DEVELOPMENT OF AN APPROACH FOR THE RECOGNITION OF INFORMAL SETTLEMENTS AND TENURE IN SOUTH AFRICA WITH THE POTENTIAL FOR REGIONAL APPLICABILITY

February 2010
Recognition of Informal Settlements

This work has been commissioned by Urban LandMark (ULM). The focus of ULM’s tenure security theme area:

• Securing land tenure in informal settlements;
• Improving access to land
• Local recognition and management of land rights

WHY?

To open up more officially recognised channels of land supply to increase poor people’s access to infrastructure, social facilities and micro finance in a practical and incremental way
Recognition of Informal Settlements

Broad Context for a New Approach -

Why we need a new approach

• Significant that many informal settlements are old - 25 - 30 years for some, means a long period of exclusion
• Growing discontent being expressed around service delivery which translates into housing delivery
• Financial / budget constraints and shortage of subsidies
• Local government elections not far away (2011)
• Government moving away from relocation approaches
• Development of National Upgrading Support Programme (NUSP)

Hence, there is space and a need to respond in a new way

• We need a governmental response that addresses informal settlements during that period before they are allocated subsidies
Recognition of Informal Settlements

This presentation sets out an approach to recognising informal settlements and securing tenure in an incremental way in the period before subsidies or full township (formalisation) establishment occurs.

The approach draws on a number of research inputs, which are summarised in the next slide. The main lessons from each of the inputs that have informed the approach are highlighted.
## Recognition of Informal Settlements

### Key Informants from Research

<table>
<thead>
<tr>
<th>CoJ Support</th>
<th>Literature</th>
<th>Regional scoping</th>
<th>Testing with LMs</th>
<th>Team Members</th>
</tr>
</thead>
<tbody>
<tr>
<td>You can work and with and modify existing mechanisms (such as Town Planning Schemes)</td>
<td>The two approaches of Tenure security vs formal title both have good aspects to use</td>
<td>Some countries have legislation to effect tenure recognition, Zambia, Namibia</td>
<td>Some reluctance to address informal settlements outside of the subsidy scheme</td>
<td>Experience in many areas with upgrading so broad inputs on policy and implementation</td>
</tr>
<tr>
<td>The importance of a legal framework</td>
<td>Using Incremental approaches to upgrading</td>
<td>They legally declare areas for upgrading</td>
<td>Municipalities not very innovative</td>
<td>Wrote up cameo pieces of their experiences</td>
</tr>
<tr>
<td>Commitment, co-ordination and co-operation from officials</td>
<td>Social justice, rights to the city are important for residents</td>
<td>Settlement security precedes individual security</td>
<td>Housing officials more likely to want to go subsidy route</td>
<td>The importance of building from local community experiences</td>
</tr>
<tr>
<td>Taking an urban management approach rather than a housing approach</td>
<td>In situ upgrading must be considered</td>
<td>Basic layout (site) plans, Certificates, Management rules - community</td>
<td>Planning officials were more open to new approaches</td>
<td></td>
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</table>
Recognition of Informal Settlements

In a nutshell, what is the new approach?

An approach that incorporates a range of existing (legal and administrative) mechanisms that will allow informal settlements to be recognised, to allow services to be improved, residents’ occupation to be recognised and for them to become legal citizens of a city/town in a managed settlement that will unlock investment in an incremental and developmental way in that period before formal township establishment.
Placing the Broad Approach

Tenure Security Continuum

No tenure security | High tenure security

The Approach
Incrementally securing tenure and improving lives

Informal Illegal

Formal Legal

Urban LandMark
Making Urban Land Markets Work for the Poor
Recognition of Informal Settlements

What does this Approach Need?

- An understanding of existing social dynamics (tenure relations) in the informal settlement;
- Basic physical information on the settlement;
- Government (municipal or provincial) to make a commitment (political, administrative and budgetary) to informal settlement recognition and develop a Programme for Informal Settlements;
- Government officials who are flexible and creative in working with their existing systems and mechanisms.
Recognition of Informal Settlements

What does the Approach try to do?

It provides a range of interventions, tackled in phases, aimed at:

• Providing overall settlement (blanket) security (no evictions, occupation rights, legal recognition) in a way that can be upgraded to individual tenure forms in time;

• Incorporating the settlement into the administrative systems of the municipality:
  - cadastral/spatial (Land Information Systems): identify the area, do simple block layout and then more detailed layout plans
  - infrastructure services: provide basic services and/or improve services
  - social services: community facilities, grants
Recognition of Informal Settlements

What does the Approach try to do? contd

- Improving tenure security via a range of interventions aimed at:
  - Enabling individual / household recognition in municipal systems (addresses, certificate and a basic site plan)
  - Providing tenure security and enabling transactions (a record of occupation, certificates, municipal bill, local land office)
  - Providing settlement urban management (land use and building management)

By providing a menu of options or tools to achieve some or all of the above in a programmatic way
Schematic of the Approach

**TENURE SECURITY CONTINUUM**

- **Existing Settlement**
  - Will have been previous govt interventions
  - Maybe some Register
  - Some services No legal status

- **Step 1 Government Intervention**
  - Government Intervention

- **Step 2 Legal Recognition**
  - Legal Recognition
  - Settlement
  - Security
  - Information Gathering:
    - Physical, environ, Infrastructure,
    - Planning base info
    - Land Legal study
    - Social relations and Existing tenure Relations
  - Decision
  - STAY
  - Tenure mechanisms
    - Recording Basic Register of occupants
    - Engagement with community on forms of tenure
    - Tenure Plan
  - Legal Routes
    - Amendment Scheme
    - DFA
    - LFTEA – Chp1
    - Rezone

- **Step 3 Regulation**
  - Regulation
  - Land Use
  - Tenure Administration
  - Detailed Layout Plan
  - Management of Register of tenure

- **Step 4 Township Establishment**
  - Ordinance
  - LFTEA Chp 2
  - DFA
  - Replace Certificates/ Letters/permits With title deeds

- **Scheme Amendment/Rezone**
  - DFA/LFTEA prep
  - DFA/LFTEA application
  - Conditions of Estab
Regularisation of Informal Settlements

Who can use this Approach?

It is aimed at Municipalities and Provincial authorities and Community Organisations:

- It recommends that municipalities develop an Informal Settlement Programme and create multi-disciplinary teams (planning/urban management, housing and infrastructure and finance officials chiefly) to implement it
- It can also guide community organisations or community structures in initiating and partnering with municipalities for upgrading.
Regularisation of Informal Settlements

Where would you use this Approach?

It should inform the Overall Programme approach of a municipality with emphases placed on different components of the approach for different categories of informal settlements, for example:

- Full approach: settlements that are unlikely to be relocated;
- Components of the approach: settlements that might be relocated but not for some 3 - 5 years and those that will be relocated but only in 3 - 5 years time;

AND

- Are on municipal and government owned land;
- On privately owned land, with consent with owner.
Regularisation of Informal Settlements

Explaining some of the Concepts in the Approach

Recognition = The acceptance of an informal settlement through a range of administrative and legal interventions

**ADMINISTRATIVE RECOGNITION**
This uses normative instruments that may arise from policies or administrative practices to give residents a form of tenure security. They may not have a firm legal basis but rather derive security through commitment by authorities in the form of council resolutions or administrative systems.

**LEGAL RECOGNITION**
This uses a legal procedure, in terms of some recognised law, to grant secure legal status to an area. It usually results in declaring the area in terms of this law (a settlement area, an area zoned for informal housing, etc) which then permits certain other actions to occur legally.
Regularisation of Informal Settlements

What do you need to get “Kick started”? 

**Political buy in** - need support from highest level in Council to champion the approach and support a Programme

**Commitment from officials** - need dedicated officials to champion, develop and implement an Informal Settlement Programme (ISP)

**Institutional home** - need the Programme to be located in a department with influence

**Multi-disciplinary team** - need a team of skilled officials from planning, housing, infrastructure, social development and other departments
Regularisation of Informal Settlements

Understanding the Approach

The approach is incremental and tackled in stages:

Simplified Schematic of Approach

**Step 1:** Establishing a programme and introducing Administrative Recognition

**Step 2:** Legal Recognition

**Step 3:** Development and Regulation

**Step 4:** Formal Township Establishment
Regularisation of Informal Settlements

Components (or Tenure Instruments) that make up the Approach:

- Vision
- Programme
- Business Plan for individual settlements
- Information on the site and the community
- Legal instrument for legal recognition
- Register/record
- Site/Layout Plan
- Tenure Evidence - proof of occupancy, leases, certificates
- Land Use and building structures Regulation
- Infrastructure Services
- Local Land Office
- Joint community / municipal structures
- Integration into Municipal administration systems
Step 1 – Administrative Recognition

Step 1 Actions
1. **Pre Step**: Obtain high level Council support for interventions in informal settlements; develop an overall Informal Settlements Programme (ISP); get approval for ISP; find a clear institutional ‘home’ for the ISP
2. **Decisive decision to Intervene in informal settlements**
3. **Information gathering on informal settlements** (physical, planning, legal, infrastructure, tenure, social)
4. **Prepare status quo reports**
5. **Categorisation of settlements and definition of future actions** (stay or relocate)
6. **Administrative interventions - name settlement, base mapping, household enumeration, acknowledgement of occupation, emergency services**
Step 2 – Legal Recognition

**Step 1**
Administrative Recognition

**Step 2**
Legal Recognition

**Relocate settlement**

**On going administrative mechanisms**

**TENURE SECURITY CONTINUUM**

No settlement or individual security

**Step 2 Actions**
1. Decide on mechanism for legal recognition
2. Declare it legally: different avenues and different levels of requirements, for example,
   - LFTEA – Chapter 1
   - DFA
   - Amendments Scheme
   - Rezone – Town Planning Scheme
   - Other
3. Settlement has ‘blanket’ legal recognition
Step 3 – Development and Regulation

No settlement or individual security

TENURE SECURITY CONTINUUM

Individual security

Step 1
Administrative Recognition

Step 2
Legal Recognition

Relocate settlement
On going administrative mechanisms

Step 3
Development Regulation

Step 3 Actions
3 main emphases:
- Early interventions
- Ongoing community consultation and implementation
- Later interventions

Important to adopt an incremental approach

Making urban land markets work for the poor
## Step 3 - Development and Regulation

<table>
<thead>
<tr>
<th>Early Interventions</th>
<th>Ongoing Community Consultation on:</th>
<th>Later Interventions</th>
</tr>
</thead>
<tbody>
<tr>
<td>Basic layout plan – site plan, blocking</td>
<td>Forms of tenure evidence</td>
<td>Layout plan – individual erven</td>
</tr>
<tr>
<td>Block addresses, entry into municipal databases per block</td>
<td>The nature of the record and its role. Possible land office</td>
<td>Leases or individual certificates or bills</td>
</tr>
<tr>
<td>Incrementally improve services</td>
<td>Building advice and management</td>
<td>Register to record transactions</td>
</tr>
<tr>
<td>Open record/register of households per block</td>
<td>Boundary definition for individual sites</td>
<td>Establish land office. Ongoing land management of area</td>
</tr>
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**Urban LandMark**

**Making Urban Land Markets Work for the Poor**
Step 4 - Formal Township Establishment

- **Step 1**: Administrative Recognition
  - Relocate settlement
  - On going administrative mechanisms

- **Step 2**: Legal Recognition
  - Development Regulation

- **Step 3**: Development Regulation
  - Formal Township Establishment

- **Step 4 – Actions**
  - Depending on the route used to grant legal recognition, need to formalise the settlement using planning legislation:
    - Prepare application
    - Secure undertakings to move households to implement layout plan, if necessary
    - Approval of township by authorities
    - Handover of register information, approval of GP and opening of register
    - Implementation – pegs, roads, other services
    - Individual title deeds
## Step 4 - Township Establishment

<table>
<thead>
<tr>
<th>Step 2 Status</th>
<th>Requirements to get to Step 4</th>
<th>Step 4 Legal Route Options</th>
</tr>
</thead>
<tbody>
<tr>
<td>Amendment Scheme (Transitional Residential Settlement Area)</td>
<td>Need to do full township establishment</td>
<td>Ordinance&lt;br&gt;LFTEA Chapter 2&lt;br&gt;DFA application</td>
</tr>
<tr>
<td>Rezoned Special Residential Area/Informal settlement Area ito TPS</td>
<td>Need to do full township establishment</td>
<td>Ordinance&lt;br&gt;LFTEA Chapter 2&lt;br&gt;DFA application</td>
</tr>
<tr>
<td>By Law</td>
<td>Need to do full township establishment</td>
<td>Ordinance&lt;br&gt;LFTEA Chapter 2&lt;br&gt;DFA application</td>
</tr>
<tr>
<td>DFA Land Development Area</td>
<td>Do not need another application – must satisfy conditions of establishment to open register</td>
<td>DFA compliance with Conditions of establishment (especially Deeds Register and General Plan)</td>
</tr>
<tr>
<td>Less Formal Settlement ito LFTEA Chapter 1</td>
<td>Will need to comply with Land Survey and Deeds Registry Acts to open township registers</td>
<td>Conversion of settlement to a township. Can do a Chp 2 application</td>
</tr>
</tbody>
</table>
Conclusions on Recognition Approach

By adopting this recognition approach, the following will be achieved in informal settlements:

- All settlements will be identified, their status investigated, categorised, and programmatic interventions identified;
- Settlements that can remain in situ and be upgraded can benefit from the entire approach and eventually become formalised townships;
- Settlements that do not need to be relocated immediately, will be recognised and have interventions defined to improve lives;
- Even settlements that will be relocated in the near future will be identified, recognised and limited, appropriate interventions identified;
- Settlement will be incorporated into a range of municipal systems, occupation will be secured.