

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

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## Issues that frame the discussion

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- Urban regulatory systems encompassing, acquisition; tenure security; development and use of land; urban land transactions; and taxation
- Emphasises points of entry for further engagement rather than making conclusive statements
  - ◆ Influences of regulatory systems on urban land markets still subject to research and debate

# The state of the regulatory system

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- 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- Still unchanged, old, outdated regulations on: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 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
  - ◆ resistance from NIMBY communities
- 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

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- 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 (IPIIRA)
- 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 in further engagement:
  - ◆ 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

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- 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:
  - ◆ 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 programmes 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 they should be incorporated into the formal

# Taxing urban land

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- 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 pursuing further:
  - ◆ 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

Thank you!!