



Urban LandMark



Implementing the LGAF in South Africa

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MAKING URBAN LAND MARKETS WORK FOR THE POOR

Introductory Remarks

- Many aspects which may be deemed good practice in South Africa such as an accurate registry and related aspects were established under the Apartheid system of government
- The implementation of the Land Governance Assessment Framework in South Africa has provided an opportunity for examining the sector as a whole
- The framework managed to expose the obvious successes and failures and the sophistication and the lack thereof within the current system
- It has adequately exposed the duality of the South African land governance systems - the formal in juxtaposition with the informal
- The good practices contained in this presentation are initiatives taken post 1994 as means for addressing the land governance challenges



Good practices in South Africa

- **Good practice I - Ensuring Constitutional Rights to Land and Housing**
 - Land in South Africa has a bitter and deeply divisive history.
 - The 1913 Natives Land Act was definitive in the establishment of the so called “reserves” which over time comprised only 13% of the land surface of South Africa.
 - All land purchases or rent tenancy by black indigenous South African’s outside of the reserves was regarded as illegal.
 - During the apartheid years (1948 to 1994), racial segregation intensified.
 - The post apartheid government adopted a Constitution which guarantees the following in the Bill of Rights:
 - That no law may permit arbitrary deprivation of property hence securing the rights of those without formally registered rights
 - Everyone has the right to have access to adequate housing
 - The Constitution secures the land rights of all South Africans - however, the challenge remains in the passing of subordinate legislation for giving adequate effect to those rights



Good practices in South Africa

- **Good practice II - Ensuring a hierarchy of plans**
 - Pre 1994, the country was highly fragmented with some areas having adequate plans while others had no plans whatsoever
 - National Government has legislated the need for the preparation of extensive plans from National to Local Government with processes implemented for ensuring alignment
 - Local Governments are required to prepare 5 year integrated development plans which include spatial development frameworks, housing plans, transportation plans, social development plans etc. These plans are reviewed annually, are linked to a performance management system and require public consultation
 - Major metros such as the City of Johannesburg have also introduced a growth and development strategy reviewed every five years and eThekweni makes use of a “package” of plans
 - While there have been a number of teething problems especially in relation to intergovernmental coordination and alignment, the system of planning is now well embedded in the operations of government
 - Communities hold government accountable for the contents of the plan
 - Certainly, it would appear that the plans prepared by all three spheres of government have been an essential component of South Africa’s transformation and growth and development



Good practices in South Africa

- **Good practice III - Implementation of the Local Government Property Rates Act, No 6 of 2004**
 - The core provisions of the Act include inter alia:
 - regulating the power of a municipality to impose rates on property
 - a transparent and fair system of exemptions, reductions and rebates through rating policies for implementation by municipalities
 - a fair and equitable valuation methods
 - an objections and appeals process.
 - A municipality is not compelled to adopt exemptions and rebates
 - Consequently, rates policies vary significantly across the country, even between the three major metropolitan municipalities.
 - The current legislative approach does allow for the financial status and capabilities of a municipality, within different contexts, to be accommodated.
 - A key challenge with the implementation of the Act lies in the small rural municipalities where the capacity levels are low



Good practices in South Africa

- **Good practice IV - Understanding socially dominated markets**
 - Approximately 4.9 million South Africans live within informal settlements and as such are forced to rely on the operations of the socially dominated markets for accessing land and housing
 - Organizations such as Urban Landmark and others like Human Sciences Research Council have undertaken extensive research work and assisted in developing the discourse on the importance of socially dominated markets
 - Personal or household claims to land in urban informal settlements are neo-customary in nature. Claims to occupy land and remain on that land are based on kin identities, networks and relationships. There are rentals and other payments, and buying and selling of shacks.



Good practices in South Africa

Good Practice IV Continued

- The understanding of this has been mainstreamed including:
 - The informal supply of land and use rights
 - How these sub-markets work, and
 - The functions which informal settlements play in people's lives particularly in bridging urban and rural systems and supporting circulatory migration
- This understanding has changed state plans to “eradicate” informal settlements, and led to cities adopting an incremental tenure approach in which settlements are administratively recognised and then land rights established legally
- The SA National Development Plan has recommendations on how to get urban land markets to work for the poor
- The implementation of the LGAF in South Africa provided further insights into the relationship between rural and urban areas and the role played by informal settlements in South Africa



Priority Policy Recommendations

Recommendation I: Regulations need to be developed in support of the Interim Protection of Informal Land Rights Act

- This is a priority for the following reasons:
 - Approximately 16 to 19 million South Africans live within the rural areas of which more than 90% are located on communal land.
 - Currently the legal framework recognises procedural rights such as the guarantee against dispossession, eviction and also makes provision for compensation.
 - However, the vast majority of rural residents do not have registered land rights.
 - A coherent legal framework is urgently required to protect the rights of vulnerable groups within the rural areas.
- Next steps - short term
 - The National Department of Rural Development and Land Reform would be required to prepare and publish the regulations in support of the Interim Protection of Informal Land Rights Act
- The monitoring of progress and the associated frequency is not yet defined



Priority Policy Recommendations

Recommendation II: The development of an alternative method for land parcel identification - primarily communally owned land

- This a priority for the following reasons:
 - It is estimated that there are approximately 20 million land parcels in the communal lands areas and informal settlements which are yet to be surveyed in South Africa.
 - The country only has 640 registered land surveyors
- Next steps - short term
 - The National Department of Rural Development and Land Reform in association with the Surveyor General's office to undertake a feasibility study in relation to alternative survey methods
- The monitoring of progress and the associated frequency is not yet defined



Priority Policy Recommendations

Recommendation III: A methodology and tools for supporting municipalities in the implementation of an incremental tenure approach should be prepared

- This is a priority for the following reasons:
 - In South Africa, little attention has been given to the so called socially dominated markets which include the systems of acquiring and trading of land within the informal settlements.
 - Some 18% to 25% of urban poor live within such settlements, and to date, municipalities have lacked innovation and the political will to determine an appropriate response
- Next steps - short term
 - The National Department of Human Settlements should further establish and fund their national upgrading support programme,
 - And within that there should be direct support to municipalities to secure tenure incrementally in all upgradable settlements
- What can other countries learn from it?
 - The incremental approach to tenure is now also being tested for applicability in Mozambique, Angola and soon in Malawi.



Priority Policy Recommendations

Recommendation IV: Systems and procedures should be developed to address the backlog in RDP registration and transfer

- This a priority for the following reason:
 - There are approximately 1 million RDP housing units which are yet to be registered and transferred to the identified beneficiary due to:
 - Delays along the route of opening of a township register
 - Reports of lapsing of township establishment approvals processes
 - Delays encountered in upgrading of land rights in terms of the Upgrading of Land Tenure Rights Act, No 112 of 1991
 - Delays resulting from the cross-linkages of property transfers to payment of tax to the state in the form of transfer duty
- Next Steps - Short Term
 - Department of Human Settlements to develop an action plan to clear the backlog in transfer of title deeds
 - Longer term: Department of Rural Development and Land Reform to reform deeds registration and sales deeds system to make ti more accessible and affordable.
- The monitoring of progress and the associated frequency is not yet defined



Shortcomings & lessons to improve process/methodology

- **Point I - Difficulty in securing the participation of National Government Representatives in the panel discussions**
 - Notwithstanding numerous requests for officials to participate in panel discussions, it was not possible to secure a single National Government representative.
 - However, a number of the local government representatives participated in the process from some of the major metropolitan municipalities
 - A decision was taken to continue with the process in order to prevent significant delays in the implementation of the LGAF in South Africa
 - The consequence of the lack of National Government participation is difficulty of now streamlining the findings of the LGAF with Government policy making
 - Greater effort should be made in the initial stages of the LGAF process in a country to ensure adequate recognition of the value of the process and thereby ensure active participation



Shortcomings & lessons to improve process/methodology

- **Point 2 - Lack of data**
 - A number of the dimensions required the submission of data.
 - In many instances, the information was not readily available or required a substantial fee for obtaining the information
 - Therefore, the scoring of the dimensions relied on the field experience and knowledge of the panelists - as such an attempt was made to find panelists with at least 15 years experience within the sector to participate in the discussions
 - It may be worth reexamining the data requirements of the dimensions to ensure that only the critical data sets are requested.



Shortcomings & lessons to improve process/methodology

- **Point 3 - Limitations placed on the Country Coordinator**
 - The role of the Country Coordinator is to facilitate the process which includes the commissioning of the expert reports and the hosting of the panel discussions
 - While most land governance aspects are comprehensively addressed, there were areas which required either further research or greater explanation - hence emerging as a gap in the report
 - Sometimes, it is only possible to identify a gap in the drafting of the national report - such as the interrelationships between rural and urban
 - Feedback from some of the external reviewers identified the shortcomings
 - Difficult to included the information as it did not emerge in the expert reports or the panel discussions



Shortcomings & lessons to improve process/methodology

- **Point 4 - Timeframe and resource allocation**
 - The budget allocations and expectations of the Expert Report drafters was unrealistic - some strictly adhered to the time and budget allocated while others ensure a comprehensive report was prepared
 - This resulted in wide variations in the quality of the work received
 - It was difficult to insist that more information be provided knowing that the budget and time allocations had been exhausted
 - It was also not possible to secure the participation of some of the top experts on land governance in South Africa due to the non remuneration of panelists
 - Certainly, it would seem that timeframes and the budget allocations require examination to better facilitate the LGAF at the country level



THANK YOU

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