Land Governance Assessment Framework South Africa - Wendy Ovens, Wendy Ovens & Associates

a. Land Governance Assessment Framework: a diagnostic tool

Wendy Ovens had facilitated the Land Governance Assessment Framework for South Africa and reported back on the assessment and the tool. She began by explaining that the Land Governance Assessment Framework is a World Bank diagnostic tool that provides a sense of what is the state of play of land governance. It is a tool meant to give an in-depth, high-level and quick evaluation of land governance and indicate where its strengths and weaknesses are. The LGAF has five broad thematic areas, 21 indicators and 80 dimensions and conducts expert investigation around legal aspects, statistics and data. Panels are called around key areas where panellists are asked to score certain statements from A-D (a = best, d = worst) to see which statement best represents the South African situation and then to justify their answers and make recommendations. Once that is completed the panel summaries are collated and incorporated into a country report.

In general, South Africa is regarded internationally as having one of the most progressive and far-reaching Constitutions and since 1994 South African policy has been extensive in protecting rights. In addition the South African government has been both proactive and reactive in addressing the developmental needs of communities. Academic institutions and NGOs have increasingly been researching land and its related issues and have started to lobby government. However, serious challenges remain. Land governance is highly fragmented and there are many specialists in many areas, each one focussing on a very specific aspect. The LGAF provided the opportunity to examine the sector as a whole, asking what South Africa looks like? It also usefully exposes successes and failures as well as the rigid duality and complexity of the informal and formal systems.

b. Land Governance Assessment Framework methodology in South Africa

A total of eight panels were established, with panellists selected from the private sector, NGOs, local government, national government and academic institutions. Each panel had a minimum of three and a maximum of five panellists. In two cases panels had to go ahead with two members, as people did not show up. A half-day session was held for each panel; a standard format was used and a final verification workshop was held. The national report is considered to be a fair representation of the South African situation with a very slight bias to the private sector, due to the non-attendance in two of the sessions.

c. Findings from the assessment

Under the legal and institutional framework it was found that there are somewhere between 16 million and 19 million people living on customary land. Currently, there is no legal mechanism for recognising these rights. The Department has launched a programme to measure the outer boundaries of these parcels of land but there is no mechanism to determine internal boundaries of traditional areas. There are also only 620 land surveyors and 20 million properties in South Africa. Furthermore there is an acute policy vacuum around rural tenure, which was made worse by the striking down of CLARA. The question of rural tenure is an important problem in South Africa. In urban areas it was found that the formal system is highly regulated with title deeds and lease agreements. However, there are almost five million people who live in situations of informality that are not regulated and there is limited political will to develop these areas. Government, although

aware of informal settlements, has shied away from dealing with these socially dominated markets. An important difference between rural and urban battles over land rights is that in rural areas the fight is for group rights, while in urban areas it is a fight for individual rights. An emerging issue is the backlog of title deeds that have yet to be registered for state-subsidised housing.

Urban land planning in South Africa is performing relatively well. Public participation is well legislated and the hierarchy of land-use plans is well entrenched in legislation, although implementation may be problematic and challenging. Regularisation of informal settlements and the incorporation of the poor into our cities is a key challenge for all metropolitans and there is evidence that informal settlements are growing in density and numbers. The primary response to informality has been the state's RDP programme, which is land extensive and problematic and has entrenched the Apartheid spatial structure. There is evidence that planning legislation needs to be reviewed and simplified; currently the timeframe for obtaining a 'building permit' varies between three and 18 months. A further issue is that of transparency and efficiency in the collection of land/property taxes. In addition, the implementation of the Municipal Properties Rates Act outside the metropolitan areas and large local municipalities remains a challenge, mainly due to capacity constraints.

Public land is owned by all three spheres of government but it is difficult to access well-located public land for housing, which raises the question of whether HDA is sufficient for poor communities to get well-located land. Although there is legislation around expropriation it is acknowledged that expropriation is a hard option for land acquisition. Public provision of land information is relatively good, with 90% of land in the formal sector in the registry, which is accurate, up to date and readily identifiable on maps. The formal systems are efficient, effective and reliable and corruption is more the exception than the rule. Contrary to the land information sector, where South Africa performs well, is the area of dispute and conflict management. The use of informal systems varies from area to area, and is generally not sufficiently acknowledged, recognised or used by government. Formal mechanisms are in place for appealing land rulings but the costs are high and they are not easily accessible. In addition the resolution of land claims takes an excessively long time, with some cases having taken more than 12 years.

Under the theme of large-scale land acquisition the dimensions for agricultural purposes were seen as quite positive, but alienation and relocation have not been sufficiently considered. The impact of mining in South Africa and in southern Africa, where it is growing as a large-scale land acquisitor, was also not sufficiently considered. Further issues included a lack of capacity for conflict resolution and the lack of mechanisms in place to prevent projects from proceeding, based on the projected social impacts.

There were a number of policy recommendations, only a few of which were highlighted: In the rural context there is the need for a strategy that is able to identify an alternative method for land-parcel identification. Legislative changes are needed to rationalise rural land-use guidelines and to respond to communal land rights. There is also the urgent need to find ways to deal with the rights of farmworkers. In urban areas there is the need to develop a methodology and tools for supporting municipalities in the implementation of an incremental tenure approach. Attention should also be paid to addressing the backlog in RDP registrations and transfers. In terms of large-scale land acquisition, funding should be identified for undertaking a time-based study on large-scale land

acquisition within the southern African sub-region and the implications thereof. South Africa has been party to irresponsible large-scale land acquisition in other parts of Africa.

d. Concluding remarks

In conclusion, the LGAF can be seen as a quick assessment tool that is useful in providing a 'date-stamped benchmark', and is really a measure of how well a country has done in terms of the broad definition of land governance. The problem is that after having identified the issues, e.g. uncontrolled growth and lack of tenure security in rural areas, there may be limited political and administrative appetite for addressing the changes required - especially those in the rural land governance sectors.