Towards Facilitative and Pro-Poor Land Use Management in South African Urban Areas

Learning from International Experience

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Introduction

- Why LUM?
  - Critique
  - Response
- Why has it not been reformed in SA?
- What can we learn from international experience?
  - Where is this occurring in SA?
- Conclusion

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Guiding question

- How to design a LUM system that is flexible and responsive enough to be able to facilitate and support creativity (both in the private sector and the livelihood strategies of the poor), while remaining sufficiently robust to begin to combat the profound inequalities that characterise the current status quo?

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Understanding LUM

- LUM should be understood as a single component in a wider land governance system which governs **access** to land (tenure), land **rights** (valuation), land **use**, and land **development**
- In the LUM 'the various **sectoral interests** are **balanced** against the overall **development objectives for a given location** and thereby form the basis for regulation of future land-use through planning permissions, building permits and sectoral land use permits according to the various land-use laws. These decisions are based on the **relevant land use data** and thereby **reflect the spatial consequences for the land as well as the people**'

  (Enemark and McLaren, 2008: 6).

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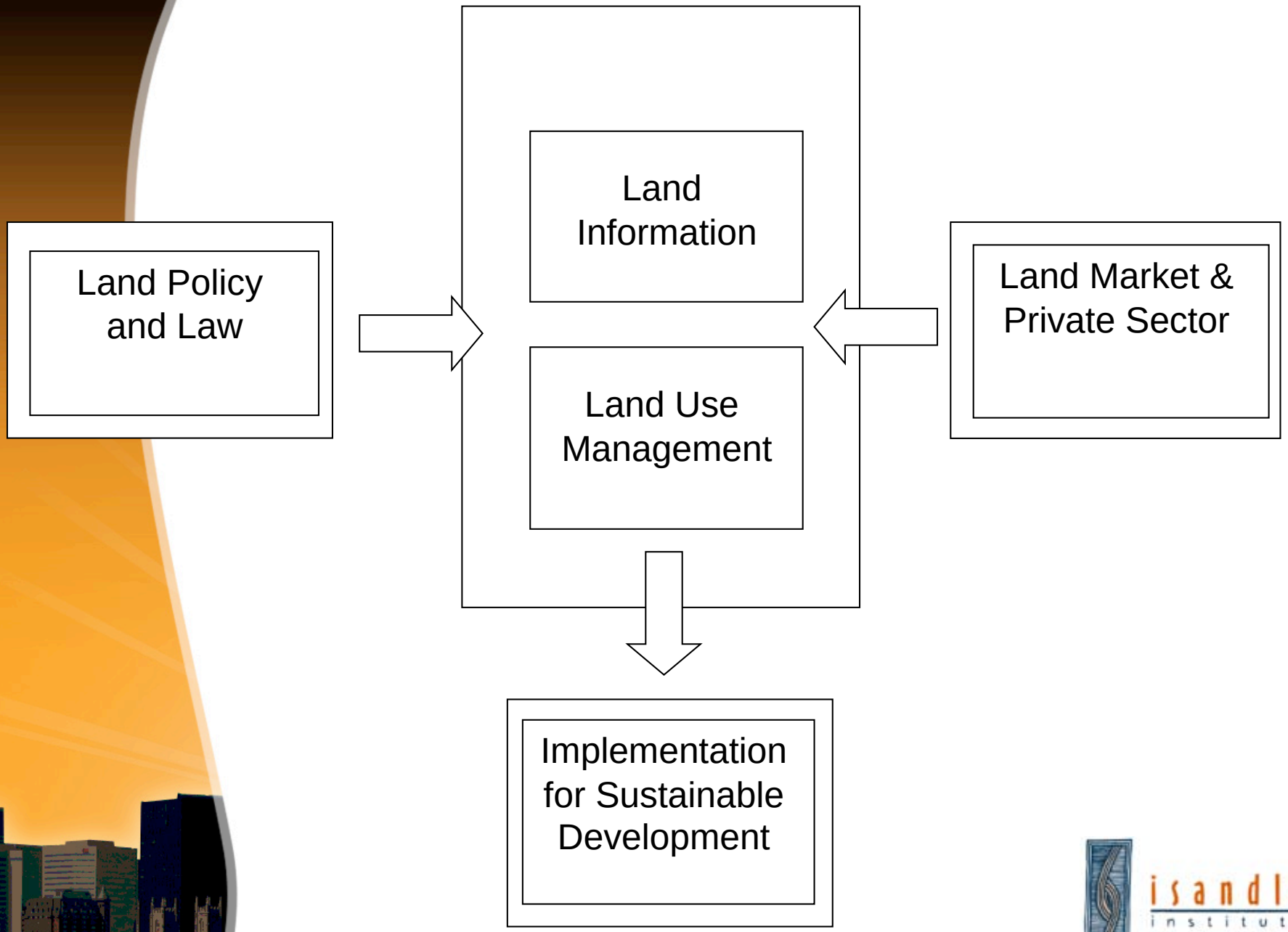

(Adapted from Enemark and McLaren, 2008: 6).

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Critiques of LUM

1. Market-based critiques
   a) State involvement results in undesirable 'externalities' including unnecessary transaction costs and the inefficient allocation of land uses
   b) Opportunities for corruption and rent-seeking
2. Progressive critiques
   a) Associated with inflexible, modernist notions of planning
   b) Historical use of the system to exclude 'undesirable elements' from well resourced areas
   c) The tendency of these systems towards the technocratic

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Critiques of LUM (cont.)

d) In the developing world, the foreign nature and impractical nature of LUM

- Inappropriateness of focusing scarce resources on producing 'paper plans' that have little impact on governance (Rakodi, 2001)
- Normative nature of informality and 'underdevelopment' of land markets (and predominance of non-market forces) render formalisation programmes (à la De Soto) impractical and unsuitable

Suggestion: improving the "'interface' between institutionalised systems of land management and development and the survival strategies of the poor" (Watson, 2009: 128)

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Why do we need LUM?

- "Typically, such populations are mentioned as 'a problem', but their undocumented, unlawful or even fugitive existence, allows most authorities to ignore them as having full 'planning rights' to the city. In other words, policy-makers define urban informality as a method of indirectly containing the 'ungovernable'... Here lies a main feature of the urban informality as a planning strategy: it allows the urban elites to represent urban government as open, civil and democratic, while at the same time, denying urban residents and workers basic rights and services" (Yiftachel and Yacobi, 2004: 217–218).

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Why do we need LUM?

- Need to support the livelihoods of the poor **and** address system of inequality
- This means expanding the debate from reviews of the appropriateness of specific mechanisms for the poor (e.g. tenure security) to address the functioning of the LUM system as a whole (- Viruly's focus on macro- institutional)
- "[**R**]**egulation and land-use management are the most powerful aspects of urban planning**; yet most reforms have concentrated on directive planning. The regulatory system is probably the most difficult to change because of entrenched legal rights and interests; but **without reform in this sphere it will be extremely difficult to use planning to promote urban inclusion and sustainability**" (UN-Habitat, 2009: 65).

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A somewhat reconceptualised LUM

- The ‘clash of rationalities’ in planning practice means that middle-class and technocrats can be **active citizens** at the city-scale, while the poor are addressed as **objects of policy** that are ‘relocated’, ‘upgraded’ or ‘evicted’ and generally restricted to the **politics of resistance**
- So the system needs to explicitly promote a **transformative set of values at the city scale** (which are likely to elicit resistance from the powerful), while remaining **sympathetic to the particular needs and priorities of local, particularly poor, communities** (again, making an effort to protect these processes from elite capture).
- This requires **proactive** and **assertive** planning profession that builds strategic partnerships with other stakeholders and professions

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Why has it stalled in SA?

1. Impact of other agendas: deep ambiguity about implementing urban policy, the constant association of land with rural issues, the fragmentation and 'despatialisation' of planning throughout government policy, 'space-blind' housing delivery, the demobilisation of civil society and social movements
2. The common vested interests that business, the middle-class and municipal authorities have in protecting property values
3. The planning profession faces a raft of challenges
   a) capacity shortages, in both the absolute number of planners as well as their skill sets and levels of experience;
   b) sometimes difficult relationship with the government and statutory body intended to regulate it;
   c) the ability of the profession to establish a confident realm of professional practice within state structures and wider society;
   d) many state-employed planners are deeply steeped in outmoded, and sometimes even discriminatory, methods of practice; and
   e) the conceptual and practical question of how to work with and influence the operation of the market
4. Separation from environmental and heritage professions and regulatory systems - "Sustainable urban development is not the sum of developmental local government plus environmental conservationism" (Swilling, 2008: 81).

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Lessons from International Experiences in LUM for South Africa

1. *Land use management needs to be premised on an understanding of the urban land market*:

-Land Market Assessments (Dowall 1995): Understanding urban land markets so as to respond appropriately to their dynamics, as well as being aware of the 'externalities' resulting from state intervention into the built environment (both directive and regulatory). (- Rode, Rust, Viruly)

-Social Tenure Domain Model (Lemmen 2010): Premising Land Use Management in localities of poverty on a land management system that takes into account the dynamics of informal land markets. (- Durrand-Lasserve's market displacement)

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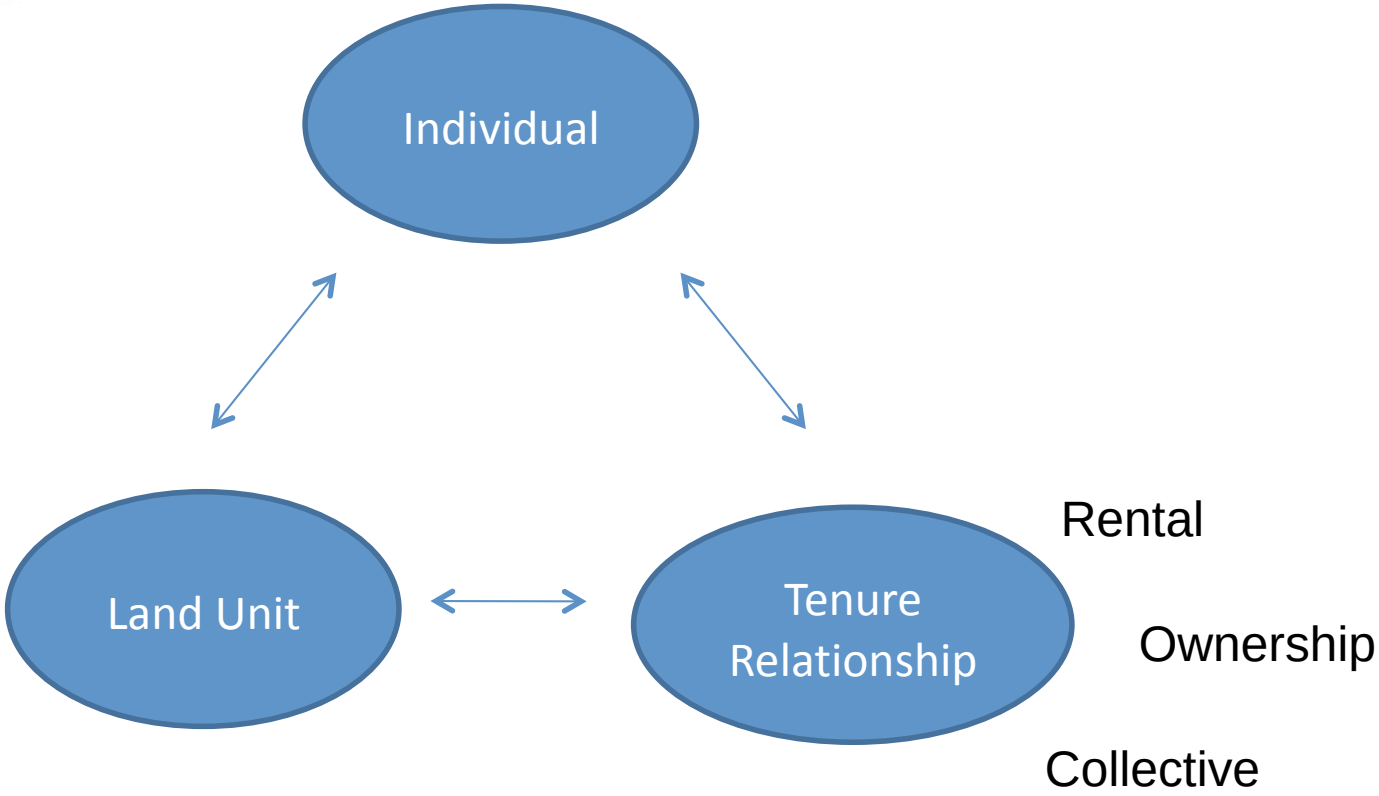
Lessons from International Experiences in LUM for South Africa



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Lessons from International Experiences in LUM for South Africa

2. *Land use management should be premised on a method that emphasizes negotiation based on a series of general principles and not a prescription of a specific urban form:*

•The UK 'Local Development Framework' (as an alternative to Zoning as the tool by which urban land is regulated):

- The Core Strategy: Long term spatial vision (South African Equivalent – IDP/CDS)
- Development Policies*:* further details to assist the delivery of the Core Strategy (South African Equivalent - Land Use Policies)
- Allocations: allocation of specific areas of land, to meet the development requirements identified in the SDF (South African Equivalent – a 'strategic' SDF)
- Proposals Map: location of local site specific proposals
- Statement of Community Involvement: sets out the process for public participation

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Lessons from International Experiences in LUM for South Africa

- E.g from the Hambleton District Council (2009):
  - Core Strategy: Strategic Spatial Policy 4.2 – "Developing a balanced housing market '' – sets out broad target / series of policies for how much housing is needed, and the general nature of housing prosion
  - Development Policies:
    - *Phasing of Land Release*
    - *Targets for Brownfield Development*
    - *Type , Size and Tenure of Housing*
    - *Affordable Housing*
  - Allocations: - releasing of land and elaboration of site specific proposals for a series of strategic sites (following slide elaborates)

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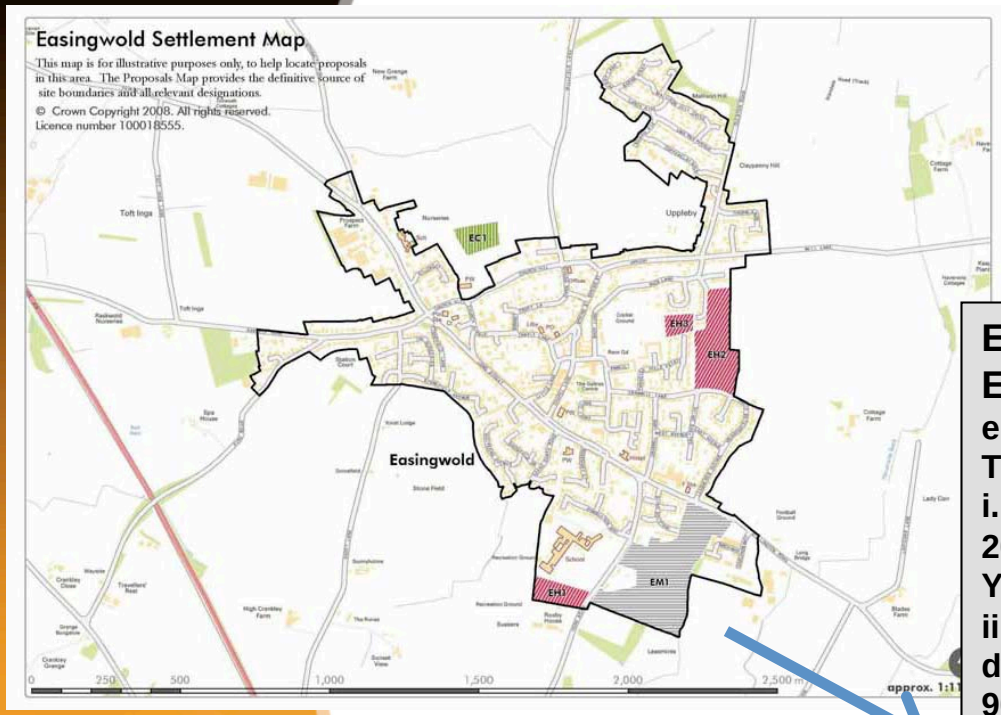

Allocations Map: Easing Wood (Hambleton District Council 2009)

EM1 STILLINGTON ROAD/YORK ROAD, EASINGWOLD (8.6ha) **(2.6ha for housing, 6.0ha for employment and other uses)**
This site is allocated for mixed development, subject to:
i. housing (2.6ha), being developed in Phase 1 (up to 2016), located in the central part of the site accessed off York Road;
ii. housing development being at a density of at least 35 dwellings per hectare, resulting in a capacity of at least 90 dwellings (of which 50%, ie. At least 45, should be affordable);
iii. housing types meeting the latest evidence on local needs; iv. employment development (6.0ha) being in two distinct parts: B1employment uses, together with health and small retail facility uses (2.5ha) at the north of the site, accessed from Stillington Road, and B2/B8 uses (3.5ha) at the south of the site, accessed from York Road; ….

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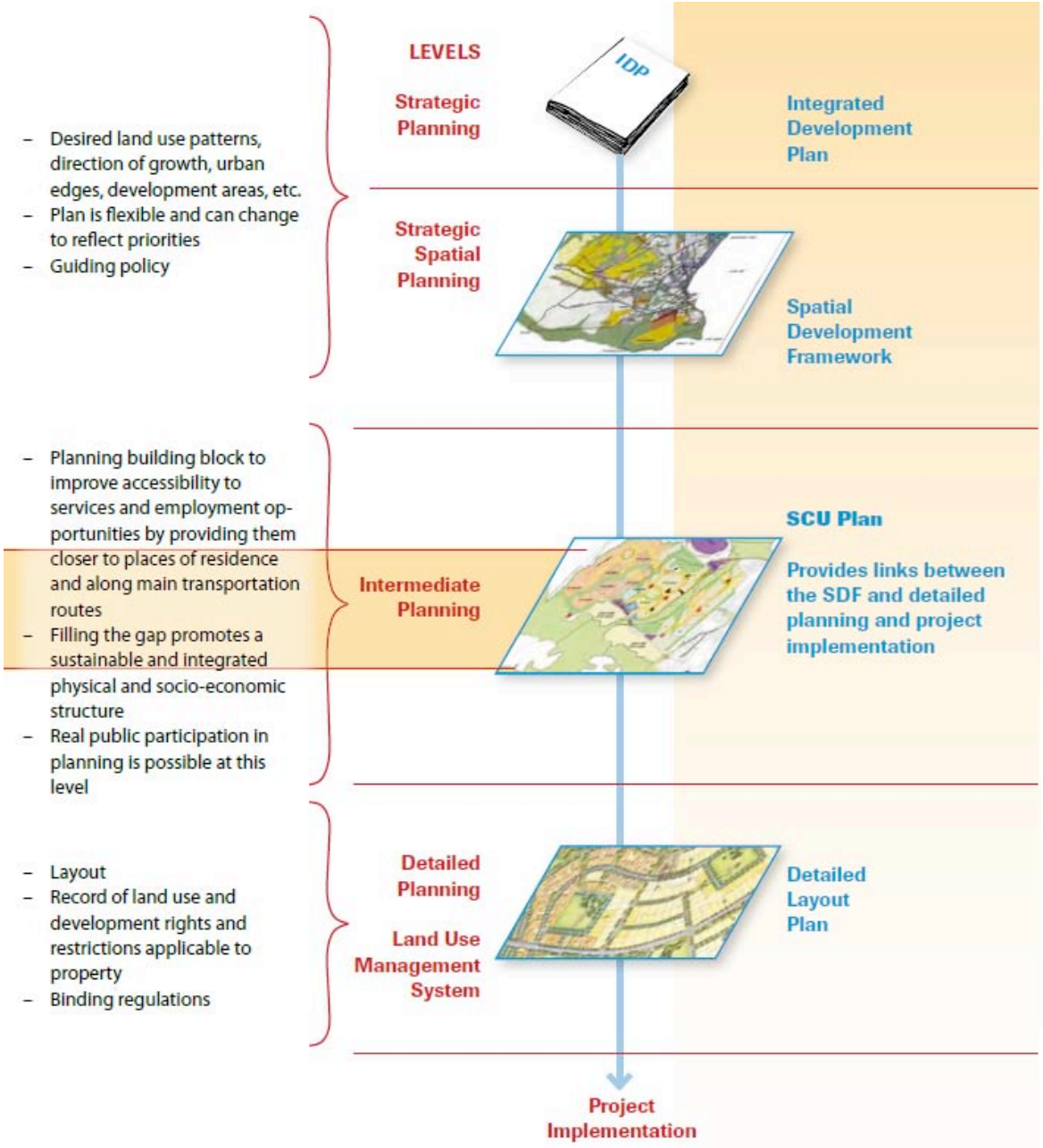
A South African Variant



Scales of planning in Nelson Mandela Bay Municipality (MNBM, 2007: 29).

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Lessons from International Experiences in LUM for South Africa

3. *Land use management must be able to speak to the needs of the city as a whole as well as remaining in sync with the values and needs of specific areas and neighbourhoods:*

- Affirming the poor's right to the city: (e.g. Brazil 'Zones of Special Interest')
- Incubate and protect livelihoods (e.g. @22 Barcelona)
- Create and maintain public space and public facilities during the creation of new settlement (e.g. Villa El Salvador)
- Traditional roles of LUM: Protecting areas of environmental and heritage value, compensation for impact on city services, avoiding the mixing of incompatible uses (industry and residence), avoiding development on areas of hazard (within flood lines, unstable slopes, etc.)

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Lessons from International Experiences in LUM for South Africa

Overall Plan

Example of a superblock

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Applying these goals for LUM in SA

1. Securing the right to the city for all
   a) City of Johannesburg zoning and 'incremental settlement improvement programme'
   b) LANDfirst network
   c) Inclusionary Housing Policy of 2008

BUT are these sufficient to support integration?

→ **Social function** of property as the basis for Brazilian land law

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Applying these goals for LUM in SA

2. Incubating and protecting livelihoods
   a) General failure thus far due to elite capture and/or under-conceptualisation (eg Warwick Junction and Cpt Station)

   "Experience has shown that at a local scale very little attention has been given to facilitate trading for entrepreneurs who desire to build an asset base that is **somewhere between a formal shop and an itinerant trading facility**. Access to secure commercial tenure is critical to establish an asset base and promote entrepreneurship. There needs to be an acknowledgement in planning of the complexity of relationships and critical understanding to provide for the diversity of economic actors at this scale" (Mammon al, 2008: 12). (- Zack's case study)

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Applying these goals for LUM in SA

3. "Public facilities, public spaces and institutions which form the backbone of any **public spatial network** provide venues to address critical issues such as health, education and social development collectively" "This is where social capital is produced and economic opportunity created. **If we cannot create a spatially coherent and productive public realm we are failing those at the bottom of the economic ladder**" (Mammon et al, 2008: 9, 23)
   a) Breaking New Ground and ISUP
   b) LANDFirst
   c) Violence Prevention through Urban Upgrading program (VPUU)
   d) **BUT** CIDs are increasingly transforming city centres and we have to question whether IDPs/SDFs are adequately (i) improving and linking networks of public transport and movement, (ii) 'green productive space' (e.g. recreation, cultural ceremonies, and urban agriculture), (iii) social institutions and facilities, (iv) utility services and (v) emergency services? (*ibid*)

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Applying these goals for LUM in SA

4. One of the primary motivations for a single system is consistency in application and enforcement throughout the city
   a) Reviewing practice in the City of Cape Town, Parnell and Pieterse (2010) argue differentiated regulation and enforcement is more likely to disadvantage the poor

BUT in a review of LUM in CoJ Rubin (2008) concludes that "much of what is necessary is a serious re-thinking of how some fundamental concepts are regarded. The existing planning schemes, zonings and the cadastral system are in many ways exclusive of the needs of low-income households and communities and seem to result in the disempowerment and alienation of those that they intend to include and empower" (p. 30).

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Applying these goals for LUM in SA

Therefore Parnell and Pieterse (2010) call for debate about "establishing built environment and service standards **that the poor can afford**, debating what **level of state regulation is appropriate** and would facilitate rather than block urban livelihoods, and balancing the needs and demands of this generation against those of future residents. The **issue of informality** lies at the core of this unspoken discussion of an alternative governance framework" (p. 155).

- ✓ Participatory planning and regulation
- – Enforceable standards
- ✓ Transparent and consultative enforcement

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Applying these goals for LUM in SA

- Limitations of this approach
  - Often relies heavily on the 'progressive' intervention of local government officials and judges
  - Democratisation does not guarantee equality
    - 'legalization of inequality' in São Paulo (Caldeira, 2007)
  - Different but equal may mean '"insertion" into the city, but not "integration" into society' unless all speculation is arrested (Watson, 2009: 183).
- In general, it seems clear that more legally diverse and robust tenure and use rights connected to a wider progressive land management system are also required to improve the security, functionality and productivity of land in informal settlements

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Concluding thoughts

- *The relationship between land management and land use management:* Accounting for informal land transactions and usage in land use management.
- *Public participation and the political nature of decision making:* Find a resolve to the 'elite' capture of the planning process.
- *Finding a balance between the competing agendas of the pro-poor, environment and heritage lobbies:* Integration of the three development control systems.

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Thank You