas where there is legal uncertainty as to what legislation to use for an application, but municipalities do not support it as its post-approval processes tend to clash with the established Ordinance systems. Traditional leaders are also not supportive of the DFA.
- Mpumalanga incorporates four former homelands – Kwandebele, Kangwane, Gazankulu and parts of Lebowa. Kangwane and Lebowa have their own versions of Proclamation R293 and the province uses the national version of Proclamation R293 for all the other former homeland areas. The provincial Department of Agriculture, Rural Development and Land Reform is the department responsible for planning and it processes and approves all Proclamation R293 and Proclamation R188 applications.
- A provincial Townships Board hears appeals in terms of the Ordinance and Removal of Restrictions Act.
- Four municipalities now have town planning schemes that cover the entire municipal area.
- Municipalities and the province prefer to have NEMA approval (a Record of Decision (RoD)) first before deciding on planning applications.



Limpopo:

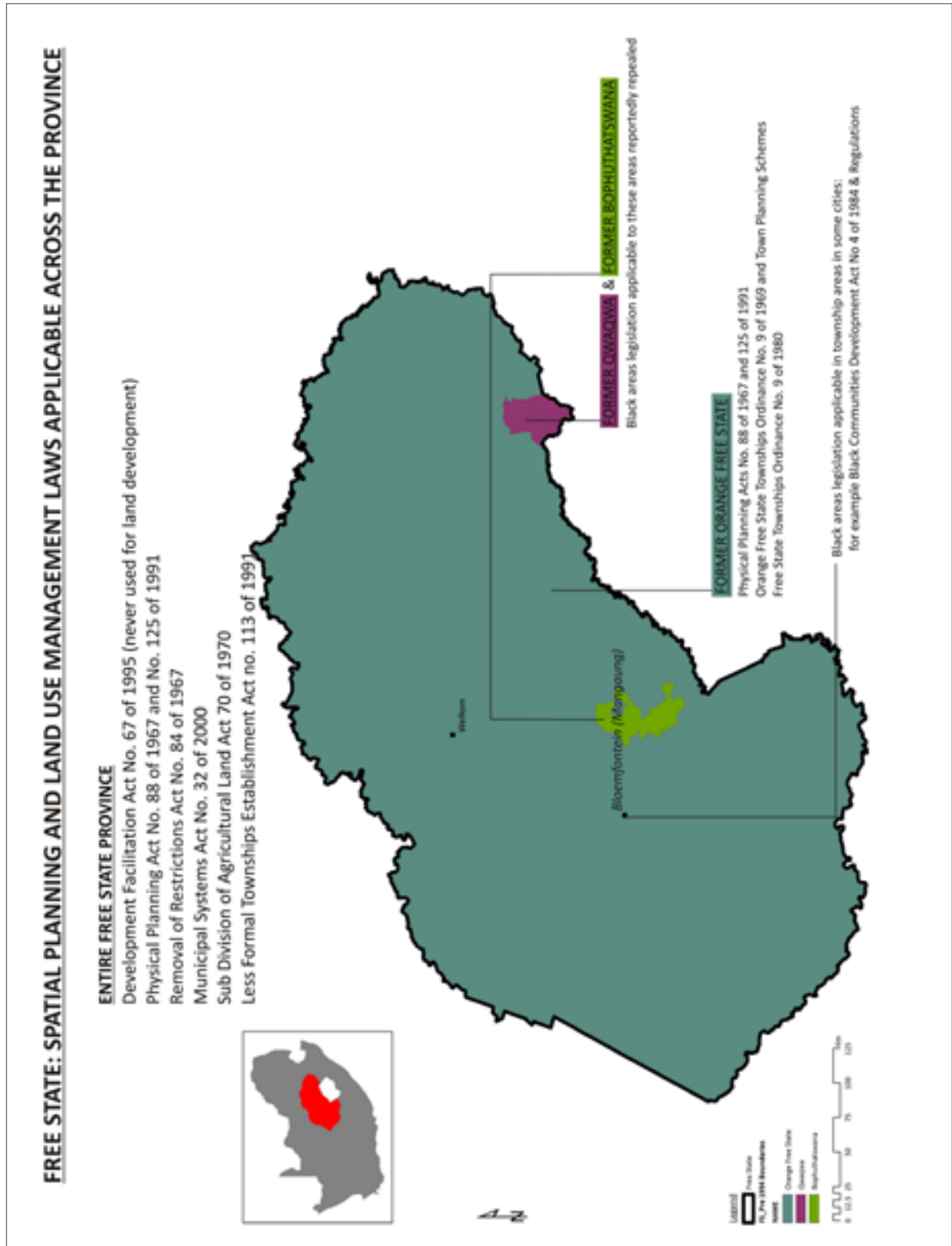


- Like Mpumalanga, the Ordinance was adopted by the province in 1994 and there are similar debates as to whether it applies across the whole of the newly-constituted province. In practice, it tends to be applied only in those areas where the former Transvaal Ordinance applied.
- The LeFTEA was also assigned to Limpopo in 1994, but it is not being widely used anymore as there is a preference for the Ordinance to be applied instead.
- The DFA is also popular and used in many areas of the province, but especially in the former rural areas (LeFTEA is not used).
- The province is also responsible for the Removal of Restrictions Act and the Townships Board hears any appeals in terms of this legislation, as well as appealed Ordinance applications.
- Limpopo also has many former homeland areas – Venda, parts of Lebowa and Gazankulu – each with their own variations of Proclamations R293 and R188 (except for Venda which repealed Proclamation R188). However, except for the Venda Land Control Act, No. 16 of 1986 and Venda Proclamation 45 of 1990, the province tends to ignore the local variations and use the national Proclamations R293 and R188 – processing 1 339 applications in 2010.

In summary, while the provincial Ordinances are widely used in these provinces, the former homeland legislation is still dominant in those territories, giving provinces substantial authority to make land use and planning decisions in these areas, even though they now fall within municipal areas.



4.2.6 Free State



The Free State province inherited the Free State Townships Ordinance 9 of 1969 and it is applicable across the whole province. What sets it apart from other old planning Ordinances is that it does not make provision for amendments to town planning schemes by persons other than the local authority. Other key observations include:

- It also has not authorised any municipalities to make local town planning decisions, although Mangaung does process applications in their area and submits recommendations from their Council to the province to make the final decision. Hence, the provincial Department of Co-operative Governance and Traditional Affairs is the major decision-maker for town planning applications across the length and breadth of the province.
- Private sector applicants use the Removal of Restrictions Act to bring re-zoning applications, along with the removal of restrictive conditions of title. It allows for the simultaneous removal of restrictions and re-zoning applications.
- The Free State also inherited some former homeland laws when Qwa Qwa and parts of the former Bophuthatswana were incorporated into the Free State. With these areas came regulations in terms of the Black Administration Act – especially Proclamations R293 and R188. These are national laws that were assigned to the province. The Free State actually repealed these, leaving the old Ordinance as the main planning and development legislation applicable throughout the province.
- With respect to other national legislation that was assigned, the LeFTEA was used quite widely in the former homeland areas, but is not used much anymore as the Ordinance is favoured.
- The PPA is still actively used to issue land use permits.

The Free State is a province with low planning capacity. Only four municipalities have planning staff. Given the history of strong provincial decision-making and resultant weak planning capacity at municipal sphere, new planning legislation compliant with the Constitution will be a challenge to implement, without support from the province.



05 Recommendations

The scale of what has to be done is too great for any one sphere to be able to do it alone.

To conclude, this report sets out recommendations for each of the three spheres of government. The scale of what has to be done is too great for any one sphere to be able to do it alone. Moreover, the intergovernmental nature of the planning and land use management activities of the state, derived from both the network of sectoral legislation and the constitutional allocation of powers and functions, is such that all three spheres have to co-operate in the resolution of the problems identified in this study. It goes without saying that these are problems that, even with the best co-operation and integration of efforts, cannot be resolved overnight. A multi-year programme of intergovernmental co-operation is needed to address the problems of planning legislation.

5.1 Recommendations for national government

5.1.1 Intergovernmental process to drive and lead planning law reform

Although it is clearly evident that the national sphere alone cannot address these issues, there is a strong case to be made for **national leadership of the intergovernmental process that must co-ordinate the process of legislative reform**. The model of the Development and Planning Commission, set up under Chapter Two of the DFA, is one that could be considered to lead this process as it incorporates the following: members appointed by more than one national minister; accommodating all provinces as well as local government and the private sector; a time-bound mandate; the possibility of very specific terms of reference; and a dedicated secretariat. All of these are prerequisites for the successful outcome of such an intergovernmental process.

5.1.2 Review the MSA provisions on municipal planning

It is very clear from this study that a new legislative framework for land use management and spatial planning cannot work if the MSA provisions on Integrated Development Planning (particularly SDFs) are not also amended. There cannot be a body of legislation dealing with land use management and spatial planning in general that exists in parallel to one that regulates (imperfectly) elements of both of these activities at the municipal level. There is thus an **urgent need to revisit and review the relevant provisions of the MSA** if there is to be an integrated and effective new legislative framework embracing all spheres of government.



5.1.3 Develop model provincial legislation

This study has shown that even the well-resourced provincial administrations have battled severely to draft and implement effective new provincial planning legislation. It would be enormously beneficial for national government to **drive a process of drafting a model provincial Bill** that individual provinces could choose to adopt, or not. Even if they elect not to adopt it in its entirety, they could use it as a base upon which they could build legislation that fits the specific needs of their provinces. This model legislation will have to cover a number of the issues that this study has shown are both neglected and which are difficult to regulate effectively. These include guidance on informal settlement upgrading, early land settlement, land use management systems for rural and traditional areas, simpler development procedures and simpler land use management systems.

5.1.4 Develop model municipal bylaws

As with model provincial legislation **there is a strong need for model municipal bylaws dealing with municipal planning.** In the event that national and/or provincial governments fail to manage the full package of legislative reform, it will be incumbent on municipalities to use their constitutional powers to make municipal planning bylaws. In this process they will be greatly assisted by model bylaws that can either be proclaimed or tailored by the municipality for their needs before proclamation. The same principle would apply as for provincial legislation, in that the model bylaws would be (and indeed have to be) optional for municipalities. They are of course fully entitled to draft and enact their own ones, but in light of the extremely constrained capacity in local government, along with the complexity of the content matter, it will be beneficial for model bylaws to be generated nationally. These bylaws could, theoretically, encompass the full range of issues that are otherwise covered in the Ordinances and related legislation. In practice, they will probably be more useful and effective to fill in gaps where these have been created or left by national and provincial legislation.

5.1.5 Guidelines on rationalising and modernising assigned legislation

This legislation consists primarily of the PPA, the Removal of Restrictions Act, the LeFTEA and Proclamations R293 and R188, among others. **The rationalisation and modernisation of these laws is increasingly important** and most provinces indicated that they would have benefited from guidelines when attempting their planning reforms. Provinces have taken many different approaches, indicating a lack of a consistent position on this. The guidelines should indicate what legislation can be repealed and highlight the potential implications for provinces to identify prior to repeal. Where amendments are necessary, they should be explained. It needs to be clear as to what is possible in former homeland areas. It should also provide best and worst practice examples from provinces that have already



repealed legislation. The complex nature of most of this legislation in terms of the creation and protection of rights and the establishment of institutional arrangements that flow from the legislation makes it imperative that national guidance be provided to enable provinces to move forward with confidence.

5.1.6 Guidelines for regulating specified processes

There are planning challenges with specific areas of complexity that have to be addressed by provincial legislation, but where **guidelines from national government** are needed. These challenges include, but are not limited to, informal settlement upgrading, managing land use in areas under traditional leadership, regulating lifestyle estates in rural areas and regulating tourism-related land uses, also primarily in rural areas.

5.2 Recommendations for provincial government

5.2.1 Establish a provincial forum to drive planning law reform

It would be unconstitutional for provinces to proceed with drafting new legislation without doing it in a collaborative manner, especially with municipalities. It is therefore essential that a forum, with specific functions, goals and outcomes be established to oversee planning reform in a province. This forum should be representative of local government in the province, the key provincial sectoral departments as well as the provincial offices of those national departments exercising land use functions in the province. The exact MEC that would have to drive this process varies from province to province as the land use function is assigned to different areas of responsibility in different provinces (e.g. environment affairs, local government, human settlements, co-operative governance and so on).

5.2.2 Compile an audit of all planning legislation still in force in the province

This study has shown not only the extreme number of laws still in use, but also how many 'remnant' laws still have a 'night life' on the statute books. These need to be identified in an audit in order to be 'cleaned up'. The audit should include not only the applicable laws, but also the institutional responsibilities and practices that have evolved in the province around the implementation of those laws. The audit thus has to show not only what law is in force but how it is implemented, if at all; as well as flag implications of the repeal of a law. Clearly this audit would build on the work already carried out in this study. Each province requires a different level of effort to carry out such an audit, but there is no province that does not need to do one.



5.2.3 Ensure monitoring and support of municipal planning

This has failed dismally to date. With the introduction of new planning laws, it is advisable to give monitoring and support to local government the attention they deserve. Very few provinces are monitoring the performance of the legislation they are responsible for. National government is not monitoring legislation such as the DFA. Some provinces (and municipalities) are still using manual recording systems for applications that provide little opportunity to analyse data.

With respect to supporting municipal planning, few provinces are able to do this as they have very limited capacity themselves. Some have been efficient at providing guidelines – for example KwaZulu-Natal and the Northern Cape. With the definition of *municipal planning* now much clearer, it is imperative that municipalities build more local planning capacity and it is a constitutional obligation of national and provincial government to support them in this. Particular ways in which this can be done include establishing Shared Services centres (as has been done in KwaZulu-Natal), developing efficient and reliable systems for recording land use data and reporting it to provincial structures, as well as developing capacity to formulate and implement municipal planning bylaws.

5.3 Recommendations for local government

5.3.1 Establish cities forum on planning legislation

Although local government is clearly a much broader sphere than simply the cities (including members of the SACN), it is also undeniable that the great majority of planning applications are processed through these major cities. Each of the cities is currently grappling, to a greater or lesser degree, with the legislative issues. In particular, many of them are battling to integrate the disparate land use management schemes that they have inherited from previous dispensations. This is a hugely difficult and complex task. It will be very beneficial for the cities to co-operate on a formal basis for the purposes both of sharing knowledge and experience, but also for lobbying provincial and national government as well as the private sector to ensure that the interests of these cities are well served. As local government increasingly appreciates the power that it has to draft and implement bylaws dealing with *municipal planning* it will become important for a forum such as this to co-ordinate those efforts too. The SACN and the South African Local Government Association (SALGA) would be the appropriate bodies to co-ordinate such a forum because of their mandate. A similar forum with a similar scope of work would obviously be useful in relation to, for example, secondary cities and rural areas, but a suitable overarching body would be required to facilitate and support it.



5.3.2 Establish systems for recording and reporting land use changes

Across the country municipalities are failing to record or report properly on land use changes. There is a wide range of technological and other techniques that are adopted for this and very few of them appear to be effective. Ideally provincial and national government should provide support in this regard, but ultimately it will be up to municipalities to develop systems that best suit their particular needs and capabilities.

5.3.3 Strengthen capacity to execute municipal planning effectively

Again, it would be optimal for national and provincial government to support this endeavour, but ultimately it is local government's responsibility to ensure that it has planning capacity that is adequate to the task. This will entail revisiting issues such as the appointment of registered professional planners, the salary scales at which planners are employed, and the design and implementation of mentoring and professional development programmes. This should be done through engagement with the regulatory body for the profession, the SA Council for Planners.¹⁶ Engagement with the Department of Home Affairs could also be pursued in order to facilitate the immigration of experienced planners from other countries to strengthen the profession in South Africa.

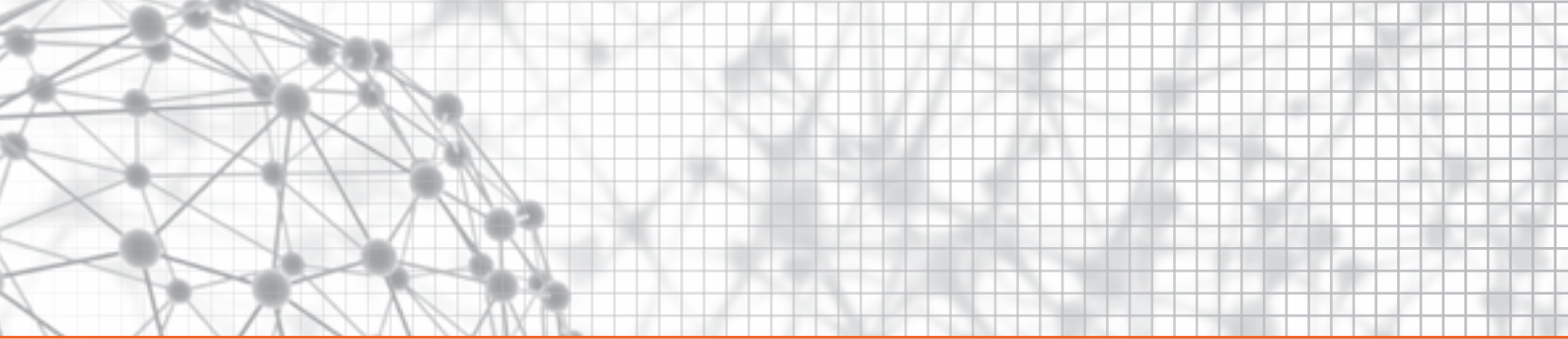
5.3.4 Develop systems for inter-municipal planning appeals

As the implications of the 2010 DFA judgment sinks in, so it will become increasingly apparent that the existing system of appeals against municipal decisions to provincial structures cannot continue. It will be in local government's interests to proactively seek inter-municipal solutions to the question of planning appeals. While these solutions would ultimately need to be reflected in provincial or national legislation, they do fall squarely within the ambit of *municipal planning* and it would be appropriate for local government to drive the approach taken towards them. A representative structure such as SALGA clearly has a leading role to play here.

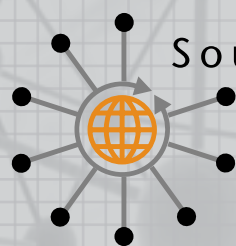
¹⁶ It is noteworthy that under current arrangements, planning is regulated under the Department of Rural Development and Land Reform while other built environment professions are regulated under the department of Public Works.







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