Incrementally securing tenure in slum upgrading:
Reflections on promising practices in southern Africa

Improving the legal status of transitional residential settlements: The case of the City of Johannesburg, South Africa

This Practice Note outlines the actions taken by the City of Johannesburg between 2007 and 2013 to secure the legal status of transitional residential settlement areas through 'Regularisation', and examines implications for practice in the field. The process was supported by Urban LandMark over several years.

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The context of the City of Johannesburg

Informal settlement upgrading is the responsibility of the City of Johannesburg's Department of Housing, often in partnership with the Provincial Department of Housing. The conventional route for informal settlement upgrading is the formal process of township establishment, driven by the housing subsidy programme. This process is slow and fraught with difficulties such as land acquisition, relocation of settlements, protests from communities and limited budgets. Few, if any, projects are true *in situ* upgrading projects.

In early 2008 the then mayor of Johannesburg undertook a site visit to an informal settlement and was appalled by the unsanitary living conditions he encountered there. He requested that his departments come up with a solution for the 183 informal settlements in the City of Johannesburg, where an estimated 220 000 households live, translating into one in every four of the city's citizens falling outside the regulatory system of government. Approximately 20 000 subsidised units were being delivered per annum at that time.[1]

Developing the Regularisation mechanism

In response to the mayor's call, the Department of Development Planning and Urban Management (DPUM) worked closely with Urban LandMark to develop an approach to recognise tenure and improve services called Regularisation. Their political mandate was to '[b]ring dignity to the poorest citizens of the City of Johannesburg by providing decent housing and eradicating informal settlements by 2014, in line with MDG goals and the ideal of a "nation free of slums"'.[2]

The executive director of DPUM in 2008 was familiar with approaches to informal settlements, including the Brazilian experience of improving *favelas* through upgrading by declaring informal settlement areas as special zones (ZEISS) where more flexible rules applied. A study tour to Brazil was undertaken in June 2008 to learn first-hand about the approach.

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1   Harrison P (2009) New directions in formalising and upgrading informal settlements. *Leadership Forum*. Available at www.joburg.org.za.

2   Ibid.

The Regularisation approach is surprisingly simple. It is based on an amendment to four of the town planning schemes in Johannesburg, in order to include a definition of a Transitional Residential Settlement Area (TRSA), and to list the portions of land that will be declared TRSAs. A schedule (Annexure 9999) was included, which sets out the rules applicable in the TRSAs. The rules relate to land use, but also include elements of spatial (layout) planning, building management, land tenure and consultative approaches. The schedule thus goes beyond the conventional contents of a town planning scheme, and is more than a land use management instrument.

Twenty-three settlements in the City of Johannesburg were declared this way in 2009. This was a specific and innovative form of legal recognition.

It is important to note, however, that Regularisation is not a township establishment process. It does not deliver a new development area with cadastrally defined sites in which individual ownership or official, subsidised houses are located. Nevertheless, the provisions of Annexure 9999 are innovative, because they make legal provision for:

- a consultative approach;
- the identification of each structure, securing the home of the household;
- spatial mapping of the area to produce a basic layout plan;
- an occupation permit, providing proof (evidence) of occupation;
- obligations on both parties for managing the area in an incremental way;
- land use regulation to protect against nuisance, and to ensure health and safety; and
- a local register, held by the City of Johannesburg to record and secure occupancy.

Significantly, Annexure 9999 provides a mechanism for the settlement to become integrated into the administration of the city. This is a very important aspect of official recognition because it offers a way to 'lock in' the tenure mechanism. By allowing for a basic layout plan, a survey of households and the spatial referencing of structures, as well as a register and the monitoring of land use and building changes, the City is required to 'insert' these requirements into its GIS, land administration and, eventually, also its billing systems. This begins to embed these settlements into the city systems, even though they are not formally proclaimed as townships.

Urban LandMark continued to provide *ad hoc* support to the City of Johannesburg between 2008 and early 2011,[3] while the DPUM developed the approach and started implementing it in 'pilot' areas. Over time, however, institutional changes occurred in the DPUM and the Housing (now Sustainable Human Settlements) Departments, and the steering committee that brought together informal settlement upgrading initiatives across all departments was abandoned in 2012.

In 2013, Urban LandMark's Tenure Security Facility engaged again with the Regularisation programme to undertake a study on the progress and impact of this initiative since 2011. This produced recommendations concerning the use and application of legal declaration mechanisms for securing tenure. The study came to a number of conclusions:

- It took one year from formulating the approach to getting the amendment scheme advertised.
- The Informal Settlements Formalisation Unit (ISFU) was established and run from DPUM for approximately three years.
- There were changes in leadership in both the DPUM and the ISFU.

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3   See www.urbanlandmark.org.za/downloads/inc_securing_tenure_p02.pdf for more information.

Box 1
Defining Regularisation

Regularisation is an interim measure to recognise settlements, deliver services, provide addresses, improve the quality of life, and extend citizenship to informal settlements while waiting for formalisation to be implemented.

The Regularisation approach enables informal settlements to be upgraded *in situ* incrementally until they can be formally developed. The mechanism is a town planning instrument used to declare certain portions of land in informal settlements as Transitional Residential Settlement Areas (TRSAs) by amending the Town Planning Scheme to include a definition of a TRSA. This provides the settlement with blanket tenure security by legalising the land use and introducing, *inter alia*, an 'occupant permit for a residential unit' into the clauses of the amendment scheme.

- There was a change in political leadership during the life of the programme.
- Only 3 of the 23 identified settlements had surveys undertaken in them, putting them on the Regularisation implementation path.

Following the initial conceptualisation of the approach, there was considerable progress towards Regularisation between 2008 and 2011. Experienced planners were driving the process and the steering committee was active. The steering committee had a mandate to report directly to the mayor, which produced the political pressure to make progress. The Happy Valley settlement was identified as the pilot project, and progress was made with the implementation of the approach, including the completion of the basic layout plan, the community survey, and the numbering and GPS positioning of the structures. Improved services were installed, representing an important outcome of regularisation, although interviews held subsequently with community members revealed some dissatisfaction with the services.

Over time, more detailed mechanisms had to be formulated. These include operational-ising the register, designing and implementing the occupation permit, linking the GIS information to the billing system, and setting up the management structures. Given the loss of staff in DPUM (see Box 3), and especially the Regularisation champions and operational staff, these mechanisms were put on the back burner and have not been implemented to date.

The overall impact of the programme is thus more limited than its designers intended, and the future of the programme is uncertain at the time of writing. It is not clear whether it will have an institutional home in the new department to which the ISFU has been transferred. Nevertheless, Regularisation is an innovative mechanism that provided greater tenure security to residents in the regularised settlements. It provided concrete evidence of improved legal status and created the conditions for improving basic services provision.

Implications for practice

The technical support provided to the City of Johannesburg presents insights into the legal recognition mechanisms toward incrementally increasing tenure security in informal settlements (see Route 7 in the diagram overleaf).

As a legally-based intervention, it provided residents with greater tenure security, because Regularisation has the potential to 'lock' a range of interventions into a legal instrument. Mechanisms such as a basic layout plan, occupant permit, a register and enumeration become a legal requirement for the municipality once an area is declared a TRSA. It also enables an area to be serviced, because the legal status can unlock bigger municipal budgets.

Regularisation uses existing planning instruments and applies them to the contexts of informal settlements. The scheme amendment mechanism is a simple and effective tool that adapts an existing mechanism to confer legal recognition on informal settlements in which upgrading through the housing subsidy may take a long time. It can apply to many informal settlements across South Africa that may take a long time to be upgraded using the housing subsidy. Regularisation has also helped to overcome difficulties in embedding certain instruments into the municipality such as registers, occupantpermits and procedures for managing land use or for providing addresses. However, champions of the approach are critical to its success.

Box 2

Principles of the Regularisation approach

- unlock state and household investment before lengthy township establishment processes are concluded

- encourage residents to make their own contributions to upgrading their property

- provide an appropriate and enforceable regulatory framework for safety and security

- ensure the approach is incremental and flexible

- keep the process administratively simple and tailored to capacity for implementation.

Box 3

Institutional changes that impacted on progress towards Regularisation

- the head of DPUM, a main driver and conceptual thinker, left the organisation

- the contract of the ISFU head came to an end

- the dedicated funding to the ISFU was for a limited period only

- steering committee meetings came to a halt in the second half of 2011

- the Urban Management section was split from DPUM.

Diagram Key routes towards securing incremental tenure in the City of Johannesburg

In future, the Regularisation process should include community participation.

In future, the Regularisation process should include community participation. This would help strengthen the sustainability of the approach and create the conditions for more equitable engagement between municipalities and affected communities.