



socio-economic rights institute
of south africa

URBAN LAND REFORM

A proposed approach to
urban land redistribution

March 2021
Version 2



Summary





URBAN LAND REFORM

A proposed approach to urban land redistribution

Introduction

The Nelson Mandela Foundation commissioned a series of papers on urban land reform in April 2019. Their aim was to inform debate about and propose a feasible approach to urban land reform which could, in the near future, be implemented. This document is a summary of the Socio-Economic Rights Institute's¹ paper on urban land redistribution.

Our paper adopts the redistribution clause in section 25 (5) of the Constitution as its starting point:

“the 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.”

¹ SERI is a registered non-profit organisation and public interest law clinic that provides professional, dedicated and expert socio-economic rights assistance to individuals, communities and social movements.

Land Redistribution Framework Act

On this basis we argue, in line with the Presidential Advisory Panel and High-Level Panel reports² that a law should be developed and enacted which gives effect to section 25(5) and that in order to operationalise the approach we propose a process for fine-tuning urban equitable access principles, the main legislative measure (the Framework Act) and the policy measures (the various programmes). We develop this proposal in three ways.

Office of Equitable Access

Firstly, we argue that the mandate for this law, and the institutional location of urban land reform, is a vexing question which we propose be addressed via an inter-ministerial dialogue between the Presidency, Human Settlements, Water and Sanitation, Public Works and Infrastructure and Cooperative Governance and Traditional Affairs. Our “straw man” proposal is that an “Office of Equitable Access” should be established within the Presidency with responsibility for the law, and for monitoring and evaluating the performance of key sector departments which are accountable for the range of multi-sector programmes or measures which constitute urban land reform.

Guiding principles

Secondly, we propose provisional content of the Framework Act: a set of principles and a range of measures in the human settlements, planning and urban development sectors to give effect to equitable access. We propose some points of departure which frame the urban land reform debate and our approach to urban land redistribution and argue that these could become the basis for the urban equitable access principles. They include: the urban silence in land reform; the non-material meaning and value of land; the institutional / sectoral dilemma; lessons from rural land reform; proactive and responsive approaches to land reform; mechanisms for redistribution, including expropriation; the role of state land in land reform; managing the urban land market; ensuring a multiple land use focus; disaggregating “the poor” and targeting appropriately.

Equitable access measures

Thirdly on the basis of a preliminary review of existing measures, we make a set of recommendations. Some of the measures comprise of existing programmes while others are new. In some cases, existing measures assessed from an urban land reform perspective or on their own terms have not been implemented and / or contain significant gaps or shortcomings and we recommend how these problems should be overcome. In summary they are:

- Social housing must be expanded and its “down-market reach” extended.
- Inclusionary housing must be used as a mechanism for equitable access. We recommend that mechanisms should be included to ensure that the majority of inclusionary housing units are made available to low-income households (households who earn less than R3,200 a month).
- Private rental market must be regulated to effectively foster conditions for equitable access.
- Regarding livelihoods measures, we recommend that an in-depth review of existing measures be undertaken by the Office of Equitable Access or Cooperative Governance and Traditional Affairs, and that a gap / shortcoming analysis be developed in order to meaningfully address equitable access to urban land for non-residential, productive uses and for economic inclusion.
- The human settlements legal and policy review process should include an equitable access strategy and mechanisms. The 1994 White Paper predates the Constitutional dispensation and should be aligned with it.
- The potential of SPLUMA, its regulations and municipal by-laws to accommodate the introduction of special zones for informal settlements be enhanced. Extending land use regulation over an informal settlement is a way to legalise the land use ‘informal settlement’. In addition: IDPs should set targets for equitable land access.
- Value capture mechanisms should be employed by metropolitan municipalities for equitable access purposes, including inclusionary housing and the progressive management of development and land use rights.
- Expropriation should be employed as a significant mechanism in urban land redistribution. The voices of the urban landless should be heard on what land should be expropriated and when, either directly or indirectly. Ordinary South Africans and communities, who have not been able to gain access to land on an equitable basis, should be able to approach the Minister of Public Works to consider expropriation. Alternatively, municipalities should bring requests from communities to the Ministry for consideration. Expropriations should be transparently conducted and publicly monitored. Procedures should be developed so that, in the event of cases of elite capture, the public should be able to both identify and object to such expropriations. Nil compensation has an important role to play in acquisition in situations of speculatively held and abandoned land and property, as well as land occupied by previously disadvantaged communities.

² Parliament, *Report of the High Level Panel on the assessment of key legislation and the acceleration of fundamental change*, 2017. Republic of South Africa, *Final report of the Presidential Advisory Panel on Land Reform and Agriculture*, for His Excellency the President of South Africa, 2019.

Test cases

We also propose that carefully selected urban equitable access test cases should be identified with key stakeholders in government, civil society and the private sector to operationalise key aspects of urban land redistribution under the authority of the Office of Equitable Access and the relevant sector departments. We make some provisional proposals for selection criteria that could determine the test cases.

Conclusion

Finally, we identify short term actions required to operationalise the approach as follows:

1. The Presidency should convene an inter-ministerial dialogue with Human Settlements, Water and Sanitation, Public Works and Infrastructure and Cooperative Governance and Traditional Affairs and Rural Development and Land Reform to resolve the vexing institutional question we identify about the location of urban land reform.
2. The Department of Rural Development and Land Reform and the proposed Office of Equitable Access, or an alternative coordinating department for urban land reform as identified via the proposed inter-ministerial dialogue, should convene a multi-sector consultation on the proposed Land Redistribution Framework Act, with both urban and rural inputs. This act should, at minimum, define “equitable access”, develop principles for land redistribution and identify the measures (existing and new) required to give effect to equitable access
3. The Department of Human Settlements, Water and Sanitation should include an equitable access strategy in the proposed new human settlements law and white paper, clearly identifying which measures contribute to giving effect to the provisions in section 25(5).
4. The Department of Cooperative Governance and Traditional Affairs should develop a new equitable access / urban land reform chapter in the IUDF, outlining the measures which contribute to giving effect to the provisions in section 25(5).
5. The Department of Public Works and Infrastructure should prioritise the use of surplus state land for land reform purposes.



socio-economic rights institute
of south africa

6th floor Aspern House
54 De Korte Street
Braamfontein 2001
Johannesburg
South Africa
Reception: +27 11 356 5860
Fax: +27 11 339 5950
Email: info@seri-sa.org