TOWARDS EFFECTIVE STATE INTERVENTIONS TO IMPROVE ACCESS BY THE POOR TO URBAN LAND MARKETS

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Abstract

The main objective of this paper is to investigate and discuss ways in which the state should intervene around urban land issues, within the context of its relationship to the private sector, in order to improve the access of poorer and excluded sectors of South African urban society to land, housing, and services.

South African government infrastructure delivery during the last decade has been dominated by direct service delivery and the subsidization of poor households. However, significant urban restructuring has not taken place partly as a result of entrenched land interests in urban areas, major challenges faced by the state in altering the regulatory environment, and the affordability of better located urban land for housing.

New policy statements emanating from government indicate a key shift in emphasis towards broader interventions in markets aimed at shifting patterns of property ownership (thus also changing the spatial patterns and density matrices of residential development). The outcome of these interventions is a more equitable and efficient city which contributes to economic growth at regional and global levels, and in which there is class and ethnic integration.

The paper discusses state-driven market-related mechanisms which are emerging in South Africa with reference to practice developed in different parts of the world.

The state of urban land

Despite considerable investment in urban infrastructure over the last twelve years (between 1994 and 2003 there was R27,6 billion of government expenditure on low income housing alone [1]), inequitable settlement patterns of urban land ownership in South African cities have persisted. This means that there are clearly observable gradations of land ownership types working out from the relative formality of inner cities, suburbs and townships, to the informality of squatter settlements and backyard shacks mostly on the edges of cities and towns, and to traditional areas under customary management as one moves into the hinterland. Statistics from the 2001 census suggested that over 2 million urban households lived without formal urban tenure [2], representing around 20% of the country's population. This included people living in informal settlements, in shacks in the backyards mostly of township properties, and in other shared accommodation.

The largest exercise to extend urban tenure to people largely dispossessed of land rights in apartheid South Africa is the national housing programme. Some 1.8 million houses had been built through this programme by March 2005 [3]. The formal land titling system, which is under the custodianship of the Deeds Registry of the Surveyor General's Office, has struggled to keep pace with this programme and with the upgrading of the tenure rights in townships established before 1994 [4].

Another area of state activity is around the land reform programme which seeks to address (rural and urban) land restitution, land redistribution and tenure reform. By the end of 2004, 70% of land restitution claims made in 1998 by people dispossessed of land had been settled, with many urban land claims being settled financially rather than by the transfer of the land in question [5]. Many claims remain unsettled and the budgetary and timing targets for the programme have been shifted on several occasions.

Given the delays in the registration of title, the high costs of transfer of property, and the inaccessibility of the formal land conveyancing system, it has been observed by a number of commentators that this state of affairs forces many households wishing to buy and sell property to do so informally [6][7][8][9]. And so the growth of a vibrant informal market in land and housing has partly been fuelled by the administrative incapacity of the state to register properties and exchanges into what is a relatively sophisticated formal land titling system.

It is likely that the formal system will at some point 'catch up' with the task of capturing transactions emanating from the formal delivery programme. It is also possible that reform of the land administration system will reduce the barriers to the use of the system and so incorporate more people who would otherwise have traded property informally, although this will require concerted action if it is to take place.

What is more difficult to alter are the spatial patterns which have emerged in South African cities over the last century and which have been, if anything, reinforced by current trends in urban development investment. These trends

include those which are driven by state investment, those driven by private sector investment and historical patterns of land ownership and ongoing speculative practices especially in urban areas.

Over the last decade, city planning practice has departed from being based on city structure plans and followed a broader strategic planning process through the popularisation of 'Integrated Development Plans', influenced by experience and direct support from Germany and the Netherlands, and innovations in participatory budgeting in Brazil. Alongside Land Development Objectives to be formulated by each municipality and area-based interventions (large urban renewal projects such as Cato Manor in Durban), Integrated Development Plans were intended to bring together many urban interests in the focusing of municipal and other state infrastructure investment. However, the plethora of competing and overlaying land development, planning and management legislation has meant that the process of opening up (particularly well located) urban land for the poor has remained illusive in most cases. Legislation which coordinates and updates regulations governing land is planned in the form of a Land Use Management Act. Nevertheless, the finalisation of this legislation has been delayed for some years meaning that provinces and municipalities continue to operate in a fraught environment. Some of the more sophisticated private land owners are able to use the complexity to their advantage [10] in urban land speculation.

During the last ten years, the state has tended not to aggressively expropriate private land for development. State land is available in some locations but its ownership and the applicable development rights are not always clear. More recent measures to consolidate state land for housing development are discussed below.

The lack of urban land readily available for development, the complexity of acquiring and correctly zoning land, and the strength of existing private urban land interests have meant that state investment in housing has tended to be on the periphery of urban areas.

State housing investment is predominantly in the form of a grant to households who qualify in terms of a maximum income, household structure and residence status in the country. Although largely effective in its targeting of poorer households (which is no mean achievement), this way of supplying housing through subsidies is premised on the state or private developers being able to acquire cheap and available land. It is also a supply side strategy in that personal choice about where to be located cannot easily be factored into projects. Municipal waiting lists of those qualifying for state housing are maintained and when developer built housing becomes available, usually after the household has waited a number of years, a household's details are accessed. The location of the available housing is then the location in which that household is able to access the state housing benefit.

Inevitably this had led to large housing estates on the edges of cities and towns, often further removed from urban centres than even the historical townships [11][12][13][14][15]. The policy instruments (the household grant or 'subsidy' as it is referred to) also concentrate households together with

fairly narrow socio-economic profiles into what have become very typical "RDP" housing settlements of small (usually 30m^2) houses on largish plots (250m^2). While the numbers of houses built in this way (approximately 82% of the 1.8 million houses built [16]) and their impact on the lives of the poor should not be underestimated, attention is now shifting to how greater socioeconomic, market and spatial integration can be achieved.

Historically, transport subsidies underpinned the operation of the apartheid city, meaning that the cost of travelling to and from distant dormitory townships to access employment and other urban opportunities in other parts of the city was subsidised by the state [17][18]. In Cape Town in 2001, transport subsidies were more than twice the budget for new low income housing [19]. The fact that transport subsidies have yet to be phased out is evidence that urban areas continue to be characterised by severe inefficiencies caused by the dislocation of the poor to the periphery.

New types of socio-economic segregation have emerged in South African cities with the burgeoning of private security estates and neighbourhood enclosures by residents [20].   The stated reasons for neighbourhood enclosure are normally given as high levels of crime, but the impact of the spatial isolation of pockets of the city is to limit freedom of movement and to create islands of high property value which militate against socioeconomic integration in their vicinities.

Against all of this background, the upper end of the residential market has been decidedly buoyant over the last five years with property values doubling and sometime trebling.   At the same time, low income housing has not experienced the same gains [21], although this is beginning to change in some localities where there is demand for older township housing.

State responses

Government policy pronouncements in at least the last two years have begun to acknowledge the limitations of these ongoing patterns of unequal development.

In 2003, the state began a process of self examination after the first decade of democracy. In the Ten Year Review of government there is mention of the "need to place greater emphasis on overcoming the spatial disjuncture between home and work by promoting more compact designs that increase residential densities and reduce long-distance commuting" [22].

Also emerging has been a debate within South Africa on the gaps between the rich and the poor, and between what has been referred to as the first and second economies[1]. The new rhetoric speaks of bridging the divide between

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[1] The Human Sciences Research Council (HSRC) has summed up the perceptions around the differences between the two economies as follows. "The first economy is modern, integrated with the global economy, and produces the bulk of the country's wealth. The second economy is: underdeveloped, isolated from the first and global economies, contains a large percentage of people including the urban and rural poor, and contributes little to the country's wealth. The two economies need different strategies but: transforming the second economy requires transfers from the first

the two economies [23][24][25][26]. Not least is the physical or spatial divide between where people are able to afford to live in urban areas, and how that conditions their ability to cobble together a livelihood which is personally sustainable.

In the State of the Nation speech of 21 May 2004 President Mbeki referred to the need to "conduct a thorough review of the impact of socio-economic transformation on social cohesion within communities and across society as a whole, including such qualitative issues as non-racialism and non-sexism…". In addition, the South African President specifically indicated that government would address "the broader question of spatial settlement patterns and implications of this in our efforts to build a non-racial society" [27].

In response to this call a five year housing strategy was prepared by the national Department of Housing. In this strategy or plan, one dimension of the urban challenge was explained as follows: "The lack of affordable well located land for low cost housing resulted in the housing programme largely extending existing areas, often on the urban periphery and achieving limited integration" [28]. The same document draws a link between this (possibly inevitable) outcome of the housing subsidy programme and the lack of development of an adequately functional market in second hand houses. The creation of wealth amongst the beneficiaries through trading in the formal land and housing markets had therefore not materialised[2], an observation which was confirmed by detailed research into the operation of 'township' property markets [29].

In most government departments and agencies, amongst design professionals (i.e. planners, urban designers, architects, and geographers), development-oriented NGOs and CBOs, and the social sciences of academia, the normative position that there should be access for the poor to better location in cities and towns, as a matter of better practice, is mostly uncontested. This is based on the assertion that through accessing better urban location for the poor there will be greater chance of improvement in living and working conditions, greater participation in a variety of markets, and therefore ultimately some measure of upward social and economic mobility. It is also based upon the assumption that a sprawling city with the poorest living at the furthest periphery is both unjust and inefficient. This normative position is not automatically shared by property developers and land owners (small and large). It is also not automatically shared by the property divisions of municipalities and parastatals organisations for whom the sale of land in their possession represents much needed revenue.

Instrumental interventions

The intention to restructure the apartheid city along more equitable lines has been present in policy statements for at least ten years[3] [30]. What has been

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economy, [and] the first economy is unsustainable without the integration of the second economy" http://www.sarpn.org.za/documents/d0000830/index.php
[2] And indeed this was not an explicitly stated aim of the original housing policy in 1994.
[3] The urban vision of the Urban Development Framework published in 1997 was that by 2020, South African cities and towns would be: "spatially and socio-economically

lacking are strong and effective state-driven policy instruments to practically encourage this change. As we have seen, the housing grant, as one example, has not succeeded in achieving this particular outcome, and if anything has exacerbated urban sprawl and dislocation. The state has been more comfortable with direct, and sizeable, physical infrastructure investment and, although there have been some forays into this area, the state has not been as comfortable engaging the market.

We turn now to a summary of the new instruments which are intended to redress unequal urban development patterns, many of which have been informed by what is considered to be international best practice.

The South African state has focused on the development of urban areas as "engines of growth" through broad statements such as the National Spatial Development Perspective [31], and through the 1997 Urban Development Framework [32]. Large urban renewal projects have been promoted through Special Integrated Presidential Projects and the Urban Renewal Programme [33], and have led to successful urban interventions which have improved location for many families, including the Cato Manor development project in Durban, and the Alexandra urban renewal project in Johannesburg. These types of project have drawn down the housing grants to fund the houses and have used national funding to municipalities (the Municipal Infrastructure Grant) to fund infrastructure. Many other line departments, individual municipalities and sometimes donors have funded social amenities and transport infrastructure.

The good practices established in these projects have not always spread beyond their boundaries [34] precisely because the broader funding and legislative environment does not easily support the additional costs of acquiring and consolidating well located land and of overcoming objections by existing urban residents.

Recently an urban development tax incentive has been put in place (since June 2005) which promotes inner city development within delineated urban development zones. It provides an accelerated depreciation allowance to promote both refurbishment and new build. So far 13 municipalities have approved urban development zones in which this incentive can operate [35]. This represents a market intervention which should stimulate inner city housing development and it remains to be seen which income groups it will primarily cater to.

There are three areas in which improved location is being addressed by the South African Department of Housing. They include:
- amendments and enhancements to the existing housing grant or subsidy system,

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integrated; centres of economic and social opportunity; centres of vibrant urban governance; environmentally sustainable; planned in a highly participatory fashion; marked by adequate housing and infrastructure and effective services; integrated industrial, commercial, residential, information and health, educational and recreational centres; and financed by government subsidies and by mobilising additional resources through partnerships".

- direct land funding and assembly interventions, and
- a broader set of negotiations with the private sector around encouraging socio-spatial integration through voluntary agreements and zoning regulations.

Taking these in turn, subsidy amendments have been made firstly to increase the housing subsidy substantially and to increase it each year to preserve its value against inflation. The housing subsidy regulations had a clause which prevented households from selling off a government subsidised house for eight years after occupation. This has been reduced to five years to, on one hand, protect the household from immediate downward raiding but, on the other hand, to allow the household to legally sell the house after the first five years.

There are also a number of new types of housing subsidy which have been introduced over the last three years. The first was the introduction of an emergency housing subsidy which allows a municipality to address urgent housing needs of communities under threat of eviction or of vulnerability to disaster (e.g. informal settlements located within flood planes). It also allows for people to be moved into transit camps while new housing is being constructed (whether in situ at the original settlement if it can be rehabilitated or in a new location).

An informal settlement upgrading subsidy now also allows the needs of a whole community living in an existing settlement to be addressed, not only the households who qualify for the subsidy according to the standard set of income criteria. The subsidy also allows for the purchase of the land on which people are settled or to which they will have to move.

If a squatter community is settled on well located and suitable land, this instrument then allows them to remain there. Unfortunately the strategy of informal settlers over the last forty years has in many cases been to invade unsuitable and badly located land in order historically to remain out of sight of the state authorities and, more recently, to access better housing in the (usually greenfields) projects which the subsidy has so far tended to provide. In this sense then the informal settlement upgrading instrument may have the opposite effect, that of reinforcing poor location. Similarly, if the emergency housing instrument is used to settle people further from urban opportunities than they originally were, then it might also be counter-productive from the perspective of geographic location. The move towards better location needs to be an independent goal in each housing intervention, and is not automatically guaranteed in these more flexible funding regimes.

A final subsidy enhancement is the introduction of a social housing bill which establishes the basis on which to stimulate the development of rental (or rent-to-buy) housing in urban redevelopment zones. Working in a similar way to the tax incentive mentioned above, it targets development in areas which are better located and if approved by Cabinet will also allow the building of a higher quality housing product which matches the improved location which it promotes.

Secondly, direct land funding will be provided for by the recently mooted establishment of a fund for purchasing land for housing [36]. Larger amounts could then be spent on purchasing better land without undermining the value of the housing to be built on the land. It remains unclear whether the Department of Housing or the Department of Land Affairs will administer this fund, and a concern is that if the land acquisition process is separated from the house building process then this will over complicate the application process and mean that greater emphasis will need to be placed on acquiring land which conforms to the spatial priorities identified by communities in the Integrated Development Plans of cities and towns. This process of aligning housing and infrastructure investment with spatial plans (which are directly informed by expressed community needs) has received a great deal of attention in housing circles in recent years. The fact that many different departments are responsible for the delivery of the policy vision of a sustainable human settlement means that alignment and coordination remain the major challenge for planning and implementation. Policy developments which centre decision making around location are therefore preferable to ones which disperse decision making.

Also in this area of direct land interventions is the recently announced intention to form a government-funded institution responsible for assembling (mainly) state land for housing [37]. Referred to as a land 'special purpose vehicle', the agency would identify, acquire, hold, manage and dispose of land or landed properties in order to promote housing development. Accompanying this is a current moratorium on the sale of municipal land which is designed to "delay the alienation of municipal owned land assets with a view to meet the sustainability requirements of integrated development" [38]. The Department of Housing also has in place a number of inter-governmental agreements with other government departments and parastatals to assist with the identification of land in their possession.

These interventions represent concerted state efforts to earmark available land for housing in a context in which land is assumed to be a scarce resource [39]. The scarcity of municipal land which is serviced by municipalities is of concern to the larger commercial banks in the banking sector which have committed themselves through a Financial Services Charter signed with government to provide loan finance to housing in the lower-middle income sector (i.e. households earning between R2500 and R7500 per month). The bottle neck in the supply of this loan finance has been identified as being the supply of serviced land which is affordable within these income categories [40].

Thirdly, on the subject of negotiations between the state and private sector, the Financial Services Charter is accompanied by a memorandum of understanding in which the private sector volunteers to make these investments in low income housing. This activity will hopefully address an unintended negative impact of the housing subsidy which has been to reduce demand and production of housing in the income bands just above the income bands which qualify for the government subsidy. This has meant that production of housing with values of less than R180 000 and more than the subsidy amount of around R35 000 has become very much reduced. Negotiations continue on how the state and the banking sector will share risks

and reach the large target of R42 billion of bank finance for lower income housing by the end of 2008.

Also being considered by the state are inclusionary zoning regulations which encourage or oblige private sector residential developers to invest certain percentages of their upper income developments in lower income housing. This may be modelled on Brazilian zoning for social use, United Kingdom's Section 106 Agreement or any number of similar systems in a range of other countries [41].

The concept of inclusionary housing has been popularised with the private sector by the Ministry of Housing through the signing of a "Social Contract for Rapid Housing Delivery" in Cape Town in September 2005. In this forum the idea that developers of higher income residential projects also invest in subsidy housing was discussed. There are now examples emerging where even before legislation has been finalised, some developers are beginning voluntarily to design projects which integrate higher and lower income households in the same developments. As the CEO of a company developing one of these integrated estates observes, "We tried to really make a statement that [mixed income development] is possible. The provision for social housing was part of the concept of the development from the very beginning. The concept of integration can work harmoniously" [42].

Despite a great deal of good will, there are likely to be limits to the effectiveness of voluntary action by the private sector and it may well be necessary for government to regulate to encourage inclusionary housing in order to go beyond tokenism and promote integration at scale.

Along with statements from the South African President about the inadvisability of developing endless numbers of security and golf estates in the country [43], and others by the Human Rights Commission taking the position that enclosed neighbourhoods promote unconstitutional practices [44], the message that the land and property windfalls of the wealthy are somehow linked to the obverse of the spatial dislocation of the poor, is becoming clearer.

Whereas the initial formulation of South African housing policy instruments may be described as 'ignoring' international experience [45], many of the current policy innovations described here have drawn on a range of international practice. This has happened through international scans of practice undertaken as part of the policy development process and has also taken place through more frequent contact between governments and agencies operating in other countries. This is particularly true of South Africa at the moment in its relationship with India and Brazil, and in the strengthening of ties with the rest of Africa through the formation of the African Minister's Conference on Housing and Urban Development[4].

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[4] Formalised at an event convened by the African Union and UN Habitat in Durban in February 2005.

Conclusion

What chance do these innovations in urban and housing policy have of offering a real option to the poor of access to better located urban land and to housing markets? Urban land ownership patterns have become entrenched over centuries and were taken to new levels of segregation by mass forced removals during the apartheid era. The historical land ownership patterns have thus not emerged through the operation of some 'unfettered' or natural property market, but through targeted legislation which has actively dispossessed and displaced the poor.   It could therefore be argued that the state will need to build solidly on their planned innovations to address ownership patterns and the urban land markets by moving beyond only voluntary deals with the private sector (as valuable as these are) and begin to boldly regulate to open up access to urban land.

Given that the urban property market has been a vibrant part of the South African economy in recent years, a more interventionist role by the state will require some circumspection if the contributions of the property boom to urban renewal are not to be undermined. However, neither should the contribution that the today's dislocated urban poor can make to tomorrow's globally competitive city be underestimated. What is needed is for the many different arms of state to begin to share more coherently a devotion to the achievement of better access to land and markets for the poor in South African cities and towns, and to continue to bring in all sides of civil society to unite around this outcome.

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