Regulatory systems and making urban land markets work for the poor in South Africa: a position paper for the Urban LandMark Programme

> By Stephen Berrisford and Michael Kihato of Stephen Berrisford Consulting

Presentation at the Urban Land Seminar Wednesday 15 November 2006, Ingwenya Country Escape Muldersdrift

## Structure of presentation

- Urban regulatory systems encompassing:
  - 1. Acquisition of urban land;
  - 2. Urban land tenure security;
  - 3. development and use of urban land;
  - 4. urban land transactions; and
  - 5. taxation of urban land.
- In relation to each of these we identify:
  - The current legal & policy framework;
  - Proposed or imminent changes to those frameworks; and
  - Areas for ULM engagement.

### The state of the regulatory system

- Ideology behind formal system has remained:
  - retained positive attributes such as relatively well organised deeds and cadastral system
  - but under increasing pressure due to higher volumes
  - and traditionally grappled with the informal
- Has positively transformed in many areas
  - tenure security and prevention of evictions
- Still unchanged, old, outdated regulations on:
  - development and use of urban land
  - taxation
- Analysis is framed specifically with regard to the implications of this state of affairs for urban poor

## The acquisition of urban land

- Regulatory mechanisms derived from:
  - Roman Dutch Law
  - Statute law and
  - to a limited extent in urban contexts African customary law
- Regulate purchase, rental, state driven programmes of acquisition, and prescription
- This area of law remains largely unchanged:
  - movements towards restricting foreign ownership of land
  - recently restrictions to sale of state subsidized housing
- Does this regulatory system support the acquisition of sufficient, well located land for the urban poor?

# Acquisition of urban land

- What is the role played by the regulations in mediating interaction of land owners and the state
- Privately held land according to the Constitution, can be expropriated for 'public purpose' and 'public interest'
  - includes the nation's commitment to land reform and to bring about equitable access
  - currently only with large urban infrastructure projects
- Substantial amount of land held by public entities
  - MFMA: may be disposed of only if the asset is not required to provide minimum level of basic services
  - PFMA: requires rules to be created for regulation of disposal of state assets by public entities
  - White Paper identifies guidelines for disposal of such land eg for for social infrastructure, SMME's etc

## Acquisition of urban land

- Areas for Urban LandMark engagement:
- How well do these mechanisms work in the face of:
  - the so called 'shortage' of urban land for socially driven programs of land acquisition
  - competing more financially compelling uses for such land
- What are prospects for in the long term for:
  - widening the scope of prescriptive acquisition: shorter times, easier procedures and pro-active prescription?
  - adopting and adapting regulatory developments in other jurisdiction such as areas of social interest?

#### Secure tenure of urban land

- Formal ownership of land guarantees security
  - only challenged through rigorous legal procedures eg foreclosure by banks
  - other rights protected eg court orders to evict tenants
- Unregistered and informal tenure eg illegal occupiers, holders of traditional rights to land etc also guaranteed:
  - Constitutional provisions on tenure reform and housing rights
  - Prevention of Illegal Eviction from and Unlawful Occupation of Land Act (PIE)
  - Interim Protection of Informal Land Rights Act (IPILRA)
- Legislative developments: tighten definition of illegal occupier

#### Secure tenure of urban land

- Impact of these substantial guarantees to urban poor
  - evictions of informal rights holders not possible without legal sanction
- However, the laws had an underlying rural rationale
  - effects of urban policies eg inner city regeneration
  - vestiges of urban laws that threaten secure tenure eg National Building Regulations and Building Standard Act
- Potential role for Urban LandMark is in engaging with:
  - urban processes eg inner city regeneration vis urban poor
  - stakeholders in dealing with these detrimental urban laws

# Development and use of urban land

- Initial development regulated by township establishment; land development area; and environmental laws and regulations
- Uses regulated by:
  - land use management eg town planning schemes
  - title deed conditions
  - by-laws, health and building standards, licensing etc
- Create a formidable regulatory maze characterised by:
  - overlap, duplicity and outdatedness
  - overly procedural and technocratic
  - no clarity on roles of different organs of government
  - few links with strategic instruments and other laws
- Formidable for formal system players, more so for the poor

### Development and use of urban land

- Problems caused by legislative paralysis:
  - unclear mandates prescribed in the Constitution from 'town planning' to 'regional planning & development', 'urban & rural development', and 'municipal planning'
- Potential areas of engagement for Urban LandMark:
  - national government, provinces and metropolitan municipalities to expedite clarification of mandates
  - high-level incl. the National Treasury and the Presidency on 'Modernizing the Planning Regulatory System'
  - highlighting areas of commonality with other progammes such as housing

#### **Urban land transactions**

- Formal processes eg sale, inheritance, pledge/mortgage regulated by conveyancing statutes:
  - complex, costly and time consuming more so with impacts of property boom, low cost housing projects, outdated technology, insufficient staffing etc
  - unable to adequately incorporate informal and customary systems of land holding
- Two important issues for further research
  - causal links between cost, complexity and inefficiencies of formal system and rise of the informal
  - extent state programs for housing and land hindered by inefficiencies of formal system
  - importance of informal systems in urban, and whether and how the should be incorporated into the formal

## Taxing urban land

- Local government rates and taxes
  - rating ordinances: exempt certain classes of land users
  - yet to be implemented Municipal Property Rates Act: uniform system with extensive list of indigent exemptions
- Others: transfer duties and VAT payable on land transactions, capital gains tax and taxes on land income
- Areas for engagement for Urban LandMark:
  - shaping the new rates policies in dealing with:
    - ✤ appropriate targeting
    - the effects of these policies on poverty alleviation
    - use to incentivise certain types of development
  - examine extent of threats of tax liabilities to tenure

