

**Perspectives on the Socio-Economic Implications of the
Spatial Planning and Land Use Management Bill,
Prepared by Planact and SERI, 2 November 2011, COSATU Workshop**

1. About Planact and SERI

Planact is a non-governmental development organisation with the mission to bring about local development for the poor within an integrated framework. Planact's work focuses on integrated human settlements and participatory governance as key programme areas. Support is provided through social facilitation for meaningful engagement between communities and government; capacity development programmes for community leaders and organisations; conducting research; and advocating for progressive policy development and implementation approaches.

The Socio-Economic Rights Institute of South Africa (SERI) is a non-profit organisation providing professional, dedicated and expert socio-economic rights assistance to individuals, communities and social movements in South Africa. SERI conducts research, engages with government, advocates for policy and legal reform, facilitates civil society coordination and mobilisation, and litigates in the public interest. Our thematic areas are: housing and evictions; access to basic services; and political space.

2. Introduction

The socio-economic implications of the proposed Spatial Planning and Land Use Management Bill ("the Bill") are wide ranging and cut across many of the aspects affected by spatial planning and land use management. These range from social justice, decent work, sustainable livelihoods, poverty alleviation, addressing inequality, reversing the apartheid spatial legacy, integration, resource utilization, and meaningful participation, among others. Based on the areas of focus of both SERI and Planact, this perspective takes an urban, rights-based, pro-poor approach. Key aspects covered therefore include:

- meaningful participation;
- informality and incremental development;
- mixed / multipurpose land use for sustainable livelihoods;
- giving meaning to 'integrated' development;
- changes in perceptions and attitudes.

This presentation focuses on broader principles with regards to socio-economic implications, as opposed to detailed specific reference to the Bill, which we understand is to undergo further revision.

The key principles outlined in the Bill include: spatial justice by redressing past spatial and other development imbalances; the inclusion of persons previously excluded with an emphasis on informal settlements, former homelands and areas of widespread poverty in terms of access to land and property, flexible and appropriate management mechanisms, and transparent processes of citizen

participation and empowerment (Chapter 2, Section 6). These principles are commendable; however require more specific unpacking within the Bill and any related regulations. The mechanisms (procedures, bodies created etc) contained in this legislation must ensure that the principles are implemented in practice, not just on paper. The potential disjuncture between the principles and the content of the Bill is something that must be kept in mind.

We strongly support recommendations that the Bill includes as a key principle, the social value / function of land also in the context of the 'right to the city' rallying call (in advancing equitable, inclusive, democratic and sustainable urban settlements)¹ and also in the context of the bill of rights in our constitution.

3. Participation in the drafting of new planning legislation

Based on the limited input to date on the Bill, and the importance of this legislation, more time is required for broader engagement, to work out the detail of various aspects. For example, this forum initiated by COSATU is a valuable space to share comments among trade unions and sector-based CSOs, and more such spaces need to be created and opened for more detailed discussion. Local municipalities, particularly small towns and cities, have a particularly important role to play, and should be consulted, not just via SALGA. They are at the coalface, and their challenges need to be addressed, and incorporated into the Bill so that it does not become impractical and unworkable.

For now, mechanisms must be in place to keep the system going and to ensure that project development applications and approvals continue within a regulated framework, particularly for public investment projects for low-income housing development, and to ensure employment opportunities are created. The importance of meaningful participation with regards to municipal by-laws and appeals at this level need to be considered to ensure that rights of the poor are promoted and not infringed upon, by municipal incentives of increased revenues. While the more far-reaching inputs in relation to the Bill should be considered, and there is the definite need for an overhaul of current archaic systems, this process cannot be rushed. It may be necessary for the DLFRD to approach the Constitutional Court to ask for an extension on the timelines.

4. Meaningful participation for democratic urban governance

Our starting point is public participation, specifically, meaningful participation by a broad range of stakeholders including civil society and poor and marginalized communities directly affected by spatial planning and land use management decisions. Currently there are varied perceptions of what participation means and hence varied practices often limited to 'information sharing' and 'consultation'. In recent research, Planact put forward the understanding that "participation can be viewed fundamentally as a basic right and a means by which people attain greater agency and self-determination through participating in the decision-making processes of their government or developing their own organisations"². Meaningful participation in the context of democratic urban governance put forward by DAG's submission is seen as "[facilitating] social inclusion and greater equity amongst all citizens through maintaining social control over state policies and spending"³.

¹ See current work of Isandla Institute, Right to City Dialogue Series

² Planact Research Synthesis, 2010, "Participation and Development from the Perspective of the Poor"

³ DAG submission, June 2011, also drawing on the UN-HABITAT definition

This would require the inclusion of a broader range of stakeholders including marginalized communities and civil society organisations in collective decision-making and monitoring of planning systems, coupled with processes that build the capacity of all stakeholders to participate from an informed perspective. Bearing this in mind, any legislation and regulations would need to define clear guidelines to ensure more meaningful participation. Participatory processes must be developed whereby all land users and owners can directly influence the shape and nature of spatial planning and land management systems. Decision-making needs to be transparent and open to debate before decisions are finalized and implemented, with on-going monitoring mechanisms in place. At present, there is a big disjuncture between civil society and community needs, and these processes, which are often dominated by business, ratepayers organizations etc.

While the integrated development plan (IDP) process is regarded by government as the space for broader participation in municipal planning, there are many flaws with this space particularly around compliance and the creation of 'wish-lists', with little involvement of people in prioritization and resource allocation. This in essence means that ordinary citizens have little influence over the final IDP, and there is severe disillusionment with and alienation from this planning process. Furthermore, the integration and alignment of SDF's with the IDP needs much strengthening if it has to have any meaningful effects with regards to *integrated* development. Broader participatory governance forums at city / municipal levels, community based planning mechanisms at levels below the municipality (neighbourhood, precinct levels) including participatory budgeting processes should be considered to give effect to more meaningful participation for positive development outcomes benefitting those directly affected by development planning, particularly marginalized communities. This should include an appeals tribunal process that ensures effective representation of those directly affected by land use changes. We have observed problems with class interests / aspirations of councillors and ward committee members in municipal affairs, and so representation of communities cannot be limited to these formal structures. Concern has also been raised with regards to the interests and incentives for municipal driven appeals/tribunals and hence inter-municipal processes could be considered (*as per section 33(2) of the Bill, elected municipal councillors should not be members of the Municipal Planning Tribunal – but the question is who can and should be?*).

5. Informality and incremental development

Another key issue is that of informality. In South Africa there is much competition for land, high levels of inequality, and high service delivery backlogs. The poor lack economic power and therefore depend on state intervention, and access to decision-making to ensure their interests are advanced is therefore very important. In the absence of effective state intervention and access to decision-making processes, poor and marginalized communities have strongly relied on their own (often informal and 'extra-legal') resources to access, use and transfer 'rights' to land. These processes need to be considered in terms of new legislation that impacts on incremental settlement development and sustainable livelihoods.

Principles to support conditions of informality and incremental development include:⁴

⁴ Based on Planact and CUBES study, 2008 "Land Management and Democratic Governance in the City of Johannesburg"; as well as Afesis-Corplan's definition of incremental development "the progressive

- **Informality** should be understood in terms of its contribution to the country's economy and the subsistence of its people. Therefore current repressive, control-orientated approaches should be replaced by a more enabling paradigm. A balance is needed between 'managing' the public realm and enabling people, particularly the poor, to realize their rights through access and use of land, at the same time protecting residents from exploitation by those with more power *within* communities.
- Rights of current residents of informal settlements should be recognized where no imminent threat exists, through a process of **in-situ upgrading** wherever possible. Identification of suitable land in close proximity to existing sites for *last resort* relocations, as per Upgrading of Informal Settlements (UISP) policy prescriptions.
- **Well-located land** needs to be released for use by the poor.⁵ Consideration for well-located land needs to include proximity to economic nodes for access to employment and income-generating opportunities, proximity to social amenities including education and health facilities, and access to transport. This requires the establishment of more effective mechanisms of attainment and release of well-located land, and requires new tools e.g. price flexibility on purchase of land, tax incentives and protections, ability to extract public goods from the private sector, anti-speculation tools etc.⁶ Incremental development on well-located land should be approached with security of tenure as a first step, protection against eviction and recognition of the need for mobility (migration).
- The privileged position that individual property ownership (e.g. individual title) has in policy discourse and practice needs to be reconsidered. This would involve exploring **alternative tenure security systems** e.g. administrative recognition, regularization, communal rights, etc. (see the work of Urban Landmark in this regard). Security of tenure would address the persistent threat of evictions and allow for community investment and consolidation in settlement development / improving their lives.
- Municipalities need to meet their obligations with regards to **servicing and regulating environments** where the poor live to uphold safety and health conditions, by ensuring effective basic services (water, electricity, sanitation), access to social facilities (education and health services), waste management, transport, and policing.

Well-located land, once sold or rights given to develop, cannot easily be taken back by the state for its own purposes of transformation. We are aware of cases in municipalities where land is being sold off illegally, and this kind of practice is extremely detrimental. There should be mechanism in place which prevent this, and ensure that land is allocated its optimal use in the spirit of the principles of the Bill and the country's broader socio-economic goals.

6. Mixed use zoning / multi-purpose land use for sustainable livelihoods

Mixed use / multipurpose zoning and higher density development should be promoted to support survival / livelihoods strategies. This should include the introduction of use rights to public and

introduction of administrative, management, engineering services and land tenure rights within an incremental development area" in the SPLUMB submission, June 2011.

⁵ Refer to Afesis-coplan submission (June 2011) in relation to the LANDfirst campaign and managed land settlement approaches; as well as to the LHR's submission (June 2011) on inclusionary housing and the need to stipulate that this refers to state subsidized housing/settlement development projects

⁶ See DAG's input on Land Value Capture (June 2011).

residential spaces for productive purposes like trade and urban agriculture, and operating subsidies to accommodate the poor in higher density environments, as well as encouraging backyard and other low cost (and rental) accommodation, which also serve as income-generating opportunities.

The notion of **special zones** as indicated in section 22(3)(b) of the Bill can potentially serve as an important instrument to address specific developmental needs of an area / municipality. This could make provision for, and regulate mixed / multi-purpose land use and can also ensure that well-located land is secured for low-income incremental development.

7. Giving meaning to 'integrated' development

Better integration in planning is required at a number of levels to ensure social inclusion and coordinated implementation. Key aspects to consider in this regard include the following:

- The **municipality should be the centre of land use planning**, however intergovernmental cooperation and support (including capacity building at this level) is important. All land use planning should be integrated at the municipal level to focus on settlement planning in relation to transport, communication, infrastructure needs, livelihoods / job opportunities at a strategic level (making IDPs and SDFs work!). However the development of SDF's and IDPs as indicated needs to be better linked to ensure effective alignment of plans. It is important to bear in mind and effectively manage the potential risks related to municipal centrality particularly in light of the perverse incentive of increasing revenue through private sector development approvals that work against the goals of a developmental pro-poor agenda. Meaningful community participation at more localized levels (through improved community-based planning approaches) should be considered, including the development of SDFs and prioritization at this level to be negotiated in relation to broader municipal and provincial area needs through the development of integrated, coordinated plans at these levels.
- There needs to be improved integration and **coordination of planning legislation across sectors** including land reform, human settlements, economic development, transport legislation (see LRC submission).
- Social **inclusion and cohesion** requires development of better approaches to **mixed-income developments** which can also address 'class apartheid' and access to improved services, economic opportunity and widening the revenue base to address development needs in a more equitable manner. The very real problem of NIMBYism needs to be addressed, and mitigated against in the Bill.
- The differing needs of citizens should be taken into account to ensure that **different accommodation typologies** are available, particularly within urban areas, in order to accommodate temporary accommodation needs as well as longer term accommodation needs at affordable rates for low income individuals/families. For example, decent low-income rental housing options within the inner city are scarce; many are at the mercy of unscrupulous landlords of decaying inner-city buildings. Many residents with home ownership rights in peripheral locations and in rural areas require temporary accommodation in urban areas for income generating and employment opportunities, as well as education opportunities. Their "illegal" selling or renting of houses is actually a rational response to problems with the current system.

- As indicated above, **mixed use / multipurpose zoning** should be considered to better integrate accommodation and livelihoods needs that can promote poverty alleviation.

8. Changes in perceptions and attitudes

It is important that the principles of spatial planning and land use management recognize the **social value and social function of land** for more inclusive, pro-poor development. The past and current (albeit tweaked) system has not contributed to particularly progressive approaches around restructuring the space within towns and cities, within a developmental, pro-poor paradigm. Further, **power relations** need to be addressed at various levels to ensure that we work towards equity in relation to planning systems. This refers to power relations at the intergovernmental level (control and micro-managing by higher levels of government including provinces and national government), private vs. public sector interests, and inter-community conflicts or 'elite capture' of processes. Managing these interests requires effective coordinated planning and dispute resolution mechanisms.

There is the need for **flexibility to anticipate change**, and recognition of the need for mobility (migration), as opposed to strict control measures e.g. 'zero growth policies' in certain areas. It is preferable to rather improve spatial planning and management to anticipate changes e.g. higher density and mixed typology developments.

Planning law will not bring about change automatically – people (and money) make change, therefore **political will and principled approaches / actions** are required to also encourage a broader public change in mindset related to narrow self-interests, NIMBY attitudes, political party agendas at the expense of developmental approaches, xenophobic attitudes, etc..

Capacity building is required at all levels to ensure greater understanding and embracing of principles underpinning spatial planning and land use management (rather than just compliance), and to ensure that a diverse range of stakeholders are effectively able to participate meaningfully in development planning in the context of democratic urban governance. Officials tasked with land use planning are often conservative e.g. town planners. There is currently a shortage of qualified professionals to take on the roles assigned in the Bill, particularly in smaller municipalities in rural areas. This needs to be addressed.

9. Conclusion

The institutional voice and influence of COSATU on behalf of the poor and working class is very important in this process. There are developmental opportunities in terms of greater access to social fabric by previously marginalised groups, and scope to re-examine the status quo with the introduction of new spatial planning and land use management legislation. There is a dichotomy sometimes drawn between promoting the rights of investors (to promote job creation or economic growth?) versus improving the lives of the poor through better access to land, services, housing etc (e.g. see section 23(1) of the Bill where the two first items listed are "economic growth" and "social inclusion" – this should perhaps be switched!). The Bill needs to find a balance between these, and ensure that above all, the system created is workable, practical, streamlined, accessible to all groups (not just developers with lawyers), fair, transformative etc. There needs to be much more support

given to provinces to draw up provincial legislation and regulation, as well as to municipalities to draft meaningful and useful IDPs, SDFs, land use schemes etc.

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