

## **Update on South Africa's spatial planning and land-use management legislation - Sunday Ogunronbi, Department of Rural Development & Land Reform**

### *a. The history and development of spatial and land-use management legislation in South Africa*

South Africa has a long history of land-use management legislation. In 1994, there were different laws depending on where you were in South Africa, provinces, Bantustans, municipalities, etc. The consequences were segregation, unevenness and differentiation. There were a number of efforts to address this problem, beginning with a White Paper in 1998 that formed the basis for a Green Paper (1999) on development and planning and which spoke of the complex legal framework that existed. In 2001 there was a Land Use Management Bill and a whole host of provincial draft legislation to try and address land-use management. The June 2010 Constitutional Court DFA judgement was a major milestone in land-use management as it assisted in solving one of the critical issues of contention, which was clarifying which sphere of government was responsible for planning. It also assisted in clarifying some of the questions around planning, zoning, terminology and which department should do what and who is better suited. The DFA will go once national legislation has been sorted out.

### *b. The need for and trajectory of SPLUMB*

There are a number of reasons why national legislation is required, including the need for clarity on the allocation of powers and functions. Previously under the DFA, there was parallel authority on the 'same subject', which the Supreme Court of Appeal determined as being of a disruptive nature for planning and development. The Constitutional Court provided a 24-month grace period from the date of judgement to remedy defects in the DFA or promulgate new legislation. The due date was 17 June 2012. The objective of the legislation would also be to provide coherence in policy and synergy and the delineation of powers between the various spheres of government. There is also the need for a predictable and transparent regulatory system (key to protection of rights) that offers a clear, rational and efficient interlinked set of sectoral and inter-spherical spatial planning tools and policies. There were many debates about the level of detail that the legislation should contain but it was finally decided to go for a national framework legislation with supplementary provincial legislation. The legislation has also been designed so that a whole suite of older and outdated legislation can be repealed.

The core issue is not just urban areas but the whole country and then there has to be the consideration of how to limit land use, not just to existing rights but going forward and providing new land-use rights. There are challenges in this area and not everything will be covered by the legislation. One of the key weaknesses is the lack of resolution on land-tenure issues. Furthermore, how do you deal with questions of exclusion so as not to criminalise poverty and discourage informal dwellers and traders who are forced to use land illegally? What is the framework in which they function and how do you include those with special needs and not criminalise them?

### *c. Key principles*

SPLUMB has a set of key principles, which include:

- Norms and standards;
- National and provincial monitoring and support;

- Spatial Development Frameworks (SDFs) across national, provincial, regional and municipal scales, where municipalities cannot do their own land-use management and spatial planning and provinces should step in;
- Land-use schemes; and
- Supportive provincial laws.

*d. Way forward: timelines and deadlines*

There is still hope that the team will be able to finalise the Bill by the deadline at the end of June and they are still working according to the agreed timeframes as described in Figure 3. However, there is a possibility that they might need to go to the Constitutional Court for an extension to this deadline.

| WAY FORWARD |   |                    |
|-------------|---|--------------------|
|             | TASKS   | DATES              |
| 1.          | Redraft of Bill   | Jan/March 2012     |
| 2.          | State Law Advisor Opinion (incl Redraft of Bill)  | Jan/March 2012     |
| 3.          | Presentation to DG Cluster  | 08 Feb 2012        |
| 4.          | Additional/limited Consultation with National Departments   | Feb 2012           |
| 5.          | Full Ministers Cluster  | 29 Feb 2012        |
| 6.          | Cabinet Committee (approval of Bill and possible recommendation/decision of application to ConCourt for limited extension of June 2012 deadline)  | 14 March 2012      |
| 7.          | Cabinet (Confirmation of CabCom's recommendation)   | 20 March 2012      |
| 8.          | Publication of Bill / Formal Introduction into Parliament   | March/April 2012   |
| 9.          | Translation of Bill into 2 <sup>nd</sup> Language   | April 2012         |
| 10.         | Parliaments JTM (Joint Tagging Mechanism – Sec 76 Bill) (2 -3 weeks after Cabinet Approval)   | April 2012         |
| 11.         | Engagement with Parliament on:<br>(a) Special/Ad hoc Committee on SPLUMB (incl Committees on Cooperative Governance, Human Settlement, Rural Development & Land Reform etc)<br>(b) Accelerated Process on the Consideration of the Bill (negotiating dates for public hearings, Committee, etc) | March - April 2012 |
| 12.         | Finalisation of NEDLAC Report   | March - April 2012 |
| 13.         | Draft Regulations to the Bill   | April 2012         |
| 14.         | Parliamentary Hearings incl Provincial Legislatures   | April - May 2012   |
| 15.         | Release of First Draft of Prov Bills and additional engagement with Provinces   | April - May 2012   |
| 16.         | Presidential Assent (subject to progress on 6 – 14)   | June 2012          |
| 17.         | Commencement (subject to progress on 6 – 14)  | June 2012          |

**Figure 1: Way forward for SPLUMB (Source: Ogunronbi, 2012)**