

LAND USE MANAGEMENT SYSTEMS

CHALLENGES AND
OPPORTUNITIES FOR
INFORMAL SETTLEMENT
UPGRADING

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The aim of the Collaborative Initiative is to advance models for participatory informal settlement upgrading through knowledge sharing, collaboration and experimentation. Isandla Institute's role in the Initiative is to inspire and inform communities of practice through research and the facilitation of engagement between practitioners in the field of informal settlement upgrading. One of these engagements takes the shape of a Cape Town-based Community of Practice. This document distils the knowledge emerging from the local community of practice engagements, and offers lessons from both theory and practice.

EXECUTIVE SUMMARY

Land administration and planning plays a significant role in reforms around informal settlement upgrading and the success thereof. Land use regulations and management have a great deal of influence in either reinforcing exclusionary spatial planning or in bringing about spatial transformation. The promulgation of the Spatial Planning Land Use Management Act No. 16 of 2013 (SPLUMA) provides the opportunity to foster better and more effective informal settlement upgrading projects, through the realisation of participatory and inclusionary land use management practices.

In this practice brief, we explore land use management challenges experienced in informal settlement upgrading and how SPLUMA can be leveraged to address these challenges, whilst drawing on experiences and lessons from practice that will help move towards more progressive land use management framework and systems.

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INTRODUCTION

Informal settlements are in part a reflection of past and current shortcomings of land administration and planning that has failed to meet the needs of the most vulnerable communities across South African metropolitan cities

This has resulted in the creation of unplanned, rapidly growing, unstructured development. The pace of upgrading informal settlements throughout South Africa has largely been slow and ineffective in terms of the overall improvement of people's living standards. To some extent, this is due to retrogressive planning processes driven and managed by land use regulations that do not fit the context of informality or address the extent of it.

Land Use Management
is the system of legal requirements and regulations that apply to land in order to achieve desirable and harmonious development of the built environment

South African law governing land use planning, development and management has historically functioned on an exclusionary and geographical basis. The previous land use framework included a set of statutory and regulatory measures, as well as provincial ordinances, that gave rise to complex and fragmented planning and land use management systems and practices, impeding sustainable and equitable provision of housing and urban development. The consequence was widening socio-spatial and economic inequalities, and an urban land crisis that the Western Cape along with the rest of South Africa is currently experiencing.

At a policy level, South African legislation has seen a major paradigm shift over the past 20 years with regards to planning and land use management systems. This shift has been towards the promotion of sustainable development, equality, efficiency and good governance. The promulgation of the Spatial Planning and Land Use Management Act No. 16 of 2013 (SPLUMA) has provided a significant opportunity to leverage policy with regards to informal settlement upgrading in a manner that is participatory and inclusionary, bringing about true spatial transformation and the appropriate application of **land use management** in upgrading processes.

The purpose of this practice brief is to explore the current challenges related to land use management (LUM) in upgrading processes. The practice brief will shine a light on local realities and the restrictive way that current LUM and planning regulations are implemented. It ultimately undertakes to put forward possible practical solutions to overcome some of these restrictions.

The practice brief will reflect on current LUM practices and whether or not SPLUMA may be leveraged to enable the effective and efficient upgrading of informal settlements. There will be a focus on the local

realities experienced with regard to the interpretation and implementation of legislation and regulations in upgrading processes and the issues experienced. The practice brief will further investigate the hurdles that are experienced with the current LUM system, identified at the Local Community of Practice on Land Use Management and Informal Settlement Upgrading held in November 2017. In addition, the practice brief will conclude with lessons from the practice of organisations working in informal settlement upgrading, as well as potential solutions to restrictions encountered by these organisations.

POLICY PROVISIONS

Spatial Land Use Management Act No. 16 of 2013 (SPLUMA)

SPLUMA set out to consolidate South African land use legislation in the democratic era. The aim was to create clear policy for both National and Provincial government as well as set out the mandate and functional requirements for municipalities with regards to land use management.

In relation to informal settlement upgrading, the policy focuses on formalising the process around upgrading and securing tenure rights. It defines informal settlement upgrading as, “...the progressive introduction of administration, management, engineering services and land tenure rights to an area that is established outside exiting planning legislation...”

SPLUMA aims to bridge the gap between existing land use legislation and the proliferation of informal settlements over the last 25 years. This is the reason for the emphasis on national, provincial and municipal roles in determining adequate land use policy to address informal settlements. It requires all spheres of government to include informal settlements in their spatial development frameworks, particularly focusing on land use schemes, legislation and developmental principles.

The policy is strongly underpinned by development principles that require land development procedures to include provisions for access to secure tenure in the incremental upgrading of informal areas. This means that any intervention that is undertaken must adhere to the principles outlined in SPLUMA, in essence, bridging the gap between established land use management legislation and incremental informal settlement upgrading.

BRIEF OVERVIEW OF CURRENT SOUTH AFRICAN LAND USE MANAGEMENT

The South African apartheid planning legacy has proven difficult and complex to address and reverse.

The effects of apartheid planning are still evident in South African cities and continue to affect the most vulnerable communities. Post-apartheid planning has done very little to address this effectively and appropriately.

At the advent of democracy, the South African government was confronted with a complicated legal framework governing land use processes and was tasked with creating a framework and systems that would introduce a progressive spatial planning and human settlement agenda. The aim of the South African government was to try and create a ‘single system’ for all. This inadvertently resulted in the perpetuation of colonial and apartheid planning systems (Van Wyk and Oranje 2014).

The motive behind SPLUMA is to engender positive reforms to spatial planning and land management, in order to be a driving force of spatial transformation.

Post-Apartheid and Pre-SPLUMA Spatial Planning Systems:

- Development Facilitation Act No. 67 of 1995 (DFA); and,
- White Paper on Spatial Planning, Land use Management and Land Development (2000).

Therefore, it was imperative that government sought to develop transformative planning legislation and land use regulations that address the vulnerabilities and challenges of communities in a manner that would foster equity as well as sustainable neighbourhoods. It is with this notion that SPLUMA was developed and it is the current legislation governing land use management (LUM) and development in South Africa. The motive behind SPLUMA is to engender positive reforms to spatial planning and land management, in order to be a driving force of spatial transformation.

SPLUMA’s normative stance with regards to land use management is that it should do more than just ‘control’ development. It should give effect to municipal **Spatial Development Frameworks** (SDFs) in order to encourage coordinated efforts towards spatial transformation and integrated settlements. In relation to informal settlements, SPLUMA makes provision for the incremental introduction of land use management and its regulations, promotes the inclusion of affordable housing in residential

land development, and accommodates incremental tenure security in land development processes as well as the incremental upgrading of informal settlements. SPLUMA promotes flexible and responsive administrative and institutional arrangements and the appropriate management of informal settlements/disadvantaged areas (South African Cities Network 2015). But for SPLUMA to achieve its intended outcomes, it requires the full commitment of relevant stakeholders in implementing the Act appropriately.

SPLUMA provides certain opportunities for fostering effective informal settlement upgrading. Section 24 (2)(a) of SPLUMA states that land use management schemes must contain “appropriate categories of land use zoning and regulation for the entire municipal area including areas not previously subject to a land use scheme”. This provides for the development of specific requirements that can be used to identify special zones to address municipal development priorities such as the incremental and participatory upgrading. The zoning of a settlement and the use of land use management schemes grants an area legal status, and therefore may be used to provide informal settlements legal recognition and eventual tenure security (Housing Development Agency 2015).

Even though at face value SPLUMA advocates for a progressive agenda around land use management and spatial planning, it does have its limitations and challenges. The fundamental challenges identified at a pragmatic level are vagueness around some of its principles as well as the complexity around governmental coordination. SPLUMA does not specify the prioritisation of its principles and implies that there should be a consensus between spheres of government and other stakeholders in order for a decision to be reached effectively (Fonkam 2017). It is well known that one of the greatest challenges that the South African government faces, with regard to effective informal settlement upgrading and a broader progressive human settlements agenda, is the lack of inter-governmental coordination. Not only is it important to have coordination between spheres of government, departments within local government, financial institutions, civil society and local communities, but also in delivery mechanisms to successfully implement incremental informal settlement upgrading.

The limitations and opportunities noted are not exhaustive, and given the infancy of SPLUMA this Practice Brief will be unable to gauge the full impacts of implementing this Act.

Spatial Development Frameworks

An SDF is a framework that seeks to guide overall spatial distribution of current and desirable land uses within a municipality in order to give effect to the vision, goals and objectives of the municipal IDP.

LAND USE MANAGEMENT AND INFORMAL SETTLEMENT UPGRADING

South African metropolitan cities tend to have diverse systems regarding land management and use, which has influenced how land is held, used and protected (Rubin 2008).

LUM should be able to take into account the lived experiences of communities rather than imposing foreign or inappropriate standards, in order to allow and support local activities (social and economic) and transform the land use management and regularisation of settlements over time and in an incremental manner

Upholding the notion of formality in our governing systems and processes while consistently marginalising the informal has reinforced a dualism. This has, in turn created a sense of spatial legitimacy for the one and not for the other, which has caused complexity and difficulty in achieving integrated cities, social inclusivity and equitable development. It is no surprise that informal settlements continue to pose a threat to existing land use management (LUM) and regularisation practices, exposing the flaws in the current system. This speaks to a tension between the formal and informal, which plays out in reality where the rules that govern development in South African cities often marginalise and do not address the realities of the urban poor (Lutzoni 2016).

Current practices of LUM tend to penalise the informal. This prompts a critical assessment of whether or not current LUM practices and building standards are applicable and relevant to the rapidly urbanising context of South African cities (Huchzermeyer 2006).

Despite a shift in the national human settlements agenda, it is evident that there is a gap between policy and implementation. The interpretation of legislation tends to affect the efficiency and appropriateness of upgrading strategies and decisions. Some of the key factors that contribute to the success and failure of appropriate implementation of policy and regulations, including:

- **Commitment and capacity of officials and implementers;**
- **Level of co-production and the involvement of relevant communities during planning and implementation processes; and**
- **Implementation environment set for upgrading (Maina 2013).**

Most importantly, affected communities should be able to influence LUM strategies for their settlements. A participatory approach to LUM procedures should be initiated, in order to foster an environment where local authorities are able to develop and implement context-specific, appropriate and sustainable solutions across settlements. LUM should be able to take into account the lived experiences of communities rather than imposing foreign or inappropriate standards, in order to allow and support local activities (social and economic) and transform the land

use management and regularisation of settlements over time and in an incremental manner (Davis and Fourie 2002). The case study of Ruo Emoh, Cape Town is an illustration of how the LUM system in its current form can be a development hurdle for a community (see box below).

Subdivisions in Ruo Emoh, Cape Town

Ruo Emoh is a community-driven housing development initiated a decade ago (2007). This housing project is located in Colorado Park, Mitchells Plain on land purchased by the uTshani Fund. uTshani Fund is a credit mechanism controlled by people themselves, through which finance is made available directly to Housing Savings Schemes on a collective basis, Ruo Emoh is a medium density development with a diversity of housing typologies (double storey, semi-detached and free-standing).

The main challenge faced by the Ruo Emoh community were the objections made by the Colorado Ratepayers Association. These objections resulted in issues around subdivisions and rezoning that made these processes difficult and unnecessarily long, taking five years to be completed (2001 – 2006).

The subdivision and rezoning approval was only valid for five years, but the subdivision approval was about to lapse by the time the subsidy was approved in May 2011. PEP, on behalf of uTshani Fund, had applied for an extension of the subdivision approval 10 months prior to the expiry date (August 2010) and received written confirmation from the City of Cape Town that the approval would be granted, which would then permit the installation of infrastructure to proceed. However, after a month of site work the Council issued uTshani with a ‘cease works’ order since the subdivision and rezoning approval had lapsed in June 2011 and the Council had not yet decided to extend the approvals. These cumbersome and complex land use management processes left Ruo Emoh residents with delays and frustration.

The current conditions for the subdivision to proceed are that the community has to build a boundary wall for the objection of the Colorado Ratepayers Association to be overturned. However, this has led to its own set of challenges for Ruo Emoh residents:

- The City of Cape Town rejected more affordable options for the boundary wall.
- The responsibility of payment has fallen on the community.
- The high development cost.
- The responsibility for landscaping and design of public space has also fallen on the community.

Implications

- Density of development dropped from 98 to 49 houses.
- Very little housing opportunities were developed for backyard dwellers.
- Community forced to comply with the process in order to avoid further delays.

(People’s Environmental Planning, 2017)

LAND USE MANAGEMENT HURDLES

Land use management in its current form continues to be a stumbling block for many organisations operating and working in the informal settlement upgrading sector.

LUM in many instances tends to delay and further complicate an already complex process of upgrading. Below are some of the key challenges faced by organisations when upgrading settlements.

Tenure Security

Land uses stem from legal rights allocated to land through title deeds and tools such as zoning schemes. Therefore, rights are largely linked to ownership, which makes tenure security such a vital component to the success of LUM in upgrading projects. The lack of tenure security tends to create challenges.

Processes around obtaining tenure security are often tedious and difficult to navigate, especially in the case of beneficiaries of state housing and serviced sites, and for intermediary organisations giving assistance in this regard. Tenure security is essential to the successful incremental upgrading of informal settlements. The lack of tenure often leads to the illegal and informal sale and transfer of property. Therefore, formal tenure is still required to deal with certain urban land challenges more effectively.

Capacity

Planning officials often lack an appropriate understanding of the legal issues around land, property economics, and development financing. Therefore, most planning officials do not have the capacity and skill-set required to optimise the opportunities provided by legislation and regulatory tools, thereby sticking to the 'inherent logic' of the status quo (Charlton 2008).

The bureaucratic atmosphere of local government also tends to restrict officials from innovating within the existing formal systems of the law and government procedures.

Failure to recognise informal logic

Regulations during upgrading do not recognise and conserve the logic, innovation and spatial programming that allows informal settlements to function despite the poor living conditions. The interpretation of LUM regulations tend to advocate for a blanket approach, lacking context-specific solutions and flexibility.

**Informal logic
is the intuitive
logic behind the
socio-economic
and development
processes and
systems that
govern informal
spaces outside
of a formal
setting and LUM
legislation.**

Restrictive engineering norms and standards

This is a critical challenge that organisations face when aiding in incremental upgrading. Engineering norms and standards can be very prescriptive, and therefore restrictive in nature. Informal settlements are often characterised by high densities, limited space and a rapid rate of growth. Minimum requirements (road, plot and building sizes) to meet engineering and building norms and standards that are designed for formality are unable to fit the context of informality, and often result in a percentage of households being displaced and relocated.

Therefore, engineering responses need to be tailored for each settlement context. Though there is an understanding that this process is not always going to be straightforward, general norms and standards are currently unable to address the specific issues of each settlement. Engineering norms and standards need to be appropriate and not just legislatively-led.

Government being risk averse

A significant hurdle for organisations on the ground is working in an environment where government tends to have an aversion towards taking risks. The fear of potential failure and concerns of being singled out means that government officials are unlikely to embrace innovation. This creates an atmosphere of ‘business as usual’ and implementation ‘by the book’, despite context, scale or degree of urgency.

In addition, with regard to informal settlement upgrading, the Human Settlements Development Grant (HSDG) tends to restrict the interventions that local and provincial government can fund and implement. This creates an environment where officials feel limited in their ability to innovate or ‘take risks’.



REFLECTIONS AND RECOMMENDATIONS

This section explores several recommendations derived from local lessons from informal settlement upgrading practice, and investigates some components required to move towards a more effective and adaptive land use management system, in order to reach a level of transformation that is impactful to the lives of the most vulnerable in South African cities.

Looking at informality through the lens of land use management (LUM) provides for an interesting perspective and provides an opportunity for creating a system that must be both flexible and accessible whilst informing a wider strategy of socio-spatial transformation.

Legitimisation

Arguably the most important possible change to LUM systems that will ultimately benefit communities is the legalisation of certain informal systems and practices, which are currently excluded from standards and legal regulations. This would 'legitimise' informal settlements and allow for local communities to have a stronger position in negotiations around the planning and implementation processes of upgrading projects. This will in turn, strengthen co-production and limit the red tape experienced at a local level with regards to building, planning and administrative regulations. Legitimisation of informal settlements would also provide greater tenure security opportunities to communities, therefore facilitating a much faster and more appropriate delivery process for upgrading projects (Davis and Fourie 2002).

Progress can be made when the flaws of the current formal system are overcome and there is a gradual integration of the informal sector into decision-making regarding tenure security, housing land supply, planning regulations and land servicing.

There should be mechanisms put in place that give legal and administrative recognition, which give residents the right to occupy, develop, inherit and transfer land. The development of the Flexible Land Tenure Act No. 4 of 2012 (FLTA) in Namibia is an example of innovation in the area of tenure security (see box below). Tenure security has been well documented in the Securing Tenure in Informal Settlements: Exploring an Emerging Approach Practice Brief produced by Isandla Institute. Refer to this practice brief for further information.

Innovation in Land Tenure Law, Namibia

Namibia has a similar formal land development and planning system to South Africa, which consists of town planning ordinances that demarcate land parcels for freehold title.

With approximately 230 informal settlements across the country, the Namibian government embarked on a rigorous process of developing a new and innovative system of land registration, to respond to the growing gap between formal and informal. This was done through the creation of the Flexible Land Tenure Act No. 4 of 2012 (FLTA).

The purpose of the FLTA is to introduce an instrument that recognises two areas and schemes: The Starter Title and Land Hold Title Scheme Areas. These are employed in areas of more informal development, so that security of tenure can be achieved. The FLTA is meant to introduce:

- a parallel but complementary system that links to the formal Land Survey and Deeds Registration within the overall land registration framework;
- new forms of land title, which are recognised and legitimate;
- tenure security;
- alternative titles that can be a part of incremental upgrading, moving from starter title to land hold title through to freehold title; and
- land use management through community participation and engagement as well as the creation of community associations that are designed according to the particular needs of the type of scheme implemented.

Starter Title:

An entry level title/right that is not registered through the Deeds Office but by a Land Right Registrar at a local Land Rights Office (LRO). The Starter Title allows individuals to erect a dwelling within a block and reside there in perpetuity as well as transfer and lease the site.

Land Hold Title:

Allows for individual plots to be surveyed and registered by the Land Right Registrar at a LRO. The Land Hold Title provides security to obtain a mortgage against the plot. However, this title comes with conditions with regard to land use and building control/regulation.

Ultimately, FLTA aims to provide security of title to people living in informal settlements or low income areas in order to empower and uplift communities.

Development of a LUM framework for informal settlement upgrading

While there is recognition of the need for laws, regulations, standards and building guidelines, there is great value in creating a LUM framework that can be utilised in spatial planning to support and sustain innovation.

Creating an LUM environment that is flexible, co-produced and experimental improves the effectiveness and efficiency of LUM (Görgens and Denoon-Stevens 2010). Flexibility in regulations and constructive engagement between relevant stakeholders and communities' aids in driving a progressive human settlement agenda.

Government departments and officials need to create and support an environment of innovation, progressiveness and co-ordination to realise sustainable and equitable development.

The creation of a secondary or alternative land use framework specifically for the incremental upgrading of informal settlement is useful in order to drive faster and more effective basic service delivery in informal settlements.

However, the key to successful implementation of alternative or new frameworks is an integrated and coordinated approach by the state.

Improvements to engineering norms and standards

The re-evaluation and adjustment of existing building and engineering norms and standards provides an opportunity to drive and accelerate service and housing delivery. Flexibility within the norms and standards will allow for the implementation of a variety of more appropriate housing solutions. The City of Cape Town has made progress in this regard with the development of the *Integrated Human Settlements Framework* (see box on right). However, the effectiveness of this framework is not assessed in this Practice Brief.



Integrated Human Settlements Framework (IHSF), Cape Town

The City of Cape Town developed the IHSF in 2015 to address human settlement delivery in Cape Town, from the realisation that the norms and standards, as well as planning tools around housing and service delivery, were complex and often inadequate in addressing housing challenges in informal settlement upgrading.

The IHSF was created to shift the conventional approach in terms of norms and standards in upgrading projects towards a more incremental and bottom-up approach to informal settlement upgrading.

The key objectives of the IHSF include:

- Creating awareness of the City's adopted policies and technical standards among built environment professionals;
- Promoting development of sustainable human settlements that fulfil social, economic and cultural needs of society;
- Clearer principles, design guidance and performance criteria for new settlements; and
- Providing a technical basis for developing solutions jointly with communities to meet housing needs.

The IHSF allows for deviations and exemptions of certain standards where there is sound reasoning to do so, with regard to *in-situ* upgrading. This is due to the fact that informal settlement upgrading projects often require unconventional solutions to address the needs of communities, with minimal disruptions to socio-economic networks. The deviations or departures are generally supported provided that there is a sound argument to do so accompanied with a proposed plan that aligns to the IHSF's principles and meets the performance criteria.

Brief Summary of Principles:

- Avoid areas and sites of ecological significance;
- Manage risk appropriately;
- Integrate neighbourhoods whilst improving access;
- Promote a compact city for sustainable mobility;
- Focus public investment on public infrastructure;
- Functionality and quality over quantity;
- Variety;
- Resilience, flexibility and adaptability;
- Provide tenure security;
- Encourage incremental densification;
- Incremental compliance with regulations, and norms and standards;
- Develop healthy living conditions; and,
- Realise greater resource efficiency.



CONCLUSION

It is evident that organisations are facing key land use management (LUM) challenges in the informal settlement sector. This is fundamentally due to a LUM framework that has given rise to complex and often fragmented planning processes and developmental practices, counteracting the goal of equitable and sustainable development of informal settlements. This is a legacy inherited from the historically exclusionary LUM system.

South African legislation has undergone major shifts, moving towards a system that attempts to cultivate improved governance as well as equitable and effective development. This has manifested in the formulation of the Spatial Planning and Land Use Management Act No.16 of 2013 (SPLUMA). In terms of informal settlement upgrading, SPLUMA aims to bridge the gap between existing land use legislation and the current state and growth of informal settlements. SPLUMA advocates for spatial transformation, the incremental introduction of LUM and regulation, as well as a participatory and *in situ* upgrading process.

Despite shifts in legislation, gaps between policy and implementation are still evident. Implementation structures and systems continue to fail in successfully upgrading informal settlements to sustainable neighbourhoods. This is fundamentally because implementing agents (officials) rely on outdated practices, tend to neglect settlement and community context, and interpret legislation and regulations in a narrow and restrictive manner. This has led to an exclusionary LUM approach, which is currently frustrating communities and organisations involved in informal settlement upgrading. The current upgrading paradigm stifles innovation, experimentation, departmental coordination and the capacity development of both officials and communities. This further results in restrictive norms and standards, complex tenure security processes and a blanket approach to upgrading.

In conclusion, the flaws of our current formal land use management systems need to be overcome in order to move towards sustainable and inclusive settlements. This can be achieved through the gradual integration of communities, as well as organisations involved in informal settlement upgrading into decision-making regarding tenure security, housing land supply, planning regulations and land servicing.

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Isandla Institute
70 Rosmead Avenue
Kenilworth, 7708
Tel: +27 21 683 7903
Fax: +27 21 683 7956
Email: admin@isandla.org.za
www.isandla.org.za