South African
CitiesNetwork

The Urban Land Paper Series

Volume 1

From the series, UNSETTLED: 100 Years War of Resistance by Xhosa
Against Boer and British
2012-2014

Cedric Nunn 'Unsettled' publications, published by Archipelago
Books, New York (2015); and Wunderhorn, Heidelberg (2015)

A history museum housed in one of the early buildings of Castle
Hill, Algoa Bay, present day Port Elizabeth.
2013

Mduduzeli Mkele, Yonela Mcanda and Sima Mkele, on the rise
overlooking Grahamstown from which Makandha Nxele (Makana)
and his forces attacked the garrison in 1819.
2013

Bridge over the Inxuba (Great Fish) River, built in 1877. The region
of Committees Drift was of great strategic value to the British,
because of ist proximity to Grahamstown.
2013

The ruins of Theopolis.
2013

The ruins of the Dimbaza Border Industrial Park. Built in the 1970s
as a source of cheap labour for industrialists (and ostensibly
employment for Ciskei Homeland citizens). This industrial zone
collapsed after 1994.
2013

Bhisho. King William's Town
2014

Ginsberg, hometown of Steve Biko, and cradle of the Black
Consciousness Movement. King William's Town
2014

Nolukhanyo township entrance, Bathurst.
2013

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Introduction

by Stacey-Leigh Joseph,
Peter Magni and Gillian Maree

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Land and the Battle for the Nation's Soul

In July 2014, Sbu Zikode of Abahlali baseMjondolo delivered a damning indictment against the post-apartheid government that gave insight to the experiences and reality of many poor urban dwellers. He pointed out that, after two decades of being 'free', freedom remained a dream for those in cities without access to land and its benefit . He highlighted the frustration and exclusion felt by people who continue to struggle on a daily basis for access to shelter, services and the benefits of the city. The overwhelming sentiment expressed was that government does not seem to be interested in the plight of poor urban dwellers who are evicted and persecuted.

The Natives Land Act (No. 27 of 1903) effectively prohibited black people from owning land in South Africa, limiting them to 7% of the land on reserves. The effect was crippling for people whose livelihoods depended on land for farming and cattle, and whose culture and society were associated with land. The effects of this dispossession can be felt today, visible in the words of Zikode and among those who struggle to access land and shelter in South Africa. In removing black people's right to own land, the Natives Land Act essentially ripped out the soul of the nation.

Therefore, a transformation agenda cannot be complete without reclaiming and restoring the dignity, identity and legitimacy of black Africans, which is intimately connected to the land agenda. These and other reasons make the land issue highly emotive in South Africa, where it is tied up in the history of dispossession and oppression. A small elite continues to own land, although the extent of this ownership is not clear. Government owns huge portions of land, which is often used ineffici tly, despite the great need (and demand) for land to be used for shelter, economic activity, infrastructure development etc.

In addressing the legacy of apartheid, the land response in South Africa has focused largely on restitution, redistribution and redress through the land claims process – mainly related to rural areas. However, with increasing urbanisation, the issue of how to address urban land challenges has repeatedly come to the fore. More and more people are seeking opportunities in towns and cities across the country, but are effectively excluded because of the high cost of urban land and the skewed land ownership, as highlighted by Zikode. Twenty years after the end of apartheid, and more than 100 years after the Natives Land Act stripped black

South Africans of their dignity and rights in the country of their birth, the land question needs to be placed fi mly on the agenda.

Section 25(5) of South Africa's Constitution enshrines the right to land, declaring that '[t]he state must take reasonable legislative and other measures, within its available resources, to foster conditions which enable citizens to gain access to land on an equitable basis'. The Constitution also makes provision (in Section 25(7)) for redress and restitution to people who had been dispossessed of their land. At the same time, it protects the rights of current property owners who may not be arbitrarily removed from the land they currently occupy. However, this right is not absolute, and the state can take reasonable measures (including expropriation) to achieve 'land, water and related reform, in order to redress the results of past racial discrimination'.

Land is critical to all aspects of human well-being: it provides material goods for livelihoods, food and health; mitigates environmental stressors or future uncertainties; and underlies many cultural values. Access to land and land resources is central to creating opportunities, reducing inequality and improving the livelihoods of the most vulnerable. As urban populations grow, the demands on land (and possible subsequent confli ts) are likely to only increase in the future.

Different viewpoints and expectations concerning land will complicate the realisation of equitable access to land and redress for past discrimination. Traditional Authorities will have a different perspective of land and the rights of people compared to a person who wants to buy some land as an investment. And the perspective of a contract worker renting a room will differ from that of a person without a job or a place to stay. An environmentalist will seek to maintain ecosystems, biodiversity and associated resources and so will perceive land very differently from a mining prospector interested in the resource potential of the land. For a democracy like South Africa, accommodating these vastly different perspectives is a legislative challenge, especially in urban areas that are home to so many different people, with different views and ways of doing things.

The management and control of urban land in South Africa is complex. Effective land governance that drives transformation falls within the ambit of local government. The recently promulgated Spatial Planning and Land Use Management Act (No. 16 of 2013) (SPLUMA), places responsibility for planning within the control of local government. However, local government is not responsible for – and does not have control over – all the land parcels in its area of jurisdiction. The private sector, other government spheres and state-owned

[1] Abahlali baseMjondolo is a shack dweller movement in South Africa known for campaigning against evictions.

[2] Zikode, S. 2014. No freedom without land. Speech to 10th biennial consultation on urban ministry. Accessed on 29 June 2015 http://www.thedailyvox.co.za/abahlali-basemjondolo-no-freedom-without-land/

enterprises own large tracts of land.

This land series explores the debates and processes related to land in South African cities. Ultimately, it provides a deeper insight for government as a whole, and local government in particular, in order to enable a restorative, just, equitable and sustainable developmental outcome.

Considerations when thinking about urban land

As mentioned, urban land is a complex and emotive issue. In discussions relating to land, the following aspects should be considered.

Land has a deep historical and political context
The history of land cannot be ignored, as it informs the current understanding and approach to land in South Africa. The history of skewed development and injustice will be forever present and, although often painful and emotive, the consequences of this history must be addressed head on – including who is considered an urban resident, how plans and decisions are made, and for whom. Clearly strong political leadership will be needed to address, in an honest and nuanced manner, land politics and its influen e on the broader politics around cities and towns in South Africa. The urban land conversation is one of the most neglected but influe tial issues in post-apartheid South Africa and will make or break the transformation agenda going forward.

Land ownership is not understood well enough
Land ownership remains fairly opaque in many cities and towns, as a result of history and politics. Knowing how much developable land is available in a city – and where and to whom it is available – is needed in order to achieve spatial transformation, compact urban development and direct growth to appropriate locations. It is important for monitoring and ensuring that entrenched interests are not reinforced and protected, while many continue to struggle for a foothold into the city. Knowing who owns the land is an essential part of the land restitution process, ensuring that land lost during the colonial period and apartheid is compensated for or restored.

Land justice is not just about ownership
While compensation for those who were dispossessed is absolutely necessary and important, the conversation should not stop there. It is also important to think about whether cities are currently being planned in a way that encourages access and opportunities, cohesion and inclusivity. How land is used and developed can significa tly contribute towards the identity of cities, make opportunities available through improved mobility and capture the value of urban investments that benefit all city residents. From a management perspective,

the legal and regulatory environment for land provides local government with tools to facilitate the best use of land, irrespective of the owner.

How land is valued and used is essential
Only by understanding the current state, value and use of land can decisions be made about the future development of the city. Land should be seen as having a social value, which should be developed for the broader public good, especially when a land property market determines a particular land value, which is usually out of the reach of the poor. Urban land is a limited resource and holds social, ecological and economic values that are best balanced through strong local governance. Urban and natural land uses are not mutually exclusive, and considered planning and management of land results in more sustainable land-use planning.

Land is required for everything
Cities are responsible for balancing decisions between competing demands for the use of land. Land fulfils a number of needs and uses at a local level. For land-use planning, land is an asset in the built environment. For public transport and human settlements, which both play a critical role in shaping the morphology of towns and cities, land must be available and its utility and value maximised. Land is necessary for urban agriculture, for urban ecological infrastructure and for open space. Well-located, affordable and serviced land is a catalyst for spatial transformation in cities. Yet land is a limited asset and a physical resource that must be used optimally. For this, it is necessary to understand how spatial development patterns are changing over time, how the transformation of land leads to the loss (or enhancement) of urban functionality and efficie y, and how the city can remain resilient to change.

A transformative land-use system is needed
Numerous legislative interventions have been made to improve the management of land in line with economic, social and political objectives in South Africa. A complex set of legal and institutional arrangements govern land management and planning, and many of them need to be overhauled in order to be more suited to and give effect to transformation goals. A first step has been the introduction and implementation of SPLUMA. However, even this critical piece of legislation does not address fully all considerations about making choices around possible land uses and balancing trade-offs between possible confli ting visions for limited urban land. For example, the biophysical considerations about the land's capacity and potential to support transport and human settlements (and the density and intensity of these activities) versus the need for more passive land uses such as open spaces, space for river flooding or cultu al activities.

The economics of land must be acknowledged
Land is critical for the urban economy: significa t capital is sunk into land, which generates further returns and grows the economy. Improved land (i.e. property) is an important

investment and is viewed as collateral for generating future investment. The property market in a city is responsible for urban growth, continuity, decline and revitalisation. In all South African cities and towns, the concept of selling, purchasing, leasing or renting property is found, and can be achieved through barter, monetary exchange or sharing. Attaching a value to land, in an urban context, has become commonplace. If a more equitable division of land is to be achieved, property owners will need to be persuaded of their social responsibility and to contribute some of the benefits of land to a social good, either through taxation or by regulating the type of land use in order to benefit the disadvantaged in society. In the process, the property markets should be strengthened, not constrained.

Land policy has to translate into effective outcomes

The frustration felt by poor urban residents about the slow pace of land reform is increasing daily. While policy and legislation have been put in place to address the land issue, poor residents continue to be marginalised and excluded from the benefits of the city. The situation is becoming starker and manifesting in more protests and land invasions, placing pressure on city plans and infrastructure that are ill-equipped to manage these demands.

The land question is everybody's business

The management of land is not confined to one sphere or sector of government, or even the public sector alone, as numerous private interests also drive and shape urban land management. A myriad of competing frameworks and plans guide land-related policy and practice, which makes the management and use of land a complex and challenging issue. While these plans very rarely overlap or connect to each other, their implementation is happening in the same space. SPLUMA places local government at the forefront of spatial interventions, but the details and implications need to be unpacked and translated, and local government needs to be capacitated.

Why this Land Series?

What this series does not seek to do

This series does not:
- **Aim to answer all the questions relating to the land debate, especially the issue of ownership.** However, it recognises the need for investigating how much land is owned by whom.
- **Delve into the issue of the property clause in South Africa's Constitution.** Achmat argues that the property clause should not be considered an obstacle because the Constitution makes provision for expropriation where

land is considered to be a social good. This suggests that government could intervene more 'aggressively' and decisively where land is deemed to have a broader social good.
- **Provide an overview or analysis of the land claims process or land tenure interventions** (particularly housing and human settlements interventions).
- **Debate the issue of rural vs. urban land.** Significa t work has been done on the issue of rural land and will not be repeated here. Instead urban land is in the spotlight, driven by the fact that to date the focus has been on the instruments and tools to guide and plan the urban environment, without suffici tly interrogating the urban land complexities and vested interests.
- **Deal with urban land as a simple issue that can be addressed through a single perspective.** Land in our cities has a history and involves politics that cannot be ignored and must be addressed head on. For municipalities, the challenge is to balance their dual responsibility, of making land available for development that will address inequality and injustice, while recognising that the same land parcels must produce an income for service delivery (through rates and land taxes).

What this series seeks to achieve

As the key implementer and driver of spatial transformation, local government must get on top of the land question. Responses can no longer be muted but, at the same time, there is a need to be realistic about the current situation and the strategic interventions required to address the land issue and the broader spatial transformation agenda.

This series of working papers on land seeks to drive municipalities toward a land conversation with the aim of achieving spatial transformation within cities. Essentially it seeks to define land and outline the roles that land can play as a catalyst for spatial transformation in municipalities. Land is needed for, shelter, public transport, economic development, social and cultural activities and environmental considerations. Cities have to respond to each one of these land needs if they are to be effici t, sustainable, productive and well governed.

To explore and unpack these critical issues, the South African Cities Network (SACN) commissioned a set of working papers on urban land. The papers are not meant to be an exhaustive investigation of the urban land topic, but rather to locate the role of municipalities within the transformation agenda, particularly with regards to the plans and programmes required for effective spatial reconfigu ation that drives local and national development.

The working papers outline and capture a set of perspectives

[3] Achmat, Z. 2014. The urban land question, People's Law Journal, Issue 2.

(be they aligned or confli ting), as a basis for further dialogue, which could lead to more appropriate and effective urban land interventions. The papers are aimed at policymakers and planners, academia and broader civil society. Most importantly, the papers are intended to contribute to a deeper, more nuanced debate about the role of urban land in spatial transformation. In particular, they attempt to provide insights that will allow metro municipalities to better understand land issues and thus develop better interventions that respond to the need for transformation.

Issues covered in this series

Each paper attempts to look at urban land through a particular lens in order to understand the often diverging perspectives. The first and perhaps most sensitive of these is the politics of land. Nomalanga Mkhize traces the use of planning reform instruments in urban areas and agrees with scholars like Watson that a Western approach to planning is insuffici t for land reform in African cities. Instead Mkhize notes that 'planning is a set of shifting, negotiated and adaptable practices that refle t dominant concerns and struggles in African cities'. She goes on to refle t on the different forms of power and influen es that different urban actors use to stake their urban land claims. Urban spatial transformation needs to be understood not only as a matter of planning but as part of the land question, which means addressing the 'politics of housing', the lack of attention to the contradictions facing cities and 'the way in which land contestation emerges through the interests and actions of multiple stakeholders and agents'.

In his paper, Paul Hendler offers a concise history of urban land and how these dynamics continue to influen e the present. The paper analyses urban land over fi e periods: pre-1913, 1913–1948 (from the Natives Land Act to the start of apartheid), 1948–1976 (Soweto revolt), 1976–1994 (time of apartheid reformism), and post-1994 (the first 21 years of post-apartheid democracy). Hendler looks at the history of land rights, land ownership and development, and environmental concerns, and presents limits and possibilities for municipal interventions.

Mercy Brown-Luthango makes an important argument for rethinking how land is valued. She argues that 'a shift in mind-set is needed across the South African society, particularly among city planners and decision-makers, about the value of urban land and its role in changing how South African cities function'. This means that municipalities should understand the tools and instruments at their disposal for creating more mixed-use and income neighbourhoods, affordable and accessible public transport, and spaces that are more conducive to the overall public good and function of South African cities.

Following on from the land value paper, Stacey-Leigh Joseph argues that the role of local government in driving

spatial transformation is being foregrounded, providing the opportunity for metros to make better decisions about land that will contribute towards more effective and effici t spatial form and functioning. To achieve this, they will need to interrogate and rethink who is allowed access to land, challenge vested interests and the entrenchment of unequal land rights, and recognise current and future land requirements – in a context where land is a fini e resource. Essentially cities need to find a balance between 'the need for shelter, effective transport infrastructure that increases mobility, economic development, and mixed-land use that results in more compact cities', and 'the need for open space, agricultural and environmental activities and maintaining ecological balance'.

Stephen Berrisford makes a valuable contribution, focusing on the evolution of planning law over the past 20 years, broken into three periods: 1993/4–1999, 2000–2009 and post-2010. The Development Facilitation Act (1995) and the events that led to the drafting and finalis tion of SPLUMA are important aspects covered in the paper. Berrisford suggests that cities should adopt a proactive and collaborative approach for implementing SPLUMA, which allows municipalities to steer and guide land developments. Metros in particular need to understand and harness this authority for more effective land interventions and different spatial outcomes. However, this will require cities to scale up their capacity, improve the land development decision-making process and determine an effective process for resolving intergovernmental relations disputes.

Poor planning alignment is an ongoing challenge. In her paper, Nellie Lester investigates the poor implementation of land-use legislation and related instruments through three case studies. These recent examples highlight the growing frustration with current land-use procedures and the poor enforcement of land-use decisions by municipalities. The paper argues that land-use planning and management is a collective process, and clarity of procedures will be integral to achieving spatial transformation. The alignment of actions and greater awareness of processes across spheres of government and between local government and communities is central to successful solutions being developed.

The focus of the paper by Nicola King and Mark Napier is understanding the land market, why it fails and how to develop better-informed interventions. The paper considers how policies, developmental interventions and land-use markets affect spatial development (in the context of divergent local needs and green economy objectives) and how they could contribute to the creation of more sustainable cities. King and Napier consider the concepts of urban land distortion, the nature of land markets, the concept of equity and fairness in the land market, and a range of possible interventions in land markets that could be used to improve efficienci . The paper

Watson V. 2009. 'The planned city sweeps the poor away…': Urban planning and 21st century urbanization, Progress in Planning 72: 151–193.

contains a framework for sustainable urban land markets, based on the interventions identifie , and concludes that achieving socially desirable outcomes will be a complex and challenging task because of the intricacies of the land market system.

The final paper deals with how to translate policy to practice and, in particular, the challenges for local government. Peter Magni considers the recommendations in urban land policy documents over the past two decades in relation to the existing land system in operation within cities. A systems approach is used to determine where government might intervene within the system. He discusses the consequences of an unequal, culturally diverse society where formal, informal and traditional land market actors operate in the same context. One of these players is local government, which has to drive spatial transformation but is constricted by a range of factors, including the fact that it derives significa t income from land trade and property tax on well-located and developed land. Magni concludes that current government policy fails to understand the complexities of the urban land system and the needs of its inter-related role-players. This is particularly the case for local government, which has responsibilities and contradictions in relation to urban land that go beyond current policy considerations.
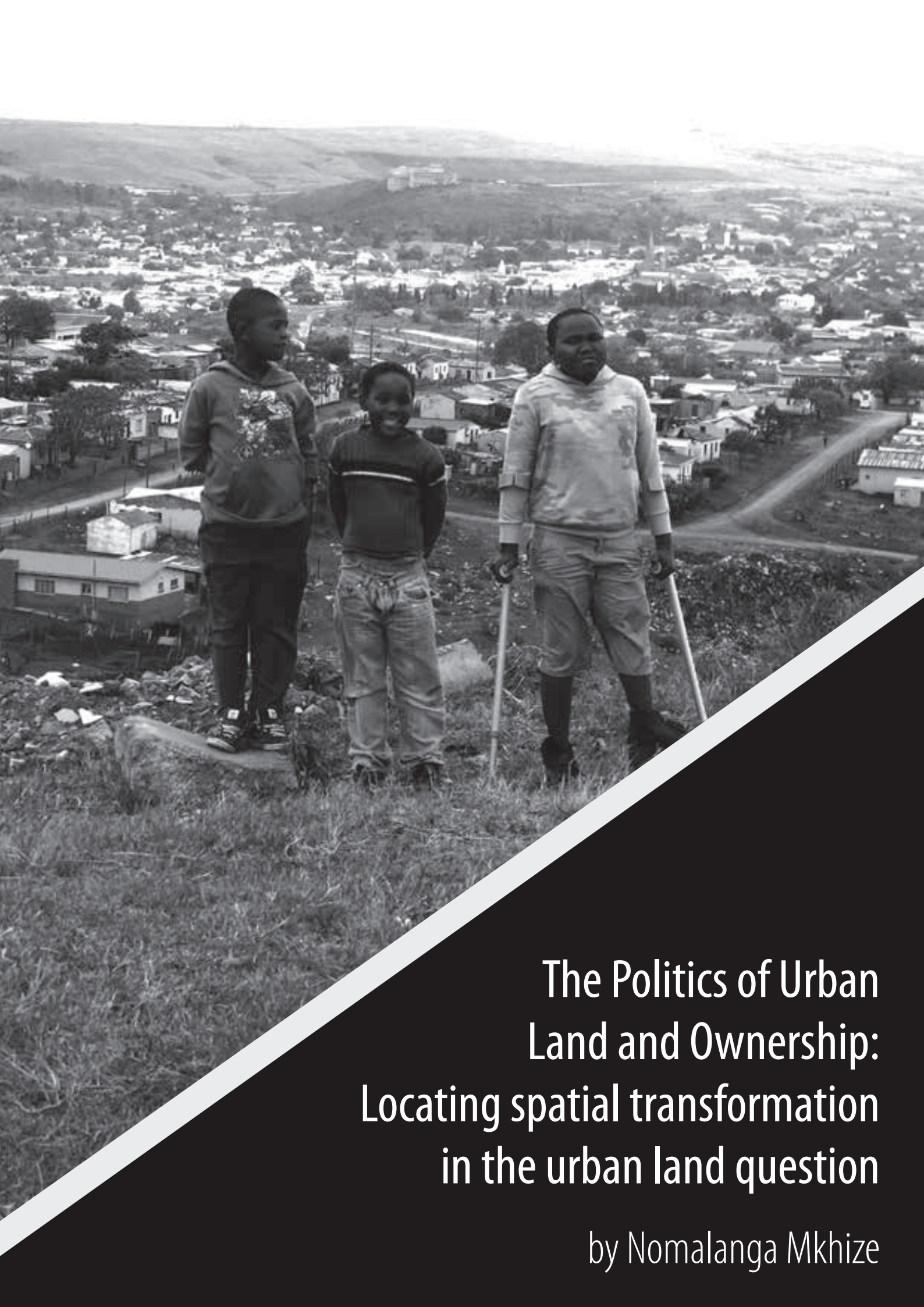
The Politics of Urban Land and Ownership: Locating spatial transformation in the urban land question

by Nomalanga Mkhize

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Introduction

The South African state has struggled to implement politically effective and socially cohesive urban spatial reform that can progressively transform the spatial legacy of settler-colonial dispossession. Urban development and human settlements policy continues to identify the persistent trio of problems: 'apartheid geography' (NPC, 2011: 233), socioeconomic exclusion and the 'inefficie y and wasteful use of scarce resources (especially land and infrastructure networks)' in South African towns and cities (CoGTA, 2014: 5). Debates about the challenges tend to treat urban spatial transformation separately from the broader South Africa's historical 'land question' and overall land reform policy. In policy terms, the 'land question' has come to be formulated as primarily being about the redistribution and restructuring of rural land, as well as dealing with the precarious tenure status of workers and dwellers on farms. This paper argues that resolving urban spatial concerns requires urban 'spatiality' to be conceptually rooted, at a fundamental level, in the politics of South Africa's land questions.

Beyers (2013: 971) traces the 'rural bias' in land reform policy to the 'solidarities formed around "the land question" during the struggles for liberation'. Thus in policy discourse 'land reform' refers to the state's restitution and redistributive policies aimed at transforming agriculture and developing rural areas (Beyers, 2013). This has led to an 'agrarianisation' of the land question, or an 'anti-urbanism' in land reform which is premised on a rural/urban spatial dichotomy (James, 2001: 94; Beyers, 2013: 973). However, the African 'rural' and 'urban' are linked, in both the past (as outcomes of colonial settlement) and the present, 'in which rural underdevelopment and poverty are structurally unified with the problem of urbanisation processes which are incapable of providing gainful employment' (Moyo, 2004: 82).

Therefore, any approach to urban spatial transformation must take seriously the policy implications of breaking the conceptual divide between rural and urban. The recently formulated Draft Integrated Urban Development Framework (IUDF) of 2014 explicitly identifies the dynamism and the 'interdependence of rural and urban space' as a key vector affecting urban systems (CoGTA, 2014: 5). However, even though there is fluidi y in mobility between urban and rural, this mobility is still bound by the concrete fini eness of South Africa's landmass, which is characterised by unequal ownership and fragmented settlement patterns. Thus spatial redress requires 'a national strategy of development that addresses issues systematically across urban and rural areas' (Beyers, 2013: 967).

The pursuit of land equity for all, and especially in cities, has been said to be eroded by the 'neo-liberal turn', where cities have been 'privileged sites of accumulation', spatially commodified for speculative markets, while the poor and economically disenfranchised are pushed further onto the urban margins (Lovering 2010: 236–237). The political consequences of this inequality have been visibly associated with the explosive politics of housing, service delivery protests, land invasions and Constitutional Court challenges for socioeconomic rights. Beyers (2013: 277) identifies these struggles broadly with the Le Febverian notion of 'the right to the city', which sees urban areas as political geographies in which contestation around citizenship, equality, quality of life and personhood unfolds. Because South African urban areas were the 'epicentre' of the struggles for liberation and human rights (Williams, 2000: 180), the spectacle of poor people protesting for land and housing access becomes a key focus in popular media and in research. This paper attempts to conceptualise the 'urban land question' by acknowledging the contradictions and complexities facing African cities. Urban land inequality must also be contextualised within the developmental questions facing African cities since their emergence during the colonial period.

Conceptualising the Urban Land Question

'Land reform' or 'planning reform'?

With the majority of the world's population now living in urban areas, the literature disagrees about whether South Africa faces a land question or a narrower defined housing shortage linked to chronic unemployment (Mkhize, 2014). Atkinson (2007), Bernstein (2005) and Walker (2007) argue that advocates of radical land reform, such as Cousins (2007), Hendricks et al. (2013), Moyo (2004) and Ntsebeza (2007), over-estimate the demand for land among Black South Africans. Yet land continues to be a symbol of heated politicking, as demonstrated by the recent success of the Economic Freedom Fighters at the polls and on/off murmurings of potential new regulations on ownership by the African National Congress (ANC). Symbolically, land remains an unresolved political question because property privilege is heavily skewed in favour of continued accumulation by whites (Hendricks et al., 2013: 8).

The Draft IUDF identifies land-related challenges faced by cities as including entrenched property relations, high land values and mismanagement of public land (CoGTA, 2014). It positions these aspects of urban land within urban planning and urban development discourse and practice, remaining quiet on how they relate to the broader political concerns about land ownership in South Africa. The technocratic, planning-driven approach to urban land and spatial management presents a 'primary barrier to grasping the full ramific tions of the degree to which the land question is now an urban as well as a rural one' (Hendricks and Pithouse, 2013: 105). This implies that framing urban land questions as 'spatial development' questions, to be solved through formal planning, divorces

urban land from the broader political implications of land reform and its redistributive goals.

Technical planning was optimistically adopted during the first wave of decolonisation in the 1960s and 1970s, when African states attempted to put their newly independent cities and towns on the trajectory to modern development with (Watson 2009: 173)

[t]he guiding vision … based on the assumptions that it has always been a matter of time before African countries 'catch-up' economically and culturally with the West, producing cities governed by strong, stable municipalities and occupied by households who are car-owning, formally employed, relatively well-off, and with urban lifestyles similar to those of European or American urbanites.

In this way, postcolonial African states, and indeed South Africa, embraced technocratic 'urban planning' and 'planning reform', as the paradigm through which to reform and manage postcolonial urban space. Far from radically decolonising cities, this approach reinforced the exclusionary economic logic of colonial spatial patterns (Njoh, 1998; Watson, 2009). In sub-Saharan Africa, 'urban land use regulatory and control measures' refle t the legacy of colonial spatial planning and administration (Njoh, 1998). Similarly in South Africa, the 'same laws used to enforce apartheid's grand plan of segregation' continue to regulate and guide land development in the present (Berrisford, 2011: 248). Furthermore, over the past two decades, planning has to a large degree been shaped by the 'neo-liberal turn', in which states have been persuaded that the logic of the markets and the dictates of the economy trump the inefficiencie and irrationalities of politics (Sager, 2011; Watson, 2009).

Watson (2009) critiques African states for uncritically adopting planning paradigms to mimic European urbanism in African cities. In contrast, Lovering (2010: 238) argues that the modernist approach of the 1950s and 1960s was pre-eminent in the global North as part of a public pact 'seen as the sensible alternative to the chaos of market forces … [and] was part of a package of economic and social reforms that explicitly had a redistributive goal'. In the neo-liberal era, planning has shifted from a 'state-holistic' approach to a 'developer-driven' paradigm, where property markets and the interests of private capital have in a sense displaced the notion of urban space and land as public good (Lovering, 2010: 239). This shift in the meaning of planning calls into question how planning is critiqued and understood by the likes of Hendricks and Pithouse (2013) who fail to take account of the way in which the concept 'planning' is itself a 'flo ting signifier with no permanently fi ed meaning' (Lovering, 2010: 239). In that sense, the notion of 'spatial planning' as inherently anti-land reform does not follow. Of import then is that planning is a set of shifting, negotiated and adaptable practices that refle t dominant concerns and struggles in African cities.

The distinctiveness of the urban land question

If planning can be understood as a set of dominant practices that are not necessarily pre-determined, then why has it failed in the context of African urban land questions? The many factors that shape the very life of the city need to be considered, i.e. its economic productivity, geographic location, ecological features, infrastructural capacity and socio-political dynamics. These factors affect development in urban areas and produce land questions that are distinct from those of rural areas.

Firstly, land questions in cities are related to a kind of manufactured land scarcity, which is created by land regulations and historical residential settlement patterns that determine where people may or may not live. In South Africa, this manufactured land scarcity is the direct outcome of a still existing 'racialised space, as an existential reality [dictating] where the majority of ordinary South Africans can live, work, play' (Williams, 2000: 171). In South Africa, 'there is not suffici t vacant land to accommodate the homeless people in or close to the cities of South Africa, the land in or close to the city is too expensive for the state to acquire for low-income residential purposes and … the incidence of "Not-in-my-backyard" syndrome is virtually perennial' (Williams, 2000: 171).

Secondly, in addition to South Africa's persistent apartheid urban spatial pattern, cities in the global South have experienced very high rates of urbanisation in the past three decades, while the global North experienced its full urbanisation at least a century ago (Beyers, 2013; Todes, 2012). These high rates of urbanisation occur at a time of globalisation, which brings rising labour insecurity, de-industrialisation, the increasing importance of the financial sector and trans-border fl ws of capital that generate jobless growth (McMichael, 1999; Bernstein, 2007). In this context, the modernist approach to urban land planning and spatial reform 'fails to accommodate the way of life of the majority of inhabitants in rapidly growing, and largely poor and informal cities' (Watson 2009: 175). African cities are also characterised by systemic failures in African economies to maintain a sustained rate of capital accumulation and investment that is 'commensurate with the rate of urbanisation' (Moyo, 2004: 84).

The contradiction is that, while postcolonial states have chosen the path of urban modernism, most African cities have 'failed' to modernise like their counterparts in the global North. Much of this failure is likely to be because of geopolitical, macroeconomic and state governance factors rather than planning. The reproduction of informality, wagelessness and other socioeconomic pressures among city populations occur within the very specific spatial and ecological limits of the city where land and basic natural resources for survival (e.g. clean water, clean air) are scarce. Moyo (2004: 82) characterises the urban land question as the confluen e of converging and diverging interests, constituted by the

competing demands for the control of urban land by capital

and the proletariat and semi-proletariat for their social reproduction. These competing demands are expressed in terms of the contested ownership and uses of urban and peri-urban lands. The contending actors include the state, at the central and local urban municipality level, customary authorities and leaders within and around urban areas, "communities" of families with land standing "indigenous" rights in both old and new cities, various social categories of urban and peri-urban residents, including so-called "illegal" land occupiers ("squatter" or "informal settlers"), and real estate developers and other elites involved in land speculation.

What is significa t is that, historically, this informality became an entrenched feature of African cities because of influx control and other regulatory mechanisms aimed at keeping Africans out of cities. As Njoh (2009: 305) states, 'colonial authorities did everything in their powers to discourage migration by Africans to the towns'. Africans were cast as 'aliens' and temporarily domiciled labour in highly segregated urban areas (Maylam, 1990; Christopher, 2005). In this context, informality has been a strategy (and perhaps the only option) for large African populations to make a living in the city. It is therefore unsurprising that resource-scarcity has been a significa t feature of African economic life in the city. While core economic activity in the city has largely been the domain of elites (both colonial and postcolonial), for the majority, economic marginality and informality has been a key defining feature. The existing and new elites are positioned to take over the formal, value-bearing property rights of postcolonial cities (Njoh, 1998).

However, even though Black elites have been on the ascendancy in South African cities in particular, a powerful hangover of the colonial-apartheid spatial imaginary is the notion that Blacks are mass consumers in the city, not masters or equal owners of the city. Malaza (2014: 555) argues, for example, that planning literature on South African spatial desegregation has hardly grappled with the notion of 'the black urban', of what it means for previously excluded Black people to become a permanent socio-cultural presence in the city. If the Black working class were historically seen as alien labour, what about the notion of the Black professional class typecast in media as 'debauched and hyper-consumerist' (Malaza, 2014: 562). The question is to whom does the city belong both culturally and materially? Therefore, contestations over city land must be understood as a competition between those who try to maintain their advantage in the city, and those attempting to 'break' into new relations of ownership.

With the notion of 'entrenched informality' in mind, planning has been criticised for not responding to informality as a reality but as a spatial nuisance to be erased or unduly restricted (Watson, 2009). Planning has thus been seen as an anti-poor and exclusionary approach to spatial reform (Watson, 2009: 153). Yet something of a conceptual contradiction emerges because planning may be seen as oppressive in some instances but has also barely taken off

in other instances, given the very little 'technical or political [capacity] to implement planning law' (Berrisford, 2011: 211). Where planning has been somewhat pragmatic or ineffectually implemented, rising informality forms not only part of the deepening inequality in cities but also part of an undoing or circumvention of the formal planning restrictions, particularly ignoring formal planning that targets informality (Watson, 2009: 157). Informality in African cities often trumps the perceived dominance of planning.

While informality increases inclusion, by creating new ways of occupying the city through informal methods, it also reproduces vulnerability. For example, the degradation of inner city infrastructure is due to 'a complex set of factors including poor maintenance by landlords, overcrowding and building hijackings [that] have led to very high densities' (Todes, 2012: 160). In this context, informality leads to the poor being more easily exploited and makes it more difficul for the state to provide formal protection and services without evoking formal regulation and law. Flexibility and enforcement alike are required to give an adequate measure of freedom and justice. In addition, the rich take advantage of informality or ambiguity in city enforcement (the most recent high profile case being the collapse of a multi-storey building owned by the Church of all Nations led by Prophet T.B. Joshua in Lagos, Nigeria).

We are left with a chicken or egg scenario: does planning cause problems for the African city or do African cities cause problems for planning? While evidence of the exclusionary violence by local authorities abounds (Hendricks and Pithouse, 2011), planning itself is not necessarily entirely at fault. Perhaps planning needs to be vested with ideological purpose, like land reform. Moreover, land questions in South Africa, especially in cities, often produce seemingly intractable and systemic problems, which require courageous political choices, for the tough reality is 'the problems of homelessness, squatting and overcrowding that characterise most of the major South African cities' (Williams, 2000: 181).

Local Government: Regulator, Participant or Bystander?

Evoking land reform suggests that political intent will resolve the urban land scarcity engineered through colonialism. In places such as China and Brazil, state interventions have restructured urban land markets in response to urbanisation pressures (Qian, 2008; Watson, 2009). In China, during the 1980s, land tenure regimes were partially liberalised, from socialist to partially privatised markets in which private property development began to play a role alongside the state, by diversifying housing options according to new tastes and preferences (Qian, 2008). Unlike the Chinese 'gradualist' approach to introducing a free market mechanism in property, South Africa experienced 'the "big-bang" reform policies of the former Soviet Union and some former socialist countries in Central and Eastern Europe, where the reforms moved countries towards a complete capitalistic socioeconomic system' (Qian, 2008: 496).

In South Africa, the fall of apartheid and concomitant desegregation saw the opening up and expansion of property markets in townships, suburbs and central business districts. Private property markets resulted in a high degree of 'racial' integration in previously whites-only areas, which were the most territorially exclusive prior to 1994 (Christopher, 2005). However, in spite of the dramatic transformation of South Africa's cityscapes, including the rollout of state-subsidised RDP housing, the economic architecture of 'the apartheid city' holds fast.

Against the backdrop of two centuries of settler–colonial urban development, skewed landholding patterns in cities continue to advantage historic and, more recently, well-connected landowners and commercial interests. Barierre (2013: 62) argues that:

At the moment, land restitution and land redistribution in urban areas takes two primary forms: government-subsidized housing (in lieu of redistribution) or financial compensation (in lieu of restitution of land). This is unfortunate and South Africa is missing out on the chance to effect profound community and economic changes in its urban areas.

In South Africa, the racial dimensions to landholding mean that urban land has been a largely white intergenerational asset for much of the country's history. This landholding pattern forms a gridlock of vested interests around urban land. The urban space is largely viewed as the domain of 'private property' and commercial business development. Malaza (2014: 563) contends that the '"Black urban" matters because South African cities remain segregated and the problem remains and is often exacerbated by market forces, development trends and unregulated city expansion'. In this context, financial might trumps notions of equity. Literature on the 'right to the city' and 'urban citizenship' has focused overwhelmingly on the city as an unequal terrain of a rich versus poor class conflict.

However, more complex dynamics exist within the urban context, in which different social segments and actors leverage various forms of power and influence in order to stake a legitimate claim to land. Williams (2000: 181) argues that 'it appears that planning, as an institutional practice, is shot through with disparate relations of power, even as it serves as purveyor and subject of transformation'.

Example 1: Elite capture at Cradock Heights, Grahamstown

Cradock Heights is an exclusive, upper middle-class, largely white suburb in the city of Grahamstown, Eastern Cape. The suburb emerged in the early 2000s, after Makana Municipality released public land onto the open market through a 'closed auction'. The aim was to provide land for first-time landowners, specifically designated groups (Black lower-income buyers). However, instead of ensuring equitable access for previously excluded groups, the process became an opaque, elite land grab aimed at creating an exclusive new suburb. Some municipal officials (both exiting and incoming) appear to have colluded with existing land owners and employed various strategies to position a select elite segment of Grahamstown as preferred bidders for that land. According to ANC Councillor Julie Wells 'it appears that municipal officials ran the project without councillors being fully aware it was being implemented'.

While the process was supposedly opened, Black Grahamstownians (except for the well-connected) were to all intents and purposes deliberately excluded, in order to maintain a geography of affluence in the former white suburbs of the town. In adopting this elitist approach, the Makana Municipality effectively missed an opportunity to decolonise the geography of the city. Soaring property values and speculative selling of plots further accrued economic assets to the well positioned. Councillor Wells believes that preventing fronting and fraud, which resulted in this kind of land grabbing, would have been beyond the capacity of the municipality to prevent:

It would probably take quite a thorough level of vetting and

investigating the eligibility of all bidders. Even then, it might be quite difficul to detect and avoid fronting. Possibly sworn statements about one's status could be required. If breaches were found later, then people could be prosecuted. However, the costs of monitoring and possible prosecutions might be prohibitive given all the competing demands facing local government. It is not easy to strictly enforce compliance on housing issues. We have similar challenges with RDP houses. There appears to be no-one eager and ready to foot the bill for legal enforcement.

Example 2: Emerging middle class aspiration and frustration in Lenasia

In 2012, middle-class home owners, who had been scammed into 'purchasing' state-owned land in the suburb of Lenasia in Johannesburg, watched helplessly as the local authority demolished their homes. The kind of people taken in by the scam were aspirant professionals who did not qualified for a state-subsidised house and could not access a large enough mortgage to purchase on the formal residential market. The opportunity to buy reasonably priced plots in Lenasia, where they could build homes at their own cost, presented a sense of hope to the buyers in this 'in-between' segment. This experience demonstrated the complete failure of residential property markets and the failure of the state to intervene effectively to provide 'gap housing' for this in-between segment. Instead of the notion of Black middle-class as 'unabated consumers', researchers ought to move 'towards models which explain where black professionals could invest in immovable property in the long term' (Malaza, 2014: 556).

Example 3: The Port Elizabeth Land and Community Restoration Association (PELCRA) initiative

In 1993, after winning an urban land restitution claim in a Port Elizabeth suburb, about 1200 land claimants established the Port Elizabeth Land and Community Restoration Association (PELCRA) (Beyers, 2013). PELCRA opted to develop an urban settlement that had the potential to transform the apartheid character of the city. It was conceived as 'community restoration' through 'building the infrastructure to support social and commercial initiatives which it was thought would in turn create the conditions for the emergence of a vibrant neighbourhood' (Beyers, 2013: 982).

Although visionary and egalitarian in its intentions, the PELCRA initiative has been hamstrung by government's administrative muddling (Tyala, 2010). There were also 'affordability constraints', such as claimants not having suffici t financing to build homes that met the municipal code for the area (Beyers, 2012: 842). In addition, although limits were placed on the sale of properties, the potential for manipulating and

exploiting vulnerable claimants (by either fellow claimants or external developers) was ever-present and undermined the collective attempt to create spatial justice. Thus, although the case fell explicitly within the ambit of 'land reform', the expected just outcomes did not emerge straightforwardly.

Example 4: Mega-enclosures at Steyn City and Waterfall Estate

Over the past 20 years, gated communities have proliferated in South Africa's urban landscapes. The latest incarnations are the developer-driven mega-projects of Steyn City and Waterfall Estate located in Johannesburg. What distinguishes these developments from their boom-gated predecessors is that they offer an almost complete lifestyle, which includes leisure, retail and schooling options within the development. These estates also embody what appears to be a racially 'transcendent' bubble of afflue e, given full endorsement by Nelson Mandela and Graca Machel, appearing to break with the apartheid past, while perpetuating its logic of exclusivism and social distance from the 'sea of geographical misery' around them (Williams, 2000: 168). Critics argue that these developments bring infrastructural investments into the city, but they also perpetuate spatial fragmentation in cities like Johannesburg, while not providing market solutions for lower-to-middle income gap-housing. In this case, the City of Johannesburg is being advised to adopt master planning as a countermeasure to this kind of development, to ensure that long-term spatial integration occurs within the city. Here, planning is viewed as something of a public ally. However, without adequate interrogation of the kind of land dispensation that the city would like to see emerging in the long term, master planning is unlikely to prevent the intensive commodific tion of land as represented by mega-developments.

Discussion

The previous case studies give some insight into how land questions emerge, not merely in the context of the power but also among a range of stakeholders, and through any number of scenarios where new players and processes open up the possibility of accessing ownership. In this context, the state emerges as having no cohesive strategy for the country as a whole, and local government finds itself as the primary terrain upon which these varied land scenarios unfold.

In the case of the Makana Municipality, elected politicians were reduced to bystanders, unable (or unwilling) to monitor effectively how public land was transferred very cheaply to existing elites. In the case of the City of Johannesburg and the new mega-developments, local government seemed ambivalent, welcoming private capital's infrastructure investment on one hand and lamenting the enclosure of

[2] Wells J. 20 May 2015. Personal Email Correspondence.
[3] Wells J. 20 May 2015. Personal Email Correspondence.

space on the other. It is unclear whether the city consciously made a pragmatic trade-off, to retain a wealthy rate-paying base behind the walls of the mega-estates and so relinquish the vision of a socio-spatially integrated city in the process, which is certainly the outcome.

New acts, such as the Spatial Planning and Land Use Management Act (No. 16 of 2013), attempt to bring some coherence, but existing institutional and organisational constraints within local government can stymie policy attempts. True transformation will require that 'all forms of government, at all levels of society should experience similar change in order to foster and sustain democratic practice' (Williams, 2000: 175). However, in the PELCRA case in Port Elizabeth, the state eschewed the opportunity to use a bona fide restitution case to vigorously challenge racialised property regimes in the city (Beyers, 2013). In Lenasia, informality became a gateway, not for 'the poor', but for a Black middle-class locked out of private housing finan e and state housing programmes.

The contention here is that positioning urban land as 'land reform' may help to bring some impetus and a degree of political coherence to the practice of spatial planning. Politically, 'land reform' implies that the state (in this case local government) ought to be actively addressing land inequalities. This necessarily means that local governments must be able to define and describe their local land question (and the multiple forms in which it manifests) and then to take active measures. However, administrative entanglements, corruption, legal battles, legislative and administrative loopholes, and misalignments in the frameworks of different spheres of government can all work against coherent approaches to spatial management on the ground.

Research suggests (SACN 2014: 6) that:
Several factors hinder the identific tion and acquisition of such land and in turn, impact the ability to transform our urban spaces. These include the legal and policy framework, market-related pricing, the identific tion and management of land by municipalities, the identific tion of state and non-SoE land, difficultie around negotiating the disposal of land by SoEs, and weak IGR structures.

In addition to taking stock of land owned by other governmental spheres and state-owned entities (SoEs), local governments must be able draw their defined local land question into municipal planning processes, specifically the Integrated Development Plans (IDPs) and local Spatial Development Frameworks (SACN, 2014). In this way, local governments can come to grips with the available land-reform opportunities in the locality and where they fit into the short/long-term development strategy. Furthermore, the participatory nature of the IDP process implies that the land-reform question becomes an open and transparently debated question for local areas. IDPs are linked to fi e-year political cycles, and so there is the opportunity both to encourage politicians to deliver on land and spatial justice and to subject the process to public debate and scrutiny. In this way, planning instruments are given transformative application by being embedding in explicit land reform objectives.

However, it is 'naive to exalt the role of government as one of an objective, fair-minded arbiter interested in nothing but the "good of all"' (Njoh, 1998: 415). While on paper, policy may give the impression of a developmental state, actual land reform processes tend to favour the well-connected who are already economically dominant. Moreover, municipalities are managing multiple, sometimes divergent, goals. For instance, on the one hand, promoting economic development (which may require pandering to commercial interests) and, on the other hand, addressing the needs of economically marginal populations. Or, having to generate revenue through rates collection, while also delivering services to populations that carry that rates burden unequally.

Local government faces 'contradictory pressures … to promote urban economic competitiveness on the one hand, while on the other dealing with the fall-out from poverty, unemployment and rapid population growth, often in the context of unfunded mandates and severe local government capacity constraints' (Watson, 2009: 158). Local government thus faces the dilemma of being able to govern cities according to a range of regulations, as well as maintaining a sense of fl xibility and inclusivity, in view of the economic instability of developing economies.

Given all these pressures, the greatest danger is that urban land reform becomes a blunt political instrument, which those seeking power can leverage either in punitive or populist ways. In addition, the scarcity of land in urban areas means that a politicised land reform approach may inadvertently fuel unrealistic and unsustainable demands for land and associated natural resources. Conversely, a passive approach results in elite-driven dominance over land, which has equally pernicious social outcomes.

Conclusion

The urgent need to deal with the broader land question in South Africa is generally accepted. Of significan e is the need to conceptualise urban spatial transformation as forming part of an urban land question. While the politics of 'housing' have been emblematic of the problem of land scarcity in urban

[1] Le Cordeur M. 2015. 'Why Steyn City is not the answer for Joburg', *Fin24*, 13 March 2015.
http://www.fin24. om/Money/Property/Why-Steyn-City-is-not-the-answer-for-Joburg-20150313

areas, insuffici t attention has been paid to the systemic contradictions facing cities, and the way in which land contestation emerges through the interests and actions of multiple stakeholders and agents.

For some critiques, 'planning' is seen as a hegemonic instrument in postcolonial urban development that has served an ideological function, primarily to depoliticise urban reform in ways that mask the operation of elite vested interests in urban planning and land management. However, these critiques can only partially explain the development failures of the postcolonial city. In many ways, the economic trajectories of postcolonial cities have taken a bad turn, regardless of imported planning techniques and their impact on land access in the city. Thus planning ought to be seen as open to contestation, open to re-shaping, open to reclamation through political lobbying and mobilisation.

Important too is to grapple with the distinctiveness of the urban areas and the many complex challenges facing them. From its inception, the African colonial city has been characterised by informality and urban poverty, and of being on the global economic periphery, which continues in the contemporary era of wageless work and de-industrialisation. Urban land reform is thus not necessarily a conceptual and practical antidote to the perceived failures of planning to invigorate the peripheral positioning of the African city. What must be explored, alongside land reform, is the way in which Africans, and Black South Africans in particular, can come to legitimise a sense of cultural and economic ownership of cities as producers and not merely as consumers or workers.

Local governments need to become much clearer about how they can develop a coherent vision of what an equitable land dispensation would look like in their cities. In this sense, land reform provides a more all-encompassing political vision for re-thinking what and how land should be used, accessed and owned in 21st century African cities with all their contradictions.

Recommendations

Define the local land questio
Local governments must be able to define the localised land question, based on a very clear understanding of what make an area's land issues distinctive in relation to its economic, ecological, and social dynamics. Defining the local land question must be understood as a political process, not a technical endeavour. Thus it is a process of coming to grips with the aspirations and interests of various social segments, many of whom carry a history of dispossession and exclusion.

Promote a national dialogue on urban policy
Ongoing dialogue is necessary to grapple with some of the contradictory and tricky elements of urban policy and the implications for land. It is imperative that emerging dilemmas and tensions are understood in relation to the political, economic and technical aspects of urban spatial management. Such dialogues must, by definition, include the voices of multiple interests and stakeholders.

Promote both 'cultural' belonging and 'economic' ownership
Local governments must be able to facilitate, or at least promote, social integration and the notion of cultural belonging and economic ownership of the city, particularly by previous excluded segments of the population. This needs to be expressed spatially (rather than simply through marketing and branding).

Leverage public land for mixed-development
Local authorities must leverage public land in order to break residential and commercial geographies of afflue e, by leasing/renting public land and state-owned properties at below market prices to emergent enterprises owned by designated groups and cooperatives.

Adopt a land reform approach in integrated development planning
Local governments must adopt a land-reform approach to integrated development planning and view land as a critical component of engaging residents openly about the role of land in short-to-long-term development.

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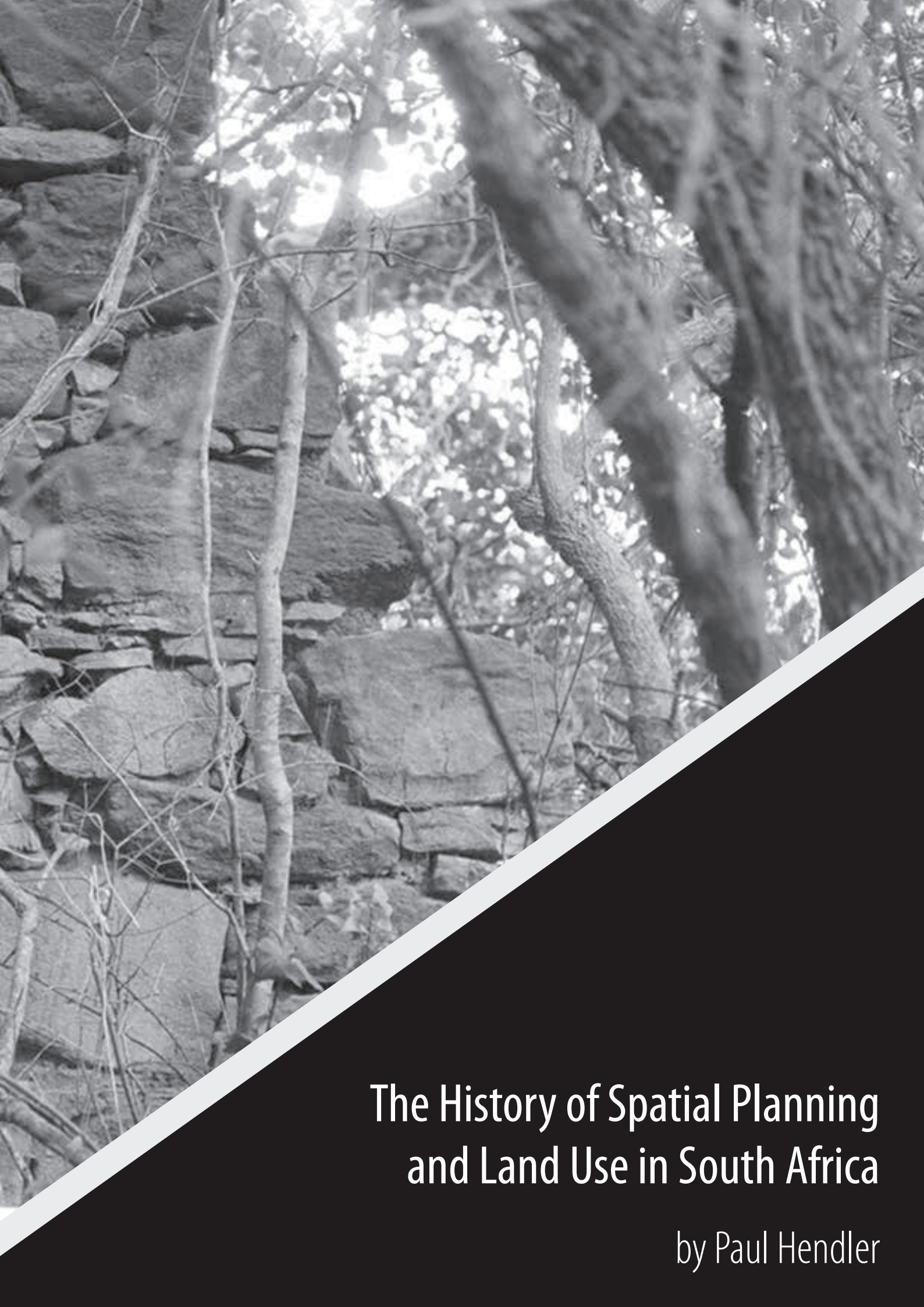
The History of Spatial Planning and Land Use in South Africa

by Paul Hendler

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Introduction

Freund ([n.d.]: 1) defines urban according to the 'size of population, the history of places with more than a certain density of population or a paradigmatic divorce from agricultural activity in the surrounds'. During the 20th century, the urban population's share of the national population grew from less than 20% in 1913 to about 35% in 1951, 43% in 1980 and 57% in 2001. Today, over 60% of the world's population is classified as urban, which is projected to increase to 70% by 2030 (Turok, 2012). Since 1950, the urbanising population appears not only in metropolitan cities but also in secondary cities and smaller towns, where resource challenges arise but where innovative capacity also resides (Swilling, 2010: 8–10).

Urban land is a limited resource that people plan, develop and use to shape local urban economies and societies, under given ecological, economic and political circumstances. Appropriate spatial planning and land usage should enable citizens to access services, facilities, and employment and livelihood opportunities. Statutory spatial plans and land-use policies are ways in which municipalities and other governmental departments can influen e the development of urban spaces. These plans and policies are the outcomes of confli ting claims and demands made by different classes and social interest groupings – the impact of these demands refle ts the balance of power between the groupings. Agencies representing different class and ethnic interests contested where urban land should be developed and who (i.e. government, private industry or the people) should pay for these developments.

Developed from a historical analysis of urban land use (Hendler, 2015), based on a periodisation of state policies and capital accumulation in housing by Hendler (1986), this paper explores the history of urban land in South Africa, seeking to understand the current limitations and to conceptualise strategic ideas for transforming urban land usage. After discussing land rights, land ownership and development, and environmental impact in urban areas over fi e periods (pre-1913 to the present day), the limits and possibilities for municipal interventions are examined, and the key issues and areas for municipal interventions are proposed.

Pre-1913: Creating the Basis for Segregation

From the late 19th century until the Union of South Africa and the Land Act (No. 27 of 1913), the basis for industrialisation was created with the discovery of diamonds and then gold, and the establishment of the mining industry. Pass laws and segregated housing controlled the movement of labour for the agricultural and mining sectors.

Urban land rights

Before the discovery of diamonds and gold, urbanisation had already begun in coastal towns, such as Cape Town, Port Elizabeth and Durban, and inland towns that were centres of agricultural supply and trading, such as Bloemfontein. Compared to Durban and inland towns, Cape Town had limited, exclusionary segregation (to protect social position). Although dock workers were forcibly moved to compound hostels at the Docks and Ndabeni in 1901, following an outbreak of bubonic plague, domestic servants were allowed to remain living on their employer's premises, and registered voters were exempted from statutory residential segregation.

In contrast, between 1854 and 1902, segregated land usage was progressively established in the Orange Free State, the colonies of Transvaal and Natal and in the Cape countryside. As a result of land conquest and dispossession, including evictions of labour tenants from newly acquired land by whites, migration increased into towns such as Bloemfontein, Harrismith, Fauresmith, Ladybrand and Kroonstad. This prompted regulations to create and maintain three categories of segregated living places: town locations, employer accommodation in 'white' areas and squatting (which was forbidden but happened anyway).

- In Bloemfontein, municipal regulations restricted the 'coloured population' to peripheral locations, (where whites were prohibited from living), removed the right of black people to rent or purchase properties, and required all employees of colour to carry a 'pass' as proof of being a registered work seeker – the municipality could either expel the unemployed or coerce them into three months' labour. Limited local government capacity led to the Free State president intervening to enforce these regulations (Van Aswegen, 1970: 26–27).
- In the Transvaal, local authorities enforced various curfew and pass law regulations and, in the Cape, ran the locations of Ndabeni (Cape Town) and New Brighton (Port Elizabeth) (Davenport, 1971).
- In Kimberley, black diamond mine workers were accommodated in mine compounds: during 1870 up to 20 000 African workers lived in open compounds and later in 30 closed compounds to contain smallpox epidemics and limit diamond thefts (Dedering, 2012). The compounds were based on the model of the barrack, first designed to house Indian labourers on the Natal sugar estates and in Durban in the 1870s (Home, 2000), which in turn was adopted for segregated worker accommodation for the gold mines after 1886.

[1] It was only after 1948 that Cape Town became strictly segregated on a residential basis (Bickford-Smith, 1995: 66).

Land ownership

Whites formed the land-owning, capital-owning and managerial classes. In white areas, emerging entrepreneurs acquired land that was largely developed by private agents, often under contract to public authorities. Architects and land surveyors considerably influen ed the development of areas for the rising white middle class and nouveau riche (Butt, 1984; Chipkin, 2008). Many small white farmers lost their land and were forced into wage labour on the mines after the defeat of the Boer republics and because of cyclical economic recessions. They lived in deprived conditions but were not subject to controls over their movement. In contrast, blacks were subject to regulations covering influx control, anti-squatting, township establishment and employer-provided accommodation, although this did not stop squatting and struggles against the brutalising controls implemented in the compounds.

Environmental impact

Being relatively expensive, the deep-level mining industry was always looking to cut costs. As a result, the quality of life in the emerging working class living places was neglected, and toxic waste output and acid mine drainage added pollutants to the local ecosystems.

1913 to 1948: The 'Segregation Period'

During this period, the state and the agricultural and gold mining industries collaborated closely to segregate the urban living spaces of the white and black working classes (Terreblanche, 2005: 248–249). It was a deepening of the 'integral partnership between state and private capital, and an equally integral connection between a core set of activities around mining and energy, straddling the public/private divide' that had existed since the 1870s – the consolidation of the 'minerals-energy complex' (Fine, 2008: 1). The 1920s saw the establishment of (in 1923) the Electricity Supply Commission (Eskom), to produce relatively cheap, coal-fi ed electricity for mineral-based industries, and (in 1928) the Iron and Steel Corporation (Iscor), an iron and steel smelting facility to produce products for export.

Urban land rights

The 1921 Transvaal Local Government Commission established the Stallard principle that 'natives' could only enter urban areas (regarded as 'white man's creation') to serve white needs and had to depart thereafter (Terreblanche, 2005: 255). Many black workers housed themselves (often in informal

structures) within segregated 'locations' close to where they worked. Key legislation passed included the following.

- The Housing Act (No. 35 of 1920), which institutionalised segregated townships for Africans.
- The 1923 Urban Areas Act (No. 21 of 1923), which withdrew the right of land tenure, and therefore permanent urban residence, from Africans, as a way of justifying their continuing disenfranchisement (Wilkinson, 1998: 217).
- The 1931 Transvaal Ordinance, which enabled municipalities to prepare schemes controlling land use, density, building size and position.
- The 1934 Slums Act that enabled the state 'to destroy existing areas, and to replan them' (Mabin and Smit, 1997: 200–202).
- The Native Laws Amendment Act (No. 46 of 1937) that prohibited Africans from acquiring land in urban areas.
- The Native Urban Areas Consolidation Act (No. 25 of 1945) that gave varying degrees of residential tenure security to four different categories of urban residents (the notorious sections 10 1 [a], [b], [c] and [d]), effectively linking the right to the city to employment and accommodation permits.

The tensions, between the need for a stable urban workforce on the one hand and controlling the movement of that workforce on the other, surfaced in the 1946–1948 Fagan Commission, which recommended the relaxing of influx control and improved rights for urban residents (Terreblanche, 2005: 279). However, with the electoral victory of the National Party in 1948, these recommendations to open up the right to the city were ignored, as influx control was strengthened and urban residential rights more rigidly define .

Land ownership and development

The Housing Act of 1920 established the Central Housing Board to control housing developments by local authorities, provide administration and supervise the lending of government funds for building houses (Calderwood, 1953). Two initiatives in Cape Town (Citizens Housing League, 1979; Veertig Jaar Diens, 1970; Garden Cities, 1972: 11-12, 17) provided holistic, planned living places (including social housing) for white workers and returning servicemen, suitably serviced with Eskom electricity. Local municipalities played a critical role in providing subsidised rented accommodation, initially for whites, framed by the availability of municipal finan e, local policies and the social interests that were dominant in the councils (Parnell, 1987: 135). Most of the capital was allocated for accommodation for people classified as white, coloured (of mixed race) and Indian (Hendler, 1986: 67–68). Subsidised rented municipal housing, which was justified to save poor whites from the sea of black poverty and earn them their rightful place as 'worthy, industrious and beneficial citizens' (Parnell, 1987: preface), was implemented unevenly: a spurt

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[2] Although segregated 'location' land was owned by the local authorities (under the Housing Act), most shelter for black workers was erected by the occupants themselves; employers were responsible for the provision of accommodation, if they employed more than 25 'natives' (Hendler, 1986: 67).

occurred from the early 1930s until the start of the Second World War and then again after 1945 (Parnell, 1987: 129–137).

Environmental impact

Environmental protection was hardly a policy concern at all, although more nature conservation areas and game parks were declared to serve as places of recreation for the white population. This stood in stark contrast to the severe environmental degradation and social deprivation that occurred in the 'homelands' and the 'black' areas of urban centres (Sowman et al., 1995: 3). This neglect had disastrous humanitarian consequences, such as the influenza epidemic in the 1920s that claimed the lives of 500 000 Africans living under appalling conditions (Morris, 1981: 15–16).

1948 to 1976: Apartheid and Tightening of Controls

Under apartheid, the movement of black labour was tightened, through planning urban space and managing land use in segregated townships, driven initially by a strategy to build the economy only on labour with permanent residential rights (Hindson, 1983, 1985; Posel, 1984, 1985) and then a switch to an entirely migrant labour force (Posel, 1984: 6, 15, 23). Anti-squatting policies prevented autonomous action by communities to secure shelter (Wilkinson, 1981).

Urban land rights

Industrial decentralisation refle ted the migrant labour focus, with infrastructure and incentives to locate factories near homeland borders (Todes, 2013: 9) and family housing in new homeland urban areas (Davenport and Hunt, 1975). The instruments used to achieve land allocation and land-use management objectives were: spatial planning, state ownership of land, public financial mechanisms and administrative controls. Spatial planning was conceptualised within the imperative to segregate and racially restructure cities (Mabin and Smit, 1997: 203–204), articulated by bodies such as the Social and Economic Planning Council, set up by Smuts in the 1940s and the Natal Town and Regional Planning Commission, established in 1951.

- The 1955 Mentz Committee (of the Department of Native Affairs) planned segregated black townships in the then Pretoria–Witwatersrand–Vereeniging (PWV) region. The committee's brief included the drawing up of spatial guidelines for promoting segregated African townships and removing integrated living spaces (South Africa Union 1955: 4, quoted in Hendler, 1993: 41).
- The Natural Resources Development Council (NRDC),

established by Smuts in 1947, was a powerful regional planning body, involved in numerous planning committees 'charged with the racial zoning of areas such as Durban, Pietermaritzburg and the East Rand as well as the new "controlled area" towns like Welkom, Westonaria, and Kinross' (Mabin and Smit, 1997: 205–206).
- The 1975 National Physical Development Plan (NPDP) rationalised segregated townships within a broader framework of regional 'development axes', 'growth poles', 'growth points', and 'deconcentration points' that were intended to counter balance the 'over-concentration' of development in metropolitan areas, and respond to out-migration of rural whites. The NPDP recognised a role for planning professionals in identifying and framing space economies (Fair, 1975), making provision for professional planning in the Guide Plans (for residential, commercial and industrial developments) that followed.

Land ownership and development

The boom–bust speculation that characterised the stock exchange between 1945 and 1955 led to speculative property booms in the white areas of the cities, such as Hillbrow (Chipkin, 2008: 104–108). During the late 1950s and early 1960s, housing welfare subsidies for poorer whites did not benefit a significa t percentage of the poor white population, who were never granted Council housing and continued to seek shelter in overcrowded slums (Parnell, 1987: 134). However, their situation improved during the boom of the 1960s, as they benefit ed from work opportunities and upward mobility, with new suburbs and decentralised commercial centres being built. Homeownership in these areas was stimulated through a firs -time homebuyer's subsidy, while the white working class continued to benefit from subsidised rented municipal housing. The CBDs expanded and elevated motorways appeared, a necessary link to 'endless suburbia' (Chipkin, 2008: 129). Small suburban nodes emerged in 1959 and further decentralised shopping malls would change the business pattern of cities across the country (Beavon, 2000: 3). Financial institutions and insurance companies were investing surpluses into shopping malls in new decentralised nodes, while property developers were diluting the traditional role of architects in planning and initiating developments through amending town planning schemes (Chipkin, 2008: 136).

Although homeownership for Africans living in or near cities had been introduced through a 30-year lease on township stands in the 1950s (Morris, 1981: 49, quoted in Hendler, 1986: 81), in 1968 the government withdrew the leasehold provisions and required occupants to rent their houses. In 1975 the Vorster administration re-introduced the 30-year leasehold but only for homeland citizens, and barely one year after its inception the homeland citizenship proviso had been dropped (SAIRR, 1977: 187, quoted in Hendler, 1986: 87),

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[3] Jan Smuts was South Africa's prime minister from 1919 to 1924 and from 1939 to 1948),

[4] By the 1970s professionals involved in spatial land use management (i.e. planners and land surveyors) could be divided into two groupings: those that worked 'mainly in the private sector or for white local authorities and presided over vigorous activity in the land and property markets' and those that 'worked largely for national (or regional) (provincial or 'bantustan') government or in the private sector in service of these tiers' Mabin and Smit, 1997: 208) – the latter were instrumental in the planning and implementation of various types of urban settlements in the bantustans.

creating the possibility of greater security of tenure for those Africans with permanent urban residential qualific tions. Nevertheless, existing legislation did not allow building societies to provide loans to people wishing to participate in this scheme, and few urban residents were able to take advantage of the change in policy (Hendler, 1986: 87).

Privately owned land could be – and often was – expropriated for segregated township development. The government micro-managed the movement and accommodation of the urban workforce (and redirected development funding) on state-owned land in both white areas and homelands. Once developed, the properties were not sold to the occupants but continued to be held by local or central government. By 1968, fi e forms of tenancy had been defined in public rented stock: site permits (with building permits), for households to manage the erection of (and then rent) dwelling units; certific tes of occupation (for renting structures erected or acquired by the authorities); residential permits (for renting units originally owned by local authorities); lodger's permits (for individuals and/or households to rent space from households which held the above forms of rental tenure); and hostel permits (for individuals to rent beds in hostels). State housing in homeland urban areas was either occupied or rented under a deed of grant from the traditional authorities (Hendler, 1993: 396–397).

Initially, private developers and planning and design professionals were excluded from the construction of mass housing estates (Hendler, 1993: 218), but building contractors were included. Central government provided the finan e, and municipal building departments managed the construction process. Friction arose at times between local government (of Cape Town, Johannesburg and Durban) and central government over how to implement influx control, which was tied to spatial plans and land usages. In the early 1970s, the administration of townships was taken away from local authorities and vested in central government-controlled administration boards with a re-emphasis of the principle of self-financin . In effect, this meant the loss of local authority subsidies and the deterioration in the infrastructure of these townships because of less funding.

Environmental impact

The expanding property market in white areas was environmentally clean, built on infrastructure that included relatively cheap Eskom electricity, as well as sanitary and water reticulation. However, in the 1960s farmers in areas close to gold mines began to notice toxicity from mining. In urban areas, townships for the African working classes suffered from significa t atmospheric pollution because of coal-fi ed stoves that were used for cooking and heating, as these areas were not provided with electrical power until the beginning of the

1980s. The earliest approaches to environmental planning were typically ad hoc, and most protected areas were found in locations with low economic potential. As a result, the protected areas were not representative of the country's biodiversity. In 1974, the first analysis of protected areas was published and drew attention to the biased, unrepresentative nature of the protected area system, but did not lead to conservation action to address the gaps (Driver et al., 2003: 5–6).

1976 to 1994: Revolt and Reform

The June 1976 Soweto students' uprising triggered nation-wide rebellions against both the use of Afrikaans as a medium of instruction to black schoolchildren and the apartheid political system. It marked the beginning of the end of stringent apartheid controls over land usage. Faced with intensified resistance from black South Africans and economic problems, government leaders and official and top private sector leadership attempted to reform apartheid society by: introducing a private housing market, reforming the labour market, removing restrictions on the urban residential rights of a minority of residents (including trading restrictions), selectively upgrading township infrastructure and promoting a second wave of industrial decentralisation. From those opposed to apartheid emerged new concepts, plans and organisational structures for the active participation by representative resident associations in planning the development and use of land.

Urban land rights

During the 1970s, recommendations from two commissions, the Wiehahn Commission and the Riekert Commission saw some concessions being made to the rights of black South Africans in urban areas. The Wiehahn Commission recommended that the Labour Relations Act be amended to grant black trade unions legal recognition and encourage them to register. Unions used their participation in the system to make further industrial and political demands, including improved facilities and housing for their members, the restructuring of the urban form and participation in planning and management of urban land. The Riekert Commission loosened influx control, and gave urban residents with permanent residential rights preferential treatment when seeking employment. However, at the same time, stricter controls were placed on migrant workers without these rights – they were now required to register for employment at assembly centres in their respective homelands. This attempt

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[5] Personal communication with Professor Francois Viruly, Property Specialist, March 2013.

[6] Noseweek. 2013. 'Here comes the poison', 1 April, p. 12.

to exempt a class of 'urban insiders' from controls ended with the abolition of pass laws in 1986 and the abolition of key urban land use management controls, i.e. the township regulations.

In support of the state's policy of geo-political segregation, new, peripheral urban residential areas and industrial parks were developed. The 1982 Regional Industrial Decentralisation Programme incentivised labour-intensive industries in homeland areas and resulted in some 55 industrial development points in places such as Atlantis, Richards Bay, Isithebe, Rosslyn, Newcastle, Ladysmith, Butterworth, Dimbaza and Botshabelo. Between 1982 and 1987, some 147 000 jobs were created (compared to only 200 000 in the previous 21 years). Employment growth in these peripheral areas was much faster than in the cities, as labour-intensive jobs, particularly in the clothing industry, moved out (Todes, 2013: 10–11). This was also in part because companies were able to secure relatively cheap and disorganised (docile) labour at a time of 'stagflation' in the global economy. However, the consequence of these developments was increased fragmentation and urban industrial sprawl, and isolation of people in the city, resulting in a separation of work and living opportunities, which created long travel times and high transport costs for urban residents.

By the mid-1980s, resistance had succeeded in undermining the functioning of the local government councils and of local municipal services. Central government declared a state of emergency, and the army occupied most major townships. In the absence of service provision, community organisations began to assume the functions of local government. Civic associations began to conceptualise (and sometimes implement) institutional structures, such as community development trusts and community land trusts (e.g. in projects facilitated by the urban sector NGO, Planact, in Tamboville, Wattville and Alexander), housing associations and housing cooperatives (such as the Seven Buildings Project in Hillbrow). What these institutions had in common was that key decisions about acquiring and releasing land and properties were taken collectively, instead of by private rights-bearing households. However, the potential for developing real citizens' participation in planning development and land usage was stillborn, following the agreement at the Congress for a Democratic South Africa (CODESA) and the 1994 general election: the new African National Congress (ANC) government soon took over the function of representative civic structures, and some of the best grassroots leaders were taken up in government structures.

Land ownership and development

Homeownership for 'urban insiders' meant security of tenure for occupants. In 1978, the reintroduced 30-year leasehold was upgraded to 99-year leasehold, and the Financial Institutions Act was amended to allow building societies to give loans directly to African leaseholders. In 1984, amendments to leasehold regulations made perpetual rights on transfer of title available to any African citizen of South Africa or the 'independent' homelands, enabled leasehold rights to be registered in the Deeds Registry office, provided mechanisms for converting leasehold into freehold tenure, and enabled developers to acquire stands in townships (Urban Foundation, 1987, quoted in Hendler, 1993: 393–394). The government also started to sell off some 350 000 units (Hendler, 1986: 95–96; SAIRR, 1984: 270) in a bid to speed up privatisation of housing and in response to the shortage of private and public funds for housing (Hendler, 1993: 78).

From the late1970s, the state implemented a strategy to win the 'hearts and minds' of township residents by upgrading infrastructure of selected urban townships – Soweto was earmarked 'as a test to develop a formula for use elsewhere' (SAIRR, 1983: 291). Projects for improving street conditions, sewerage systems, storm water drainage, and electricity and water supply systems were undertaken in other Witwatersrand townships (Hendler, 1986: 95). Unlike current public investments in catalytic infrastructure projects, the upgrading of infrastructure was twinned with a security strategy to return stability to the townships and was not directed at making cities more efficient per se.

Environmental impact

The use of cheap coal to generate cheap energy resulted in excessive pollution: 85% of SA's commercial energy derived from coal and each 1980 dollar of GNP required 41 mega joules of energy input, twice as much as the United States and four times as much as Japan. The white population's per capita carbon emissions was nine tons in 1987, compared with five tons for the United States and one ton for the world. Effects of

[7] Biodiversity - the different types of life found on earth - is a measure of the variety of organisms that sustain different ecosystems, which provide natural services, such as forests and wetlands, which are beneficial to society. Trees sequester carbon, thereby mitigating CO2 emissions and global warning. Wetlands form natural levees that absorb floods from sudden weather events caused by global warming, and, by protecting and rebuilding these, society is better able to adapt to irreversible climate change (Driver et al., 2003: 5–6).

[8] On 1 May 1979, the first interim report of the Wiehahn Commission is tabled in Parliament. The Wiehahn Commission was set up by the government after the Durban strikes of 1973 and the Soweto uprisings of 1976 to look at the industrial relations system in South Africa.

[9] The government appointed the Riekert Commission to consider ways of adapting the influx control laws to meet rapidly changing economic and political challenges.

[10] SA History On Line. Wiehahn Commission Report tabled in Parliament, available on line at www.sahistory.org.za/dated-event/wiehahn-commission-report-tabled-parliament

[11] See Hendler (1986: 5–8) for a contextualisation of social reproduction and capital accumulation within social struggles of the 1980s and 1990s over South Africa's future political and urban forms.

ever-worsening air pollution were felt primarily in segregated townships, where the burning of coal stoves resulted in widespread respiratory diseases (Durning, 1990: 8–13). The dropping of the pass laws had also led to an increase in informal settlements. During the 1980s, development environmentalists were able to put the issue of environmental impact assessments (EIAs) of development projects on the agenda (Sowman et al., 1995). In the mid-1980s, a scoring-based assessment by biodiversity experts of remnant priority sites in the lowlands of the Cape Floristic Region was undertaken, but virtually nothing was done to implement the outcomes. Other studies in the late 1980s and 1990s continued to focus more on data analysis than on identifying priorities or mechanisms for implementation. Indeed, none of these early assessments resulted in conservation actions (Driver et al., 2003: 5–6). Nevertheless, during negotiations for a new political dispensation, significa t environmental impact regulations were incorporated into the then emerging spatial planning regime of integrated environmental management (IEM). The IEM approach required EIAs at all stages of the planning of development projects, public participation processes and post-impact assessment monitoring and management, as opposed to what until then had been an expert/elitist approach to planning (Sowman et al., 1995: 50–55).

1994 to 2015: The New Dispensation

Since the demise of apartheid, high unemployment and inequality have persisted. These are symptoms of deeper problems exacerbated by private sector behaviour and government policy choices that refle t the influen e of the minerals-energy-complex (Fine, 2008).

Urban land rights

The ANC government removed all apartheid spatial planning and land use management regulations, to enable effective and effici t urban land markets. The aim was to maintain and expand existing property market values and facilitate private development and tenure, including the commercialisation (user-pays principle) and outsourcing of municipal services provision. However, as municipalities come under severe financial pressure, household affordability and employment increasingly determines who lives in the city. For the majority of the population, economic obstacles have hindered their right to the city, prompting public protests over increasing social inequalities and spatial marginalisation, especially since 2004.

Land ownership and development

Since 1994, the government has introduced policies aimed at encouraging integration and densific tion of work, living and recreational spaces, in particular the 1994 Housing White Paper, the 2003 National Spatial Development Perspective (NSDP) and the 2004 Breaking New Ground: A Comprehensive Policy on Sustainable Human Settlement (BNG). The white paper was meant to enable homeowners to buy and improve housing and realise gains on a secondary market. However, most of the one million new housing units delivered by 2004 were built on the cheapest, peripheral land. Instead of centrally located housing and mixed residential/retail/commercial development, municipalities sold significa t tracts of non-core, centrally located land for the highest price and invested the proceeds in peripheral RDP housing. To address these challenges, government responded with BNG, statutory municipal integrated development plans (IDPs), spatial development frameworks and public-private partnerships (DHS, n.d.: 2), which were intended to encourage higher densities and greater efficie y.

Despite these measures, only a minority of residents of previously segregated townships – mainly in Gauteng – have joined the ranks of the middle and upper middle classes. Some have bought into the gated community lifestyle of housing developers, while others have moved into established suburbs. Some suburbanisation has occurred in larger townships, such as Soweto. New projects, e.g. Cosmo City in Gauteng and Cornubia in Durban, are attempts to develop sustainable mixed income housing projects. Buildings in the inner cities of Johannesburg and Pretoria have also been upgraded and refurbished for residential accommodation. However, while this has provided rental accommodation on scale, poorer residents unable to afford the rent have been excluded.

The relatively high land prices in urban centres have confined BNG housing projects to peripheral townships. Between 1997 and 2008, South Africa's residential real estate infl tion-adjusted price rose by 389%, more than double the rate in Ireland (193%) and the United States (66%) over the same period (Bond, 2010: 18). The focus on compaction has probably contributed to escalating inner city land prices, through creating scarcity. In response, many groups have erected informal structures, adding to the number of informal settlements (NUSP, n.d.). The 'gap' ownership market, where houses cost between R300,000 and R500,000, is similarly constrained, although banks have started to develop financial products. Currently, 15% of households with an income higher than R15,000, can buy into established primary and secondary housing markets. Approximately 57% of households are excluded from fully accessing their right to the city, as they earn less than R3501 per month (taking social grants into

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[12] In an investigation of the Botshabelo industrial area, Cobbett (1987) reported extremely low wages, the absence of statutory health and safety rights for workers and the right to organise, and large-scale tax fraud by companies – the significa t government subsidies were used to attract foreign companies, mainly Israeli and Taiwanese, to break sanctions.

[13] See Hendler (1993: 378–387) and Hendler and Spiropolous (1991) for a further discussion on the details and contradictions inherent in community participation, residential planning and product delivery.

account) and are on long waiting lists for government BNG housing, as Figure 1 shows.

Figure 1: South African households that qualify for housing subsidies or can afford a mortgage loan

Figure 1: South African households that qualify for housing subsidies or can afford a mortgage loan

Distribution of SA Households qualifying for subsidies or being able to afford a mortgage loan

	Monthly Household Income	
15.4%	R 15 000 +	Can afford established mortgage market (R 500 000+)
11.6%	R 7501-R 15 000	Can afford to purchase in the affordable (R100 000-R500 000) market segments
15.9%	R 3501-R 7500	Qualifies or Government Institutional plus FLISP Subsidies
57.1%	R 0-R 3500	Qualifies or Government Capital Subsidy
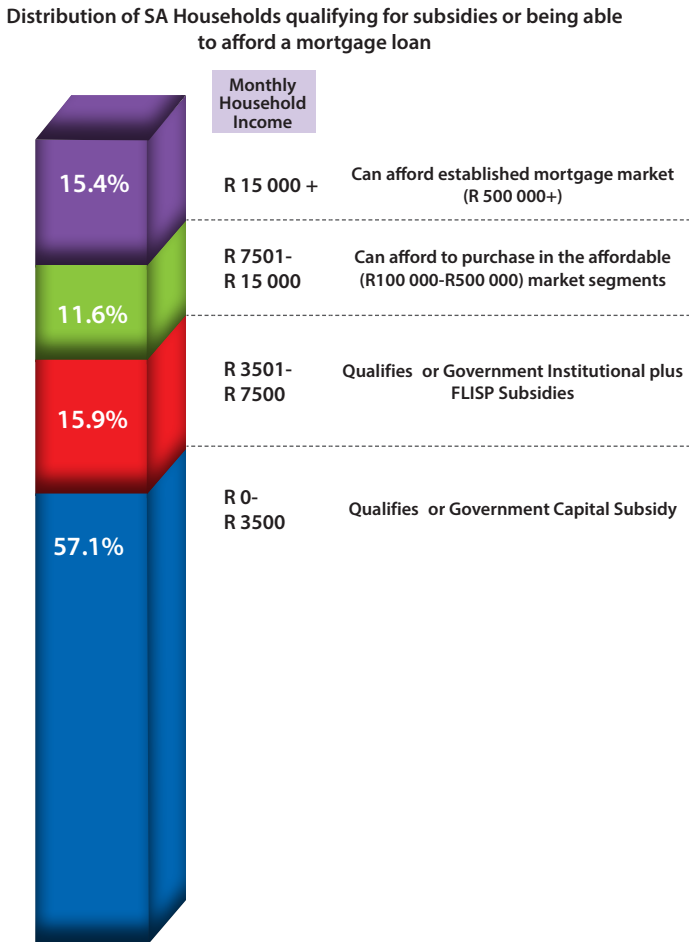
Environment concerns

Biodiversity conservation measures have progressively strengthened on the assumption that development and conservation are compatible, providing the correct balance is found. Nevertheless, 57% of South Africa's river ecosystem types and 65% of wetland ecosystem types are classified as threatened, adding impetus to the drive for systematic conservation (Driver et al., 2003: 5-6). The National Environmental Management Act (NEMA) (No. 107 of 1998) covers pollution control, waste management, environmental authorisations and natural and cultural resources use and conservation. Threatened ecosystems and species are published in the Government Gazette, and permits are required for restricted activity involving a threatened species or the prevention of the spread and eradication of invasive alien species. There are also guidelines for offsets when development projects are close to protected biodiverse land (SANBI, 2014: 17–60). The large-scale provision of electricity has also helped to curb the worst atmospheric pollution in previously segregated townships.

However, in urban areas, specific tions of bioregional plans are sometimes not incorporated into municipal levels plans, such as IDPs, or into different municipal sectoral strategies. For example, a recent housing project in Polokwane explicitly ignored the required biodiversity specific tions and offsets, despite being adjacent to a sensitive biodiverse area. The effects of acid mine drainage pollution in the West Rand continued after 1994, with authorities only taking action in 2013, when rising levels threatened to pollute aquifers under the West Rand and threaten the integrity of Johannesburg's subterranean infrastructure. Most affected by this radioactive pollution are several informal settlement communities in the sprawling shantytowns on the West Rand. Air pollution from oil refine ies and burning of biomass has also taken its toll in Durban South (South Durban CEA, 2011), while controversy surrounds the exploration for fracking in the Karoo.

Possibilities and Limits for Municipal Interventions

From the history of planning and land use in South Africa, a number of lessons can be drawn about the potential for, and limitations on, municipalities effecting changes.

- **Simply removing segregationist land use regulations does not create integrated and sustainable living, working and recreational areas.** Large parts of the bigger townships like Soweto may have transformed and suburbanised, while some black people have moved into modern white suburbia. However, much more is needed. An important aspect of urban land use is for urban spaces to be identified symbolically, whether as 'world-class cities', 'African cities' or 'working-class cities'.

- **Municipal land use strategies and practices tend to favour private business interests, often at the expense of redistribution.** Privatisation of municipal services, the lax regulation of fossil fuel polluting emissions (e.g. in Durban South) and the World Cup stadiums opened new opportunities for private accumulation by local and global interests. In addition, property rates-based funding incentivises escalating property values (benefitting

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[14] Terreblanche (2012: 3, 6, 69) argues that the ANC government was in a relatively weak position in 1994, 'as its sovereignty was fairly seriously restricted by the conditionalities that were made applicable when our economy was integrated into the structure of global capitalism'. Terreblanche adds that through leading ANC figu es receiving 'ideological training at American universities and international banks', pressure from Western governments and international institutions (such as the IMF and World Bank), as well as secret negotiations (held at the Development Bank of Southern Africa), the ANC was brought over to the view that neo-liberal globalism and market fundamentalism would be economically advantageous for South Africa – the new governing elite also had defini e material interests in participating in this process through being empowered to allocate affirmative action and affirmative procurement contracts.

real estate players, particularly banks), encouraging municipalities to sell their non-core land for the highest price rather than to embrace a role as property developer of prime land for the working poor and unemployed.

- **The municipal funding model inhibits a transition to residential solar energy through feed-in tariffs.** However, Eskom's current crisis might be a 'burning platform' that could prompt a change to renewables. At a March 2015 Urban Conference hosted by the SA Cities Network, the mayor of Tshwane expressed the need for a new municipal funding model that would liberate municipalities from rates-based and trading services funding. However, this will require either transfer payments from national government or a sharing of the taxation of companies operating within municipal jurisdictions.

The way in which municipalities spatially plan and implement services and land usage is likely to come under more pressure from spontaneous protests, creating pressure for change. In an increasingly volatile environment, municipalities will have an interest in stability. They might resort to repression (e.g. eviction of informal traders and squatters, cutting off water and electricity supplies to defaulters, etc.), but this will secure stability only in the short term, given the underlying macro-economic drivers of protest activity. In the medium to long term, negotiations with representative and organised community groups could lead to agreements with protesting communities and a greater likelihood of stability.

The recently promulgated Spatial Planning and Land Use Management Act (SPLUMA) (No. 16 of 2013) contains the statutory framework for agreements with communities aimed at enhancing their right to the city. Embedded in this framework are principles of spatial justice and spatial sustainability, which justify strategies for improving the working class's access to cities and quality of life. These above principles, together with the principles of financial sustainability, administrative sustainability, efficie y, transparency and public interest, form an overall guide for municipal governance, spatial plans and land-use management that support the development of working-class urban spaces for living, working and recreation. Within the overall framework of the principles enunciated by SPLUMA, the Constitution and the Municipal Finance Management Act, municipalities need to formulate processes and procedures for acquiring, holding, developing and releasing land.

Whether negotiations between municipalities and community representatives take place and develop into a different set of spatial planning and land use practices will depend on the role

of progressive senior municipal officia , such the Stellenbosch Municipal Manager, who facilitated the memorandum of understanding with the Informal Settlements Network (ISN) for upgrading the Langrug informal settlement (outside Franschoek). The Langrug organisers also developed strong relationships with municipal official responsible for providing and maintaining services to human settlements and with the planning departments of academic institutions, which helped envision – and plan – a different, connected Langrug in the future. [20]

Conclusion

Municipalities have the potential to transform urban spaces into compact, densified living, working and recreational spaces through catalytic infrastructure transportation projects. While the municipality may not own vast tracts of land within the city jurisdiction, it has authority over road transportation and can influen e where and how more effici t and integrated public transportation systems and infrastructure are planned and implemented. However, this means that municipalities need to embrace a broad development function, which goes beyond catalytic infrastructure projects to include the type of mixed-used developments needed to ensure more citizens can exercise their right to the city.

When negotiating with communities about land usage, municipalities need to be clear about their functions in respect of spatial planning (of land under their jurisdiction) and development (of their own land). As public sector developers, municipalities take on the risks associated with developing land for specific social uses (e.g. mixed industrial/commercial/residential development with a focus on inclusionary, social and welfare housing). Instead of outsourcing the development function to the private sector, municipalities (in their role of public sector developers) would envision, plan and manage the implementation of development projects, on municipal – or municipal-acquired – land for the benefit of low-income communities, the working poor and the unemployed. For example, social and welfare housing, food garden programmes (for food security) on municipal commons, non-motorised transport infrastructure and systems (for walking and cycling), electrified trams and rail (to mitigate the risk of fuel price volatility), enablement and enhancement of informal livelihoods (e.g. of traders, informal producers) and protection and nurturing of informal markets. The land on which these developments would stand should remain the property of the municipality and start forming part of an emerging asset base. Specific challenges to inclusive development are pressures

[15] Noseweek. 2015. 'A plague on frogs – and the people of Polokwane – Nature buffs unearth dark secrets of dodgy property deals', 20–23 May.

[16] Segar S. 2013. 'Wonderwoman – Gauteng's last hope', Noseweek, 14–16 April 2013; Noseweek. 2013. 'Here comes the poison', 1¬0–13 April 2013, p. 12.

[17] Groundwork. 2014. 'Shell: don't frack the Karoo', available on line at https://milieudefensie.nl/publicaties/rapporten/shell-dont-frack-the-karoo.

[18] Edgar Schein's burning platform theory is that for people to make a leap from today's platform to the relative unknown, it must be more uncomfortable for them to stay on today's platform than the perceived anxiety created by the change to tomorrow's desired future (Alan, 2010).

from the taxi industry and shopping malls, which undermine the integrative and compaction potential of integrated public transport, and the drive for clean cities, which affects the livelihoods of informal traders.

To achieve socially beneficial projects, a public sector developer will probably face opposition from private real estate interests, on the basis that the public authority is unfairly advantaged and the playing field is unbalanced. Indeed, there is likely to be strong ideological and political opposition to municipalities playing the role of public sector developers, or at least attempts to minimise their impact. In the current socio-political environment, local governments and municipalities are subject to the influen es of asymmetrical power relations between the established private business sector, the emerging business sector and citizens from poorer and working class communities. Therefore, they will have to trade off land usage for social purposes gains against private and elite gains.

Suffici t consensus will be needed between key role players within the municipalities and the local government representative structures. Such a consensus could be expedited in cases where municipalities have significa t non-core landholdings to leverage development. Municipalities without this leverage will have to seek other forms of leverage, such as development funding. Municipalities receive conditional grants for various aspects of infrastructure, services and residential and/or mixed development, but there are development funding shortfalls. Most municipalities make up these shortfalls on the capital market or through raising debt. However, in line with public banking practices in the other BRICS countries (Brown, 2013) municipalities could explore the feasibility of setting up their own municipal-owned banks: by lending to themselves, the funds would be interest free and so enable greater infrastructure investment, as well as provide low interest – or no interest – funding to the small, medium and micro-enterprise sector. The Gauteng provincial government recently advertised a tender for a feasibility study of a provincial government bank to fund the reindustrialisation of southern and western Gauteng through inter alia providing funds to small, medium and micro-enterprises. Municipal banks could also align with the current programme of the ISN to scale up their Community Upgrade Finance Facility through a significa t tranche of donor funding and by getting municipalities to augment city-wide funds in return for co-ownership of these funds.

Municipalities that can develop suffici t gravity around their role as public sector developers should focus their land-use planning and management practices on building

energy efficie y, implementing and enhancing recycling programmes for waste management, planning and implementing sustainable urban transport systems (including pedestrianisation) and managing urban ecosystems, particularly with the aim of conserving water and recycling wastewater (Camaren and Swilling, 2011: 24–31).

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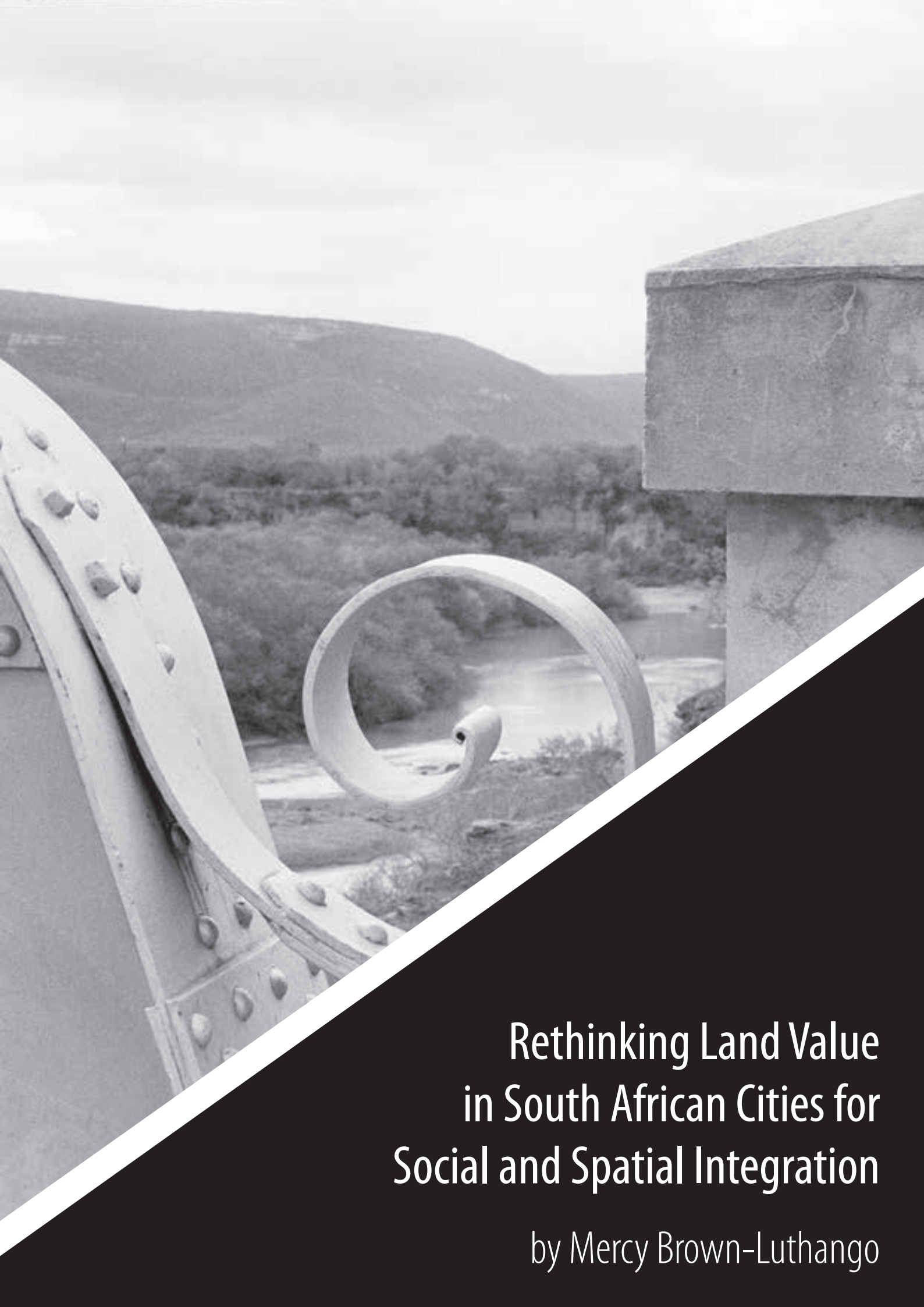
Rethinking Land Value in South African Cities for Social and Spatial Integration

by Mercy Brown-Luthango

CONTENTS

Background

Twenty years after democracy South African cities continue to be characterised by spatial, social and economic fragmentation and the exclusion of millions of poor citizens from access to urban resources and the benefits of city life. Low-density urban sprawl and inefficient land-use patterns impose a great burden on poor households that spend a considerable proportion of their income on transport costs, put a substantial strain on city finances and threaten environmental sustainability. Given this context, municipalities, which are responsible for driving and realising the South African government's developmental agenda, face significant and often competing demands, including:

1. Providing infrastructure and services to all households and clearing service backlogs to poorer households through, for example, the upgrading of informal settlements.
2. Raising and improving own-revenue sources in order to become more financially independent and sustainable.
3. Restructuring the urban spatial form in order to:
   • improve urban efficiency and encourage more sustainable use of land and other resources,
   • achieve social integration and inclusion of marginalised groups, and
   • improve the health and well-being of households, by bringing them closer to employment opportunities and services.

At the centre of local government's ability to meet these competing imperatives efficiently and equitably is the issue of land and how different role-players perceive and operationalise the value of land. This paper argues that a shift in mind-set is needed across the South African society, particularly among city planners and decision-makers, about the value of urban land and its role in changing how South African cities function. Furthermore, local governments have planning and regulatory instruments at their disposal that enable them to direct the use of land and land value in a creative manner, to balance the need for inclusion, sustainability and financial sustainability.

The paper will touch on the following questions:
a) What shift in thinking and reinterpretation of land and the value of land is required among municipal authorities to transform the urban landscape in South Africa?
b) What opportunities does land value capture offer municipalities to respond to the challenges outlined above?
c) What possibilities do high-density, mixed-use and mixed-income infill development, as well as transit-oriented development (TOD) offer municipalities for achieving social integration and urban efficiency through more compact, mixed-income and mixed-use developments?
d) How can municipalities use existing tools and policies more effectively to achieve more sustainable, efficient and equitable urban development?

After an overview of the international and national debates about the value of urban land and property rights within the context of 'just', sustainable and efficient cities, the concept of land value capture (and how it applies to thinking differently about land value) is discussed. The focus then turns to higher density, mixed-use, mixed-income infill developments, linked to quality public transport, and how they could change the form and function of South African cities. Some suggestions are offered about using existing instruments within high growth areas to provide affordable housing and encourage racial and spatial integration. The paper concludes with some recommendations for municipalities.

Rethinking Land Value and Property Rights for the Common Good

South Africa is currently the most urbanised country in sub-Saharan Africa, with more than 60% of the country's population living in urban areas. This puts enormous pressure on the available resources in cities. Growing urbanisation has resulted in a proliferation of informal settlements and very poor living conditions for the majority of the urban population, and municipalities are struggling to keep abreast of the increased demand for infrastructure and services. In a context of growing informality, unemployment and poverty, the notion of fair or just cities (and what this means) becomes important. Cities are expected to be all things to all people, and those responsible for running them have to make difficult trade-offs between growing the economy, protecting the environment, expanding the city's fiscal base and integrating the society. The question of land – and the management of finite land resources – is at the heart of current debates about urban efficiency, spatial restructuring, social inclusion and environmental sustainability. How municipalities and other decision-makers value land has a significant bearing on how the afore-mentioned challenges are managed and addressed.

Different perspectives have dominated the discussion on land and how it is valued. On the one hand, market-centred approaches to land management insist that the market will decide the highest and best use of land and, if left free from regulation, will automatically allocate land to the poor. These approaches favour the economic function of land, in which the value of land is based primarily on the market. The market value of land refers to 'the estimated amount for which a property should exchange on the date of valuation between a willing buyer and a willing seller in an arm's length transaction after proper marketing wherein the parties had each acted knowledgeably, prudently and without compulsion' (IVSC, 2003). On the other hand, more rights-based approaches

argue that land plays a social role. These approaches promote the use value of land over its exchange value, to ensure that land fulfils its social function and contributes to a broader urban reform agenda. Promoting the use value of land over its exchange value means that 'urban space should be produced to meet the everyday needs of those who inhabit it' (Irazabal, 2009). Proponents argue that the social function of land is crucial for constructing the 'just' city and key to human flourishing (Irazabal, 2009; Crawford, 2011). Central to the social function of property idea is the fair distribution of, and equal access for all city dwellers to, the resources and benefits of the city, irrespective of race, class, gender or any other factors. According to the World Charter on the Right to the City (UNESCO, 2005):

> As its primary purpose, the city should exercise a social function, guaranteeing for all its inhabitants full usufruct of the resources offered by the city. In other words, the city must assume the realisation of projects and investments to the benefit of the urban community as a whole, within criteria of distributive equity, economic complementarity, respect for culture, and ecological sustainability, to guarantee the well-being of all its inhabitants, in harmony with nature, for the present and for future generations. The public and private spaces and goods of the city and its citizens should be used prioritising social, cultural, and environmental interests.

Implicit in this definition of the social function of property is the importance of a more equal and balanced distribution of land and land value for long-term social and environmental sustainability. This is in the best interest of all citizens, not just the poor and marginalised.

Latin American countries, such as Colombia and Brazil, have faced similar pressures of fast-paced urbanisation and spatial inequality, and have recognised the need for reform in land and property rights in order to effect urban transformation. Both countries have realised that the social function of land needs to supersede individual property rights, in the interest of distributive justice and social order. In Colombia, the legal recognition of the social function of property has enabled the government to address social and economic challenges stemming from the unequal distribution of land: it allows for the expropriation of unproductive or unused urban and rural land parcels that do not fulfil their social function (Bonilla, 2011). Similarly, in Brazil, the courts pronounced that the City Statute of 2001 'is an instrument directed at the correction of distortions brought about by unruly urban growth, at the promotion of the full development of the functions of the city and at the application of the principle of the social function of property' (dos Santos Cunha, 2011). The City Statute of 2001 makes several instruments available to municipalities

for managing land and land value in order to improve city finances and to advance spatial, social and environmental sustainability (Maricato, 2010). While the implementation and application of the social function of land and property in Brazil and Colombia may be uneven, some advances in restructuring urban spaces have undoubtedly been made, particularly in cities such as Medellín and Bogotá in Colombia and Sao Paulo in Brazil.

In South Africa, Chapter 2, Section 25 of the Constitution holds that property might be expropriated 'for a public purpose or in the public interest', and land reform and equitable access to natural resources are issues of public interest. The Spatial Planning and Land Use Management Act (SPLUMA) (No. 16 of 2013) also aims to promote 'spatial justice', social and economic inclusion, and a more equitable distribution of land, by ensuring 'more access to and use of land' for those previously denied these rights. For some scholars, the Constitution's property clause entrenches individual property rights and has stifled land reform progress in South Africa (Ntsebeza, 2007). However, others argue that activists have paid too much attention to Section 25(1) and, in so doing, have failed to recognise the progressive parts of the property clause and its potential for bringing about social change and transformation (Achmat, 2014). In several cases, South African courts have upheld the progressive intention of the Constitution, and so 'land and property injustice can be remedied lawfully should government use existing laws to ensure decent housing and integrated cities' (Achmat, 2014: 28). Achmat seems optimistic that the Constitution and laws like SPLUMA can enable municipalities to direct the use of land in more socially just and equitable ways. However, the question remains whether the Constitution and SPLUMA are explicit enough in defining the social function of land, or are other legal instruments needed that would give municipalities the unequivocal mandate to manage urban land for the common good.

The liberal legal tradition of individual property rights has a direct impact on exclusionary land-use patterns in cities, as property is conceived only within economic terms and so limits the State from using land in more inclusive and equitable ways (Fernandes, 2001; 2007). Urban reform requires a 'profound legal-political reform that affirms a new set of citizenship rights' (Fernandes, 2007: 204). In the Brazilian case, this meant expanding and legally operationalising (through the City Statute of 2001) the idea of property's social function as contained in the Brazilian Constitution of 1988. The City Statute provides municipalities with a toolbox of different instruments which can be combined in creative ways to give practical expression to the social function of property in the city. The City Statute 'broke with the long-standing, individualistic tradition of civil law and set the basis of a new legal-political paradigm for urban land use and development

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[1] For a more extensive discussion of these different approaches see Brown-Luthango (2010).

control in Brazil, especially by consolidating the constitutional approach to urban property rights' (Fernandes, 2007: 212). This begs the question of whether a similar legal instrument is needed in South Africa to give practical guidance to cities about how to bring about the spatial justice referred to in the Constitution and SPLUMA.

What is required first and foremost, among not only local authorities and other spheres of government but also the whole of South African society, is a shift in mind-set about the value of land and land's role in transforming persisting apartheid spatial patterns. The problem is that, at the moment, land, land value and the burden of unsustainable land use are unequally distributed, so poor households bear the brunt of ineffici t spatial patterns. A system in which individual property rights are so fi mly entrenched results in a situation where 'landowners are able to internalise the positive externalities produced by city growth and externalise the costs to the public realm' (Blanco, 2011: 29). In contrast, promoting the social function of land entails distributing more equally the rights, benefits and responsibilities of citizenship and city life.

Upholding individual property rights at all costs, and maintaining the status quo, will perpetuate apartheid spatial planning and increase informality, making cities socially and environmentally unsustainable. This contributes to violence, crime and social disruption, which are costly to all of South African society. In the long term, a constitutional change or new legal instrument (similar to Brazil's City Statute) may well be needed to ensure an unambiguous mandate for the social function of land.
However, to begin to transform South African cities, in the short term municipalities need to use their planning and regulatory powers to create more inclusive, equitable and well-functioning cities. Land value capture can activate such a process.

Land Value Capture: not a Panacea, but a Catalyst

Land value capture refers to a process through which local governments can recoup a portion of the additional, or what is referred to as 'unearned', land value created through public actions. This captured land value should then be redistributed for the good of society as a whole, to ensure that land fulfils a social function. Three 'public actions or decisions must be associated with the distributive principle of value capture' (Furtado, 2000: 2):

1. **An original public action which results in land value increments**
   The central notion is that the value of land is not derived from any actions of the landowner but, in many instances, by actions undertaken by a public authority. Such public actions include, among others, the granting of planning permission, provision of infrastructure, changing the use of land through rezoning, and natural urban growth that increases the demand for land. Accessibility to infrastructure, services and amenities is another crucial factor that influen es the value of land (El-Barmelgy et al., 2014; Lee and Kim, 2009; Rodriguez and Vergel, 2013). This added land value is unearned, as it is not created through the action of private landowners but through government interventions, and thus the broader public has the right to share in it.

2. **A second action to capture some of this value**
   In many parts of the world, various instruments have been used to capture land value created by public interventions. Determining the most appropriate instrument and the best way of applying the instrument can take considerable time and effort. However, apart from the ethical arguments for facilitating a process whereby the whole community can share in the benefits of publicly created land value, land value capture also provides a practical way of correcting land-market distortions, such as speculative retention of land that increases the price of land and drives the poor to the periphery where land is cheaper.

3. **A third action related to the destination or use of collected resources**
   A redistribution element should be part and parcel of any value capture initiative. For example, if value captured in a well-resourced, wealthy area remains and is used for the delivery of infrastructure and services in that area, the public action becomes 'regressive', as it does not alter the status quo (Furtado, 2000: 3). The origin and destination of captured value is of primary importance in any value capture initiative. Here value is used in the broader sense and does not refer only to economic value. A distributive action could also mean ensuring that poor urban residents benefit from being connected to urban infrastructure in well-located areas, through affordable housing or the provision of quality public spaces and amenities. Therefore, value capture instruments and policies should be linked to urban policies aimed at removing socio-spatial inequalities (Furtado, 2000).

Different ideological principles underlie the rationale for, and application of, land value capture. Debates concerning the principles of equity and justice versus efficie y and sustainability have been raging since the nineteenth century, when Henry George first argued for a land value tax to ensure that all of society benefits from the creation of land value, as land is a public good. Since then, concerns over economic efficie y have come to dominate discussions about land management (Fainstein, 2012). However, in Latin America

'value capture is still viewed primarily as a tool to promote equity in cities rather than as a way to improve municipal fiscal autonomy' (Smolka, 2012: 10). These goals of equity and social justice, efficie y and sustainability, and revenue generation do not necessarily have to be mutually exclusive. But in a country like South Africa, where inequality is unacceptably high and poor urban citizens are denied access to resources and benefits of the city, equity and social justice might need to trump financial goals in the sho t term.

The various land value capture instruments can be categorised as fiscal or regulatory instruments. Fiscal instruments usually include taxes or fees and are aimed at generating additional revenue for municipalities. Regulatory tools are aimed at directing the use and management of land in more socially and environmentally sustainable ways and require some kind of 'public benefi ', either in kind or in monetary terms from developers (Smolka and Amborski, 2000). McGaffi et al. (2013) distinguish between social/use-related value capture mechanisms and income-generating mechanisms.

Land value capture provides a middle-ground between market-based and rights-based approaches to land, as it does not necessarily have to be restricted by the broader political system governing a country. For many years, the Netherlands and Singapore, both capitalist countries and land-constrained, have successfully used tools, such as land banking and public land ownership, to ensure access to affordable and decent housing for all citizens – 'in both cases, an ideological commitment to equity and diversity framed the policy-making process' (Fainstein, 2012; 27). Political will is thus essential to deal with vested interests, which try to maintain inequitable and exclusionary land-use patterns in the city. Land value capture offers an ideal compromise between land nationalisation and neo-liberal, market-based land management. It is a good way of incentivising and encouraging developers to act in a socially responsible manner while still making acceptable levels of profit from development. It also gives municipalities the opportunity to capture social and economic value from land development. However, what is important is that municipalities and developers agree on an 'acceptable' level of value capture, so that neither party feels that they are losing out. This could go a long way towards resolving some of the tension and resistance to land value capture.

Land value capture is not a silver bullet to all societal challenges, and so public officials need o:
* Understand the context of the issue being addressed and be clear about the goal of the land value capture instrument i.e. whether the goal is revenue generation or social inclusion.
* Be clear about the institutional and legal conditions for successfully applying the land value capture instrument.
* Understand how value capture instruments can be effectively applied to overcome the issue in question (McGaffin et ., 2013: 377).

Another important consideration is the economic cycle and prevailing market conditions, which will have a bearing on the type of value capture instrument that would be most appropriate and the level of value capture that can be achieved.

In 2011 and 2012, the Lincoln Institute of Land Policy surveyed more than 2000 public officia , city planners and other decision-makers about the application of land value capture in Latin America, where its use has been included in various pieces of legislation over the years. Interestingly, the lack of understanding among key government executives about the potential of land value capture was found to be more challenging than any legal or technical obstacles (Smolka, 2012).

South African cities face a number of difficultie that have been extensively documented. These include persistent racial and spatial segregation, urban sprawl and ineffici t land-use patterns characterised by a mismatch between land use and transport, resulting in environmental concerns, a growing housing backlog and a proliferation of informal settlements. Another difficu y is maintaining existing infrastructure, while also providing new infrastructure required to stimulate economic growth.

Given the multiple challenges which confront South African cities, land value capture offers city-makers the possibility of balancing the demands for justice and access to the city for all, with the need for more effici t and sustainable use of limited land resources. This requires local government official to consider carefully the goal of a particular land value capture intervention, possible trade-offs between competing priorities, a forward-looking approach, as well as boldness and creativity to experiment with a range of instruments. A good starting point is more intensive use of existing land parcels, particularly those in well-located, fast-growing areas of the city.

Higher density, mixed-use, mixed-income, in-fill development

South African cities are very ineffici t, characterised by low-density urban sprawl, created by apartheid spatial planning and perpetuated post-1994 by large subsidy housing developments on the urban periphery where land prices tend to be lower. The impact of low-density urban sprawl has been well-documented, including:
* The cost to the State in terms of high transport subsidies and costly provision of infrastructure to outlying areas.
* The burden to individual households in terms of transport expenses and social costs.
* Environmental impacts.

The Financial and Fiscal Commission (FFC, 2012/2013) argues that low-density urban sprawl costs R6.4-billion annually

and, for six metros , the difference between urban sprawl and a more compact city scenario amounts to about 1.4% of gross domestic product. More effici t use of land and other resources is critical for creating more economically, socially and environmentally sustainable cities. To improve the use of limited urban land and to address low-density sprawl, an important strategy is infill development, which encourages the construction of higher density units on well-located, vacant or under-utilised parcels of land in the city, (Mtantato, 2011).

Some of the benefits associated with infill development compared to low-density development on the urban periphery include (McConnel and Wiley, 2010; Turok, 2011; WCDEAT, 2009a):
• More effici t use of land.
• Addressing crime and grime sometimes associated with vacant parcels of land.
• Economies of infrastructure, through better use of existing infrastructure and services.
• Lower transport costs.
• Lowering of carbon emissions and air pollution associated with motor vehicle dependency.
• Greater integration and social interaction.
• Regeneration and redevelopment of older buildings into new higher density development, which can create job opportunities.

Barriers to infill development can be grouped into economic, regulatory and political factors. Economic barriers refer to costs associated with land assembly and upgrading of infrastructure to support high densities. Regulatory barriers include zoning restrictions on higher density building and regulations preventing subdivision of existing plots. Political barriers include 'nimbyism' (nimby = not in my backyard) and opposition from surrounding landowners to higher densities. In the United States, an important barrier to infill development is an unwillingness to use 'eminent domain', or the State's power to expropriate land, which is 'necessity for significa t infill de elopment' (Farris, 2001).

In South Africa, densific tion and infill development have been part of the policy discourse for many years, dating back to 1994, but implementation has been patchy and inconsistent. South Africa has 'had a lot of policy rhetoric about the virtues of high density, mixed-use, mixed-income living, while investments have gone in the opposite direction'. Several factors account for this divergence between the policy intention and implementation. The first challenge relates to a lack of 'political appetite' to change existing practices and an unwillingness on the part of official to step out of their comfort zone and apply their minds to alternative spatial structuring (Turok, 2011). Another challenge is confusion about the rationale and

objectives for higher density infill development (ibid). The current housing subsidy funding model and the absence of a clear set of incentives/disincentives also constrain this kind of development. The 'funding grant does not incentivize infill and brownfield development, but is designed to provide a complete housing product in cheaper peripheral locations' (Mtantato, 2012: 2013). Even though Breaking New Ground (BNG) (DoH, 2004) and other policy documents speak to the importance of higher density, mixed-use and mixed-income housing delivery, BNG was not supported by a transformation of the fiscal arrangements or the housing subsidy regime to facilitate this new direction. Successful infill development also requires an audit of vacant or underused parcels of land in the city, with up-to-date information about the number and location, ownership and suitability for development of vacant land parcels (WCDEAT, 2009a). The lack of information about the number of land parcels, and in particular their ownership, is often cited as an obstacle to strategic forward planning in cities.

South African cities have two unique characteristics, which mean that careful and strategic thinking is required about where and how to encourage density, and the combination of instruments to be used to facilitate densific tion (Turok, 2011). The first is that population densities are particular low, even compared to other cities in the developing world. The second is that densities are inverted, which means that they increase the further one moves away from the central city (Mtantato 2011; Turok 2011). This highlights the need for a city-wide, rather than an area-based approach, where higher density development in the city is planned in accordance with the potential and characteristic of density required in specific parts of the city, in line with spatial development frameworks (SDFs).

In a city like Cape Town, this would mean encouraging higher density developments in the Central Business District (CBD), the Goodwood/Parow area along Voortrekker Road and the greater Blouberg area including Tableview and Parklands. These areas have a number of characteristics that make them suitable for higher density, mixed-use and mixed-income developments:
• Growth potential.
• Significa t investment in infrastructure and services, particularly transport infrastructure like the MyCiTi Integrated Rapid Transport (IRT) system.
• Existing racial and class integration, which could be further encouraged in areas like Goodwood/Parow and Tableview/Parklands.

In the CBD, for example, the rising demand for residential property, specifically rental accommodation, combined with strong economic and infrastructural growth and a high

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[2] Distinctions are made between population density, which refers to the number of people per hectare, and physical density, which refers to the number of dwelling units per hectare. Both of these have different implications for effici t use of land and infrastructure and optimising the benefits associ ted with densific tion. For a more detailed discussion see Turok (2011).

[3] eThekwini, City of Johannesburg, Nelson Mandela Bay, Ekurhuleni, Tshwane and City of Cape Town

vacancy rate of office blocks at the lower end of the market, creates an excellent environment for retrofitting these office buildings as affordable housing (Fleming, 2014). Similarly, in the greater Blouberg area, an increased demand for rental housing and buy-to-let investment opportunities has resulted from the combination of considerable transport investment (MyCiTi and a new highway link to the N7) and a concentration of good services and amenities and job opportunities. In addition, even though the price of property has steadily increased over the last few years, housing is still more affordable than in other parts of the city. In the Goodwood/ Parow area, the City has already made substantial investment in the regeneration of this corridor through the Mayor's Urban Regeneration Programme.

In these areas, higher density and mixed-used, mixed-income developments along transport interchanges should be aggressively encouraged, through a combination of different instruments such as inclusionary zoning, supported by density bonuses. The Urban Development Zone (UDZ) tax incentive scheme is another mechanism that municipalities can use to obtain certain social benefits (e.g. affordable housing and other social amenities) from developers. Reorienting this mechanism has the potential to change the discourse and practice around urban regeneration in South Africa. Administered by the South African Revenue Service (SARS), the UDZ is a tax incentive aimed at facilitating urban regeneration by encouraging private sector-led residential and commercial development in inner city areas with existing public transport infrastructure. Often discussions about urban regeneration revolves around eradicating 'crime and grime' in order to attract private investment, rather than providing housing for low- and middle-income households in well-located areas in order to promote inclusion.

In other, higher-income parts of the city, with potential for growth and infill development but with steeper house prices and possibly greater resistance to integration, stronger instruments (such as planning gain and the sale of building rights) might be used as financial instruments to collect additional income for the municipality. SPLUMA (2013) allows for upzoning, whereby municipalities can change their zoning schemes to allow greater density, which can be sold to developers as additional floor space. Proceeds from these instruments could be collected in a central fund to finan e the upgrading of informal settlements on better located land and to provide services, amenities and recreational facilities that are currently difficul to fund through the Upgrading of Informal Settlements Programme. This would give effect to the redistributive potential of land value capture as suggested by Furtado (2000).

Transit-oriented development: maximising transport investment

There has been extensive investment in infrastructure, particularly transport infrastructure in South Africa recently. The link between transport infrastructure and land value is well established, with a number of studies finding a positive relationship between transport infrastructure and land value (Brown-Luthango, 2011; Cervero and Kang, 2009; Cervero and Susantono, 1999; Debrezion et al., 2007; Doherty, 2004; ULM, 2012). Transport infrastructure significa tly increases the economic value of surrounding land parcels, especially those in close proximity to stations. A study of land values around three different types of transport interchanges (Bus Rapid Transport station, railway station and a highway interchange) found that land value was indeed rising around all three, with the highway interchange showing the greatest increase in land value (ULM, 2012). Investment in transport infrastructure offers another possibility for local governments to transform the discussion about land and the value of land in South Africa, by actively seeking to exact social benefit from developments around transport interchanges. TOD has been used in many parts of the world (notably USA, Hong Kong, Singapore) and is also being suggested in South Africa as a means to encourage higher density, compact, mixed-use developments around transport interchanges. TOD is a planning approach centred on improved integration between transport and land use, and has the potential to combat urban sprawl, reduce distances between employment and residential development, provide a mix of housing options and encourage integration and environmental sustainability. Through greater alignment between public transport and land-use management, TOD can contribute significa tly to improving equity of access, safety and greater efficie y in cities (Denoon-Stevens, 2014). Currently, poor households are most disadvantaged, and carry a heavy financial and social burden to access employment and services. Bringing people closer to jobs and other social amenities, and reducing travel times not only have social benefit , but are also more environmentally sustainable and more economically effici t, through reducing expenditure on providing infrastructure to sprawling areas.

A study into the potential for TOD around the Gautrain stations found that, although the application of TOD principles around the different stations varied, the presence of the Gautrain provided a significa t driving factor for developers to develop in these areas (Mushongahande et al., 2014). Accelerated property development, particularly mixed-use, was observed at all stations (including Pretoria, Midrand and Rosebank), but Rosebank seemed to fare considerably better than the other stations in terms of integrated mixed use development, high quality pedestrianised spaces and modal integration (ibid). The development of local SDFs, which was a useful strategy

[4] Pieterse E. 2014. 'Transport system and densific tion must foster mutually inclusive plans', Cape Times, 18 July 2014.

[5] Pieterse E. 2014. 'Transport system and densific tion must foster mutually inclusive plans', Cape Times, 18 July 2014

[6] Seeff. 2015. Blouberg rental market sees huge demand, stock shortages and excellent buy to let investment potential, 17 March 2015. http://www.seeff.com/about/news/article.php?newsId=1142.

to encourage developers to invest, are also important for encouraging residential development around these stations in order to provide the necessary densities to make TOD viable (Mushongahande, 2014). Locational advantages and the availability of land also play a crucial role (ibid). To capture increased land value created around transport interchanges, 'customised zoning' or inclusionary zoning can encourage varied housing options, specifically affordable housing, in order to ensure social inclusion (Holmes and van Hemert, 2008). This is because high demand around transport interchanges and the resultant increase in property prices can actually exclude low-income families and individuals. The 'huge opportunities available in integrated transport-oriented development in South Africa put authorities in a unique position to negotiate with developers around capturing value from such projects and also put them in a position to influen e planning in ways that create value for public good and promote local development' (Clacherty, 2011: 4).

Local authorities have a real opportunity to proactively encourage mixed-used, mixed-income, higher density developments around good quality transport infrastructure in fast-growing areas, where investment has been made in the provision of transport infrastructure, where affordable rental accommodation and social amenities are in demand and where the price cliffs might not be that steep. This would require a creative mix of incentives, such as the use of the UDZs, density bonuses and regulatory tools, such as zoning and conditional planning approval, in order to ensure that TOD fulfils a social function and that the benefits of substantial investment in transport infrastructure are maximised and equally enjoyed by all.

Elements of an Effective Land Value Capture Programme

Over the past few years, the idea of land value capture has gained much attention in South Africa. Experience from around the world, and particularly Latin America where land value capture has been in practice for some time, suggest that certain components are essential, including an enabling legal framework that explicitly encourages and facilitates the social function of land. The vague references to spatial justice and redressing past spatial imbalances, as currently contained within the Constitution and SPLUMA, may not be suffici t to force municipal and other decision-makers to take the bold steps required to transform South African cities. In the long

term, a new legal instrument may be required, similar to the Brazilian City Statute, which could be the basis for a bolder and more far-reaching urban reform process. This needs to be practically operationalised at the local municipal level through planning and other land-use management instruments.

What South Africa needs is a practice based on 'the social management of land values' (Furtado, 2008: 12), which requires a complete change of mind-set and praxis from urban development managers, including local government officia , planners, land use managers and valuers. They need to 'anticipate, plan and mobilize' land value increases, which should be linked more carefully to SDFs, integrated development plans, infrastructure plans and the overall development and management of the city (Furtado, 2008: 13). Therefore, at each stage of the urbanisation process (planning, servicing, regulating and managing), where and how increased value is generated needs to be carefully considered. A much more practically defined link between the origin (creation) and destination (redistribution) of captured land value would also be required and is vitally important in contexts marked by severe socioeconomic and spatial inequalities, like in South Africa.

Political will and champions, be they individuals or specific departments, are also crucial to drive a value capture programme in South Africa. All sectors of South African society have to realise that the current paradigm is not sustainable and that everyone pays a price, be it financia , environmental or costs associated with high levels of violence, fear and other social dysfunction that arise from spatial inequality and exclusion. Land value capture presents an ideal middle-ground, as it does not require a complete economic shift or nationalisation of land and other resources, but does allow municipal governments to regulate the urban land market in order to balance individual property rights with social and environmental justice imperatives. Some municipalities have already begun to experiment with different land value capture instruments, and more learning and awareness-raising is needed about what works and what does not work. A policy and institutional framework should be put in place to facilitate replication and scaling up.

Conclusion

Land value capture is not a silver bullet to all the challenges facing South African cities, but it can be a catalyst for transforming the way in which cities function and are managed. South Africans, particularly those responsible for managing cities, need to think differently about land and the

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[7] www.capetown.gov.za/en/Planningportal/Pages/UDZ.aspx

way in which land is valued, managed and distributed. This means that, where appropriate, city-makers have to challenge the sovereignty of individual property rights and use the instruments at their disposal in bold and creative ways, to enable land to fulfil a social function. Densific tion and mixed-use, mixed-income development, on vacant or underused parcels of land within the city, preferably around quality public transport interchanges, offer exciting possibilities to transform the current patterns of low-density urban sprawl that characterise South African cities, thereby advancing integration and environmental sustainability. A number of legislative and other mechanisms are available to facilitate this densific tion in fast-growing areas of the city with good infrastructure and public transport facilities. All these need to be built upon and scaled up in order to reconfigu e the urban landscape and tackle current exclusionary and environmentally costly spatial patterns.

Recommendations

South Africa does not lack good policy, from national policies to local government policies, which all speak the right language about spatial restructuring, densific tion, compact urban form and social inclusion. South Africa also already has a number of instruments in place that can allow municipalities to apply land value capture. The Local Government: Municipal Property Rates Act (No. 6 of 2004) allows municipalities to tax vacant land at a significa tly higher rate. In applying this, municipalities can capture additional revenue and discourage speculative retention of land, which drives up land prices. Other instruments, such as the UDZ and the Neighbourhood Development Partnership Programme, can be used to incentivise developers and to obtain social amenities and affordable housing from private sector developments, specifically around public transport infrastructure. South Africa also needs to urgently finalise its inclusionary housing policy in order to standardise the rules for developers and create consistency and predictability across cities and regions.

To facilitate the optimal use of existing policies and instruments, the following is needed:
- Active promotion and pursuit of the progressive intention of the property clause within the Constitution and SPLUMA. In the long run, this might need to be supplemented with a different, bolder legal instrument that can give practical guidance to municipalities on how to give effect to the notion of the social function of land.
- Greater integration between policies and the funding instruments to enable them.

- Closer integration between transport planning and land-use planning and management.
- Boldness, creativity and an appetite for experimentation by planners and other city official to encourage density and infill de elopment.
- Political will to deal with vested interests to maintain the status quo.
- A city-wide planning perspective, instead of piecemeal interventions that do not speak to a vision for a broader urban transformation.
- Clarity about different value capture instruments, their aims and the rationale for using them, i.e. whether they are implemented for financial purposes or to effect more socially just outcomes.
- Consistency of policies and plans across regions to avoid developers 'voting with their feet'.

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[8] Huge income inequality, which contribute to steep house price cliffs, have been highlighted by a number of authors as a challenge to the development of national policy around inclusionary housing and the implementation of provincial inclusionary housing policy (see Verster, 2008, WCDEAT, 2009b and Klug et al., 2013)

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[9] For example, BNG (DoH, 2004), the National Development Plan (NPC, 2011) and the draft Integrated Urban Development Framework (CoGTA, 2015).

[10] This act was amended in 2014. Refer to Municipal Property Rates Amendment Act (No. 29 of 2014)

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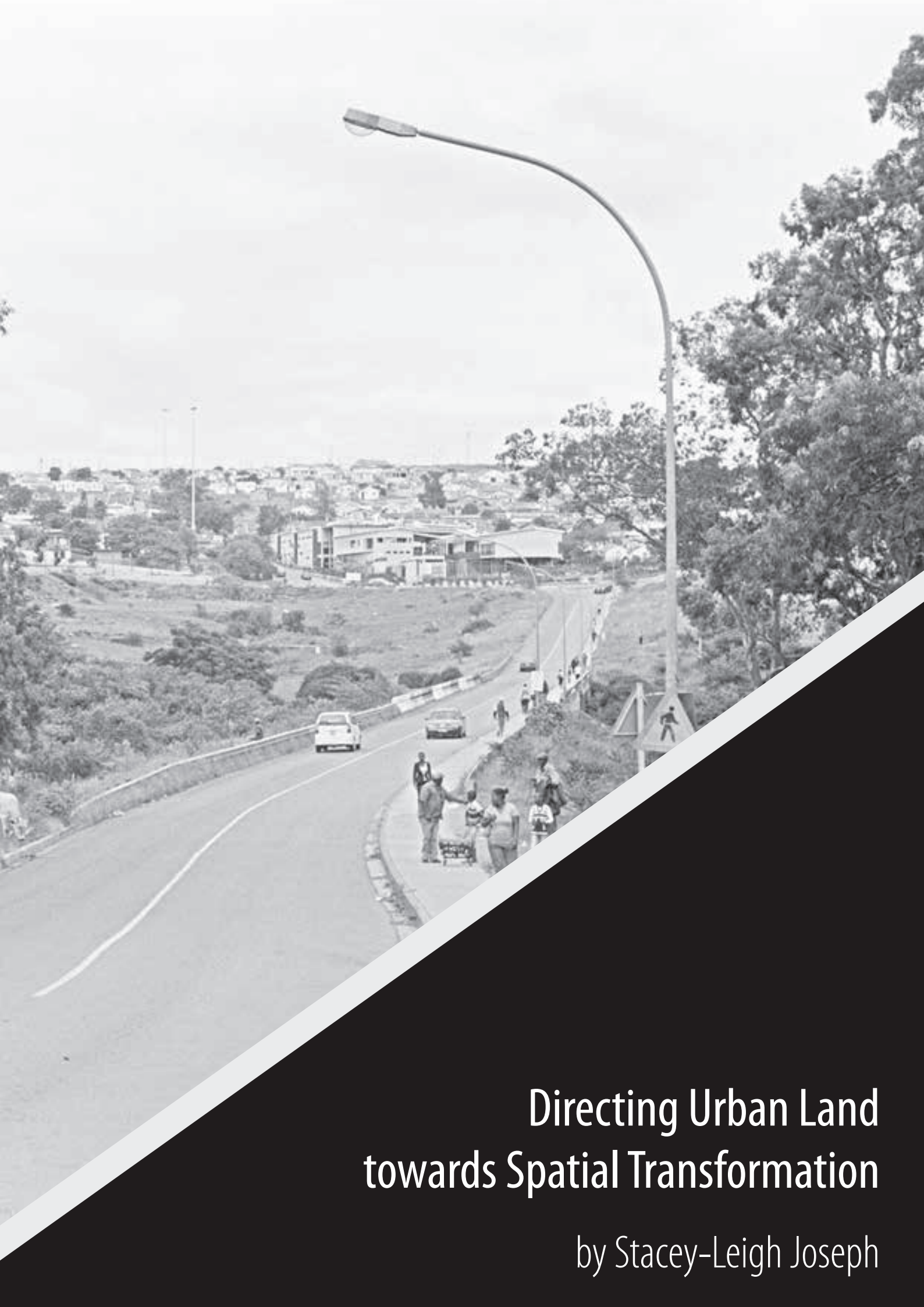
Directing Urban Land
towards Spatial Transformation

by Stacey-Leigh Joseph

CONTENTS

Why is Spatial Transformation Being Foregrounded?

Transformation as a constitutional goal

The 1998 White Paper for Local Government outlined the imperative for transforming cities and towns in South Africa. It noted that 'spatial integration is also central to nation building, to addressing the locational disadvantages which apartheid imposed on the black population, and to building an integrated society and nation' (Ministry for Constitutional Development and Provincial Affair , 1998). In highlighting the key requirements for urban areas, it emphasised the promotion of mixed-use and mixed-income development and the importance of identifying current and 'future land-use and infrastructural needs for residential, commercial and industrial development' (ibid).

Transformation, however, is a long-term project. It requires undoing or reversing deep-rooted and complex practices and attitudes. In South African cities, land as a commodity and asset is entrenched, as are the vested interests and rights of those allowed to own land. However, despite this complexity, transformation needs to happen in a way that goes beyond just 'ad hoc and piecemeal fashion' where the status quo remains largely intact (Williams, 2000) – fundamental change is needed. In the context of urban land, while ownership remains important, the conversation has to be extended to include using land effectively, ensuring the resilience and sustainability of land, maximising urban efficiencie for the state, households and industry, and (most importantly) promoting spatial justice through a range of interventions. The long-term focus needs to be on achieving these aims and requires a clear vision for South Africa of what a just, effici   t, sustainable, resilient and quality urban space looks like. Immediate short-term interventions are also required to transform space and ensure better access and liveability of our cities. How we manage land, allow for certain land uses and adapt our processes to accommodate the challenges of post-apartheid 21st century cities is crucial in the short term and also has long-term implications.

The first step is to define and frame transformation, which Williams (2000) describes as, 'a programmatic, plan-oriented, project-directed effort to change the unequal access to and occupation/ownership of socio-politically differentiated space in South Africa … a multi-dimensional, open-ended, fluid process of change, organically linked to the past, present and future'. In this definition, transformation is distinct from restructuring or reform. It is about fundamental changes that will reorder and reshape the urban environment, its workings and its outcomes. Land is crucial for transformation, as it underpins all human activity. Effective land transformation should be prioritised in order to address the apartheid spatial legacy and to build resilient and sustainable cities for the future.

The debate around transformation is not new, and interventions to transform South Africa have come in many guises. However, only in recent years has the conversation about space become an explicit component of the transformation discussion. From the land reform programmes to the housing programme and its intended outcomes, no effective intervention has encompassed the full extent of the spatial vision set out in the National Development Plan (NDP) (NPC, 2011). Legislative reforms, such as the Spatial Planning and Land Use Management Act (No. 16 of 2013) (SPLUMA), and the ongoing devolution of functions to local government also contribute towards the increasing focus on the spatial transformation agenda. At the same time, there is growing restlessness and frustration with the slow pace of transformation, two decades since the officia end of apartheid and despite numerous interventions to address its legacy. Now is an ideal time to have this conversation about space, as metro municipalities (despite ongoing challenges related to capacity and efficie   y) are perhaps for the first time in South Africa's history in a position to play the developmental role enshrined in the Constitution and White Paper for Developmental Local Government.

The spatial planning of the apartheid city has locked many South Africans into a particular development trajectory, but interventions made now could significa tly alter the state and the working of the future city. Developing a clear transformation agenda for urban land is critical for altering the current development path and achieving the NDP's spatial transformation vision of spatial justice, efficie   y, resilience, quality and sustainability (NPC, 2011). However, a transformed space must respond to the specific locality and its characteristics. It is not useful or realistic to expect the transformation required in a metro like Mangaung or Buffalo City to be the same as in larger metros like Johannesburg or eThekwini. Therefore, an important point to make is that the intervention will be unique and respond to the local reality, but must at the same time speak to the broader national transformation vision as defined   y the NDP.

The location of space is important for transformation

The reality is that 'urban areas allow for economies of scale and agglomeration, which in turn allow specialisation to occur,

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[1] For a further discussion of the spatial principles highlighted in the NDP, see NPC Background Discussion document on Spatial Principles (The Presidency, 2011).

and for resource generation and distribution to be maximised' (McGaffi and Kihato, 2013: 25). After many years of a land market system that benefit ed the few, elites (old and new) still control how land is used and owned in South African cities. This means very poor people are rarely able to access available land for shelter in areas that are close to other activities and opportunities – land parcels with existing investments and higher value are beyond their reach. 'These inequalities could have political consequences such as social unrest, land clashes and war' (ibid: 29), which South Africa has already seen in the form of land invasions and protests. Furthermore, for many South Africans, land is not just an economic or financial asset but is linked to their social and cultural history; there is a deep seated emotional attachment – the loss of land is like losing a lover (Mngxitama, 2015).

Given that land value, use and patterns are already entrenched, what intervention is required to change use, access, and value, and ultimately transform space in South African cities? According to Williams (2000), one of the requirements for transformation is the restructuring of physical spaces to achieve spatial justice and equity and to de-racialise apartheid spaces. More than a decade later, this point is reiterated in the Draft Integrated Urban Development Framework (IUDF), which states that 'property values refle t apartheid patterns of segregation and mono-functional use, which need to be addressed to promote spatial transformation. Effici t land governance and management will contribute to the growth of inclusive multi-functional urban spaces' (CoGTA 2014: 10).

The conversation about land reform has remained largely rural, with the focus in urban areas being on the housing programme and its associated benefits (i.e. access to land and asset creation over time). Despite the delivery of more than three million houses over the past 20 years, one of the biggest criticisms of the housing programme has been the location of housing projects, which have locked people into the periphery of cities. The majority of land claims are about urban land: of the 79 694 land claims made by 2003, four-fi ths (82% or 65 642) were in urban areas (Atuahene, 2014: 68). Yet the government's land programme is currently driven by the Department of Rural Development and Land Affair . This is where the challenge lies. The urban land question is perhaps one of the most complex and challenging that the post-apartheid government has had to deal with, but the preference is to focus largely on rural land – this is perhaps indicative of the levels of vested interests (economic, political, and social) in urban land.

Of the many factors that have inhibited more effective and aggressive land interventions in cities, the two most obvious (and often interconnected) factors are (i) contestation around controversial or disputed land claims where land value has significa tly increased; and (ii) the tension between where people are located versus where actual areas of opportunity exist. The issue of using land for social value or good is one that is explored in another paper in this series (Brown-Luthango,

2015) and so is not addressed in detail here. Nevertheless, any debate about expropriation (which is allowed by the Constitution if the land is for a social good) needs to be informed by a clearer definition and understanding of the broader social good in order to facilitate more effective land release. Furthermore, even where land is expropriated for a social good (e.g. making space available for more inclusive residential, commercial, environmental and cultural use), economic considerations are important. For example, if land is expropriated for developments targeted at lower-income communities, the surrounding land use and developments should be responsive to the needs of these communities, and so access and affordability are important.

Another reason for the insuffici t shift towards the desired spatial form is the widely held belief (by many in the private and public sectors) that any development is good development, regardless of the consequences. Thus, even developments that have led to gentrific tion (effectively excluding lower income or vulnerable groupings) have not been questioned. While improving run-down and underutilised areas is important, it may be time to consider the development model that at present inevitably leads to exclusion rather than long-term inclusive and sustainable development.

Where land is located is important both for those who lay claim to it – to enable access to opportunities and services – and for the state – to make interventions that will effectively transform cities to be more inclusive, sustainable and resilient. The land claims process has been extended by a further fi e years (to 2019), which may have further consequences for local government where well-located land is already very difficu to access. One example is the claim by the descendants of Chief Tshwane (after whom the Tshwane metro was named) that covers portions of the central business district, the area where the Union Buildings is located and vast tracts of valuable land around the city; land estimated to be worth billions. Regardless of how the claim is processed, the consequences are likely to be far-reaching for the city government and also for other actors operating in the urban environment.

Utilising land for spatial transformation

In urban areas, an important challenge for local government will be the demand for land from a range of competing (yet necessary) uses. The need for justice and restitution to resolve apartheid injustices has to be balanced with ensuring that land use and access meets future development priorities, specifically e vironmental and economic sustainability.

South Africa's growing urban population will continue to place pressure on towns and cities to provide adequate access to services, opportunities and the rights to the city. Access to well-located land and the means to improve their lives will be a major demand. While informal land markets have provided impoverished households with a means to access the city, urban land distribution and access dominate the political

discourse. City governments will have to engage with this fundamental question, if they are to be seen to take urban spatial transformation seriously. Given the existing historical patterns of exclusion, a critical priority for government should be those who are excluded from accessing well-located land with economic potential (McGaffin and ihato, 2013).

Cities need to come to grips with their role in steering development and spatial transformation. Local government should be the navigator and map the storyline for what happens in its area. Cities should be able to redirect investments (driven by either private or public sector) that clash with long-term plans or the broader transformation logic. Cities are enablers for more effective development and so should develop platforms, incentives and other links between the investment necessary to transform space and land investment to unlock catalytic transformation projects.

While it is important to recognise the historical context that has led to current land ownership, use and configu ation, it is also important to recognise that spatial development patterns change over time. How people move, the activities that take place in cities, how the economy functions, and the aspirations of people all contribute towards changing the demands on our cities and should inform investments and development decisions. This means addressing historical imbalances in the present but also taking the long view and planning for a different kind of future with different technologies, movement patterns, ways of living and engaging with space. In many cases, cities change and adapt very quickly, which must be matched by the use and access to land. To determine the appropriate interventions that will result in transformative developments therefore means knowing the growth trajectory of the broader city as well as specific areas within the city (SACN, [forthcoming]).

Why Does Land Matter?

Dispossession and the three Rs

The history of land in South Africa is steeped in dispossession and exclusion, with black South Africans denied the right to own land. For the most part, post-1994 attempts to resolve the land question have focused on the three Rs: redistribution, restitution and redress. These are all critical to reverse the apartheid legacy and to restore dignity in response to a process where 'a state directly or indirectly destroys or confisc tes property rights from owners or occupiers whom it deems to be sub persons without paying just compensation or without a legitimate public purpose' (Atuahene, 2014: 3). This has been the dominant land reform focus in South Africa and is a

crucial undertaking in view of the long-term intergenerational consequences of land dispossession. For many South Africans, the dispossession of their right to own land in the country of their birth has left a deep-seated and lingering impact. Therefore, restitution is not only about returning the physical confisc ted property or financial compensation but also about restoring the sense of humanity and equal worth, reinstating agency and reconnecting communities (Atuahene, 2014).

The major interventions around the three Rs have been the state's land restitution and subsidised housing programmes. While the first is aimed t compensation and (where possible) restoring access to land from which people were forcibly removed, the housing programme provides the opportunity for ownership of property as an intergenerational asset.

Resolving the land claims process has been fraught with difficultie because of the financial interests (where land is well located and valuable and has existing land uses) and the difficu y of the willing buyer/willing seller model (where huge financial value is demanded from current owners). In some instances, the onerous process of verific tion has unwittingly allowed fraudulent claims to be processed, thereby robbing some claimants of their right to compensation (Atuahene 2014: 88). In other cases, e.g. Evaton in Gauteng, claimants waited a long time for their claims to be processed because of poor communication, being geographically dispersed and a regular change of official (Atuahene, 2014). These processes are extremely difficul and carry with them a great deal of emotional baggage, as people who had been dispossessed and disregarded as legitimate citizens have been further subjected to a stripping of their dignity in a democratic South Africa. While this land-claims approach is an important response to the consequences of land dispossession, it has limits and should be a component of a broader land development strategy aimed at spatial justice and equality.

Cities need to determine and implement mechanisms that balance the need for redress, redistribution, restitution within a context of real resource constraints. Ensuring effective transformation that addresses the needs of urban residents (especially people affected by apartheid), while securing the future of our cities through sustainable practices, are two sides of the same coin. This may at times seem contradictory.

Land as a physical asset

An essential part of the transformation project is some form of redress for those who were deprived of the right to own and develop land. Yet the reality is that land is a fini e physical asset and cannot be reproduced. Competing interests are vying for access to suitable and prime land parcels, especially in urban areas where well-serviced, well-located land is highly valued.

[2] Timeslive. 'Pretoria under massive land claim', 5 March 2014. http://www.timeslive.co.za/thetimes/2014/03/05/pretoria-under-massive-land-claim

But without land the necessary development (economic, social, cultural, and environmental) for transforming and building our cities cannot take place. Furthermore, the existing land-use system, which underpins decisions about land use and management, is informed by a system of land rights that govern ownership and trade of land.

An important aspect to understand is who owns the land (and how much). As black South Africans were banned from owning land during apartheid, most valuable land parcels with existing developments and investments remain in the hands of a small elite and out of the reach of the majority. The state also owns large tracts of land, dispersed across different departments and state agencies. It is not always clear what land is available for development and obtaining land identified as suitable for development is often difficu . Although not dealt in depth by this paper, the land ownership issue is relevant for (i) the government's redistribution, restitution and redress agenda; (ii) the fact that many poor black urban residents continue to be poorly located with insuffici t access to services and opportunities (iii) its impact on the ability of the city government to manage its urban boundaries and (iv) how it limits/contributes to broader economic and social value.

How land is used

Over the past two decades, the land-use management system in South Africa has been critiqued extensively (Berrisford and Kihato, 2008; Charlton, 2008; Gorgens and Denoon-Stevens, [n.d.]), with some of the highlighted challenges being:

- The land-use management system in South Africa, which is fragmented and complex and unable to respond to the reality of the post-apartheid city.
- The poor alignment between the key agendas that inform space in our cities: planning, environmental and heritage concerns all determine land interventions but are poorly aligned at the local level and sectorally.
- The responsibility for planning, which has not been clearly located, with provincial and national government able to overrule decisions made at local government level.

Some of the above issues are addressed by SPLUMA, the introduction of which has been a major development (perhaps the most significa t in the past 100 years). A paper in this series (Berrisford, 2015) outlines the planning legislation over the past two decades and highlights the importance of addressing the challenges noted above. It also discusses SPLUMA and applauds the clarity provided by this legislation, which places the authority for municipal planning squarely in the hands of local government. This allows cities to design context-specific instruments to manage land use and development, creates the opportunity for strengthening their development visions (through spatial development frameworks – SDFs), implementing these visions (through

the land-use management schemes) and better aligning potentially confli ting sectoral interventions and plans (Berrisford, 2015). In essence, SPLUMA has the potential to address most of the key challenges raised above.

Nevertheless, SPLUMA is not a panacea to the land challenges in South Africa but does, if used appropriately, allow municipalities the opportunity to guide spatial transformation interventions. Locating authority for planning at local government level will enable municipalities to guide even national and provincial development initiatives. A municipality will be in a better position to drive a spatial transformation agenda, as its spatial development vision will be refle ted in its SDF, which in turn will be aligned with its land-use management scheme and the legislation (including environmental, transport and human settlements) that affects land use and development at the local level. SPLUMA is the first legislative intervention since the end of apartheid that is aimed at driving a more transformative outcome. If used as intended, guided by the overall and local spatial visions of municipalities, this Act has the potential to be a decisive tool for restructuring space.

Private and public value of land

Land is both a public and private good. It can be traded for a financial value but is also essential for public use that benefits society as a whole. A market value is attached to land, determining the estimated value for which a property should be exchanged. Market value is an important determinant in decisions about land but is not the only value. Land also has an economic and social function, which needs to be factored into decisions about how to use available land and to regulate land used by other actors. Land is needed for a range of cultural and social uses (e.g. parks and spaces for children, places to gather, public art and creative spaces etc.), all of which contribute to the overall character and functioning of urban spaces. If done correctly, these spaces are able to bring together people from various backgrounds and contribute towards the agenda of inclusivity and cohesion.

Even where land is used by the private sector, it is important to incentivise investments that support – and, where necessary, penalise investments that appear to contradict – the spatial transformation agenda. All decisions related to the urban environment should contribute in some way towards the broader spatial transformation agenda. Even if they do not explicitly contribute to this agenda, these decisions should at the very least not contradict the vision being implemented by cities. For example, at one end of the spectrum is a private development like Steyn City, while at the other end is the mega-city approach by the Department of Human Settlements. These types of projects are counter to the transit-oriented development approach adopted by

[3] Personal communication with M. Napier, 4 June 2015.

the City of Johannesburg to drive spatial transformation. A development like Steyn City is not only located on the urban periphery but also further fragments the city along class lines, requires operation and maintenance from the city and does not conform to the vision of a more compact, connected and integrated city. In the case of mega-projects, these may be sustainable in their own contexts but are, similar to projects like Steyn City, disconnected from the city's strategy to ensure better access, location and integration within the broader city fabric.

The property market

The housing programme can be seen as one of the largest land redistribution efforts, creating a sizeable housing market where previously there was none. However, the extent to which this programme is located within the broader land and property market is questionable, especially in urban areas where the subsidised housing market functions outside of the established higher-end property market. The trade in subsidised houses has often operated informally, particularly in the early years of the housing programme when people were not aware of the value of their house or how to trade this asset. Furthermore, the costs associated with home ownership meant that many families were unable to afford to maintain their homes, and renting out or selling these properties was often the best available option.

Refle ting on the current urban property market, the IUDF notes that 'there has been no substantial land reform and restitution, in part because of the importance of the formal property market, which increased significa tly between 1994 and 2014' (CoGTA, 2014: 15). For many South Africans, the broader formal property market remains out of reach, which has led to a growing small-scale rental property market. This market could be supported by appropriate interventions (e.g. the upgrade of bulk infrastructure and increased open, communal spaces as environments densify) that would benefit both landlo ds and renters.

An important consideration is that land is an important financial asset for municipalities, which derive a great deal of revenue from investment in and sale of land on the property market. Therefore, for local authorities, a crucial concern is balancing the need to generate income for day-to-day activities with the ability to use land more strategically to achieve spatial outcomes.

Land for transforming the built environment

Land is the essential component that underpins effective urban development and spatial transformation. 'Ensuring adequate rights to and governance of land is thus critical if the means of production are to be adequately used to increase the capabilities of people to create a decent life for themselves' (McGaffi and Kihato, 2014: 23). Transforming space requires the transformation of the built environment to allow for more equitable, effici t, effective spatial form and functioning. How we plan for and manage land is integral to this. While considerable emphasis is placed on developing sustainable human settlements, the economy, improving mobility and access, and better managing vulnerable natural resources, all of these depend on appropriate and effective land availability, management and use. Public transport and human settlements both play a critical role in shaping the morphology of our towns and cities, and so ensuring the availability (and also maximising utility and value) of well-located land for shelter and transport is critical. Transforming land is fundamental for built environment transformation but also has implications for the environment.

Environmental considerations

Plans to transform the built environment and space in cities are often poorly aligned with environmental and heritage concerns in cities (Gorgens and Denoon-Stevens, [n.d.]). The environmental agenda is especially important if cities are to remain resilient to natural and other disasters, maintain fini e resources such as water and energy, and effectively manage waste. The close relationship between environmental issues and major infrastructural investments cannot be overestimated. Without access to natural resources, cities cannot function. Open spaces (for urban agricultural activities) and quality public spaces (for communal/community activities and for mitigating the effects of urbanisation on the environment) are important, especially within the context of compaction and densific tion. The challenge is to ensure sectoral alignment as well as alignment at the local sphere of programmes and plans that affect the local space. Poor alignment is revealed when new settlements are built without enough open space, transport access or bulk infrastructure management.

Often the 'green agenda' is seen as being in opposition to housing, transport and planning for infrastructure development. However, cities have to understand that aligning planning for development and the environmental agenda is about both sustainability and the economy. For example, land for urban agriculture contributes to food security, which is vital for economic growth and the development of a healthy and resilient city. Making adequate land available for effective water, energy and waste management must also be a priority, as cities cannot exist without these resources. This includes management and preservation of parks, wetlands and spaces critical for biodiversity.

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⁴ See the work of Urban Landmark www.urbanlandmark.org.za and the Finmark Trust www.finma k.org.za

A Spatial Transformation Change Agenda

South Africa is 63% urbanised (Stats SA, 2011) but the apartheid spatial patterns in cities remain. In post-apartheid South Africa, the state-subsidised housing programme is one of the many interventions aimed at addressing the legacy of dispossession, underdevelopment, poverty and inequality. This programme is considered the largest land distribution programme in the country, providing land ownership to millions of households that were previously prevented from owning land (Napier and Ntombela, 2006). This access to the land and property market would not have happened 'naturally' given the functioning of the existing formal property market. However, access has largely been on peripheral land because of the cost of purchasing land, particularly in urban areas. Therefore, while significa t progress has been made in extending land tenure, transforming the spatial patterns of South African cities has been a lot harder (Napier and Ntombela, 2006).

What is the status quo?

Twenty years after apartheid, 'it is harder to reverse apartheid geographies in 2014 than it was in 1994' (CoGTA, 2014). Factors that have contributed to existing spatial patterns include state interventions, private sector investment decisions, the historical spatial patterns, and ongoing land speculation in urban areas (Napier and Ntombela, 2006).

a) *The legacy of apartheid:* The land reform programme was introduced post-1994 to address the apartheid dispossession of land and exclusion of black people from the formal land and property market. The principles of restitution, redistribution and redress have thus guided the formal state-driven response. However, as highlighted by Atuhene (2014), the land claims process has had its own challenges, which limited its ability to resolve all claims and rights to access land in urban areas. The demands for shelter have driven land invasions in cities, as both new and existing urban residents struggle to find safe and affordable accommodation.

b) *South African property markets:* The existing formal property market has effectively excluded poor, black urban residents. State interventions have created a secondary housing market, which has not been effectively absorbed into the broader market. A major reason for this is the high cost of well-located land, which has led to subsidised housing being developed on the periphery of cities (CoGTA, 2014), entrenching segregated urban settlements and perpetuating the location of poor black urban residents who are disadvantaged in their ability to access and afford services such as transport and other social amenities.

c) *South Africa's urban lifestyle:* Investment in road infrastructure and the dependence on private cars and suburban lifestyles has produced urban sprawl, a highly ineffici t spatial form, in South African cities (CoGTA, 2014). This type of development is unsustainable because of the costs and the amount of land required for infrastructure to service far-flung and dispersed settlements. The cost of access is greater for poor communities, which contributes towards higher inequality. In addition, at both the higher and lower income scale, South African urban populations aspire to a lifestyle that consists of gated communities, vehicle ownership and high consumption patterns. For most people, the overwhelming desire is for freestanding housing and estates and private vehicle transport, rather than denser living arrangements and increased public transport, which would result in more effici t and effective land use.

d) *Land politics:* At the formal and informal end of the spectrum, land is used to drive and inform political and economic interests. As another paper in this series explains, 'symbolically, land remains an unresolved political question because of property privilege heavily skewed in favour of continued accumulation by whites' (Mkhize, 2015: 1). While ownership among black people has increased, the overwhelming perception is that land remains in the hands of a minority. The issues of ownership and access, which continue to elude the majority of black South Africans, will need to be addressed. Decisions about land are bound to be unpopular, and so strong political leadership will be key to making the tough decisions and trade-offs related to land.

e) *Contestation around urban land:* Residential, commercial and infrastructural, environmental, agricultural and social purposes compete for the fini e resource that is land. Land cannot be reproduced but can be 'repurposed again and again' (CoJ, 2014: 5), as long as it occurs in a manner that prevents the 'loss of urban functionality and effici y, the loss of productive land, and a change in the ability of the city to protect itself from external shocks' (ibid). Developing urban spaces is about ensuring space for human activity in a sustainable manner. The way in which the needs for shelter, adequate transport, job opportunities, effici y and compaction are addressed will have fundamental implications for the sustainability of cities, and vice versa, and so competing priorities will have to be managed.

Towards a change agenda

Transformative change is both about where people live and what access they have to the opportunities for quality and sustainable livelihoods. An effective change agenda has to consider the needs of the urban residents and the economic, financial and environmental sustainability of the city. While the NDP spatial principles are important for guiding a broader understanding of how space should transform, more work is

needed to translate these principles into implementation at local level. A change agenda at the local level could thus:

- Focus on where people are and how this influen es issues of inclusion, cohesion and integration of the city. Location matters and, over the long term, the current locational patterns in South African cities must be reconfigu ed.
- Consider what access people have to a range of services and opportunities that will allow them to access various livelihood strategies, which would improve their current situation and the choices available to future generations.
- Provide land uses that allow for a range of activities, including informal, within a regulated environment that protects poorer urban citizens from abuse and sub-standard environments without hindering their ability to maintain their livelihood strategies.
- Advocate for sustainable approaches to the factors that underpin the ability of the city to develop and grow. This includes ensuring financial sustainability and the ability of local authorities to generate the revenue required for transformative interventions.
- Improve city efficienci , in order to improve the ability to deliver services to residents, and to attract and retain the necessary economic investment, which continues to grow and contribute towards the development of the city.
- Implement a land-planning and management system that facilitates mobility and access, denser and more compact developments, and steers transformative interventions.
- Consider the needs of both the current and the future city. In the long term, change in where people are located, and how land is used and functions.
- Ensure that environmental concerns are taken into consideration to ensure the long-term resilience of the urban environment.

Cities need to direct land investments and decisions towards this spatial agenda. Cities need to engage with the politics and realities of urban land, which means confronting and refle ting on what is at stake if the land redistribution debate is not tackled more aggressively and strategically. Yes, economic interests must be maintained, but failing to recognise the growing frustration of those dispossessed, left landless and excluded will have far-ranging implications for the transformation project and the future city.

Cities need to start steering the land debates, including balancing land ownership with investments and uses that facilitate access and inclusion in cities. They need to move beyond the ownership and restitution debate to recognise and take advantage of opportunities to improve access through land use.

What Could Cities Do?

Constitutional and legislative alignment is beginning to take shape (e.g. SPLUMA and the ongoing attempts to devolve key built environment functions for human settlements and transport to the local level), providing local authorities with the opportunity to guide spatial transformation and specific land interventions.

The following land-related aspects should be considered as part of a municipal spatial transformation agenda:

a) *Develop a clear land strategy.* Land has traditionally been key to asset creation but, as the world and technology changes, the way in which land is valued and used needs to change, so that a future generation is able to access a different kind of asset creation. Spatial investments made now will fundamentally change and reconfigu e the urban form. Therefore, it is important to consider the spatial outcomes of the interventions that address short-term requirements (e.g. public transport investments). The strategy should be clear on how to physically change the locations of investment, where people are located and how to actively change the current unequal spatial layout.

b) *Engage with public and private actors to deal with politics and contestation.* A conversation about land is required that goes beyond redistribution, restitution and redress and recognises that the transformation of South African cities is as much about who owns land as about how land is used and managed. Cities can be effective drivers of local and national development if land – its role and the values South Africans attach to land - informs the critical interventions in the built environment.

c) *Recognise power and authority of local government.* Local government must guide investments toward the long-term spatial vision in South Africa. City governments have a tough but necessary task to play in steering and 'disciplining' land investments, regardless of land ownership, towards development that contributes to spatial transformation. It is essential that land-use management decisions and particularly development approvals do not run counter to the broader strategy of transformed, integrated cities.

d) *Local government alignment.* Internal coherence and alignment among municipal departments responsible for built environment investments should be supported administratively and politically. It is within the ambit and control of local government to ensure that departments responsible for planning, transport, housing and human settlements, infrastructure development and the environment are aligned and function optimally.

e) *External alignment and coordination with various actors.* Local realities must inform engagement and negotiation with provincial and national departments and stakeholders to ensure more effective alignment, implementation and monitoring of the country's long-term growth and development. Current challenges experienced by municipalities in accessing land need to be addressed, and state-owned enterprises must be held accountable (and where necessary penalised) for holding onto (or selling off at exorbitant prices) land parcels needed for development.

f) *Capacity.* Cities do not currently have the capacity to make innovative, fl xible, informed, visionary decisions about land in the context of transformation. They will have to 'scale up their capacity to execute their newly-confi med mandates' in terms of both 'technical as well as political capacity' (Berrisford, 2015: 18). Cities will require suffici t capacity to navigate the numerous challenges and contestation of the new planning regime.

Finally, cities need to take responsibility for the developments approved, as many developments have clashed with the broader development agenda, and steer more appropriate investments. Cities need to balance the need for income (required for service delivery and day-to-day functioning) derived from the sale of property and property rates and taxes with the longer-term spatial transformation vision.

Conclusion

The question is how to think of, manage and develop urban land to effectively transform space to meet the country's development goals. The history of land dispossession in South Africa has made the conversation about land emotive and political, but also essential for future development in South Africa. To date, this conversation has not been transformative enough. A number of assumptions and deep-seated beliefs about land need to be interrogated in order to rethink and reconfigu e the land situation: who is allowed to access land, what rights people have to land, vested land interests and how the system protects and further entrenches unequal land rights. A balance must be found between the need for shelter, effective transport infrastructure that increases mobility, economic development, and mixed-land use that results in more compact cities, with the need for open space, agricultural and environmental activities and maintaining ecological balance.

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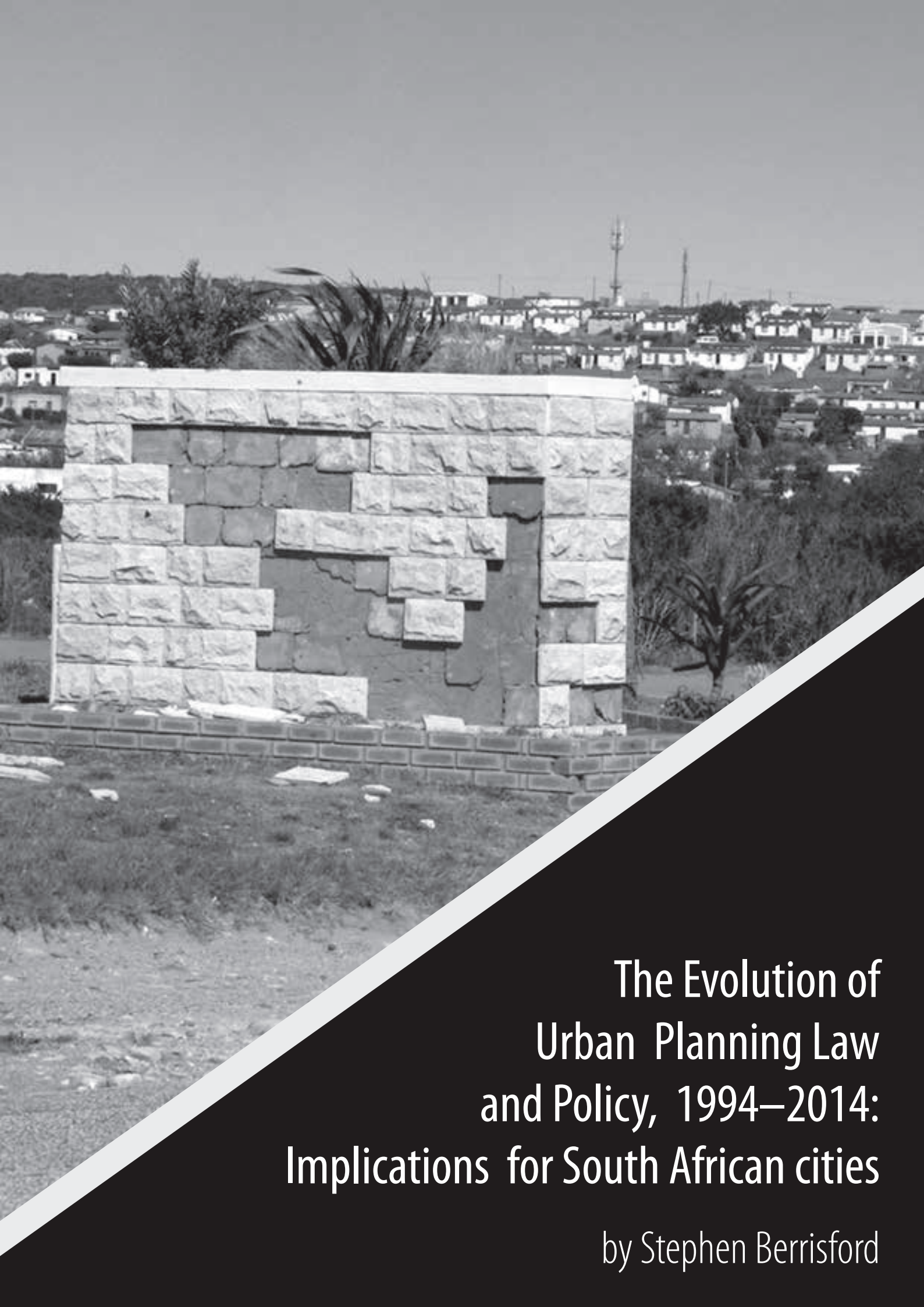
The Evolution of
Urban Planning Law
and Policy, 1994–2014:
Implications for South African cities

by Stephen Berrisford

CONTENTS

Introduction

'This situation cries out for legislative reform', said Judge Jafta in the ground-breaking Constitutional Court decision in 2010. With these words, the judge summarised the frustration that has characterised the evolution of urban planning law in South Africa, especially since the advent of the new Constitution in 1996. In its judgment, the Constitutional Court was obliged to provide answers to questions that have bedevilled the development of post-apartheid urban planning laws, and increasingly complicated cities' decision-making relating to spatial change and land-use management. The clarity provided by the Court gave the impetus for a new burst of law-making in the planning sector, exemplified by the highly symbolic enactment of the Spatial Planning and Land Use Management Act (No. 16 of 2013) (SPLUMA) by Parliament.

As the country embarks on a dramatic new phase of planning law reform, cities, the private sector and other spheres of government are all facing new and challenging questions. The purpose of this paper is to locate these questions within a historical context. Providing a historic context is not simply a matter of academic interest. It is an empowering step that should enable officia , especially in cities, to engage with the unfolding of new legal frameworks with greater confiden e and a stronger ability to promote and protect city interests in the new system.

The evolution of planning law has not been uncontested, and the author has been part of many of the discussions and debates that have characterised the process. This paper builds on two earlier pieces of work: a study in 2011 for the South African Cities Network (SACN) and the Department of Cooperative Governance and Traditional Affairs (CoGTA) and a roundtable in 2012 that was convened by the SACN together with the Community Law Centre and Urban LandMark. Readers wanting a more academic discussion of the evolution

of planning law in South Africa might find the discussion in Oranje and Berrisford (2012) of some interest. Similarly, the textbook Planning Law by Professor Jeannie Van Wyk (2012) provides an excellent and comprehensive overview of planning law in South Africa.

Following an overview of the main events in the evolution of planning law, which raises the key substantive questions, the paper discusses the current legal questions facing cities. It suggests an approach that cities can use in their ongoing engagements with other spheres, as well as in the day-to-day management of spatial planning and land use regulation. The four areas in which cities are urged to be proactive in anticipation of the roll-out of SPLUMA (and indeed even if SPLUMA is never rolled out) are the scaling-up of planning and land-use management capacity, rationalising of decision-making systems, resolving intergovernmental disputes and influencing the emerging generation of statutory instruments to be issued in terms of SPLUMA. The scale of these challenges is such that cities will benefit enormously from tackling them together, preferably through a body such as the South African Local Government Association (SALGA) or the SACN.

The Timeline

Figure 1 shows the key steps that have marked the evolution of planning law in South Africa over the past 20 years, divided into three periods:
(a)   The nineties, from 1993/4 to 1999.
(b)   The 'noughties', from 2000 to 2009.
(c)   The 'teens' (post-2010).

Figure 1: Timeline showing key steps in evolution of planning law
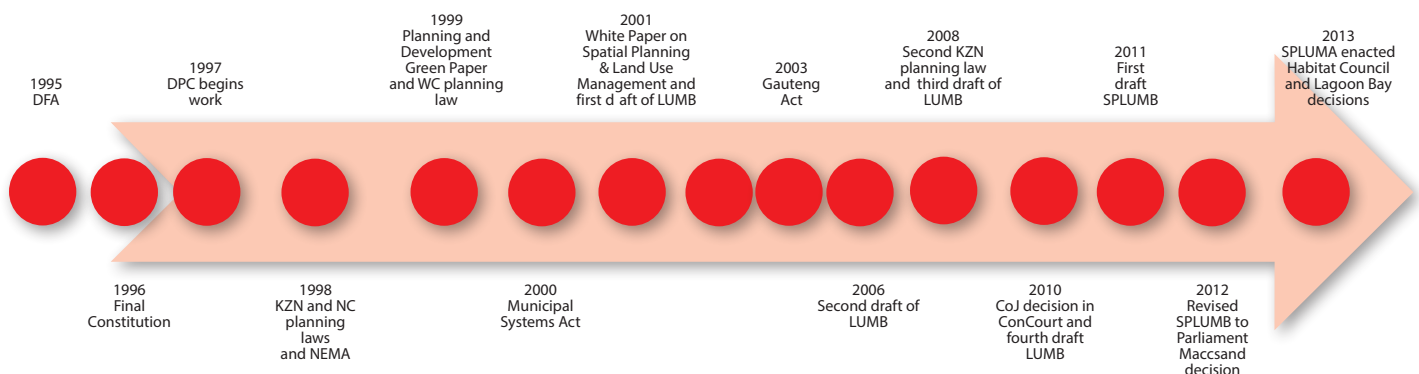
1 City of Johannesburg Metropolitan Municipality v Gauteng Development Tribunal and Others, [2010] ZACC 11 at paragraph 33.

2 Provincial Land Use Legislative Reform: a Response by Provincial and Municipal Government: the author was one of two team leaders (along with Gemey Abrahams). This study provided a comprehensive overview of the evolution of planning law in each of the country's nine provinces. An overview report is available on the SACN website under two publications: Addressing the Crisis of Planning Law Reform in South Africa (2012a) and Important Legal Issues for Provincial Planning Law Reform dealing with Spatial Planning and Land Use Management (SACN, 2012b).

3 This roundtable, convened as Parliament was debating the final clauses of wh t was to become SPLUMA, brought together experts and stakeholders from all three spheres of government to chart a way forward for urban planning law reform. The author of this paper was a co-convenor of the roundtable, together with Professor Jaap de Visser. The report from that meeting is also available on the SACN website under 2012 publications.

The 1990s: a time of great activity

This was a decade of great promise in the development of planning law in South Africa, and a decade in which the scale and complexity of urban planning law was underestimated. As with many other governance aspects at that time, there was a commitment to undo the legislated and real impacts of apartheid and a great optimism that planning law reform would be the key to achieving this. Prior to 1994, a think-tank based at the University of the Western Cape, the Institute for Local Government and Development (INLOGOV), together with COSATU and experts from various urban development non-governmental organisations began developing alternative approaches to planning law. Simultaneously, the Urban Foundation and the National Housing Forum convened a group of experts on planning law. During late 1993 and early 1994, these two initiatives were combined into a structure known as the Forum for Effective Planning and Development (FEPD). After the 1994 elections, it became a government structure, still known as the FEPD and co-chaired by the ministers responsible for Housing, Land Affairs and the Reconstruction and Development Programme, until it was disbanded in the late 1990s.

Drafting the DFA

After the 1994 elections and the allocation of specific functions to different ministries, work began in earnest on drafting new legislation. The overriding fears at that time were that:

(a) The multiple legal systems in place to regulate land use and development and 'township establishment' would hold up the new government's investment in housing projects.

(b) 'Old-order' official opposed to the political transition would use their knowledge of the inherited planning laws to stall the new government's programmes of reconstruction and development.

(c) Municipal councillors would politically obstruct new programmes (especially new housing projects in well-located areas) because local government had not gone through the same far-reaching political transformation that national and provincial government had experienced.

In 1995, the legislation drafted under the auspices of the FEPD became the Development Facilitation Act (known as the DFA). It was among the first batch of laws enacted by the newly elected Parliament; a testament to the urgency that surrounded the idea of new planning legislation and to the preparatory work began prior to 1994. The DFA was both ambitious in its reach and pragmatic. On the one hand, it introduced provincially appointed development tribunals with sweeping powers to approve land-use changes, in the face of possible opposition from either neighbouring landowners or local government. On the other, it was explicitly a temporary measure, providing for the appointment of a national Development and Planning Commission tasked with advising on a more sustainable, long-term rationalisation and reform of planning and development legislation. Similarly, the 'general principles' established in Chapter 1 of the DFA applied to any land-use and development decision, whether taken in terms of the DFA or other legislation. This refle ted the acceptance that, for the time being (or at least until the Development and Planning Commission's recommendations had been implemented), land-use and spatial planning decisions would still be made according to the inherited legislation.

The DFA did not provide for local spatial plans per se but instead provided for 'land development objectives' (LDOs), which were intended to be a relatively 'quick and dirty' instrument that a municipality could use to set out its short-term spatial and land-use priorities or objectives. The advantage of the LDOs was that, once approved by the municipal council, no other authority (including a provincial development tribunal) could approve a land-use change that deviated from the relevant LDOs.

The new Constitution

Between the coming into effect of the DFA in 1995 and the start of its implementation in late 1996, a fundamentally important event occurred: the finalis tion of the country's Constitution, which replaced the interim Constitution of 1993. The new Constitution was to have serious impacts on the future evolution of urban planning law, many of which were not anticipated when the Constitution's text was finalise . The chief impact was in Schedules 4 and 5, which set out the respective legislative competence of national and provincial (and indirectly local) government. Table 1 sets out the competences relevant to the evolution of urban planning law. With the enactment of the 1996 Constitution, the dominant question hanging over urban planning law became: which sphere of government has the power to make new planning laws in so far as they relate to the traditional practice of 'town and regional planning' (i.e. approving land-use changes, subdivisions and township establishment)? In the intervening 14 years, each of the three spheres has come up with different approaches, and these approaches themselves have changed. Until the Constitutional Court started to provide guidance in 2010, each sphere developed these approaches – and, of course, different provinces and different metros came up with their own approaches – largely on the basis of opinions commissioned from various advocates. After 2010, the opinions of judges, especially those of the Constitutional Court, began to lead the development of new approaches and new positions by the different spheres.

Prior to 1996 the constitutional dispensation provided for 'town and regional planning', which was widely accepted as describing both the making of plans and the management of

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4 A fuller account of the period up to 2010 can be found in Berrisford (2011).

land use and development. However, this terminology was jettisoned in the 1996 Constitution, partly because of the distaste towards the practice of town and regional planning, widely (and correctly) seen as a professional practice complicit in the implementation of apartheid spatial planning. Thus the 1996 Constitution used terms such as 'municipal planning', 'urban and rural development' and 'regional planning and development'. The competences allocated to Schedule 4 were 'concurrent', in that both national and provincial government are empowered to draft legislation concurrently. Where a confli t emerges between a provincial and a national law, rules in Section 146 of the Constitution apply. In the case of Schedule 5 competences, Section 44 of the Constitution sets out a more limited set of conditions that has to be met if a national law is to prevail over a provincial law, thus giving provinces wider but not unfettered legislative powers. Where a legislative competence falls into Part B of Schedules 4 or 5, then the laws made by either provincial or national legislation must provide for executive decision-making to occur at a municipal level. Furthermore, in relation to areas in both Parts B, municipalities are empowered to make their own bylaws. Although these bylaws may not confli t with national or provincial legislation, national or provincial governments are also barred from acting in a way (i.e. making laws) that compromises or impedes a municipality's 'ability or right' to carry out its constitutionally based activities, which in this case includes their power to make bylaws.

The 1996 Constitution provided a guide on how to proceed with urban planning law reform, but much was left to interpretation. Increasingly, the most important question became that of the distinction between 'urban and rural development' and 'municipal planning'. While both of these competences are contained in Schedule 4, thus falling into the category of concurrent competences, 'urban and rural development' is in Part A and 'municipal planning' is in Part B. This distinction is significa t because, under Part A legislation, any sphere of government can be given executive decision-making powers. If the relevant competence falls under Part B, as 'municipal planning' does, then that decision-making power must reside with the municipality. So, in practical terms, this means that if a new planning law falls under 'municipal planning', then the power to make decisions in relation to changes of land use, rezonings, subdivisions, township establishment etc. has to sit with local government. These decisions cannot be taken by a provincial (or national) body or structure.

Table 1: Schedules 4 and 5 and competences relevant to urban planning law

Implementing the DFA

The Department of Land Affairs (DLA), the precursor to the current Department of Rural Development and Land Reform (DRDLR), was responsible for implementing the DFA. Three provinces chose not to implement the DFA in full: the Free State, KwaZulu-Natal and the Western Cape decided not to establish provincial development tribunals. In the Free State, the land-use approval system in place already effectively bypassed local government decision-making, which meant that a provincial development tribunal was seen as superfluou . For the other two provinces, the decision to opt out of the development tribunals was largely fuelled by a party political imperative to be seen to be acting independently of national government. However, all three provinces did observe the Chapter 1 general principles. Most municipalities in most provinces began the process of developing LDOs (with some financial assistance from the national department). The national department provided training and related technical support to the six provinces that established development tribunals, which was extended to include KwaZulu-Natal, when a change in provincial government leadership led to the province also deciding to establish a development tribunal.

Soon after the DFA was implemented, a number of provinces starting working on draft provincial planning laws to replace the inherited legislation that remained in force. Again, KwaZulu-Natal and the Western Cape followed a political impetus to develop their own legislation. Although not driven by political concerns, Gauteng and the Northern Cape also began their processes but, unlike KwaZulu-Natal and the Western Cape, worked towards a provincial planning legal framework that built on the system established by the DFA. They thus incorporated provincial development tribunals into their models. The Northern Cape and KwaZulu-Natal were first to approve their new laws in 1998, followed by the Western Cape in 1999 and eventually Gauteng in 2003. With the exception of the Northern Cape, none of the other three provinces was able to implement their new laws, primarily because of disputes between the provincial governments and the metro municipalities, which challenged the powers given to provincial decision-makers at the expense of local government. This tension between provincial and local government was important, as it signalled the central theme that would continue – and still continues – to dominate the development of planning laws in the country.

During this period, relatively few reviews had been done of the impact of the DFA. In 2010, Urban LandMark and the Presidency conducted a review, as a 'background technical assignment' to work on a regulatory impact assessment on

SCHEDULE 4 (AREAS OF CONCURRENT LEGISLATIVE COMPETENCE)		SCHEDULE 5 (AREAS OF EXCLUSIVE PROVINCIAL LEGISLATIVE COMPETENCE)	
PART A	PART B	PART A	PART B
Environment	Municipal planning	Provincial planning	-
Regional planning and development	-	-	-
Urban and rural development	-	-	-

the draft Land Use Management Bill (Urban LandMark, 2010). The review generally found that the DFA had provided an efficit and effective system for managing land development especially in provinces with weaker capacity.

The Development and Planning Commission (DPC)

In late 1997, the DPC was appointed and included representatives from each provincial government, the private sector, local government and civil society, as per the requirements set out in Chapter 2 of the DFA. It was a statutory body with a mandate prescribed in the Act. This mandate was given a specific focus by the then Minister of Land Affairs who stipulated that within 18 months he wanted a draft Green Paper on Development and Planning.

The Green Paper on Planning and Development

In May 1999, the draft Green Paper was duly presented to the Minister, who immediately published it for comment. The Green Paper highlighted the following key concerns:
(a) No shared vision of what spatial planning should be.
(b) A lack of coordination between different spheres and between different departments.
(c) A lack of capacity.
(d) A high degree of legal and procedural complexity.
(e) A very slow pace of land development approvals in some parts of the country.

The Green Paper proposed an 'incremental approach' to planning law reform, based on a 'minimum number of government actions', coordinated from 'a departmental home for land development planning in the Department of Land Affair'.

The Green Paper made the following recommendations, together with implementation recommendations:
(a) Use an amended DFA as the basis for a new planning system.
(b) Explain and educate on the meaning, importance and impact of the DFA Chapter 1 general principles and the 'DFA paradigm' more broadly.
(c) Assist each province to rationalise the laws applicable within its boundaries into one land use and planning law for each province.
(d) Make integrated development planning by local government mandatory, as well as land development management systems that support the integrated development plans.
(e) Clarify the roles of the different spheres within a decision-making system.
(f) Speed up land development approvals.
(g) Decentralise decision-making to local government.

(h) Address capacity constraints through monitoring, technical assistance and reviewing technical training.

Outflanking by NEMA

While the planning law evolved slowly but steadily during the 1990s, the country's environmental laws were developing much faster. The most significat of these laws was the National Environmental Management Act (NEMA) (No. 107 of 1998), which provided the first comprehensive legal framework for conducting environmental impact assessments. It replaced the very limited scope of the now repealed Environment Conservation Act, although it took until 2006 for regulations to be proclaimed that would enable the NEMA requirements for environmental impact assessments to be implemented. A key theme underpinning NEMA is the importance of integrated environmental management. Central to this objective is the integration of decision-making between different authorities charged with approving land-use changes. Although NEMA was amended a decade later, to provide for integrated decision-making, the immediate impact was that new laws for environmental authorisations seemed to be moving faster than that for more conventional land-use approvals.

The noughties: consolidating law and policy

The Municipal Systems Act

Perhaps the most significat legislative development since the DFA was the enactment of the Municipal Systems Act, which fimed up considerably the requirement that every municipality produce an Integrated Development Plan (IDP). The IDP was intended to be an all-encompassing plan for a municipality, covering financia, institutional, spatial and other forms of planning. Contained within every IDP was a Spatial Development Framework (SDF), which had to 'include the provision of basic guidelines for a land use management system for the municipality'. Although concerted efforts were made at the time to align the need for integrated development planning with the requirement that municipalities also adopt LDOs, in terms of the DFA, in practice the implementation of the Municipal Systems Act saw most municipalities abandoning their LDOs. In some cases, municipalities submitted their SDFs both for approval by the municipal council in terms of the Municipal Systems Act and to the province's Member of the Executive Council (MEC) for Local Government in terms of the DFA, in order to ensure that their planning instruments satisfie both laws' requirements. This practice however died off quickly.

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5 In the various constitutional dispensations prior to the 1996 Constitution, 'town and regional planning' was positioned as an area of provincial competence, at least in relation to the four provinces of the old Republic of South Africa. It was a national competence of the 'national governments' of the various TBVC states (Transkei, Bophuthatswana, Venda and Ciskei).

The White Paper

Almost oblivious to the fundamental changes that had occurred to the land development approval (through NEMA) and municipal spatial planning (through the Municipal Systems Act), in mid-2001 the then DLA submitted a draft White Paper to Cabinet. This document had been compiled on the strength of the comments submitted on the Green Paper published in 1999. However, the White Paper's proposals for new planning laws differed markedly from the Green Paper. The White Paper took an entirely new approach to the constitutional question, claiming to avoid the vexed question of whether traditional urban planning laws fall under the constitutional competences of either 'urban and rural development' or 'municipal planning'. Instead, the White Paper argued that, because land use concerns the use and development of land, and land is an area in which national government has exclusive legislative competence, provinces have no role to make planning laws. Only national government can do so. Building on the approach adopted in relation to water use by the National Water Act (No. 36 of 1998), the White Paper advocated for one uniform national law to regulate land use, spatial planning and development. It was a radical new idea and, while it may have had theoretical value, found very little support outside of national government. Provinces and municipalities, especially metros, were united in their opposition to this idea. The then Minister and Deputy Minister of Land Affairs were unable to resist that opposition. With the death in 2009 of the Deputy Minister, who had championed the views propounded, the White Paper lost its last high-profile supporter. Technically the White Paper remains national government policy today but, in practical terms, has had no impact on the subsequent evolution of legislation.

Policy uncertainty and ongoing efforts to develop new legislation

With the White Paper of 2001 failing to find traction, the DLA's various draft Land Use Management Bills submitted to Parliament in the 2000s foundered in a sea of opposition. Two provinces proceeded with the proclamation of new planning Acts: Gauteng in 2003 and KwaZulu-Natal in 2008. Neither of these two provincial interventions resulted in immediate or effective change, and the inherited legislation remained in place. In KwaZulu-Natal the 2008 legislation did come into effect in 2010, but in Gauteng the law remains dormant.

During this period of ongoing policy and legal uncertainty, some of the metros, led by eThekwini, began to propose a view that because land use management and spatial planning, at least by a municipality, fell squarely under the umbrella of 'municipal planning', the solution to the law-making impasse was to allow municipalities to develop their own municipal bylaws, which would effectively remove the need for provincial or national legislation. City official from eThekwini

argued that, if national and provincial government could not agree on a way forward, then the municipalities should take up the challenge and substitute their own law-making powers for those of provincial and national government.

This was of course the polar opposite of the approach proposed in the White Paper. Instead of one uniform set of rules governing land use and development in the country as a whole, the logical conclusion of the eThekwini approach was a scenario in which every municipality could have its own tailor-made set of regulations designed to fit its own particular configu ation of land development pressure, environmental considerations and municipal capacity. At the time the eThekwini approach was regarded as a fringe argument and one that could not possibly be taken seriously, at least not in the halls of national and provincial governments.

2010: moving forwards

The Constitutional Court steps in

From the mid-2000s, a confli t had been brewing between the City of Johannesburg and the Gauteng Development Tribunal (GDT) established in terms of the DFA. The City opposed decisions taken by the GDT that contradicted the provisions of the municipal SDF approved in 2003 in terms of the Municipal Systems Act. Earlier versions of the municipal SDF had also been approved as LDOs in terms of the DFA, but the 2003 SDF was not. Legally this meant that the GDT was no longer obliged to make decisions consistent with the City's SDF, as the DFA gave the tribunal sweeping powers to disregard the provisions of most other legislation governing land use and development.

Matters came to a head when the City refused to register the decisions of the GDT in its land-use management and land administration systems. Effectively the City refused to recognise the validity of the GDT's decisions. Developers who had obtained approval to develop large swathes of land on the outskirts of Johannesburg were left in a vulnerable position, as they could neither market their new developments nor access the City's infrastructure and urban management networks. The matter thus headed to court, progressing through the Witwatersrand Local Division and the Supreme Court of Appeal before finally reaching the Constitution Court, which gave its decision in 2010.

At the heart of the matter was the now long-running question of whether land-use approvals fell under the 'urban and rural development' or 'municipal planning' competence. If the former, then a provincial structure such as the GDT

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[6] See sections 24K and 24L of NEMA, as amended.

[7] Section 26(e) of the Municipal Systems Act.

could approve changes to land use; if the latter, then only a municipality could give that approval. The court came out fi mly in favour of the view that land-use change, rezoning and township establishment fall squarely under the competence of 'municipal planning'. The implications of this finding were dramatic.

- Firstly, the court held that the parts of the DFA providing for provincial development tribunals were unconstitutional and invalid.
- Secondly, despite this finding of invalidity, the court recognised that if development tribunals were to fall away overnight, this would create many problems in provinces (and particularly in non-metro provinces that had begun to depend on tribunals to handle large land development applications). The court thus gave the national government a two-year period in which to replace the DFA with new legislation, allowing the tribunals to continue operating in certain parts of the country during that period. Thus began the process of developing the new legislation, which was to become the Spatial Planning and Land Use Management Act (SPLUMA).

SPLUMA

Parliament missed the Constitutional Court's two-year deadline but did, three years later, approve SPLUMA, which received the President's assent in August 2013. The date on which the Act comes into effect was gazetted as 1 July 2015.

The Bills that had preceded SPLUMA, over roughly 12 years, had each refle ted a different approach to the interpretation of the Constitution's provisions regarding legislative competence. The Constitutional Court's 2010 decision in City of Johannesburg v Gauteng Development Tribunal fundamentally influen ed the final Bill that was submitted to Parliament. During the three years that followed this decision, the Court's position was reinforced through a number of judgments, in particular three important cases: Maccsand, Habitat Council and Lagoon Bay, which are discussed below.

The theme running strongly through all three cases is the confi mation of the 2010 position that municipal planning – which encompasses both the making of municipal plans and the regulation and management of land use and development – is a municipal function. In each of these cases, the Court had to grapple with the consequences of a 100-year-old system, under which provincial governments dominated land-use decision-making, that is shifting to one in which local government's power is most important. Whether the challenge came from a national department, which believed that the legislation empowering its official to regulate particular types of land use (Maccsand), or from a provincial department asserting its power to overturn municipal land-

use decisions on appeal (Habitat Council), the Court was adamant that local government decision-making is now at the heart of the country's land-use planning system.

Maccsand [11]

In this case, the question was whether the issuing of a mining permit by the national government obviated the need to obtain a municipal land-use approval. The mining company (and the national Department of Minerals and Energy) argued that mining is an exclusive national function. Therefore, once the national mining permit had been obtained, there was no need to approach the municipality for a land-use approval, and the mining could commence. A parallel with the interplay between provincial and municipal planning decision-making can be made here: once a provincial planning permit is obtained, there is no need to approach the municipality for a land-use approval, and building may commence. However, the Constitutional Court did not agree with this argument. It held that the national mining law and the municipal planning law served different purposes and the resulting overlap was not a constitutional problem. The Court remarked, 'sometimes the exercise of powers by two spheres may result in an overlap. When this happens, neither sphere is intruding into the functional area of another. Each sphere would be exercising power within its own competence'.

In summary, the Maccsand judgment is clear that national (or provincial) approval for a particular development never removes the need for a municipal land-use decision.

Habitat Council [12]

This case dealt with the constitutionality of Section 44 of the Western Cape's Land Use Planning Ordinance (LUPO) of 1985, which regulates appeals against municipal land-use decisions to the MEC. Essentially, Section 44 of LUPO permits the MEC to replace municipal land-use decisions with his/her own, if they are challenged in an appeal to the MEC. The Constitutional Court found this to be unconstitutional and declared Section 44 of LUPA unconstitutional. In the words of Justice Cameron, '[m]unicipalities are responsible for zoning and subdivision decisions, and provinces are not'.

In summary, the Habitat Council judgment confi ms that the province may not change municipal planning decisions through a provincial appeal procedure.

Lagoon Bay [13]

This matter revolved around the question of whether the provincial government is constitutionally permitted to (dis) approve developments that have an impact beyond the municipal jurisdiction and affect the provincial interest. The

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[8] Gauteng Planning and Development Act (No. 3 of 2003).

[9] KwaZulu-Natal Planning and Development Act (No. 6 of 2008).

Lagoon Bay development, a large and controversial project, required the Western Cape's MEC to amend the George municipality's Structure Plan (a spatial plan approved by the municipality in terms of LUPO). This was done, but subject to the condition that the MEC approved the subsequent rezoning application. When the MEC subsequently did not approve the rezoning, his authority was challenged on the basis of the argument that the MEC does not have the authority to rezone. The Supreme Court of Appeal agreed. However, the case 'fell fl t' in the Constitutional Court. In the Constitutional Court, Lagoon Bay did not attack the legislative basis (i.e. the actual legislation, LUPO) for the MEC's decision. The Court thus held that this law stands and the MEC's decision was constitutional.

In summary, the Lagoon Bay judgment indicates that powers exercised in terms of statutory provisions are valid, even if the constitutionality of those provisions is in doubt. This is different only when the statutory provision itself is declared unconstitutional.

Provincial initiatives

Immediately post-2010, there was a flu ry of work at provincial level, developing new provincial planning laws that would be consistent with the Constitutional Court's interpretation of 'municipal planning'. In some cases, such as the Western Cape, Gauteng and KwaZulu-Natal, the provincial governments drove these initiatives. In others, such as the Eastern Cape, Free State, Limpopo, Mpumalanga and Northern Cape, the national DRDLR drove the processes, primarily through commissioning expert teams to draft new planning bills for the provinces. By the time that SPLUMA was approved, almost all provinces had draft planning laws, in varying degrees of readiness to implement in parallel with the national SPLUMA.

To date, with the exception of the Western Cape's Land Use Planning Act, none of these draft laws has been approved by the relevant legislatures. The reasons for this delay vary from province to province, but in the main it is because the national regulations in terms of SPLUMA have not yet been finalise , and provinces want to have a better sense of the direction that these regulations will take before they commit their own draft bills to the legislative process. In some provinces, the draft bills are simply not ready to be submitted to the relevant legislatures for consideration and debate.

New instruments for capital investment planning: SDBIPs and BEPPs

In parallel with the development of SPLUMA and related planning instruments, National Treasury introduced two other planning requirements, to encourage more effici t capital investment planning by municipalities. These instruments are the Service Delivery and Budget Implementation Plan (SDBIP)

and the Built Environment Performance Plan (BEPP). The SDBIP is introduced through the Local Government: Municipal Finance Management Act (MFMA) and the BEPP, which is only applicable to metropolitan municipalities, through the annual Division of Revenue Act (DORA). This means that, as SPLUMA implementation looms, the major urban municipalities will be developing and implementing their municipal SDFs alongside (or in competition with) spatial planning instruments, which are more directly linked to municipal budgets and infrastructure investment planning.

Cities Facing the Future

The legal framework governing land-use regulation and spatial planning in South African cities continues to evolve. At this point, it is useful to pause and establish the main aspects that city governments (and SACN members) have to address in the immediate future. These laws are centrally important to cities' efforts to promote a more effici t, sustainable and inclusive spatial form, as well as the lawful development of land as an element of social and economic development. It is not an exaggeration to argue that cities' efforts to transform their apartheid spatial legacy hang on the lynchpins of land use and planning laws. The challenge now is for cities to identify and maximise the opportunities provided by the current legal framework, while simultaneously meeting the challenges and mitigating the risks that arise from the prevailing uncertainty. This section discusses the opportunities, challenges and risks.

Opportunities presented by the new legal framework
The most significa t opportunity arising from the evolution of urban planning law in the country is the growing clarity on the scope of local government's powers in relation to municipal planning. The Constitutional Court's repeated statements to this effect have turned a century of provincial decision-making on its head. Whereas before 2010 planning decision-making was a provincial power, to be devolved to local government only at the discretion of the provincial government, that power now sits squarely with local government, with provincial (and national) government only able to exercise decision-making in prescribed, exceptional circumstances.

This has important implications for appeals, the development of municipal planning bylaws, the design of new land-use management instruments and the alignment of sectoral approvals.

Appeals

In some provinces, such as the Free State, where devolution to local government has been minimal, this implies a

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[10] This description of the cases' impact on the evolution of planning law draws on a report submitted by Stephen Berrisford Consulting to the Western Cape Department of Local Government in 2014, to which Professor Jaap de Visser made important contributions on the legal aspects.

fundamental and far-reaching change in the practice of planning decision-making. In all provinces, though, there will be changes. Devolution to local government has always been accompanied by the power of the provincial government to overturn the municipality's decision on appeal. However, these appeals are no longer constitutionally valid (as confi med in the Habitat Council case). No province may now challenge a municipal planning or land-use decision on appeal, nor may a provincial structure make such a decision in place of a municipal decision (as confi med in the City of Johannesburg and Maccsand cases).

Each city now has the opportunity to design a system of hearing appeals against planning decisions. This system will have to respect the public's rights to fair administrative process and to getting a fair hearing, and so will have to provide appellants with a real prospect of success if their arguments are both compelling and legally sound. Nevertheless, even from a very narrow view of municipal self-interest, this is preferable to the pre-Habitat Council practice of provincial governments being able to overturn a city's planning and land-use decisions on appeal.

Bylaws

eThekwini's proposal before 2010, that municipalities could regulate land use decision-making through their own bylaws is increasingly widely accepted as the basis for future land-use management. For example, in the Western Cape, the provincial government has already prepared a model municipal planning bylaw for adoption by municipalities should they so wish, while the City of Cape Town has enacted its own comprehensive municipal planning bylaw. In late 2014, the DRDLR issued tenders for consultants to draft model municipal planning bylaws for most other provinces, which underlines the importance the department attaches to bylaws, as an instrument for implementing SPLUMA.

No municipality has a completely open book when developing bylaws. Any bylaw has to be consistent with the applicable national and provincial laws. However, that requirement for consistency falls away if the municipality can show that the national or provincial law unreasonably compromises the municipality's power to manage the implementation of its municipal planning function. This allows each city, within reasonably clear parameters, to develop land-use and land development regulations that best suit its own particular needs and context. A municipality can use this power to enact municipal planning bylaws in at least two ways:

• **Designing and implementing context-specific land management instruments.** City governments now have the opportunity to explore options for managing land use and development differently. For example, cities can develop city-specific measures to address informal settlement upgrading, regulation of informal sector businesses, land value capture, improvement districts and transport-oriented development, within the frameworks provided by national and provincial legislation, using the power that cities have to enact their own bylaws.

• **Strengthening and clarifying the relationship between municipal SDFs and land use management schemes.** Since the first references in the Municipal Systems Act, to the 'basic guidelines for land use management' required of municipal SDFs, there has been uncertainty as to precisely how the forward-looking SDF's provisions should align with the management-focused land-use schemes. SPLUMA attempts, in Section 25, to clarify this, by demanding that a city's scheme 'give effect to and be consistent with' its SDF. A literal interpretation of this provision suggests that the scheme's provisions must mirror those of the SDF, i.e. when the SDF changes, the scheme must automatically change to refle t those changes. A more pragmatic interpretation might be that the scheme simply has to be amended in line with the SDF, as and when applications for amendment are made by developers or applicants. Individual cities now have an opportunity to use their bylaws to develop an approach that serves their strategic needs rather than waiting for the national and provincial law to be further developed in ways that may not suit the cities' needs and priorities.

• **Aligning sectoral approvals.** A significa t obstacle to effici t and speedy decision-making on land-use changes and land development has been the parallel existence of multiple legislative requirements in both land-use planning and other sectoral legislation. These requirements do not now suddenly disappear, but the Constitutional Court has re-affirmed (in cases such as Maccsands and Lagoon Bay) that municipal approval of a land-use change will be needed regardless of the sectoral law's provisions. Coupled with the provisions in Sections 29 and 30 of SPLUMA, this means that cities can take the lead in designing processes for more integrated decision-making. Thus cities can propose systems and procedures for aligning, for example, environmental and heritage conservation approvals with those regulating land use and planning under the SPLUMA umbrella.

Challenges and risks facing cities

The challenges and risks that come with a new law such as SPLUMA are considerable. The costs of a city failing to rise to these challenges, or ignoring the risks, will be huge both financially and politically. And, of course, there will be long-term problems for the city's planning that will take many years to resolve.

While each city must carry out its own assessment of the challenges and risks introduced by the new era, it is fairly safe

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[11] Maccsand (Pty) Ltd v City of Cape Town and Others 2012 (4) SA 181 (CC).

[12] Habitat Council and Another v Provincial Minister of Local Government, Environmental Affairs and evelopment Planning, Western Cape and Others 2013 (6) SA 113 (WCC).

to assume that the following issues will be covered:

• Scaling up capacity to execute cities' new mandates.
• Rationalising decision-making systems for land-use management and spatial planning.
• Resolving intergovernmental disputes over spatial planning and land-use decisions.
• Maximising the influen e of cities and city concerns in the development of the range of complementary statutory instruments, which are still be introduced nationally and provincially to facilitate the implementation of SPLUMA.

Each of these four issues is discussed briefly bel w.

Scaling up capacity

As cities assume greater powers, they also have to scale up their capacity to execute their newly confi med mandates. This capacity is both technical and political, as in-house appeals are most likely to be to councillors. It relates to enhancing and strengthening the capacity of existing human and institutional resources, as well as to building new capacity in those areas. Both of these requirements will have direct financial implic tions for cities.

The challenge for cities is significa t, especially those with relatively weak capacity and relatively limited experience of taking land-use and land development decisions. In order to mitigate the risks of not meeting this challenge, cities need to work cooperatively with national and provincial government, which are both constitutionally obliged to support local government in fulfilling its different mandates. SALGA and SACN also have a strong role to play in coordinating capacity building and training.

Rationalising decision-making systems

Many cities have begun to rationalise their land-use management instruments or 'schemes' (known variously as town planning schemes, land-use management schemes or zoning schemes). As each city inherited myriad different regulatory tools or 'schemes', this rationalisation is a complex and resource-intensive task. Opposition is also likely from vested interests that, correctly or otherwise, believe they are threatened by the new schemes. When rationalising their decision-making schemes, cities will also have to take into account the imminent (but long anticipated and indefini ely postponed since 1998) demise of the Subdivision of Agricultural Land Act (No. 70 of 1970), which has played a key role in the development of peri-urban land.

Cities that have approached this challenge as a purely technocratic task, of compiling all existing regulatory tools into one new scheme, have had to acknowledge that it is significa tly more demanding than initially thought. Where a city fails to complete this process properly, without paying due attention to the range of possible legal, spatial and economic impacts, the resulting problems can be immense. On the one hand, the procedural uncertainty in particular parts of the city can lead to diminished investor interest. On the other hand, that same uncertainty can lead to households, fi ms and developers seeking ways to evade compliance. In this latter case, city official find themselves powerless and expected to implement regulations that they can see are not designed for optimal results.

A provision of SPLUMA that requires specific attention from cities is Section 2(2), which says that:
[e]xcept as provided for in this Act, no legislation not repealed by this Act may prescribe an alternative or parallel mechanism, measure, institution or system on spatial planning, land use, land use management and land development in a manner inconsistent with the provisions of this Act.

This section appears to prohibit cities from passing bylaws that might prescribe the alternatives listed above. Yet, on the other hand, Section 10(2) states that 'provincial legislation not inconsistent with the provisions of this Act may provide for structures and procedures different from those provided for in this Act in respect of a province'. This is confusing from the perspective of a provincial legislature, as it appears to directly contradict the prohibition in Section 2(2). It is even more confusing for a city, as it is difficul to understand why SPLUMA provides this apparent opportunity to establish alternative approaches only to provincial law-makers and not to municipal councils. As cities move to develop their own bylaw-based systems, they will need to establish and test the limits to their powers within this somewhat confusing context.

Resolving intergovernmental disputes over planning decisions

As cities start to fl x their newly recognised planning muscles, the already prevalent risk of confli t between city plans and those of other spheres will grow. In 2010, this type of confli t led to the City of Johannesburg and the Gauteng province resolving their differences over an aspect of the city's SDF before the Constitutional Court, as none of the existing measures for resolving intergovernmental confli ts was able to do it. Since then, and taking into account the subsequent decisions of the Constitutional Court, the Western Cape Department of Local Government has established that measures in terms of the Intergovernmental Relations Framework Act (No. 13 of 2005) can be used to address these confli ts. In addition, SPLUMA proposes in Section 9(3) that the Minister may, 'after consultation with organs of state in the provincial and local spheres' develop and publish procedures for resolving and preventing confli ts and inconsistencies arising from the spatial planning or land-use management.

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[13] Minister of Local Government Environmental Affairs and evelopment Planning of the Western Cape v Lagoon Bay Lifestyle Estate (Pty) Ltd and Others, CCT 41/13

To date these procedures have not been developed, but, once they are, may well also provide an avenue for cities to follow when conflicts or inconsistencies arise between city plans and policies and those of the other spheres. In any event, cities need to start working through approaches to the question of conflict resolution that will work on their terms. Imagine a scenario in which a city is considering how to approach a matter, which has a reasonably good chance of clashing with the priorities of a provincial plan or objective. Here it is obvious that, the better the city understands how that clash will eventually be mediated and resolved, the better the city will be able to prepare a strategy and approach that stands a reasonable prospect of prevailing at the point of conflict resolution.

Influencing the emerging SPLUMA instruments

For SPLUMA to operate effectively, particularly in terms of the land-use management and land development aspects of city management, the Minister of Rural Development and Land Reform first has to promulgate numerous interventions. For example, Section 8 requires the Minister to prescribe norms and standards that must, among other things, 'ensure that land development and land use management processes, including applications procedures and timeframes, are efficient and effective'. In order for Section 52, which covers the operationalisation of development applications that affect the national interest, the Minister has to prescribe a set of criteria to guide the implementation of that section. These criteria will have to be aligned with the provisions of the Infrastructure Development Act (No. 23 of 2014), especially Section 8, which allows for the designation of 'strategic integrated projects' that have to be reflected in every organ of state's 'planning or implementation of infrastructure or its future spatial planning and land use'.

Section 54 sets out the areas where the Minister does not have to, but nevertheless may, intervene through promulgating regulations. These regulations may cover, among other matters, 'procedures concerning the lodging of applications and the consideration and decision of such applications', 'the process for public participation in the preparation, adoption or amendment of a land use scheme or the performance of another function in terms of this Act' and 'the operating procedures of a Municipal Planning Tribunal'. These regulations may not be necessary in provinces where new, 'SPLUMA-compliant' provincial legislation is in place or in cities that have enacted 'SPLUMA ready' municipal planning bylaws. However, they will be essential in all other cases. Without these regulations, cities cannot implement SPLUMA linked to this are the ongoing processes, in almost all provinces, to develop new provincial legislation, as well as model municipal planning bylaws for municipalities.

A great deal of work has to be done at a national and provincial scale before cities can implement SPLUMA. However, the outcome of these national or provincial processes has the potential to derail city efforts to plan for more efficient, inclusive and sustainable human settlements. Therefore, it is crucial for cities, preferably with the support of bodies such as the SACN and SALGA, to engage vigorously with the other government spheres, to ensure that the outcomes are conducive to effective city management and, of course, are constitutionally sound. The contested nature of the law- and policy-making processes in this sector over the past 20 years, suggests that cities will have to do more than simply submit comments on draft regulations or other documents circulated for consultation. Cities will have to rise to the challenge of proposing alternatives, citing examples from their own experience (and, where appropriate, internationally) that have worked, and then lobbying the relevant decision-makers for regulations, policies and guidelines, which meet not only national and provincial objectives but also the needs of the country's growing cities. Where cities are unable to secure the outcomes that they want and need, they may have to consider court challenges.

Conclusion

At the heart of cities' ability to achieve spatial transformation, lies their ability to manage urban land use and land development. Recent developments in the interpretation of key provisions of the Constitution, together with the enactment of SPLUMA in 2013, usher in a new era of city-based and city-driven change. Cities now have the legal power to manage land use and development more independently, which brings both opportunities and risks, and challenges. This paper has highlighted the historical evolution of the law, up until the present. It also identifies some of the specific opportunities to be seized, as well as the challenges to be met and the risks to be mitigated. The next decade of urban land-use management will continue to be marked by tensions and difficulties, but these will be new tensions and new difficulties. The underlying legal position of cities in relation to national and provincial government has changed fundamentally, as the result of a protracted and tortuous process. Cities have to design and craft their own strategies for moving forward, taking full advantage of these changes while also ensuring that the challenges that arise are not overwhelming. As they do this, they will benefit hugely from support and guidance emanating from bodies such as SALGA and the SACN. If cities are caught on the back foot in the first year of SPLUMA implementation, it will take many more years to cure the problems that then arise. The risks from cities failing to meet this challenge are substantial, as without cities that can plan and manage land use effectively and efficiently, the country's economic, social and environmental prospects are weakened.

Today cities have more powers and more freedom than ever before in relation to spatial planning and land-use management. These powers and freedoms are, of course,

not unlimited, as national and provincial laws still have a role to play. However, cities have new and untested room to manoeuvre. For now at least, the courts are fi mly on the side of supporting cities in the exercise of their municipal planning powers, and it is imperative that the cities take advantage of a moment in the evolution of our local government law that may not last indefini ely. Just as the courts have begun to show impatience with national and provincial governments' efforts to challenge the principle established in the City of Johannesburg case in 2010, they too may begin to lose patience with cities that fail to rise to the occasion.

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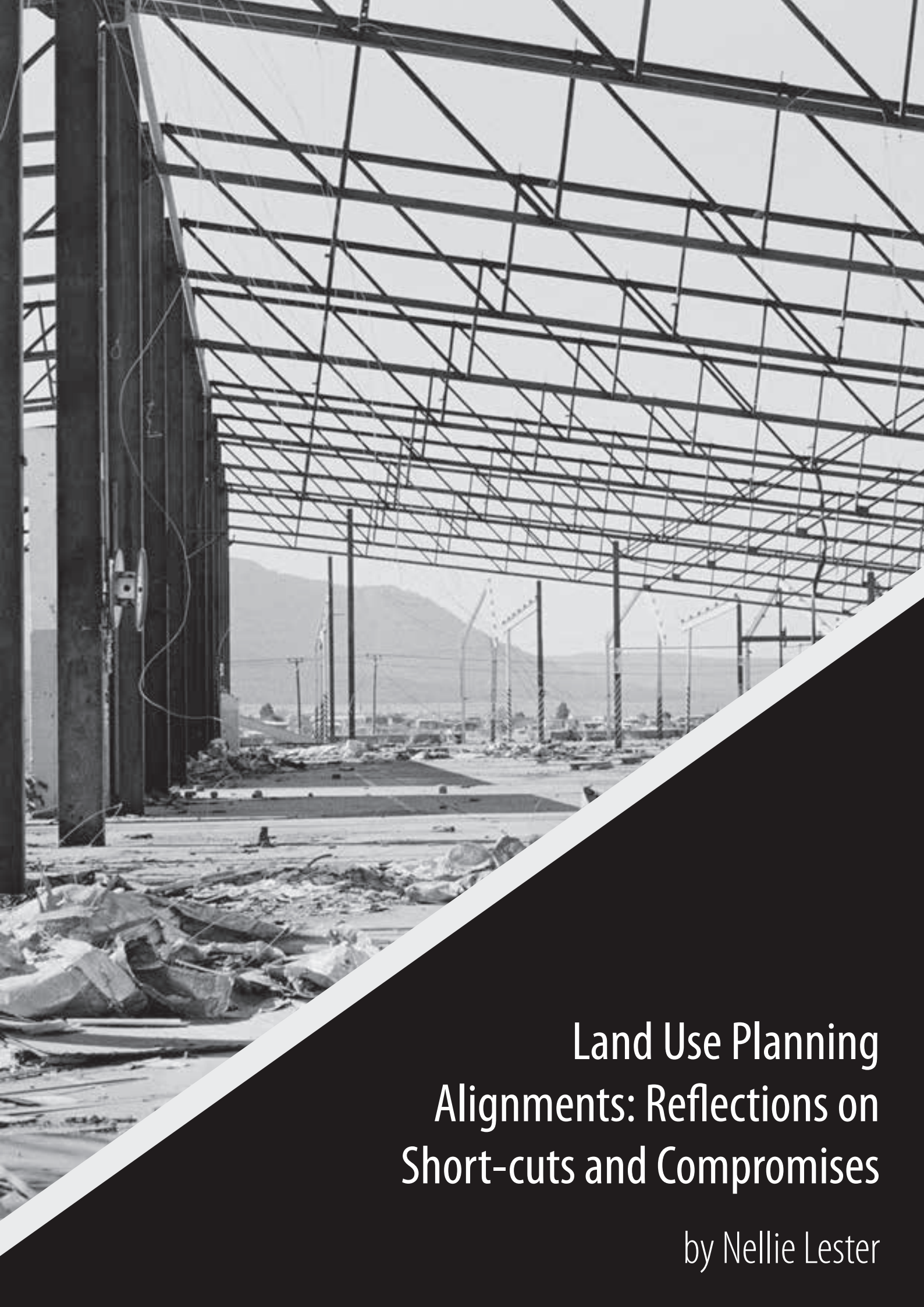
Land Use Planning Alignments: Reflections on Short-cuts and Compromises

by Nellie Lester

CONTENTS

Introduction

Cities have experienced a significa t surge in migration both from rural to urban centres, and from countries beyond South Africa's borders. The result has been rapid densific tion of existing urban townships and growing informality in the housing sector, leading to increased demand for municipal services. The demand for urban land (particularly for poorer communities) continues to rise, but the pace of legislative reform to improve access to land has been slow and tentative, especially when compared to the apartheid government's approach. Under apartheid, land-use decisions were directive, with government policies rapidly being translated into laws that legitimised and granted the authority to control and enforce permissible land uses. Since 1994, the South African government has put in place progressive land-use policies that are supported by the Constitution. However, practice has not matched policy, as adequate legal reforms have not accompanied the policy statements. This slow legal response has led to the emergence of inconsistencies, with 'old order' laws being applied in parallel to new, post-apartheid laws, resulting in confli ts and delaying land development in rapidly urbanising cities.

Despite the various legal reforms – from the relaxation of laws such as the Less Formal Township Establishment Act (No. 113 of 1991), to the interim Development Facilitation Act (DFA) (No. 67 of 1995) and the Spatial Planning and Land Use Management Act (SPLUMA) (No. 16 of 2013) – land-use management practices remain problematic. In the midst of rapid migration to cities and demand for basic services by the poor majority, a defini e new direction for land development planning and management is still needed. SPLUMA, which came into effect in July 2015, grants local municipalities direct responsibility for land-use planning. But, although SPLUMA affords municipalities more definiti e powers, it may be in fact a hollow victory, as successfully implementing these plans will require the alignment and collaboration of the national and provincial spheres of government responsible for delivering infrastructure at local levels. The current misalignment is particularly evident in rapidly urbanising metropolitan cities where coordinating the delivery of social infrastructure (e.g. schools, housing and public transport) is next to impossible, as the demand is highest at municipal level, but the planning and budgets remains in the control of national and provincial government departments. Without alignment and collaboration between the spheres of government, South African cities will struggle to reverse the 'star bone' ineffici t and costly spatial patterns, characterised by low densities with pockets of intense development and limited, often poor municipal services (World Bank, 2009).

Legal challenges may also increase and further delay the desired urban spatial transformation. The case studies of Harry Gwala community in the current Ekurhuleni Metropolitan Council, Diepsloot Township in the City of Johannesburg and the Lwandle community in City of Cape Town are examples of where spheres of government have found themselves at opposite ends in court.

This paper refle ts on land-use planning, management and development challenges in the context of slow spatial legislative reforms. It considers the various attempts to introduce new land-use legislation, and how challenges are exacerbated by the complex constitutional powers and functions assigned to different spheres of government. It looks at whether the policy shifts and legal reforms since the transition to democracy are adequate or decisive enough to address the 'stubborn' apartheid land-use patterns. The aim is to provide a perspective of land-use planning in South African cities, and the constraints within which municipal authorities operate, against the backdrop of growing community unrest because of the lack of urban land for the poor majority. The aim is also to encourage local government to interrogate urban land-use planning and management processes with provincial and national sector departments in order to promote integration and to accelerate the spatial transformation of the South African built environment.

The main land-use policies and legislation are outlined, as a means of understanding the government response to addressing land development since 1994. Sectoral plans are included, as the underlying assumption is that infrastructure development projects by sectoral departments have a direct impact on land-use patterns at municipal levels. Therefore, the planning, approval, and financing of these projects should be closely coordinated and aligned with local municipal spatial development plans and land-use management instruments. Case studies are used to illustrate the challenges of the lack of alignment within sector departments and across spheres of government, which has resulted in confli t and sometimes violent incidences at community levels. The studies illustrate the limitations of legal instruments as the mechanism for resolving land-use management disputes. Legal processes are lengthy and costly, a strain on the already limited technical capacity at municipal levels, and cannot alone tackle the land-use management challenges. The case studies demonstrate that legal processes are often long and may be further complicated by the misalignment of powers and functions with respect to land development that cut across national, provincial and local government. What makes the already slow practice even more complex are the inherent interdependencies, where no one party is likely to act on their own without affecting the others. Confli ts are bound to occur but, while using the legal route to resolve such confli ts may be appropriate, it should not be the only solution.

The case studies were selected mainly on familiarity, as land-related stories that have made headlines in recent media reports, and many other cases may exist that are equally suited to illustrate these challenges. The case studies are limited to land-related matters and do not seek to describe any of the projects in detail, as this would be beyond the scope of the

paper. The paper concludes with a summary of key findings and recommendations.

Main Developments since 1994

Land and its use has been an emotive issue since the Natives Land Act (No. 27 of 1913), which paved the way for many spatial and land use-related legislations that set South Africa on a path of separate development along racial lines. These include the Removal of Restrictions Act (No. 84 of 1967), the Physical Planning Act (No. 88 of 1967), the Black Local Authorities Act (No. 102 of 1982), the Local Government Transitional Act (No. 209 of 1993), the Less Formal Townships Establishment Act (No. 113 of 1991) and the amended Physical Planning Act (No. 125 of 1991).

The Constitution adopted in 1996 defined the powers and functions of each sphere of government and accorded certain rights to all South African citizens, such as the right to access to basic services and adequate shelter. It also introduced a wall-to-wall local government system, whereby municipalities were established for the whole of South Africa. At the same time, 1262 local government structures were amalgamated into 843 local authorities (municipalities). With the establishment of the Municipal Demarcation Board in 1999, the number of municipalities reduced to 284 before the 2000 local government elections, and 278 ahead of the 2011 local government elections (and are likely to decline further prior to the 2016 elections). The amalgamation of councils not only changed the physical boundaries of land under municipal administration but, most significantly, also dislodged the land-use management instruments and records (Land Use Schemes and Planning Ordinances). However, land records were often not properly transferred to the new administrations, and prior land ownership arrangements were not legally resolved as part of the re-demarcation process, when former townships were amalgamated into new municipalities.

The DFA was the first planning Act of the new South Africa. Heralded as a new paradigm in land-use planning, the DFA was aimed at accelerating land development, ensuring that past laws did not hinder national objectives, and promoting the speedy provision and development of land for residential, small-scale farming or other needs and uses. It provided for the establishment of Development and Planning Commissions to advise the government on policies and laws concerning land development at national and provincial levels, and powers to make decisions and resolve conflicts with respect to land

development projects. The DFA was intended to balance any local government decisions that were not progressive and supported the marginalised poor. Land Development Tribunals were established and granted powers to adjudicate and accelerate land development decisions. However in practice, some private developers took advantage of this provision by opting to approach the Provincial Planning Tribunals, which were perceived as being more lenient than equivalent municipal structures in approving development applications. The Provincial Planning Tribunals also provided a mechanism to review municipal planning decisions, creating uncertainty in the planning process. The DFA was introduced as an 'interim' measure to address the inherited land-use management procedures that reflected the priorities of apartheid spatial planning. It was meant to be pragmatic and therefore allowed apartheid-era laws, such as the Less Formal Township Establishment Act (113 of 1991) and Permission to Occupy laws, to remain in practice. However, the application of the DFA without repealing the 'old order' laws such as the Township Ordinance Act (No. 15 of 196) created confusion in knowing which law to apply to in a particular circumstance, and then in ensuring that consistency was achieved in the application of the different planning processes.

The Municipal Structures Act (No. 117 of 1998) and Municipal Systems Act (No. 32 of 2000) further outlined the governance and operations of local government. In the mid-1990s, the requirement for each municipality to formulate an Integrated Development Plan (IDP) and within it a Spatial Development Framework (SDF) was promoted as the game changer for spatial transformation but did not really tackle the legal implications required to undo the 'old order' land use laws.

Despite being a short-term, interim measure, the DFA remained in force until a 2010 Constitutional Court case ordered various sections of the Act to be struck down and replacement laws to be developed and implemented within two years. The SPLUMA, which was finalised as a result of the Constitutional Court's decision, replaces the DFA and is aimed at doing away with the uncertainty and inconsistency created by old order legislation by repealing the 'old order' laws. The Court noted that the 'interim measures' provided by DFA were long overdue and that the government needed to act urgently to provide decisive land legislation. This judgement ruled in favour of municipalities and granted them more powers for making land development decisions than those proposed in earlier drafts of the Spatial Planning Land Use Management Bill, which sought to prescribe national uniform and standard provisions to be applied by all local municipalities.

National government has had several attempts at policy directives that specifically affect land and land development. The National Development Plan, which came into effect

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[1] For an in-depth discussion of this Act, please refer to 'The evolution of urban planning law and policy, 1994–2014: implications for South African cities' by S. Berrisford in this series of land working papers.

in 2011, makes specific mention in Chapter 8 of spatial transformation principles. The draft Integrated Urban Development Framework further emphasised these principles as national guidelines for spatial transformation. National line departments also championed their own spatial restructuring initiatives, which never really had traction at municipal levels nor were aligned to local spatial development plans.

- The Department of Transport (DoT) introduced Spatial Development Initiatives (SDIs) in the 1990s and early 2000s, as a means to enhance regional and urban spatial integration. The Maputo Corridor was one such regional corridor. In municipalities, the SDI concept took the form of urban corridors such as the Chris Hani/ Bara-link Corridor in Johannesburg and the Lansdowne-Wetton Corridor in Cape Town.
- The Department of Provincial and Local Government (DPLG), now Cooperative Government and Traditional Affairs (COGTA), initiated the Urban Renewal Programme (URP)
- The Presidency launched the Integrated Sustainable Rural Development Programme (ISRDP) pilot nodes in 2002.

Some metropolitan municipalities are still implementing the urban renewal programme, e.g. Alexandra Urban Renewal Programme in the City of Johannesburg and Khayelitsha Urban Renewal Programme in Cape Town but the initiatives have not to a significant degree been mainstreamed into holistic municipal plans as key integrators for spatial transformation.

Special Infrastructure Projects (SIPs) of 2013 by the Presidential Coordination Council are the most recent spatial development initiative aimed at aligning government infrastructure investments along identified national economic growth corridors and promoting socioeconomic projects of national importance. Early indications suggest that the SIPs are also likely to run into similar challenges of misalignment, whereby budget allocations remain with line departments – the final decisions will be taken by the responsible national and provincial treasuries, so municipalities will have limited influence outside of political engagement to enforce alignment between local plans and the SIPs.

These sector initiatives, among others, continue to have a direct impact on cities and their land-use planning and management systems. However, their alignment and coordination continue to be illusive despite the Intergovernmental Fiscal Relations Act (No. 97 of 1997), which outlines the process for sharing nationally collected revenues across national, provincial and local spheres of government, and the Intergovernmental Relations Framework Act (No. 13 of 2005), which provides for an institutional framework for the three government spheres, to facilitate coherent governance, and procedures for the settlement of disputes.

Case Studies

The case studies provide a useful backdrop to reflect on the nature of land conflicts and to understand some of the root causes of the conflicts and implications going forward. The case studies were selected based on documented land conflicts and the involvement of more than one sphere of government. They illustrate the limitations of legal instruments as the definitive mechanism to resolve land-use management disputes (given the delays) and suggest that earlier coordination and alignment of actions among government spheres might have relieved the burden of challenges through the courts. All the case studies have involved (and still involve) lengthy legal processes, which are not only costly but also strain the already limited technical capacity at municipal levels. They illustrate the limitations of legal solutions to land conflict.

Harry Gwala case study

The Harry Gwala case study explores the problems that arose when a community had been granted the right to occupy and develop land under the Black Local Authorities (BLA) Act, but without legal resolution of a prior land ownership arrangement and formal establishment of a township. Following the re-demarcation, and amalgamation of the land portion in question into a new, democratic council, the community's right to occupy the land was questioned.

The BLA Act provided for the establishment of village councils and town councils for blacks in designated areas. One such council was the Wattville Council, which was consolidated into Ekurhuleni Metropolitan Municipality through the re-demarcation process. The Wattville Black Council granted permission for black residents to occupy and develop a farm referred to as Tent City, later renamed Harry Gwala. In November 1993, the community received a letter from then Wattville Town Council granting them permission to develop Portion 29 and 68 of the farm for residential purposes (Wattville Town Council, 1993):

> Tent-town Residents Committee, led by Mr. A. Kau, has permission of the Wattville Council to develop Portions 29 and 68 for resident's purposes. These two areas are situated on the eastern side of the Wattville Town Council.

The Local Government Transitional Act (No. 209 of 1993) repealed the BLA Act, but the status of the Harry Gwala community was not fully resolved when the Wattville Town Council was later amalgamated into the newly established Ekurhuleni Metropolitan Municipality.

Since 1993, the Harry Gwala Civic Committee has lobbied for their informal settlement to be recognised as a township and

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[2] City of Johannesburg Metropolitan v Gauteng Development Tribunal and Others. 18 June 2010. Case CCT 89/09 [2010] ZACC 11. Constitutional Court of South Africa, Johannesburg.

to have access to basic services. The community's application for interim services (seven additional taps, high-mast lights, refuse collection and sanitation) ended up in High Court on the grounds of constitutional and statutory rights (in relation to housing and water) having been infringed. However, the Ekurhuleni Metropolitan Municipality objected to the court application and refused to extend the provision of basic services to the site, arguing that the land was not earmarked for development according to the new spatial plan for the area and, therefore, could not be approved for township establishment. The municipality cited several site limitations, including environmental and safety concerns (existence of mine dumps and proximity to railway line), as well as the need to have suffici t number of residents in order to apply to the Department of Education to build a school. It offered to relocate the community some 13 km to the north-east of the settlement.

In response, the community protested against the relocation plans, noting that they were not illegal occupiers, as the land was granted by the past local authority to occupy and develop as a settlement and, therefore, they should be treated differently from cases of illegal land invasion. They rejected the relocation option because it would disadvantage them, being far from their economic and social activities. The community argued that the site limitations could be remedied. The mine dumps could be rehabilitated, protective barriers could be erected near the railway, and the spatial layout plan could be reconsidered to accommodate water servitudes and power lines. They also noted that the adopted national policy mentioned 'relocation as a last resort' (DHS, 2009: 9, 25, and 32).

In 2009, Acting Judge Epstein found that interim services could only be provided by the municipality if a decision had been taken to develop the informal settlement in-situ under Chapter 13 of the Housing Code. The services could only be provided if the land in question was fit for residential development, but no such legal record existed other than the letter from the disbanded Black Council. The community's legal team argued that the permission granted by Wattville Council in 1993 (albeit before the new democratic government) could not be disregarded despite the absence of formal township establishment records. The fact the disbanded council took a short cut and granted land occupation before general plans were approved was a failure of government, not the community. They further argued that the national policy should prevail in this case, as it came into effect after the community was granted permission to occupy. The policy stated that relocation should be the last resort, which they interpreted to include the development of the land for residential purposes.

While the parties may all have had legitimate concerns, the fact is that seven years on the government has not yet found a workable solution. This demonstrates the limitations of the legal route as the sole mechanism to resolve the historical

demand for urban land combined with the failure of interim measures applied at the time. The two parties would not have had to go to court, if the DFA had contained a clearer directive on how to deal with the 'old order' provisions related to land.

The land ownership records were not resolved when municipal boundaries were re-demarcated. As a result, those occupying the land have had their legitimacy questioned and are in danger of being relocated without being afforded the same opportunity that would have been granted to other private land owners, simply because they are poor. At a broader level, the communities settled using the Less Formal Township Establishment Act are essentially still not receiving equal access to municipal services 20 years later, if their local land-use plans have not been amended and guidelines approved. The DFA was treated as 'interim', resulting in parallel practice where 'old order' laws are still being observed despite of the new policies and frameworks. Delays in revision of the land-use schemes could see more court challenges, as poor communities become more frustrated and seek permanent rather than interim solutions.

Diepsloot case study

The Less Formal Township Establishment Act provided a shortened procedure for designating, providing and developing land, establishing townships and less formal forms of residential settlement, and for regulating the use of land by tribal communities for communal forms of residential settlements. The procedure for establishing a township was shortened if the administrator was satisfied that the demand for housing in the area justified township establishment. In some such instances, settlements would take place before the general plan for the designated land was approved.

The plan to establish Diepsloot was conceived pre-1994, when the then Transvaal Administration realised that, while it could not stop the movement of people into the city nor provide everyone with a house, it could take steps to keep things 'orderly' (Harber, 2011). The problem began in 1991, when 45 families from the Zevenfontein community received an eviction order to vacate a piece of land that they had been renting from a private landowner. The families were temporarily settled on land belonging to Rhema Church pending the court case and were soon joined by other families, as the administration deliberated on a solution for ensuring an orderly long-term urbanisation in the north-westerly quadrant of the provincial region. A report was commissioned and recommended the expropriation of farm Diepsloot 388 JR: 812 hectares in the District of Pretoria. With the change in municipal boundaries, Diepsloot later became part of the City of Johannesburg.

At the time, the land was designated a 'less formal settlement', which was still permissible under apartheid laws. The township plan made provision for 1324 residential stands, each about 250 m2, three schools, 16 community sites, two

business sites and 12 parks. This was, however, not suffici   t to accommodate the Zevenfontein families, whose numbers had since increased to over 8000.

In the tense and uncertain mood of the early 1990s, the white landowners took the provincial government to court, as they feared their land would devalue because of the influx of squatters into the area. In 1992, Judge J de Velliers granted the landowners an interim interdict to stop the settlement. In 1994, the council took the case to the Appeal Court, which approved the Diepsloot settlement on the basis that the law had changed making it easier to deal with 'squatters' and that the Administrator had acted reasonably and consulted with all parties concerned in the establishment of the township.

The plans for the housing development only took effect in 1997 and by then, 'shack farming' was already underway, as local self-proclaimed bosses asserted control over the area. By 1999 the housing backlog for the site was estimated at 5000 and by 2001 10 000; yet only 4800 stands were developed. An aerial photograph by the City of Johannesburg in 2012 presents the contrast of what started out as an orderly settlement in 2000 and is now a densely populated informal settlement with open sewers. Over the years, the housing demand has far exceeded the infrastructure capacity for the site, as people have continued to settle in the township.

Figure 1: Aerial photos showing the changes in urban density in Diepsloot between 2001 (top photo) and 2012

The lesson from Diepsloot is that, in the context of high urbanisation rates, changing land-use practices takes longer than envisioned in situations where large numbers of mainly poor people access land and housing outside of accepted land-use practice. In addition, without the mechanisms in place to deal with rapid urbanisation and related development control and infrastructure provision, over-crowding and social crimes such as drugs and child abuse become entrenched. The legal process cannot be the only solution to the urban land problem.

Lwandle case study

The Lwandle case study is yet another example of where legal instruments was used as a means to resolve land-use confli t. It also highlights the problems that results from a lack of alignment and consultation among national, provincial and municipal entities.

In July 2014, families living in Lwandle, in the Strand (which falls within the jurisdiction of the City of Cape Town) were forcefully removed during winter, their shacks and possessions destroyed, and relocated to a local community hall. The evictions caused a media and public outcry, and the national Minister for Human Settlements intervened, condemning the evictions as inhumane and arguing that the City of Cape Town was insensitive to the plight of urban poor seeking housing.

However, it emerged that the land was in fact owned by

Source : City of Johannesburg

Source : City of Johannesburg

the South African National Roads Agency (SANRAL), a state-owned company, not the City of Cape Town or the Western Cape Provincial Government. A group of poor households had occupied land owned by SANRAL for a considerable period. They were registered on the government housing waiting list but had no certainty as to where and when they would be allocated houses, and so they had occupied the piece of land earmarked as road reserve. SANRAL (as the legal landowner) evicted these households under the Prevention of Illegal Eviction From and Unlawful Occupation of Land Act (No. 19 of 1998) (PIE Act) claiming that the families had illegally occupied private land. The PIE Act defines an 'unlawful occupier' as a person who occupies land without the express or tacit consent of the owner or person in charge, or without any other right in law to occupy such land. This law, however, excludes a person who is an occupier in terms of the Extension of Security of Tenure Act (No. 62 of 1997).

In this instance, the City of Cape Town regarded SANRAL as a private landowner and therefore did not take part in the eviction process. The City of Cape Town knew of the illegal occupation, but its position was that all landowners within the city had been warned to take proactive steps to prevent

illegal occupation of their properties by fencing and obtaining appropriate legal orders to evict illegal occupiers. SANRAL exercised what they believed to be their legal right without coordination with municipal or provincial government.

The national Minister of Human Settlements established a commission, which later confi med that the court order issued to SANRAL on 24 January 2014 (but effected only in July) did not authorise SANRAL to evict the families, and therefore the evictions were illegal. The Minister also directed the Housing Development Agency to identify potential public land where the communities could be accommodated as an 'interim' measure. Sites were identified in Macassar, but the community of Macassar argued that the identified site was already earmarked for housing their local residents and that the Lwandle residents were jumping the queue. In the end, the residents were moved back to the very same piece of land where they had initially been evicted.

This case study illustrates that despite the existence of the Intergovernmental Relations Act and the spirit of cooperative governance, each sphere of government still acts independently based on their powers and functions, even where this may cause confli ting outcomes for the state as a whole – and to communities.

Recommendations

The following recommendations are proposed as proactive measures to assist cities in obtaining the support of provincial and national spheres of government in the implementation of SPLUMA.

- Establish mechanisms to speed up any land-related legal challenges, to fast-track decisions so that communities are not kept in limbo without certainty in relation to the land which they are occupying and without access to housing and services.
- Refine and develop land-use schemes or precinct plans that incorporate informal settlements, defining the use and the future development intent for each such settlement within a municipal jurisdiction.
- Enrol the active support and collaboration of provincial and national sectors in formulating, preparing and approving local spatial development frameworks and land-use schemes, to avoid possible misalignments or confli ts of plans.
- Consider and fast-track mechanisms to enhance the internal capacity of municipal development planning departments to enforce land-use decisions and to monitor the implementation of these decisions particularly in relation to informal settlement upgrading.

Conclusion

Land and its associated uses remains an emotive concern in democratic South Africa. The slow pace of legal reform has been overtaken by rapid urbanisation and demand for basic services. Land development decisions have been stifled by a series of legal challenges since the transition to democracy. While the apartheid laws were directive and specifi , the post-apartheid land-related laws have been rather tentative and inconsistent as they grapple with the social complexities of land. The 'old order' laws (e.g. the Less Formal Township Act) were not properly resolved in the democratic transition. In many ways, `interim' laws such as the DFA have created more problems because of the delays in formulating replacement laws. The much-awaited SPLUMA seems unlikely to accelerate the required change, especially given the capacity constraints within municipalities.

The case studies illustrate the dilemma of communities who were granted 'interim' rights to settle on land without clarity on how such provisions would be addressed under new laws passed after the democratic transition. And the growing levels of frustration at community levels should not be under-estimated in the process of developing legal reforms. The legal reforms have not been able to keep pace with the need to access land.

The case studies also highlight the limitations of the legal process as the main mechanism for resolving such confli ts and the broader problem that exists: that of misalignment across national, provincial and local government. These are inherent interdependencies, where no one party can act without affecting other parties. They also show that, while local government is the most visible sphere, it does not always have the influen e or power to guide the actions of other parties.

What is clear is that issues are complex and will require collective action, not simply legal recourse, which is lengthy and costly for both government and affected communities. An urgent dialogue is required across spheres of government to institute greater collaboration with respect to land-use planning. The alignment of spatial development frameworks at national, provincial and municipal level is crucial to enable local land-use schemes and detailed precinct plans to be effective.

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Market Interventions for Sustainable Cities: Understanding land markets

by Nicola King and Mark Napier

CONTENTS

A metropolitan economy, if it is working well, is constantly transforming many poor people into middle-class people…. Cities don't lure the middle class, they create it (Jane Jacobs, in Siegel, 2000).

Background

Within cities, land is a key and limited resource, essential for built environment interventions and central to any decisions about urban management and development. Land, and its appropriate management, is required to meet social, economic and environmental goals, which are often in confli t with each other. Land-use planning and development control laws remain one of the most basic and important instruments for natural resource management in developing countries. These include physical planning, national planning, zoning and development permitting in the context of land management (Markandya et al., 2002).

Understanding why land markets fail (and thereby constrain development) or function well (and thus enable sustainable spatial development) will allow for better-informed policies, legislation and proposed actions. Furthermore, a better understanding of the impact of policies, developmental interventions and land-use planning on spatial development (in the context of divergent local needs and the greener economy objectives) would go a long way in ensuring effective policies and better implementation of sustainable cities in the future. This would ultimately ensure the sustainability and resilience of communities, cities and regions. This paper aims to address the South African Cities Network (SACN) strategic objective of understanding land markets and the interventions required for sustainable cities.

This paper aims to provide a context for urban land markets, identifying some of the historical and current distortions in South Africa as well as urban land market failures. The paper recognises that any interventions are ultimately governed by the overarching goals and outcomes intended for the interventions, based on different perspectives of equity and justice. Given this context, the paper focuses on the characteristics of urban land, and how these characteristics can drive urban land market failures. It then identifies interventions that can be used to address these market failures in order to ensure the development of sustainable urban cities. A framework of urban land markets for sustainable cities is proposed, which recognises that any interventions fall within the broader realm of sustainable development. To this end, the framework places these interventions in the context of the fi e forms of capital that underpin sustainable development and the fl ws of capital, factors of production, wages and services. in order to ensure that more people have access to land and better tenure through functioning markets.

Although important to the debate in South Africa on land and land markets, informal land markets are not included, as this paper focuses on urban land . These markets may be recognised or unrecognised, extra-legal or unregistered, and, as a result, require a unique and distinct set of actions to address their sustainability and inclusiveness in the formal urban land market space (Royston, 2013).

What are Urban Land Markets

Land typically refers to property, excluding buildings or equipment that do not occur naturally. Traditional economics regards land as a factor of production alongside capital and labour. Land titles may extend an owner's rights beyond the land itself, to include all natural resources on the land, including water, plants, human and animal life, fossils, soils and minerals. Normally a market approach refers to a system that allows free trade to allocate goods or resources to 'achieve a least cost or economically effici t allocation' (Quentin Grafton et al., 1962). However, effici t or least-cost allocation is only possible when property rights are clearly defined and allocated, and prices are inclusive of all externalities (whether positive or negative).

For the purposes of this paper, land markets refer to land that includes the factor of production, man-made alterations and additions to the land, and the owner's rights to associated natural resources. The reason for choosing this definition is that urban land does not function merely as a factor of production, which is the case for agriculture. For urban land, the land value is driven by the man-made alterations to the land and the owner's rights to various aspects associated with the land. This in turn has implications for both spatial planning and land-use management.

Whether called 'planning' or 'zoning', land markets are regulated in many cities and countries over the world. These interventions ensure the provision of certain amenities but researchers are increasingly becoming aware of the repercussions they have in land and housing markets, as well as in other segments of the economy (Cheshire and Vermeulen, 2008: 2).

The 'shape' of cities, and their sustainability, is determined to some extent by the nature of ownership and property rights defining land, the complexity of commodific tion on the land and the effectiveness of the land market.

Urban land markets are important to society and sustainable transformation because they potentially allow the poor and working class access to land, housing and business premises.

[1] Financial, natural, produced, social and human.
[2] Definition of land taken f om Investopedia www.investopedia.com. Accessed on the 3rd March 2015.

This in turn shapes who depends on government (or municipalities) for land and housing, and who accesses these through the market, or who allocates these to themselves by occupying land or premises (Napier, 2009b). Accessibility and affordability remain constraints to participation in land markets in South African cities.

Urban land market distortions and market failures

Market distortion and market failure differ in relation to origin and intent. Market distortion refers to the 'deliberate regulation or intervention by the state, which prevents the effici t allocation of productive resources or the unhindered establishment of a clearing price' (for the purpose of this paper – land) (DFID 2005; Murphy et al, 1992, cited in Napier 2009a: 71). Market failure refers to the failure of market forces to maximise social benefits – in this case, well-located land that is integrated into the urban infrastructure of South African cities and towns (Napier, 2008; Khan, 1998). The social benefit refers to the increase in the welfare of society from an economic action, such as the trading or use of urban land.

Many people live in societies in which the goods and services they consume are provided through markets and subject to their income; they are able to make choices about what to consume, how much to consume and where to consume (Cheshire and Vermeulen, 2008). However, markets can and do fail to effici tly distribute some goods and services. As a result, to varying degrees, governments intervene in markets through the use of tools, such as direct regulation and/ or economic incentives (taxes or subsidies). Land markets are no different, and land-use planning or zoning is a key regulatory tool in the hands of municipalities. This form of regulation guides the use of the natural resource, in this case land, according to rules and norms. As a result, prices and markets still have some level of influen e, but this influen e is constrained by planning decisions (Cheshire and Vermeulen, 2008).

Contemporary and historical state interventions in South African cities and towns have distorted urban land markets, especially affecting the poor. This has resulted in market failure for less wealthy individuals and households in their attempts to find places to live, trade and manufacture in order to earn a decent living (Napier, 2009a: 1).

Cities are driven by and depend on land as a fundamental input for development and growth. Land-use planning and implementation can be a measure both of successes and challenges faced by a city. Planning for sustainable, integrated and equitable land use and development in South Africa requires an understanding of these markets – which externalities are not accounted for and why these markets fail – in order to allow for sustainable solutions for cities.

Examples of historical market distortions in South African cities include:
- Tenure that was limited to rental in most historical townships in urban areas.
- Depressed affordability driven by limited education and income.
- Limited access to, and insecure tenure of, business rights.
- Layered and inconsistent regulatory systems.
- Disparate levels of infrastructure.
- Spatial segregation and dislocation underpinned by transport subsidies.

Componding these historical market distortions, new failures to land markets are now emerging and include:
- The State's emphasis on house production has led to land (value) being neglected and location issues.
- The ramp-up of supply-side programmes, such as public infrastructure programmes, in the absence of an expression of demand has lead to a mismatch between need and supply.
- The grant system has created unwitting market players and led to under-valued assets.
- A rising gap between grant product and bank-mortgaged product is continuing to emerge, affecting the market's ability to define app opriate clearing prices.
- Limited or no available serviced land on the market for poor and working class people.

Given the prevalence of both urban land market distortions and failures, interventions are required to meet the needs of developing sustainable cities. Sustainable cities are potentially defined by the overarching demands of equity and fairness. The question may then be asked, for whom? The next section identifies three key arguments around the distribitutional effects of urban land market interventions. When considering an intervention, the distributional effect and ultimate goal for implementing the intervention need to be understood, to ensure that the intervention achieves the desired outcome.

Equity and fairness in the choice of urban land market interventions

Effici t land markets aim to allocate land in a way that maximises the difference between social benefits and social costs. However, this does not necessarily explain how these costs and benefits are distributed between members of a society or inhabitants of a city. The 'best' distribution depends on what view of equity and fairness is held (Khan, 1998). The perspective depends on which argument is prioritised and which argument overrides. These arguments include: the social justice argument, the poverty alleviation argument and the urban efficie y argument.

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³ This section is adapted from Napier (2009a).

The social justice argument for land rights

Ideologically, at least in a context where the right to access land is entrenched in a national constitution, it is important that all citizens (and even residents) are fairly granted the choice to own, use or access land. It can be argued that property rights (for those who already own land) and rights of access (for those who aspire to acquire land or user rights over land/space) are key to building a stable land market. Land, land rights ('rights, restrictions and responsibilities'), improved technical supports ('e.g. land registration and accurate spatial identific tion') and the 'cognitive capacity of market participants' are seen as the building blocks or necessary ingredients for a functional land market (Wallace and Williamson, 2006: 124).

The poverty alleviation argument

Land is often discussed as an asset that households can use to alleviate poverty, through using the property either to trade up and achieve positive residential mobility, or to use as a locality for trading, small manufacture or sub-renting. There is also a heated debate about whether property needs to be underpinned by formal title in order to be more effici t as an asset – e.g. title may enable the use of property as collateral for formal finan e (de Soto, 2000; Royston, 2007; Tomlinson, 2005). Others point out that legalisation of land and the transfer of ownership rights may take too long and curtail the plans of households to remain mobile (Datta and Jones, 2001).

Despite this, the argument that land is a usable asset (whether it is owned or simply has defensible use rights attached to it), seems self evident, especially if located in neighbourhoods that are well integrated into the urban economy. From the perspective of the individual household, Landman and Ntombela suggest that access to, and ideally integration with, public uses in higher value areas provides some opportunity for poorer inhabitants to 'gain access to opportunities and facilities which are generated through the resources of the more wealthy' (Dewar and Uytenbogaardt, 1991, cited in Landman and Ntombela 2006).

The urban efficie y argument

From an urban efficie y perspective, opening up the market in well-located land to the poor makes sense. Locating large numbers of poor people on the urban periphery means that accessing employment and other urban opportunities generates a tremendous amount of movement and concomitant costs. The poor bear the brunt of this, with cities only subsidising public forms of transport. This has a negative impact on the broader economy, as it exerts upward pressure on wages and labour costs as a result of high transport expenditure.

About 67% of the demand for public transport comes from township areas (DoT, 1999). The subsidies needed to prop up public modes of transport continue to pose a problem to national and local government. The excessively long working days for the poorest sectors of population reduce productivity and increase transport costs borne by the consumer and by employers.

A discussion on urban land markets and identified interventions, would not be complete without understanding the role of distributional impacts of these interventions and the arguments for or against them. This paper does not intend to unpack the distributional impacts (whether positive or negative) of various interventions. However, it is important to bear in mind that any selected intervention will fall within the broader context of desired goals set by government for sustainable cities.

Why Do Urban Land Markets Fail?

Cities are driven by, and depend on, land for development. The market's inability to allocate land effici tly is referred to as a market failure. A market failure may not necessarily mean that a market (in this case, a land market) does not clear (i.e. the quantity of land demanded is greater or smaller than the quantity of land supplied), but that the market forces have failed to maximise the social benefits of the land. When this happens, a divergence between private costs and social costs may be created (Khan, 1998). Private costs refle t the direct costs to a person engaging in an activity, but the activity may lead to society incurring costs that the individual person does not pay for directly. For example, an individual may incur private costs (e.g. petrol and wear and tear on a vehicle) but driving the vehicle also creates costs for the society (e.g. pollution, congestion, and wear and tear on the roads). These costs are not necessarily incorporated into the individual cost of driving, and so society as a whole carries the added burden. Social costs may to some extent be managed through taxes, levies and other charges.

Urban land markets were defined upfront. However, land has certain characteristics that underpin the reasons for urban land market failures and the divergence between social and private costs in the market. Typical features of land include (Cheshire and Vermeulen, 2008; Pamuk, 1999):

*   Land has a specific and fi ed location – because each piece of land is locationally unique, the value of the land is influen ed by its specific loc tion.

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4 Tomlinson M. 2005. 'Title deeds not a magic wand', Business Day (Johannesburg), 10 August 2005. http://www.businessday.co.za/.

- The value of land is largely determined by the characteristics and uses of other land bordering it and to which it gives access.
- Land and housing markets capitalise the impacts of amenities, neighbourhood characteristics and the lack of amenities of a given location.
- The valuation of open space and other planning-induced amenities may not be fully accounted for in land markets.
- The actions of landowners – whether positive or negative – that generate externalities, may not be captured in land markets.
- Government authorities tend to be more involved in land regulation and management than for other goods in the market, and government is itself a significa t land owner,
- Land is expensive to develop, and zoning, servicing and building on land take time and money. Here there is a difference between formally recognised land and informally supplied land. If the urban authorities zone and service the land before people settle on it, the development costs may have to be spent upfront. However, if people have already occupied the land (prior to officia approval), the development costs can occur after settlement.
- Land and the buildings on the land last for a relatively long time. Land can be used and re-used many times and in different ways over many years.
- Significa t transaction costs are involved in acquiring land (e.g. costs to identify available properties for sale or rent, costs to negotiate sale or rental contracts – or the use of unregistered land – and costs for transfer of ownership).
- Over any given time period, land does not change hands often compared to many other types of goods, and so the volume of transactions over time is low, which may affect how prices are set.

As a result, land markets experience various market failures that lead to the inappropriate, disproportionate or ineffici t allocation, use and management of the land. Key market failures observed in land markets include: imperfect competition, imperfect information, different views of land as a public good, inappropriate government intervention and externalities.

Imperfect competition

Imperfect competition refers to markets where the individual actions of particular buyers or sellers have an effect on the market price. In such markets, marginal revenue differs from the market price, and marginal social cost then differs from marginal social benefit (Khan, 1998). In the case of urban land markets, imperfect competition may lead to barriers to entry and disparity in social welfare.

Imperfect information

When some segments of the market – buyers, sellers or both – do not know the true costs or benefits associated with land use or land transactions, imperfect information exists.

Imperfect information for a public good or externality differs from imperfect information for a private good (Khan, 1998). For example, township properties are often undervalued and remain 'ripe for picking' by better-informed buyers and other market actors (Napier, 2008).

Public goods

Many environmental goods and services have a public-good nature, which implies that the responsibility for their management rests with governments (King, 2006). In South Africa, the responsibility for land allocation and management is distributed differentially over the three tiers of government, national, provincial and local, as well as an intermediate tier defined y cities or municipalities.

If land is regarded as a pure public good, critical to sustaining human life, its characteristics should be (derived from Hassan, 1997 and King, 2006):
- Land is a public good, not privately owned.
- Nature governs the renewable supply, and the long-term supply of land is relatively inelastic.
- Land is essential to the existence of human life and to the functioning of ecosystems and the maintenance of biodiversity.
- Land has no substitutes.

Based on the classical theory of public goods and the definition proposed by Samuelson (1954; 1955) public goods are defined by non-exclusion and non-rivalry in their consumption and use. These views on public goods are, however, challenged by Randall (1981) in his review of the definition of public goods, and hence of the characteristics of land resources. Randall recognises two axes of classific tion for economic goods, based on the 'possibility that the good may be provided by markets and the possibility that its provision may be pareto-effici t', implying that no-one will be made worse-off when a group or individual uses the good. The resulting four categories of goods are: divisible and exclusive goods, divisible and non-exclusive goods, indivisible and exclusive goods, and indivisible and non-exclusive goods. Based on this work, land resources and their management can result in rivalry and excludability, with allocations falling short of pareto-effici t goals. Furthermore, Khan (1998) recognises that public goods may be collectively or privately provided, as is the case for land in South Africa.

Inappropriate government intervention

Inappropriate government interventions can create a disparity between the private and social values for land. In South African cities, a complex and confused regulatory environment for land markets favours existing and sophisticated landowners. Furthermore, public official are not always capacitated to open up creative opportunities for the poor in land markets or to negotiate with private sector actors to ensure more inclusive developments (Napier, 2008).

Externalities

Externalities are one of the most important classes of market failures for natural resources, including land. Externalities refer to unintended consequences (either positive or negative) associated with land uses or land transactions. Externalities may also arise through poorly defined property rights or the inability to enforce property rights, for example an open access externality (Khan, 1998). An example of an externality is where value capture by municipalities is under-developed (Napier, 2008). Table 1 shows the differences between pecuniary externalities (an externality that operates through prices rather than through real resource effects) – e.g. an influx of city-dwellers buying second homes in a rural area drives up house prices, making it difficul for young people in the area to get onto the property ladder – and technological externalities (which have a direct resource effect on a third party) – e.g. pollution from a factory that directly harms the environment or human health.

Table 1: Summary of differences between pecuniary and technological externalities*

Urban Land Market Interventions for Sustainable Cities

A vast selection of instruments is available to change land-use actions and development. Some instruments are used to influen e market behaviour, for example changing property rights or land title arrangements, while others affect the process of land management and include improved regulation, the use of subsidies or taxes, and the provision of better and appropriate information (Markandya et al., 2002).

The following section defines some of the key interventions that can be considered within a broader suite of options to address the market failures of imperfect competition, imperfect information, different views of land as a public good, inappropriate government intervention and externalities.

Legislation

The core of well-functioning land market economies is sound social, legal and institutional support to uphold the enforcement of contracts and land transactions. Weak institutions supporting land and real estate transactions lead to inefficie   y and poor productivity (Rajack and Lall, 2009). Indeed, 'the inability of societies to develop effective, low-cost enforcement of contracts is the most important source of both historical stagnation and contemporary under-development in the third world' (North, 1996).

In the short term, deregulating land markets and lowering transaction costs (such as application charges, processing costs and impact fees) may reduce revenues and rents to cities but, in the long term, more effici t and cost-effective measures may ensure more direct and sustainable revenue streams. This in turn requires the removal of any systemic illicit rents for tenure (Rajack and Lall, 2009).

At times, the State also becomes a player in urban land markets, using public holdings or the acquisition of private land to steer these markets towards more effici t and inclusive outcomes. This may increase the available supply of land; encourage private investors to establish housing solutions where revenues appear unattractive; and ensure spatial connectivity, cost-effici t designs and city efficie   y. Despite its merits, the role of the State or city as a player in urban land markets also carries risk of further distorting the market in unintended ways (Rajack and Lall, 2009).

However strong the legislation, it may be rendered ineffective without strong enforcement. Legislation remains a first step towards establishing well-functioning land market economies and needs to be supported by effective enforcement of the legislation's intent. For example, the artificial raising of the price of land in localities where the state acquires land.

Better information

The appropriate land-use decisions and actions for sustainable cities can be supported through the use of land information systems, various land assessments, and public information that provides timeous and appropriate information on critical land issues, land conditions, as well as the social and environmental implications of land use. Although land-use information systems are available and collate information on cities to some degree, this information is not necessarily relevant for the period under evaluation or accessible to all citizens. Information that is timeous, up-to-date, relevant and accessible for decision-making is required to support effective land-use and management decisions.

Type of externality	Types of variables affected	Effect of production possibility frontier	Effect on social welfare
Pecuniary externality (not a real externality)	Prices	Movement along frontier	Transfer from one segment of society to another
Technological externality	Ability to produce goods or utility	Shift of frontier (downward in the case of negative externalities)	Net change in welfare (downward in the case of a negative externality)

Source: Khan (1998)

Economic incentives

Economic incentives include pricing, preferential tax schemes, transfer and development taxes, and subsidies. These can be used to encourage cities' management, developers and landowners to use their land in accordance with defined social or environmental objectives (Markandya et al., 2002). However, subsidised interventions targeted at the poor may still become subject to imperfect competition, which may lead to 'downward raiding' and result in unintended consequences (Rajack and Lall, 2009). The circumstances surrounding, and the application of, selected incentives remain a complex issue. There is no 'one-size-fits-al ' solution for cities' management, developers and landowners. Certain incentives needs to be selected and applied in accordance with the defined outcomes required. This may align with the choices between equity and efficie y and whether one is seeking social justice, poverty alleviation or urban efficie y outcomes.

Advocacy

Also referred to as moral suasion, advocacy is a process of supporting and enabling people to express their views and concerns, get access to information and services, defend and promote their rights and responsibilities in order, ultimately, to be able to make choices and have access to options (SEAP, 2015). Advocacy is not a typical market intervention but remains vital for empowering actors to participate in markets (in this case urban land markets) in developing countries, where the disparity between the wealthy and the poor remains large, and the power imbalances define the ability to access information and markets. In the context of South Africa, civil society has historically played an important role in driving change. Advocacy continues through various avenues within this civil society space.

Command and control regulation

Regulatory controls include zoning, sub-division regulations, transfer of development rights, and various controls designed to protect sensitive land resources, public interests, and environmental and cultural values (Markandya et al., 2002). Land regulations serve two purposes: (i) to ensure that different types of land uses are separated – for example, industrial development and polluting fi ms or users are separated from residential users; (ii) to integrate private and public land uses – for example, to maximise access and use of transport infrastructure (Rajack and Lall, 2009). However, it has been observed that the net impact of regulations in the formal urban market may have limited reach. Formalising urban land markets is often a complex and extensive task, which is underestimated (ibid).

Property rights

The allocation of clearly defined and secure land tenure rights allows for investment in either land and infrastructure development or improvements (Markandya et al., 2002). This in turn leads to successful capital accumulation in many regions and countries (Rajack and Lall, 2009). Formal land markets and land property rights have a limited reach, as they can be complex, expensive, slow to implement and may lack well-defined links to access finan e and private investment. However, the formalisation of property rights (whether private, freehold or rental) remains a central tenant to government interventions to improve access to urban land markets (Rajack and Lall, 2009).

Government allocation of infrastructure

Government provides appropriate infrastructure, such as roads to facilitate accessibility and services to improve social welfare, and protects open spaces to provide a healthy ecological infrastructure (Markandya et al., 2002). According to the National Development Plan (NDP), sustainable cities require spatial justice, sustainability, resilience, quality and effic y. The appropriate allocation of infrastructure (both man-made and ecological) underpins the long-term sustainability of cities.

Understanding the Role of Urban Land Market Interventions in Managing Sustainable Cities

The market interventions listed above aim to address the NDP's goals and achieve access to services, tenure security, access to credit, and redress past imbalances, while ensuring a sustainable city into the future. Table 2 outlines these interventions, the market failures that they address and the implications for managing sustainable cities.

Table 2: Impacts of various market interventions on social welfare and the management of sustainable cities*

A Framework for Sustainable Urban Land Markets

The concept of capital has a number of different meanings, and so it is useful to differentiate between fi e kinds of capital: financia , natural, produced, human, and social. All are stocks that have the capacity to produce fl ws of economically desirable outputs. The maintenance of all fi e kinds of capital

Market intervention	Types of market failure addressed	Types of variables affected	Effect on social welfare	implication for managing Sustainable cities
Legislation • Basic human rights • Governance • Regulatory rents and revenues	Imperfect competition	Prices	Transfer from one segment of society to another	Separate polluters from residential users. Integrate private and public space. Lower rents may lead to longer-term revenue streams.
Better information • Planning • Mapping • Value	Imperfect information	Prices	Transfer from one segment of society to another	Improved decision-making.
Economic incentives: • Taxes • Subsidies • Grants	Imperfect competition, externalities	Prices	Transfer from one segment of society to another	Correction of externalities. Redress welfare imbalances.
Advocacy: • Supporting and enabling people • Access to information and services	Public goods	Prices Income	Transfer from one segment of society to another, Net change in welfare	Stronger buy-in and commitment from society. Better choices and options. Safeguarding of rights.
Command and control regulation • Restricting land use • Artificially limiting urban development • Increasing minimum development standards	Public goods Externalities	Prices	Net change in welfare	Ensuring the preservation of green-belts (may limit land supply or increase property values). Managing urban densities. Increasing the cost of unintended development.
Property rights: • Secure • Transferrable	Imperfect information,	Prices	Transfer from one segment of society to another	Rising property values. More frequent land transactions. Higher municipal revenues. Use of real property as collateral.
Government allocation of infrastructure: • Access • Services • Ecological infrastructure	Inappropriate government intervention	Prices Income	Transfer from one segment of society to another Net change in welfare	Lower transaction costs through better access. Improved welfare through service delivery. Sustainable cities through ecological infrastructure.

Source: Authors' own

is essential for the sustainability of economic development (Goodwin, 2003). Urban land markets remain complex integrated systems and are dependent on these fi e forms of capital to function. Through the use of market interventions, these forms of capital are better equipped, supported and capacitated to participate in urban land markets. Ultimately, this will provide for sustainable cities and improved social welfare within the urban landscape.

In the South African context, the question remains: how can land-use planning, development control and building regulation be better used to facilitate better urban land markets? For urban land markets to work better and be more inclusive, a number of key elements or layers need attention. Figure 1 shows the layers, working from the bottom up, that countries need to build and strengthen to make the whole system work. These are the necessary foundations for a functional and accessible land market. The system works better if human rights and then property rights are in place. Land needs to be well administered and managed for the public good and to stimulate investment at all levels. With the rights-base and good governance in place, market interventions to lower the barriers to entry and the costs of transactions are more effective. The physical urban geography is the setting in which this all plays out, making a difference to how places are made and shaped. More equal access to this system can lead to improved livelihoods and open the doors to more of the benefits of u ban life (Napier et al., 2013).

Figure 1: A framework for market interventions for sustainable cities*

Through the market interventions identified above, the fi e forms of capital (financia , natural, produced, social and human) may be able to provide the relevant factors

of production, capital, labour, and resilience to support functioning sustainable cities. In turn fl ws, through wages, infrastructure and services, may be established to support the effective functioning of the forms of capital. Ultimately, the selection of the 'best' or most 'effective' intervention will depend on the goals or impacts chosen and the form of capital to be supported.

Conclusion

Government and market interventions are used to influen e land market outcomes in cities across the world. Although well meaning, these interventions may generate subsidiary effects that are unintended by policymakers. Achieving socially desirable outcomes in complex land and real estate markets remains a challenging task. The unintended result may be a net social loss, leaving the urban economy worse off (Brueckner, 2009).

Most state and private sector urban interventions and investments affect the land and real estate market. With a better grasp of land market dynamics, these effects can be more consciously factored into policy and programme designs. Without this awareness, single-pronged approaches to addressing land markets for sustainable cities may fail, as interventions may be misdirected, generate unintended externalities or become ineffective because of the varied demographic and socioeconomic characteristics of sub-groups within a city and the multitude of constraints underlying effective implementation (Rajack and Lall, 2009). The rank ordering of chosen interventions for sustainable cities will change depending on the severity of the current market constraints. This needs to be given careful consideration, given the extent and diversity of land market and credit

Source: Authors' own and Napier et al. (2013)
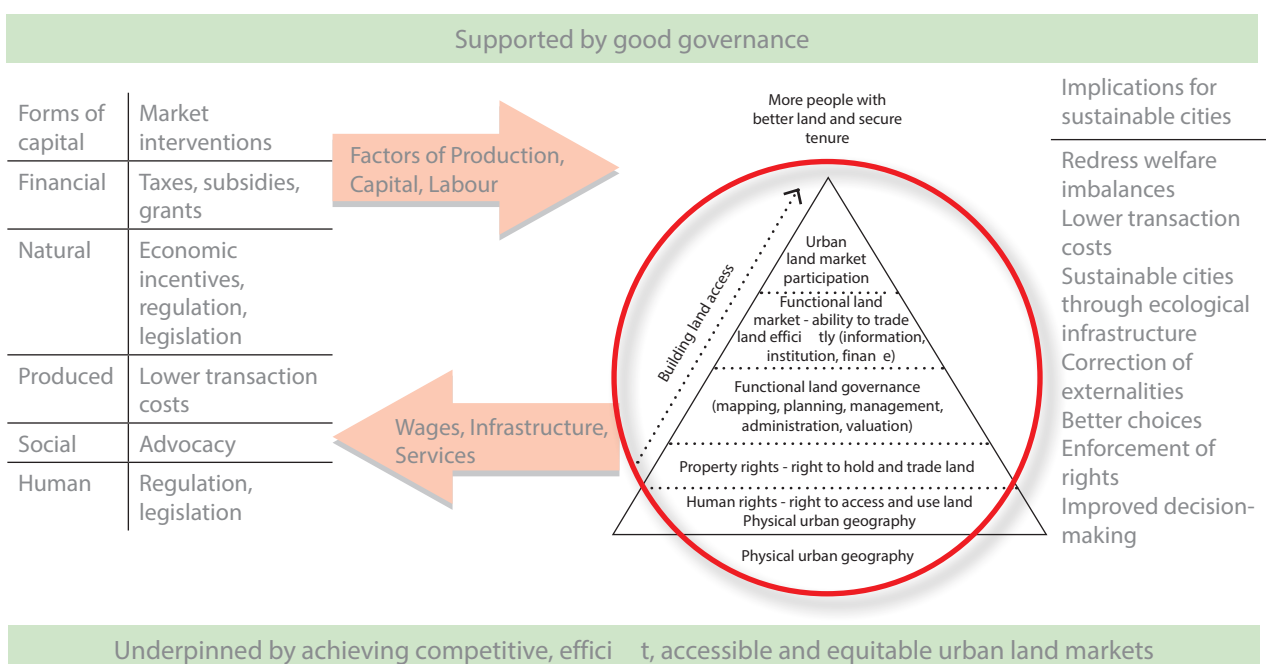
distortions experienced in developing countries (Dasgupta and Lall, 2009).

In many cultures, land is viewed as a resource to be used for the common good. As land becomes an increasingly complex commodity, elements of that viewpoint need not necessarily be lost nor militate against the stimulation of vibrant urban land markets which constantly open up opportunities for the poor to have a place in the city, and thereby to become less poor. The challenge is understanding the complexities of the system suffici tly well to be able to intervene to address market failures but without distorting the market to the detriment of all (Napier, 2008).

Recommendations

Decision-makers need to take into account the 'true' value of land in order to ensure that the following contributions are internalised:
• The importance of land markets in supporting income.
• The importance of land markets in supporting job creation.
• If valued correctly, land will be:
• used at the most effici t level,
• be developed in accordance with its value, taking into account the competing goal of social inclusion.

In order for good land market governance to refle t fair policy considerations, the following factors should be taken into consideration when allocating resources:
• The level of service provision across sectors.
• The method of payment across sectors.
• Land vendors and other suppliers and sources.
• Security and reliability of land supply, including property rights.
• Income across sectors and user groups.
• Willingness-to-pay across sectors and user groups.
• The ecological thresholds of supply, and whether the resource is renewable or non-renewable.

Appropriate legislation, which is strongly defined and appropriately enforced, may ultimately separate polluters from residential users, integrate private and public spaces, and lead to longer-term revenue streams through lower rents. This also includes the enforcement of command and control policies that:
• restrict land uses to preserve ecological infrastructure,
• artificially limiting urban development to manage urban densities, and
• increase minimum development standards to raise the cost of unintended or undesired development alternatives.

To make well-informed decisions when designing urban interventions, availability of (and access to) relevant and timeous information needs to encouraged:
• Data about land and real estate transactions, including price, should be included in decision support systems, such as land availability, and suitability tools used by municipalities.
• Informed by analysis of this data, municipalities should be encouraged to formulate a specific land policy, as part of their integrated development plan, showing how vacant and under-used land will be developed and managed to achieve wider socio-economic and environmental objectives.
• Better information will ultimately inform more effective mapping, planning and valuation.

Property rights need to be clearly define , secure and transferable, in order to encourage rising property values, more frequent land transactions, higher municipal revenues, and the use of real property as collateral. Including the economic value of natural resources, such as land, into decision-making allows for the resource to be properly measured, carefully managed and effectively allocated among competing users. This will, in turn, effectively support the principles of good land governance and transformation towards just, sustainable cities.

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Translating Land Policy to Practice

by Peter Magni

CONTENTS

Background

Over the past 10 years, urban land has been a recurring theme in South African national policy. This working paper considers how the policy focus on urban land can be translated into practical interventions with reference to the current city experience of land. After looking at national policy and legislation related to urban land, the urban land system and role-players are considered, with a focus on metropolitan municipalities. The paper then proposes some urban land interventions for metropolitan municipalities, and concludes by highlighting the complexity and confli ts related to urban land.

Urban land is a policy focus in South African cities because of the high demand for land, which results from urbanisation and the limited supply of shelter options. Growing socioeconomic inequality compounds the constraints in the supply and demand of land, leading to increased violence and dissatisfaction with government., In addition, the Apartheid urban form and associated land ownership patterns, where poor and marginalised racial groups are located on the edge of cities away from opportunities, remain largely unchanged.

Urban Land as a Policy Theme

Government has produced three policy documents related to urban land, and the issues raised by each policy are captured in Table 1.

Breaking New Ground – A Comprehensive Plan for the Development of Sustainable Human Settlements (BNG) raises land as a concern in realising quality human settlements (DoH, 2004).

The National Development Plan (NDP) – Diagnostic Report identifies u ban land as a specific issue (NPC, 2011)

The Integrated Urban Development Framework (IUDF) is currently being compiled by the Department of Cooperative Governance and Traditional Affairs (CoGTA), and a draft framework for discussion was published in 2014 (CoGTA, 2014).

Table 1: Urban land-related policy proposals by policy document

URBAN LAND-RELATED POLICY PROPOSALS	BNG (2004)	NDP (DIAGNOSTIC) (2011)	IUDF (2014)
Acquire well-located private land for low income housing development	X		
Introduce fiscal in entives for accessing well-located land	X		
Address land issues related to informal settlements	X		
Coordinate effectively access to and development of state and parastatal-owned land	X	X	X
Implement strong measures to prevent further development of housing in marginal areas		X	
Increase urban densities to support public transport		X	
Introduce incentives and programmes to shift jobs and investments towards dense townships on the urban edge		X	
Establish new norms and a national spatial framework		X	X
Integrate diffused funding fl ws into a single fund for spatial restructuring		X	
Reform the planning system to resolve fragmented responsibility for planning in national government, in relation to intergovernmental relations and in municipalities		X	X
Establish neighbourhood spatial compacts to bring civil society, business and the state together		X	
Enable citizens to participate in spatial visioning and the planning process		X	
Simplify land-use planning and management			X
Rethink the role of the Housing Development Agency			X
Speed up the provision of land tenure			X
Promote land value capture			X
Ensure legislative concepts are applied consistently			X
Address the impact of traditional authorities in urban municipalities			X
Address the fragmentation in public land information			X

A common theme of the policies is that urban land concerns the provision of shelter and/or housing for the poor, which has clearly not been addressed adequately over the past decade. All three policies highlight the ineffective coordination in accessing and developing state- and parastatal-owned land for this purpose. Other common concerns relate to resolving land issues in informal settlements, and the need for urban land norms and a national Spatial Development Framework (SDF).

[1] Herman P. 2015. Khayelitsha quiet after land grab, News24, 16 April. http://www.news24.com/SouthAfrica/News/Khayelitsha-quiet-after-land-grabs-violence-20150409.

[2] Skelton D and Dlamini P. 2015. EFF land invasions disrupt housing plans, undermine the poor: Tshwane, Timeslive, 21 January. http://www.timeslive.co.za/politics/2015/01/21/eff-land-i vasions-disrupt-housing-plans-undermine-the-poor-tshwane

Despite the similarities between the policies, the NDP and the draft IUDF have broader application than meeting the needs of the poor. The NDP speaks to the need for densific tion in relation to public transport facilities, incentives to shift commercial investment to areas where the poor live and the establishment of a fund for spatial restructuring. The draft IUDF raises the issues of tenure uncertainty and inadequate land-use management instruments. The broader focus highlights the extent of urban land challenges facing government.

The conversation about urban land policy occurs within a broader political discourse of addressing inequalities in land ownership in South Africa through 'a radical and rapid break from the past' (ANC, 2012).The focus on urban land in the BNG, NDP and draft IUDF is a break with the status quo that focused on rural land through the government's land reform programme. This bias towards rural land is apparent in the land-related policy and legislation published recently:
The Green Paper on Land Reform in 2011 (PLAAS, 2011).
The Restitution of Land Rights Amendment Act (No. 15 of 2014), which extends the date for lodging claims to 30 June 2019 (DRDLR, 2015) and allows for land claims that originated prior to 1913.

The Property Valuation Act (No. 17 of 2014), which establishes an Office of the Valuer-General to assess property value in relation to the land reform initiatives. The Land Holdings Bill, which will prevent individuals from owning more than 12 000 hectares of land and prevent foreigners from owning land (The Presidency, 2015).

New land-related policy that does not have specific rural focus includes:
The Expropriation Bill (published in Government Gazette No. 38418 of 26 January 2015), which provides for the seizure of property in the public interest.
The Spatial Planning and Land Use Management Act (SPLUMA) (No. 16 of 2013), which provides a single land development process for spatial and land-use planning.

Arguably, the greatest impact on urban land will be through the implementation of SPLUMA, which devolves responsibility for directing spatial change to local government (Berrisford, 2015). The implications of the Expropriation Bill and its impact on property rights will depend on the extent to which (and conditions under which) government may seize public land. A concern with the implementation of the new wave of land policy is the unintended consequences within urban areas that might create uncertainty, diminish local government revenues and hamper integration of administrative systems.

Government's past focus on rural land reform has meant that its response to urban land and property markets has been limited to sector concerns, such as housing. As a result, the overhaul of the planning legislation relating to land and property took a decade to conclude. This policy neglect occurs when 60% of the population live in urban areas, where demand for land is highest and inequality between people is most acute.

Urban land systems would most benefit from rationalising existing land-related legislation, so that processes can become inter-related, easier to understand and easier to administer. Table 2 highlights the existing raft of legislation relating to land that would need to be considered when implementing new urban land policy.

Table 2: Land-related legislation

URBAN LAND-RELATED LEGISLATION	
The Constitution of the Republic of South Africa (Act No. 108 of 1996) – Sections 24 to 27 and Schedules 4 and 5	
Land Administration	Alienation of Land Act (No. 68 of 1981) Deeds Registries Act (No. 47 of 1937) Expropriation of Land (No. 63 of 1975) Government Immovable Asset Management Act (No. 19 of 2007) Land Administration Act (No. 2 of 1995) Land Survey Act (No. 8 of 1997) Municipal Finance Management Act (No. 56 of 2003) Municipal Property Rates Act (No. 6 of 2004) Spatial Planning and Land Use Management Act (No. 16 of 2013)
Land Development Prioritisation	Division of Revenue Act (annual) Infrastructure Development Act (No. 13 of 2014)
Tenure	Rental Housing Act (No. 50 of 1999) Sectional Title Act (No. 95 of 1986) Social Housing Act (No. 16 of 2008)
Tenure Security	Prevention of Illegal Eviction from and Unlawful Occupation of Land Act (PIE) (No. 19 of 1998) The Upgrading of Land Tenure Rights Act (ULTRA) (No. 112 of 1991)
Housing	Housing Act (No. 107 of 1997) and associated Housing Code (2009) Housing Development Agency Act (No. 23 of 2008)
Construction	National Building Regulations and Building Standards Act (No. 103 of 1977)

[3] T Holmes. 2015. Foreign land Bill a 'setback' for economy, Mail & Guardian, 6 March. http://mg.co.za/article/2015-03-05-foreign-land-bill-a-setback-for-economy.

[4] G Hosken. 2015. Pretoria is mine-chief, TimesLive, 24 February. http://www.timeslive.co.za/thetimes/2015/02/24/pretoria-is-mine---chief; T Holmes. 2015. Foreign land Bill a 'setback' for economy, Mail & Guardian, 6 March. http://mg.co.za/article/2015-03-05-foreign-land-bill-a-setback-for-economy; L Ensor. 2015. Expropriation Bill mum on links to Valuation Act, BDLive, 19 February. http://www.bdlive.co.za/business/property/2015/02/19/expropriation-bill-mum-on-links-to-valuation-act.

Mining Rights	Mineral and Petroleum Resource Development Act (No. 28 of 2002)
Transport	National Land Transport Act (No. 5 of 2009) The South African National Roads Agency Limited and National Roads Act (No. 7 of 1998)
Environmental	Conservation of Agricultural Resources Act (No. 43 of 1983) Mountain Catchment Areas Act (No. 63 of 1970) National Environmental Management Act (No. 107 of 1998) National Environmental Management: Integrated Coastal Management (No. 24 of 2008) National Environmental Management: Protected Areas (No. 57 of 2003) The National Forests Act (No. 84 of 1998)
Water	National Water Act (No. 36 of 1998)
Heritage	National Heritage Resources Act (No.25 of 1999)

Source: Adapted from van Wyk (2012)

The land administration is complex because of the number of Acts, parallel administrative processes, and differing roles for different departments and spheres of government. The policy intent also needs to be matched to the reality of urban land.

The Urban Land System, Urban Land Role-Players and the Municipal Response

Any attempt to translate policy into practice must first understand the urban land system, its role-players, and how urban land practice is administered at a local level. This provides a basis from which to decide where best to intervene in practice.

The urban land system

Urban land can be illustrated as a simple system (Figure 1). A human population enters/exists in/exits a parcel of urban land. The population represents the infl w and outfl w of the system, and can decrease or increase over time. The population structure will determine how the land is used and perceived, but its particular structure (e.g. ethnicity, family, age and gender) can vary.

Land is a fini e asset – the stock of the system. Therefore, to accommodate a growing population, either the area or the intensity of activity (land use) has to increase. In the case of a declining population, these would decrease.

A population uses a parcel of land, which has value because of its resource attributes and type of use permitted. Resource attributes include water, minerals, soil, location and biodiversity, while land uses encompass residential, commercial, services, and open spaces.

Increasing or decreasing population fl ws will determine whether there is urban growth, decline or stagnation.

Figure 1: A simplified urban land s stem

Population and land interactions are regulated through a number of processes, or feedback loops (Meadows, 1999). Controlling loops (negative feedback loops) keep the land system in equilibrium by providing a place for people to live. Examples of these loops are property markets, systems of tenure, cadastre and land-use management. In contrast,
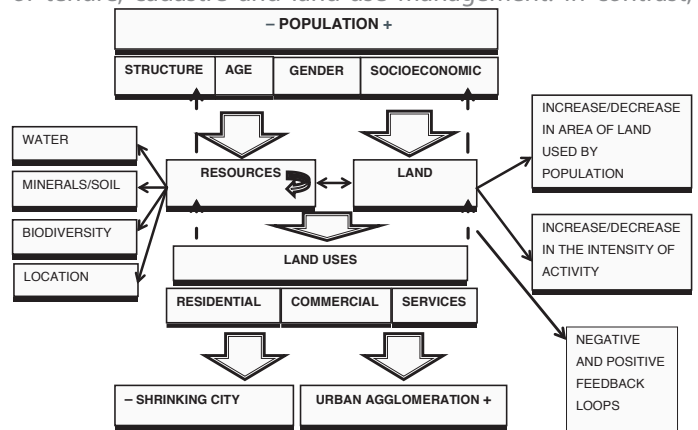
positive feedback loops are responsible for the growth and collapse of systems, and 'are self-reinforcing' (Meadows, 1999). For example, if more babies are born, more people will grow up to have babies, which in turn places pressure on the availability of land, and may lead to a settlement becoming uninhabitable due to unsustainable pressure on key resources.

Defining urban land as a system is helpful for understanding the phenomena and defining where best to intervene. Meadows (1999) developed a ranking of possible interventions within a system based on potential impact and how long the intervention would take to happen (Table 3). The interventions are not meant to be definiti e but are a way of prioritising interventions. The basic principle of the ranking is that of changing the way a system is managed, related to, or perceived, being quicker and more effective than altering the stocks (i.e. land), fl ws (i.e. population) and feedback loops (e.g. the system of tenure, or how many children parents can have).

Table 3: Interventions in complex systems applied to urban land

| RANKING	AREA OF INTERVENTION	EXAMPLE OF INTERVENTION IN URBAN LAND SYSTEM	IMPACT OF INTERVENTION	PERIOD REQUIRED FOR INTERVENTION TO HAPPEN
12	Constants, parameters, numbers (e.g. implementing subsidies, taxes and standards).	New municipal rates regime.	Low Impact	Long Term
11	The sizes of buffers and other stabilising stocks relative to their stocks and flows.	Tearing down and rebuilding the city (e.g. Paris).		
10	The structure of material stocks and flows.	Constructing public transport systems.		
9	The length of delays relative to the rate of systems change.	Lengthy ownership or land-use change procedures make government response to land invasion slow.		
8	The strength of negative feedback loops (the processes that keep a system in equilibrium).	A land-use management process.		
7	Reduce the gain around driving positive feedback loops.	Sustained population growth within a city.		
6	The structure of information flows (who does and who does not have access to information).	Who has access to/can use cadastre and deeds registration systems.		
5	The rules of the system (incentives, punishments and constraints).	Switching from a privately owned to a state-owned land system.		
4	The power to add, change, evolve or self-organise the system structure. The ability of the system to innovate and include variation.	The formation of informal settlements where the land market could not support the needs of the poor.		
3	Change the goals of the system – the aim of the game.	Instead of providing land so that the state can build low income housing, purchase land so that the poor can build their own homes on serviced sites.		
2	The mind-set or paradigm out of which the system – its goals, structure, rules, delays arises.	Shift from a socialist to a free-market approach to urban land.	High Impact	Short Term
1	The power to transcend (to go beyond) paradigms underpinning systems.	The shift from a racist Apartheid state to a multiracial state based on reconciliation that allowed for freedom for all to access land anywhere within South Africa.		

Source: Adapted from Meadows (1999)

Before the ranking can be applied to urban land, a more detailed understanding of the role-players is required.

Urban land role-players

In the interaction between the population and land, a number of role-players act to realise cities through property markets (Figure 2).

Figure 2: Urban land role-players
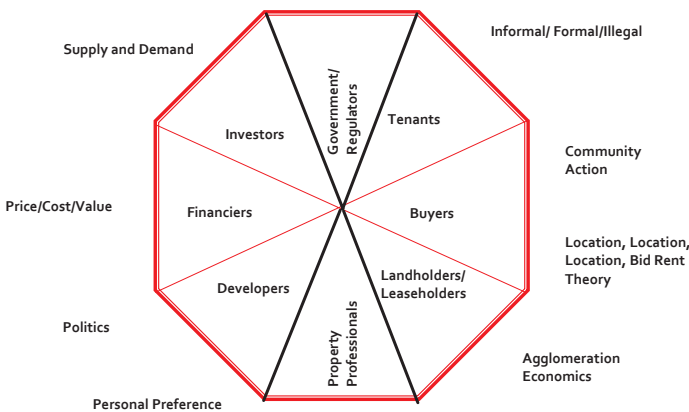
Source: Adapted from Urban Landmark and UN-Habitat (2010)

The first group of role-players are those involved in developing the land: investors, financiers and developers. Investors buy urban land to obtain an income or realise a return (Urban LandMark and UN-Habitat, 2010) and range from an individual who purchases property with the intent to rent it out, to a corporate involved in large-scale speculative development covering a range of land uses. Financiers can be formal institutions, which provide financing for purchasing and developing land, micro-financiers (ibid) who make loans available for the incremental construction on the land, and individuals who provide informal loans to enable family and acquaintances to obtain land. Similarly developers who assemble land and raise capital to develop property (ibid) range from individuals to large companies. For this group, the aim is to make a return on investment, and so key considerations are the supply and demand of land, and cost and value of different land uses. The group depends on the needs of the second group, as the second group define the supply and demand for land and associated land uses, while at the same time defining what a desirable built environment is for a given socioeconomic group. The first group also relies on government to provide an effective and effici t system for definin , transacting, financing and redeveloping land and property.

The second group trades the product constructed by the first group and includes tenants, buyers, landlords and leaseholders. Tenants rent access to land uses from a landlord, ranging from a room in a block of fl ts, to a business

or a space for a shack in an informal settlement. Buyers can afford to purchase freehold or sectional-title rights to a piece of land or a given property, and are not necessarily investors or landholders. Landlords rent out property and/or land to a tenant, ranging from a backyard shack to luxury accommodation. The considerations for this group include location of property, affordability, personal preference and access. In the case of the buyer and the landlord, the return on investment is an important consideration. The group relies on the first group for stock and for financing options, and requires from government a fl xible system that is effective, effici   t, protects land-use rights and can be navigated. The two groups are not mutually exclusive – e.g. buyers can be developers and investors.

Government constitutes the third group of urban land role-players and is primarily responsible for regulating the market. Land-related actions undertaken include land and tenure administration, provision of housing, land-use rights and infrastructure provision. In South Africa, different spheres of government have different responsibilities in relation to land. National government is responsible for land administration (the cadastre and deeds registries, through regional offices) and sector department considerations (e.g. water, minerals and energy, and agriculture). Provinces are responsible for land in terms of specific uses, such as health, housing, education and certain transportation. Local government is the closest form of government to the people and performs a number of roles in relation to land, which are detailed in the next section.

The fourth group of role-players are property professionals, which include civil engineers, architects, town planners, quantity surveyors, estate agents and conveyancers. The property professionals occupy roles within the other four groups and need to understand the complexity of urban land.

In South Africa, the property market marginalises the poor because of the high cost of urban land and the unequal access to property markets. This has given rise to an informal land market, which operates in parallel with the managed legal market, and manifests in informal settlements and hijacked buildings. In such circumstances, gatekeepers independent from government regulate the access to urban land. Informal markets can work in tandem with formal markets, and, while they are more insecure than formal land markets, they do provide access to the city for a significa t number of people.

In addition to the parallel informal land market, certain South African cities contain areas managed by traditional authorities, which represent another system of regulating land access.

The Metropolitan Municipalities Role in Relation to Urban Land

Local government is interpreted as the implementer of government policy and, as such, is seen as the interface between the citizenry and the state. For this reason, the paper focuses on local government's role in relation to urban land.

As a key role-player in the urban land system, a South African urban municipality has a number of land responsibilities. In the municipal context, land is a means to provide shelter solutions and service infrastructure and facilities, to produce income, to manage environmental resources and to assess potential development on a given land parcel.

A municipality's response to land is departmentally determined and is executed in terms of the legislation and guidelines that relate to the given department. This creates a 'silo' mentality. Coordination between departments on land issues is usually determined through defined processes, such as those related to land-use management, environmental impact assessments, building codes or land disposal. A coordinated approach to land in an urban municipality is not legislated for and so occurs in an informal manner, which is not necessarily successful unless there is political backing, and may only take place when considering long-term strategy. This fragmented approach to land can lead to confli t and misunderstanding. A more integrated system, which effectively and effici tly deals with the municipal land responsibilities, is urgently needed, if the intention is to provide residents with a high quality, unambiguous urban land service.

The section below outlines the different functions that a municipality plays in relation to urban land. It also considers challenges related to the different functions.

Land for housing

To address unequal access to land and shelter for the poor, municipalities and provinces have in the past twenty years purchased or obtained large tracts of land for low-income housing and informal settlement upgrading. These projects are mostly found on the urban periphery because of land costs, limited funding, current marginal locations of informal settlements and existing townships, project management constraints and a fix tion on yield. This process of acquiring the land for low-income housing has been criticised for having unclear laws and regulations, a lack of monitoring, little publicly available information and lengthy procedures for processing applications. (Urban Landmark, 2013)

Land for providing infrastructure and services

Urban municipalities with growing populations need land for infrastructure and social facilities in new developments or for replacing existing infrastructure. Of concern is the expensive expropriation process for accessing land for such needs, the little recourse for the poor in the process and the capacity constraints in administrating expropriation (Urban Landmark, 2013).

In terms of development agreements with developers, financiers and investors, public infrastructure is built by the developer of a private scheme, and then the servitude commonly becomes the property of the municipality. Municipalities are responsible for managing public servitudes and associated services, through wayleave agreements with service providers of infrastructure. Cities experience serious constraints in managing these servitudes, resulting in poor quality public roads, pedestrian paths and other civic spaces.

Cities are also struggling to maintain publicly owned land on which infrastructure is provided (e.g. for reservoirs, social facilities, parks, squares, substations etc.) because of insuffici t operational budgets and poor coordination of maintenance. A further difficu y for cities is accessing suitable land for 'undesirable' uses, such as landfill , wastewater treatment works and cemeteries, which require specific site conditions and are often opposed by affected communities

Bio-diversity and natural resource management

The expansion of urban areas and intensific tion of associated uses reduce biodiversity and radically alter the nature of land resources. Cities also contain land that has been degraded due to a concentration of pollutants (e.g. mining land, former landfill sites and abandoned industrial areas) and needs to be rehabilitated.

Local government does not purchase suffici t land for conservation, resource protection and land rehabilitation, and does not have suffici t funds to manage the land once purchased (Denoon-Stevens, 2014). Furthermore, issues relating to bio-diversity and natural resource management are not applied consistently when assessing development applications and applying spatial plans (Urban Landmark, 2013). Spending on land and land management for resource protection is fundamental for the long-term survival of urban areas. Alternative approaches to conserving specific areas need to be explored, such as allowing incentives that benefit landholders.

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[5] A servitude is public-owned land used for public infrastructure, such as a road, a sewer or a power line.

[6] A wayleave is the consent in writing that allows service providers to carry out work on the land.

Land as a source of income

Urban municipalities obtain revenue from rates on land, in addition to income from tariffs for services rendered, which are determined by land use and improvements made to land. Municipalities also collect payment for leases and rent.

Many constraints affect this revenue. Only a small percentage of residents pay rates and tariffs, as the poor are largely exempt. Urban municipalities also do not always have effici t billing, valuation and updated property information to collect revenues, and these inefficiencie lead to tension between land role-players. However, the study by Urban Landmark (2013), which assessed land governance against global experience, concluded that the country 'generally performed well in terms of regularly updating valuation rolls, collecting property taxes and maintaining spatial information'.

An important means of funding projects and paying debts is through the sale and exchange of municipal land. Maximising property value through physically improving or rezoning the land is an important strategy. However, the process for disposing of public land in South African municipalities is not transparent and a cause for serious concern (Urban Landmark, 2013). A land disposal strategy is needed that considers not only the return on investment but also the city's broader development strategy.

Land administration

A key function of city municipalities is administering land-use change and spatial planning systems. The adoption of SPLUMA, which allows for a single land development process, provides increased clarity for land role-players. In a municipality, the land administration has the following components:

- The SDF, and the more detailed large-scale plans underlying it, provides strategic direction for future development of a given area. It also guides the decisions that should be taken related to development applications received by a municipality, and where to direct the municipality's infrastructure and related land purchases.
- The development management system, which receives, catalogues, decides upon and implements development applications and associated building plans in terms of a land-use management scheme and associated support systems (e.g. land information systems, geographical information systems and building regulations). The development management system is in turn linked to the national cadastre and the regional deeds registry.
- Development control to enforce land-use decisions.

However, spatial planning faces many challenges, such as decisions made on land development applications that are inconsistent and contrary to the SDF. The SDFs also have to balance broad intentions for development against being too specific in terms of intended outcomes (Denoon-Stevens, 2014), while incentives to implement the SDF are not in place.

From a land-use management perspective, problems include lengthy delays in taking decisions on development applications (CoGTA, 2014); poor and/or inconsistent decisions on land development applications in relation to the intentions of spatial plans (Denoon-Stevens, 2014); poor or ineffective enforcement of decisions (ibid); expensive and lengthy processes required to resolve disputes relating to planning, tenure and ownership (Urban Landmark, 2013); and the compliance with other legislation in finalising land-use applications such as National Environment Management Act (No. 107 of 1998) and Water Use Licences over which the municipality has no control.

Contradiction and contestation in municipal interventions in urban land

There are certain contradictions and confli ts over how city municipalities in South Africa intervene in relation to urban land. These vary from city to city but affect the way the municipality relates to other land role-players, and the effectiveness of land development in a city. Key areas of contestation are:

- Fragmentation of responsibility for land within the municipality. The intention to develop a piece of land is determined from a sector perspective (e.g. housing, water, health, property investment), rather than the perspective of land requirements for a particular neighbourhood or the city as a whole. Both sector and strategic perspectives need to be integrated.
- A municipality is both player and referee in terms of land. It is a land system in microcosm, playing the role of an investor, a developer, a landowner, a land buyer, a leaseholder, a tenant, a government administrator and employer of a range of property professionals. Municipalities do not appreciate the potential contradictions in performing these different roles, while the administrative mechanisms to understand and manage potential confli t over land are often piecemeal. A stark example of confli ting roles is when a municipality, as a land owner, removes occupiers from a block of fl ts that it plans to use for social housing (and will manage) but has not arranged for alternative land or shelter for the illegal occupiers and thus is in contravention of the Prevention of Illegal Evictions (PIE) Act (No. 19 of 1998). Municipalities do not appreciate the potential positive effects that a coordinated well-functioning approach to urban land would have on the broader property market.
- Municipal imperatives are to remain financially viable (i. . through increased rates and tariffs, and using municipal land for investment purposes) and to drive specific sector initiatives (e.g. housing, social housing, land for bulk infrastructure requirements). This means that insuffici t attention is paid to how the land market operates within a given city and what the different role-players (in the formal, parallel or traditional land market) need for the system to be sustainable.
- Political intervention related to land or the property

market, which is contrary to plans and budgets, makes achieving land and associated development goals difficu .

- The complexity of the interventions carried out, combined with increased value of city land (because of high demand and limited supply) and poor policing of commercial crime, results in a high potential for corruption.
- Municipal land processes and concerns occur independently of land considerations by provincial and national government and state-owned entities. This has been a problem in relation to the location of low income housing, schools and economic development activities.

Specific contradictions and challenges relating to urban land cannot be divorced from the broader challenges facing city administrations, such as poor coordination between sector departments and spheres of government, a lack of skilled staff within the municipality, poor quality service provision to the public, a reliance on junior staff, overextended skilled staff, insuffici t budgets to address multiple municipal mandates, over-complex and/or ineffici t municipal systems (e.g. procurement systems, political approval processes) and corruption. Therefore, addressing urban land-related constraints will also require tackling more general issues relating to municipal administration.

Urban Land Interventions for Cities

The proposed interventions to improve urban land practice relate to city local government, address the areas of urban land confli ts and consider the roles a municipality plays in relation to urban land. The proposals are illustrative and not exhaustive. The suggestions draw on the principle set forth by Meadows (1999), that greater impact can be achieved when intervening in the paradigm, goals, self-organisation, rules and information fl ws of a system.

The primary land goal for municipalities is to understand and facilitate the functioning of the formal, parallel and traditional property markets within their jurisdiction. The aim should be to achieve a sustainable property market that provides for a range of income groups, appreciating that not all socioeconomic groups will be catered for in a given location. Critical data required, on a regular basis, for this understanding includes:

- population change within census enumerator areas and wards over time
- migration trends within the city
- points of integration and tension between the formal, parallel and traditional property markets
- location of informal settlements, additional units, traditional authorities (showing responsible chief, nduna and/or traditional court)

- property price change by census enumerator area and wards over time
- retail, office and industrial office location and vacancy rates across the city
- variation in residential density by zoning and by number of units on a given land parcel (erf)
- location of rental, sectional title and leased properties within a city
- location, zoning, function and size of municipal and state-owned land within a city
- access to public transport.

In order to deal with sector fragmentation of land responsibility, a city needs to have a single land strategy, as a component of the SDF. This strategy should inform the SDF's intent, using data to guide decisions about land development applications, and should operate at a land parcel (erf) level. The land strategy needs to:

- Coordinate and prioritise sector land requirements within a three-, fi e- and ten-year horizon. The strategy must promote the clustering of municipal functions in locations accessible from places of employment and public transport.
- Define municipal and state-owned land within a city's jurisdiction.
- Define a eas for urban expansion and densific tion.
- Determine capital requirements for land to facilitate city expansion and densific tion, in conjunction with the capital investment plan/infrastructure asset management plan.
- Consider the implementation of urban land innovations, such as land banking, land value capture and development incentives etc.
- Define land investment projects to be undertaken by the city – the investments need to assist in meeting the land needs of different sectors.
- Define potential public-private partnerships (PPPs) in relation to municipal land.
- Define a programme for retaining and releasing municipal-owned land.

The success of the land strategy will depend on its implementation. Therefore, whoever is responsible for the land strategy should have the necessary administrative and political influen e to be able to coordinate a number of different sectors and cooperate with different spheres of government. The directorate or unit responsible for the strategic coordination of land must also be responsible for PPPs and other coordination required across government and with state-owned entities.

To understand the breadth and complexity of municipal land, staff will need to be continuously trained in urban land processes and sector responsibilities. In the case of controversial processes, such as expropriation or removals, each sector needs to know how and when to act in relation to a legislated process. Similarly, a regular annual marketing

campaign on municipal land services is needed, to inform residents of the municipality's services, how the different services relate to each other, how residents can access these services and what the benefits of the services are to residents.

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The municipality's Council should approve the land strategy, with the list of projects requiring land, and the political oversight body (Section 79 committee) responsible for planning should be responsible for implementing the land strategy. Input by ward and proportional representation councillors on municipal land disposal or acquisition must be facilitated at specific meetings in a given financial year, and minutes incorporated into the land strategy once the proposal has been reviewed. A report needs to be provided to councillors concerning their suggestions relating to land.

Municipalities need to take a far tougher stance towards corrupt activity associated with land where official are involved. Current initiatives to stem such corruption do not seem to be working, and municipalities continue to be implicated in these matters. Part of the problem is that the processes are isolated within sectors, but official also do not understand the details and the significan e of certain actions. Irregular practices by provincial departments in acquiring land also contribute to corrupt practices. Combatting corruption related to land requires rationalising land-related processes within the municipality, coordinating with provincial departments over land-disposal processes and improving education.

Table 4 suggests interventions for the different land-related roles played by a municipality. These interventions are not limited to proposing paradigm shifts, goal setting and the rules of the system, but also consider system-wide interventions.

Table 4: Possible interventions in relation to the different roles played by municipalities

ROLE	POSSIBLE INTERVENTION
Land for Housing	
	Housing needs to be a municipal function, so that the sector can be integrated and managed in relation to broader human settlement concerns.
	Well-located land for housing at reasonable cost needs to be found. Provincial, national and state-owned entities are a potential source of such land, which will require ongoing discussions. Such discussions should not be limited to housing alone but should also consider how to maximise the investments made by government and state-owned entities through the way in which development proposals are packaged.
	Municipalities need to focus on accessing land, providing bulk infrastructure and a range of zonings and erf sizes for human settlements that include the poor, rather than building houses for the poor.
	The emphasis needs to be on creating and facilitating land markets across a range of socioeconomic needs
	A four-pronged initiative is needed for providing shelter to the poor: • Linking low-income land provision to the controlled expansion of the city. • Promoting infill de elopment in defined loc tions. • Identifying land for informal settlement occupation. • Promoting inclusionary housing through land value capture mechanisms, to encourage a greater range of land markets and rental opportunities within a given location.
Land for Providing Infrastructure and Services	
	The land strategy must consolidate and prioritise future requirements for land intended for infrastructure and services.
	Land requirements for infrastructure and social facilities need to be considered three to fi e years before the land is purchased (e.g. what would be the significa t land requirements if the municipality becomes a power producer through solar or wind energy). Similarly, land for 'undesirable' uses needs to be considered.
	Municipal wayleave systems need to be overhauled, to ensure that a high quality of public environment is maintained. In revising the systems, residents should be included, to assist with maintaining sidewalks, holding private companies accountable and improving coordination between sector departments.
Bio-diversity and Natural Resource Management	
	Grant funding should be provided for purchasing land needed to protect bio-diversity, natural resources and recreational open space.
	Private sector incentives should be investigated, as a mechanism for protecting natural resources and conserving particular parcels of environmentally sensitive land. Land swops and other mechanisms could be considered as alternative strategies.

	Dedicated land maintenance and operational budgets are needed that facilitate natural resource management. Poor maintenance and security of this land can turn communities against such land uses.	
	A combination of public awareness, good project design, cross-sector support within a municipality and private sector buy-in can ensure the success of natural resource management.	
Land as a Source of Income		
	Municipalities must increase the rates base by including more socioeconomic groups, as incomes received from tariffs on water, electricity and waste collection are declining.	
	More effective and effici t rate collection systems are required to deal with parallel property systems	
	If this is not possible, city municipalities need to look to other means of collecting revenue other than land. Sale of land/assets should be a last resort – leasehold should be considered the primary option in commercial /non-residential land disposal.	
Land Administration		
	Decisions made by municipalities on land develop-ment applications need to be consistent and effici tly concluded.	
	Decisions made by municipalities on land development applications need to be aligned to the strategic intent of the SDF and the city's land strategy.	
	The process for land development applications must be clear and consistent. An on-going marketing campaign is needed that clearly indicates what residents have to do in order to sell, change the zoning, sub-divide the erf or build on their property.	
	Contraventions in relation to the town planning scheme and the spatial development framework need to be enforced rapidly and effectively.	

Conclusion

The policy discussion on urban land in South Africa is over a decade old, and the BNG, NDP and draft IUDF define the policy concerns. The primary concern is to address the unequal distribution of land caused by apartheid, in the context of deepening socioeconomic inequality. While policy imperatives are correlated between the policies, the NDP and the draft IUDF provide a broader view of urban land than the BNG document. At present the policy remains detached from how an urban land system functions in relation to land.

The land-related legislation is complex, and land practitioners (often at municipalities) have to consider a range of processes. The urban land system presented is a system where an urban population relates to a given parcel of land and its associated resources and uses. Determining where best to intervene within a system is possible using a systems' perspective of the urban land market and the ranking developed by Meadows (1999). The ranking suggests that greater impact can be achieved by altering the paradigm, goals, and self-organisation, rather than intervening in the stocks, fl ws and

feedback loops of the system.

The property market is the engine of the urban land system and has a number of role-players: investors, government/ regulators, tenants, buyers, landholder/leaseholder, property professionals, developers and financier . The sustainability of the property market and, by extension, the sustainability of the broader land system, depends on the optimal functioning of the relationships between the role-players. The urban land system is complicated in South Africa by parallel informal markets and traditional land holdings. City local government is a key role-player and can be viewed as a microcosm of the property market. The municipality requires land for housing, infrastructure and for natural resource management. In addition land is an important source of income for municipalities, and municipalities play a critical land administration role.

Within the current local government system, the contradictions and confli ts related to land include:
• The fragmentation of responsibilities across sectors within municipalities.
• The focus on deriving income from land, at the expense of understanding and intervening to ensure sustainable property markets.
• Political interference, which makes it difficul to achieve municipal goals in relation to land..
• The serious problem of corruption in relation to municipal land.
• Poor urban-land coordination between the three spheres of government

What is needed is a paradigm shift by municipalities with regard to their land responsibilities and roles. Municipalities need to understand property markets within their jurisdiction and make the sustainability of the property market their central focus. In a scenario of decreasing tariff revenues, what is needed is to increase the rates base by facilitating a sustainable city-wide land market, while strategically releasing and acquiring local government land. To achieve this outcome will require a single intent from municipalities to clearly articulate land-related processes to all role-players within the land market, to enter into well-defined land-related PPPs and to develop a clear strategy to exterminate corruption related to land.

Nevertheless, although municipalities are a microcosm of the urban land market, they are but one role-player dealing with the urban land system. The policy proposals contained in the BNG, NDP and the draft IUDF include acquiring well-located land for low income housing, dealing with informal settlements, achieving spatial transformation through densific tion and directing urban growth and particular land uses to particular locations, and public participation. These will be the responsibility of local government to implement. This paper has highlighted the complexity and related confli ts of urban land interventions by municipalities, and

that the current policy proposals in relation to urban land in BNG, NDP and the draft IUDF are not detailed enough or sensitive enough to these nuances. This accusation against the policies can be extended to the processes and needs of the other role-players in the urban land market, be they in the formal, informal or traditional context. The policies in question should consider what interventions government can make to ensure that the urban land role-players function optimally.

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