



Urban infrastructure in Sub-Saharan Africa – harnessing land values, housing and transport

Literature review on planning and land use regulation

Report 2

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1 Executive Summary

Context

Underpinning the discipline of planning is the belief that allowing 'free for all' development results in haphazard, unmanageable, and socially undesirable outcomes. State intervention is needed to curb and shape market and human impulses.

While towns were established in SSA before the colonial period, modern planning rose under colonial regimes. There are three core aspects of planning in SSA which find roots in colonial practices. These include:

1. Master plans: A master plan is a spatial or physical plan for a city. Master plans generally take the form of two dimensional layouts of the city. Through this picture, land uses are designed within a forward planning frame.
2. Land use regulations: Land use regulation, also sometimes referred to as urban development regulations or controls, are rules which indicate how land in particular areas can be used and developed. Common land use regulations include building codes, infrastructure standards, zoning, subdivision regulations, floor area ratio, and minimum plot sizes.
3. Formal land management/tenure systems: Land tenure is a system which determines the relationship between people and land. Land tenure systems include rules, as defined both legally and socially, for how land can be administered, held, and transacted.

While the continued need for urban planning and land management systems is undisputed within the urban sector, a review of the literature unearthed a catalogue critiques. These critiques largely focus on the inappropriate design or implementation of plans, regulations, and land management systems. However, they represent fundamental challenges within the SSA context, including:

- A lack of capacity and resources
- The mismatch between plans/regulations and implementing institutions
- The failure to respond to social economic conditions, in particular informality in cities
- The need to attract investment, leading to the preferential treatment of investors
- The impact of politics and vested interests on urban outcomes

Policy trends

There are many global and regional institutions concerned with the reform of planning in SSA. Among the global voices, the World Bank, UN-Habitat, and the Cities Alliance are three important global voices in the urban planning debates. All three institutions are concerned that regulations in SSA cities are overly restrictive, unresponsive to the socioeconomic realities. The Department for International Development (DfID), the Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ), US Aid and the Swedish Development Agency (SIDA) are important donors who are influencing the planning agenda in Africa. There are a number of important regional institutions including UNECA, the African Development Bank, and AMCHUD. Most of these organisations argue that existing planning systems are outdated and that new urban plans, land use regulations and tenure systems should seek to respond to the needs and capabilities of the urban poor. However, exactly what this reform entails differs.

The following are some of the emerging agendas which these organisations, as well as leading academics, have come to support:

Strategic planning: Strategic planning is currently the most advocated approach to city planning. The plan does not control everything or seek to provide development prescriptions for all parts of the city. Rather a strong strategic plan will aim to create an integrated framework for the planning of critical infrastructures and articulate the hierarchies among them. Strategic planning draws the attention to project implementation, with a particular focus on catalytic interventions.

National Urban Strategies: National Urban Strategies are frameworks strengthen and support urbanisation processes in countries. National governments have powerful policy tools, not the least of which is the ability to invest in large scale infrastructures and devise relevant urban legislation. These tools should form part of national urban strategies which can complement to local strategies.

City Development Strategies: At the scale of the city, City Development Strategies (CDS) have become the most common strategic planning tools in developing countries. CDSs focus on stakeholder participation and the building of shared vision for urban development.

Urban Expansion: One of the key themes in current urban planning debates is how to plan for urban expansion and the future urban growth of existing urban areas. The 'Urban Expansion Project' (UEP), situated within the New

York University School of Business, is a key contributor to this debate and is testing their approach in Ethiopia.

Planning with informality: This is an approach to planning which seeks to revise plans and policies with the view of supporting the informal sectors of cities. The discourse emerged, in part, as a response to the violent ‘slum eradication’ campaigns undertaken with the intention of creating orderly and modern cities. Among other things, this approach includes upgrading informal settlements, working with informal economies, applying affordable and flexible standards, and acknowledging informal tenure systems.

Community led planning: Recent attention has also been given to how communities and civic organisation participate in collaborative planning partnerships with state institutions (such as CLIFF) and ‘insurgent planning’.

Participatory and Inclusive Land Readjustment (PILaR): Participatory and Inclusive Land Readjustment (PILaR) is a tool developed by the UN Habitat which adapts the more traditional tool of land readjustment for the context of developing countries and advocates for the poor to be included in these processes.

Efficient cities: Efficient or ‘smart’ city discourses advocate for interventions and investments which respond to several urban imperatives simultaneously, make informed trade-offs in terms of short, medium and long term costs and benefits, and have ‘catalytic’ impact thus inspiring other actors to invest.

Governance: this represents a shift of attention from spatial plans for the built environment and towards efforts to reform the underpinning institutions, acknowledging governance structures, including institutions and systems, mediate and give effect to plans and policies.

Masterplanning 2.0: despite the rejection of master planning, a new wave of master planning is under way. Cities, seeking to increase their attractiveness to investors, hire global design, architecture, or economic development firms to create new plans for their cities.

Policy examples

Within this report, five case studies of innovative mechanisms that recognise informal and incremental land development processes, land tenure, and land use regulation are looked at in more detail. These include:

- Legal declaration of statutory and improvement areas in Zambia,
- Flexible Land Tenure Law Reforms in Namibia,

- Land Readjustment in Angola,
- Special zoning in two South African cities.

The cases illustrate how governments in different countries in Southern Africa have addressed the increasing phenomenon of informal settlements.

What they all have in common is that they all rely on the identification and subsequent declaration of the informal settlement as a specific type of development area or scheme. All of the schemes introduced less onerous development requirements for the declared areas as the formal system of land surveying and deeds registration are expensive, have onerous requirements and are inflexible for poorer households. All the tenure forms that were granted were issued and managed at local government level indicating a shift from a centralised approach often characteristic of land management in SSA countries. All mechanisms represent a desire by authorities or developers to find unique ways to confer a legal status on the informal settlements in order to promote upgrading. Most of these innovative mechanisms promoted incremental forms of tenure that authorities saw as being able to be upgraded over time and as the development needs of the area permitted or were desired.

The usefulness of planning

While it is largely agreed that planning is important and that improved planning systems can contribute to better urban outcomes, it is difficult to assess the impact of actual planning tools and instruments due to the confluence of forces which impact on urban development processes. It is therefore important to understand the limits of planning, especially in the face of severe resource constraints and complex political landscapes evident in SSA cities.

Moreover, there is a need for much more extensive comparative work. In addition to a honing of our understanding of the relationship between planning and politics, it is imperative to also explore the relationship between economics and planning. Looking at key economic factors (such as effective demand for urban space, resources/finance, and development costs) offers additional insights into the discrepancies between the visions of urban plans and implementation on the ground.

2 Acronyms

AfDB	African Development Bank
ACC	African Centre for Cities
AMCHUD	African Ministers' Conference on Housing and Urban Development
CBO	Community Based Organisation
CDS	City Development Strategy
CLIFF	Community-Led Infrastructure Finance Facilities
CoTC	City of Cape Town
DfID	Department for International Development
DW	Development Workshop Angola
FAR	Floor Area Ratio
FLTA	Flexible Land Tenure Act
GLTN	Global Land Tools Network
HDA	Housing Development Agency
LRO	Land Rights Officer
LUR	Land Use Regulation
NGO	Non-Governmental Organisation
NUSP	National Upgrading Support Programme
SDF	Spatial Development Framework
SDI	Shack Dwellers International
Sida	Swedish International Development Cooperation Agency
SPLUMA	Spatial Planning and Land Use Management Act
SSA	Sub-Saharan Africa
TRSA	Transitional Residential Settlement Areas
UCLG	United Cities and Local Governments
UCLGA	United Cities and Local Governments Africa
UEP	Urban Expansion Project
UNECA	United Nations Economic Commission for Africa
URPB	Urban and Regional Planning Bill

3 Introduction

3.1 Background

As part of a project commissioned by the UK Department for International Development (DfID) entitled 'Urban infrastructure in Sub-Saharan Africa – harnessing land values, housing and transport', this paper examines the literature on urban planning and regulation for Sub-Saharan Africa (SSA)¹. Since these topics are broad and multifaceted, the focus is on those aspects of planning and regulation which relate to the broader themes of the project: infrastructure finance and land value capture.

The critical role of effective urban planning in avoiding what Pieterse (2014) has called an 'urban poly-crisis' has been well recognised by international agencies and governments alike (House of Commons, 2009; AMCHUD, 2012; UN 2014). While the limits and challenges of planning are well documented, planning will undoubtedly play a role in mitigating (or reinforcing) many 21st century challenges which cities face (UN ECA, 2014; Clarke Annez & Lin, 2010). In the quest to build more empowered and sustainable cities, able to confront these challenges, planning and regulation have an important role to play. Not only can they help shape urban growth, but planning processes create important moments where the increasing value of urban land, often brought about by planning interventions, can be captured by local governments and used for developmental purposes.

There is a growing body of literature on planning and regulation in SSA. The majority of this literature is critical of the master planning approach which has dominated planning practice from colonial times to the present (UN Habitat, 2009). Despite this critique, it is recognised that embedded and complex patterns are difficult to change; the SSA planning environment has been slow to shed colonially inherited laws and shift towards more flexible and responsive strategies. Further, even where plans and land use regulations are carefully designed, successful implementation is constrained by a lack of technical capacity, limited resources, political tensions, and a lack of understanding of how the land markets actually function (Berrisford, 2013). It is with these real challenges that future planning efforts must grapple.

¹ This report has been written principally by Liza Cirolia and Stephen Berrisford, with an important contribution from Gemey Abrahams. Lise Pretorius, Corrine Cash and Nancy Odendaal contributed to earlier drafts of the report.

3.2 Research Questions

A number of questions therefore emerge with regards to the relationships between planning, land, and infrastructure. These include:

1. What is the history of formal planning in SSA countries?
2. What are the advocated alternatives to traditional master planning and is there evidence of their success in terms of guiding urban development?
3. Is there evidence of master planning or land use regulations leading to increased urban productivity and job creation?
4. What drives and mediates the relationship between planning and land values?
5. Does categorising countries based on various planning/land related indicators enable a better understanding of the varied and diverse urban development outcomes among SSA cities?

3.3 Research Methodology

An initial list of approximately 30 relevant research documents from organisations such as the World Bank, Cities Alliance, or Urban Landmark, was already in the library of the lead author and used as a starting point for collating the non-academic literature.

For academic literature, search engines such as Primo, EBSCOhost, and Google Scholar, were used to search various scholarly databases using English keywords. These same keywords were used to search Google for additional grey literature, and the websites of the following agencies were searched for their view on planning and land use regulation:

- The World Bank
- UN Habitat
- Cities Alliance
- UN Economic Commission for Africa
- UK Department for International Development (DfID)
- The Swedish International Development Cooperation Agency (SIDA)
- African Development Bank (AfDB)
- African Ministerial Conference on Housing and Urban Development (AMCHUD)

A draft of the literature review was presented to both an internal peer-review panel appointed by the African Centre for Cities as well as a review panel appointed by DfID. The comments received from these reviewers have been incorporated wherever appropriate.

This initial search was deepened and broadened through snowballing, which taken together generated a list of approximately 85 references. During subsequent internal reviews and comments in the initial research phase, additional authors were added to the list to produce a final document with

187 references. In reviewing this literature, the authors summarised the articles and coded for key words and phrases to themes, grouping common concepts together.

3.4 Quality and quantity of the literature

In systematically analysing the origin and authorship of the 187 documents reviewed, each was categorised by source type, including peer reviewed or non-peer reviewed journals, organisation's views, book chapters, and conference presentations.

This review process revealed that a wide range of journals contribute to this debate. Of the 68 peer reviewed papers, the majority of articles were in journals focusing on African issues, urban issues (particularly geography journals), town/city planning theory, and international development, with a total of 32 different journals consulted for one or more articles. Habitat International (12 articles) is the most well represent journal in this review, followed by Urban Forum (6 articles) and Land Use Policy (5 articles).

In the category of Regional/Multinational/Research organisations, the majority of work on these topics has come from UN Habitat (15 reports), followed by the World Bank (14 reports) and Urban Landmark (11 reports). These reports included both institutionally authored reports and institutionally branded reports.

The literature was relatively evenly split between what could be considered from "Western/Northern" authors and "Southern" authors, the latter being associated with SSA based universities and almost all found in peer reviewed journals and book chapters.

This analysis reflects a body of literature that is relatively balanced with respect to origin, and of sufficient quality to draw reliable conclusions. There is a broadly consistent view proposed in all the literature, with very little in the way of direct contradiction or conflict between the different authors and institutions.

Differences in approach are evident, and some ideological starting points differ, but in the main the literature coheres and is mutually supportive.

There is however a relative paucity of work that derives from comprehensive analysis of the legal tools and their spatial impacts. Almost all the literature reflects the views of officials, planners and academics reacting to their observations of what have gone wrong with the implementation of planning and land use tools in the region's towns and cities. The efforts have been made to trace the impacts of particular land use regulations (or lack therefore) on such things as affordable housing opportunities or spatial form tend not to be generalizable (Suzuki et al. 2010; Braimoh and Onishi, 2007). This is a weakness in the overall body of literature.

This weakness is aggravated by the relative absence of a comparative analysis that examines how similar (or even identical) legal tools and instruments have impacted on different country and city contexts. Two exceptions to this are Goodfellow's comparison of the impacts of planning law in Rwanda and Uganda (Goodfellow, 14a) and McAuslan's examination of the impacts of similar urban planning laws in the countries of East Africa (McAuslan, 2013).

4 Issues and concepts

4.1 The origins and traditions of urban planning in SSA

Underpinning the discipline of planning is the belief that allowing 'free for all' development results in haphazard, unmanageable, and socially undesirable outcomes. State intervention is needed to curb and shape market and human impulses. This requires plans which articulate what, where, and when development should be allowed. The granting of allowances has, since the advent of modern planning, been accompanied by prescribed conditions and payments in the form of fees and taxes.

Planning has a long and complex history in SSA. Njoh (2002) points out that even prior to the colonisation of Africa, there were many functioning towns; these towns were a subject of fascination and documentation by early explorers and colonialist. With the expansion of European colonialism in the late 19th century, what had been small and often coastal outposts utilised as refuelling or slave trading stations, burgeoned into functional urban centres. Luanda (then called Sao Paulo de Assuncao) was one of the first colonial posts founded in 1576 (Jenkins, et al. 2002).

Colonial centres were often geographically set apart from the villages of the indigenous people and strictly adhered to European standards of construction and urban development (Njoh, 2009). European planning

tools, including master plans, land use regulations, and the formation of land rights systems, were used to control where and how development in SSA cities could take place, often using pseudo-scientific or social rationale.

Popular traits of colonial planning included the primacy of statutory frameworks, separation of land uses and racial groups, cumbersome planning permissions processes, strict adherence to master plans created by colonial planners and architects, and limiting migration to towns and cities (Mabogunje, 1990). In addition, colonial efforts to transform the communal land tenure systems found in most of Africa into schemes which could be documented and controlled by the colonial powers formed an important plank of planning practice (Wekwete, 1995). Finally, beyond the colonial enclave, infrastructure planning and investment in SSA concentrated on regional networks for exports and the expansion of global and regional markets.

Many of the colonial planning tools and laws retained their stature in the post-colonial periods (Todes et al., 2010; Wekwete, 1995). Centralised urban planning and rigid implementation of land use regulations were carried over into the new government structures. In addition, the 1960s ushered in a new wave of master planned cities. Many countries, including Nigeria, Tanzania, Botswana, and Malawi, sought to build new, planned, and ordered capital cities (Abubakar and Doan, 2010). These new cities were often funded by western aid organisations, intent on securing the allegiance of third world countries during the Cold War period. Many of these new capital cities struggled and never became primary cities (such as Tema and Dodoma). However, these challenges have done little to abate the persistent resort to new cities as a solution to SSA's urban development challenges.

The following section discusses three critical aspects of planning in SSA cities: the master plan, land use regulations, and tenure systems. These three aspects were largely formed under colonial control; however, they are still the most relevant aspects of planning in SSA cities today.

4.1.1 Master plan

As noted above, a master plan is a spatial or physical plan for a city. Master plans generally take the form of two dimensional layouts of the city. Through this diagram, land uses are designed within a forward planning frame (i.e. what should exist, rather than what currently exists) (Davison 1996). Master plans generally cover the full expanse of the city (its edges or boundaries conceptualised by the planners) with details indicating what types of development are allowed in each and every part. Plans may be

backed by statutory planning instruments, meaning they are articulated in the law, or they may only be consulted when applicable (Goodfellow, 2014a).

In the colonial era, master plans were concerned with three primary aims: addressing public health concerns through spatial ordering, the production of housing for native populations in colonial towns, and the commodification of land (Mabogunje, 1990). The purpose of these plans was, and continues to be, to create orderly development based on a technical picture of how towns and cities should look. Regulatory mechanisms were used to guide development toward fulfilling these plans. As empires fell and post-colonial governments formed, planning functions were incorporated into centralised and top-heavy bureaucracies often with little adaptation. Planners, refusing to officially accept anything which did not confirm to the master plans and laws, while lacking the power to enforce such decisions on the ground, found themselves increasingly unable to control the development of cities.

This form of planning is now widely seen as aggravating urban challenges rather than alleviating them (Watson, 2009a;2009b; Todes et al., 2010). Master plans have been criticised for being rigid, ill-equipped to deal with the realities of fast growing, informal, and heterogeneous SSA cities (Davidson 1996). These plans tend to be utopian, with little resemblance to that which exists or is possible. Many have also critiqued the use of master plans in legitimating harsh evictions and their failure to acknowledge the needs of the urban poor (Fainstein, 2000; Watson, 2009b). Examples include displacement of informal traders and slum clearance where informal settlements are deemed nuisances in 'prime' areas. (Kamete, 2007). Two high-profile examples of this are cited by Kamete and Lindell (2010): Operation Murambatsvina/Restore Order launched in Zimbabwe, in May 2005 and an attempt to relocate a marketplace to the outer periphery of Maputo, Mozambique in the run-up to the Africa Union Summit in 2003. However, everyday evictions of a smaller scale and oppression of informal vendors are common practice in SSA cities (see COHRE 2006 and 2007). These processes negatively impact on the survival and livelihood strategies of the poor.

While it should be made clear that master planning is not inherently a bad approach to planning, in many SSA cities where there is top-down decision making, highly unequal development, informality, utopian visions of world cityness, and limited state capacity, master planning continues to generate problematic outcomes.

4.1.2 Land Use Regulation

Land use regulation, also sometimes referred to as urban development regulations or controls, are rules which indicate how land in particular areas can be used and developed (Goodfellow, 2014a). Land use regulations serve the purpose of restricting development in order to give effect to urban plans. The following are common land use regulations in SSA:

Building codes: Rules and laws pertaining to the physical structures of buildings and the standards of construction. These rules might take into account issues of health, safety, aesthetic, or environmental impact.

Infrastructure standards (for soft and hard infrastructures): Minimum standards or guidelines for the provision of infrastructures (e.g. road width, public space, service levels).

Land use zoning: Regulations which segregate land into separate and often singular uses, such as residential, commercial, industrial, and recreational. Zoning is usually articulated in the form of a 'zoning scheme'. Within each zone, particular activities are allowed and prohibited.

Minimum plot size and subdivision regulation: Constraints relating to the minimum size which plots can be and rules and laws pertaining to the subdivision of land into smaller plot sizes. These regulations aim to curb development and prevent excessive densities (Suzuki et al. 2010)

Floor area ratios and limits (FAR): An indicator used to measure the intensity of the use of a site. The FAR is generated by dividing the building floor area by the plot area. A FAR of 1 would mean that the floor area of the development is equal to the plot size (Bertaud, 2010). FAR can be used to limit the development of a site. FAR may also be referred to as 'floor space areas' or 'site ratio' (among other terms).

Like master planning, there has been substantial critique of land use regulations. Excessive regulation is seen to constrain development and create market inefficiencies. While regulations serve an important purpose, by their nature they serve to restrict development. They therefore often have negative impacts on the poor by driving up to cost of land and housing (Quigley and Rosenthal, 2005; Payne, 2001; World Bank, 2005). For example, limiting FAR and enforcing large minimum plot sizes limits densification and drives up the 'per unit' cost of land making it difficult to provide affordable housing (Bertaud, 2010; Clarke Annez & Linn, 2010). Suzuki et al. (2010) show that in Addis, the minimum plot size of 75 m² means that 75 per cent of the population cannot afford the minimum

standards. Similarly, restrictive zoning may prohibit mixed use spaces, thus limiting the opportunities for poor households to create home-based business. The implications are that the poor have had to “step outside the law to gain access to urban land and housing” (Fernandes, 2001). For example, in South Africa poor households informally subdivide their plots, creating backyard shacks which they rent out (Lemanski, 2009). When land prices are very high and regulations cumbersome, this dynamic also affects middle-class households who may also opt for utilising informal systems or ‘down raiding’ housing intended for the poor (Clarke Annez & Linn, 2010; Roy 2009).

4.1.3 Land Tenure

Land tenure is a system which determines the relationship between people and land. Royston (2013), offers a more elaborate definition arguing that “[t]enure is about the procedural and substantive aspects of land holding [including;] rights and obligations to property, and benefits flowing from property, and the processes and procedures through which rights, obligations and benefits are invoked and materialized; authority in relation to these rights, duties and procedures; [and] social and institutional practices governing rights, duties, benefits, processes and procedures” (taken from Leap 2008). Therefore, tenure systems include rules, as defined both legally and socially, for how land can be administered, held, and transacted.

As noted above, the construction and implementation of formal and legal land tenure systems in Africa formed part of colonial planning practices (Njoh, 2004; 2009). Often, formal tenure systems existed in the towns and cities, with parallel ‘traditional systems’ or ‘customary rights’ in the peri-urban and rural areas. The assumption that urban land is administered formally and rural land is in the traditional domain has been the source of ongoing dispute and conflict (Magigi, & Drescher, 2010; Luduka, 2006)

Over time these land systems have evolved, subject to global and local influences. For example, in countries with Marxist legacies, such as Mozambique, Angola and Ethiopia, land is entirely state owned and can only be leased for use (UN Habitat, 2011; Cain, 2010). Kalabamu (2010:118) writes;

“In Zambia, Nigeria, Sudan and Uganda freehold land titles were also abolished and replaced with long term leaseholds, while Kenya and Malawi opted to replace customary land tenure systems with private land ownerships, thereby eliminating the community interest in land. Senegal and Botswana are examples of countries that have

persistently pursued adaptation or incremental land tenure reform – retaining and promoting customary, statutory and common law land rights systems, but seeking ways for integrating them.”

Many authors recognize the fundamental tension between existing property rights and the need to address social and economic justice (Napier, 2013). The legal tenure systems in many post-colonial cities have made it very difficult for the poor to claim rights to land and many households resort to precarious and insecure arrangements. Many informal and irregular settlement dwellers, having no legal right to the land on which they live, face threat of eviction on a regular basis. The need to address tenure insecurity in SSA cities has not gone without attention (Durand-Lasserre and Royston, 2002; Royston, 2013). According to UN Habitat (2011, p. 8), security of tenure is defined as:

“reasonable duration of rights appropriate to the use to which the land is put and to the social needs of the land user; effective legal protection against eviction or arbitrary curtailment of land rights, with enforceable guarantees and legal or social remedies against the loss of these rights, and accessible and effective dispute resolution mechanisms.”

Prompted by the World Bank’s 1975 ‘Land Reform Policy Paper’ (which set forth a strong case for legal titling in informal settlements) many SSA countries have sought to regularise tenure by granting property rights to those in informal settlement (Kalabamu, 2011; Deininger & Binswanger, 2009). Most notably, South Africa has rigorously pursued a land ownership agenda in the post-apartheid period, granting titled plots to millions of poor South Africans (Huchzermeyer, 2001). However, attempts to regularise informal areas and grant legal tenure rights to the poor have experienced mixed results (van Asperen and Zevenbergen, 2012). Payne et al. (2007) writes

“...many of the advantages for which titles are promoted, such as stimulating investment in property improvements, have also been realised by less formal increases in tenure status, which may also be much cheaper and easier to implement given limited institutional and human resources”

Underpinning most regularisation programmes are assumptions that rights to land which are not legally enforceable or are informal are not secure. Therefore, formal/legal land ownership is the only way to ensure that the poor are protected. In an effort to overcome the often critiqued dichotomy between ‘formal’ and ‘informal’ (see critiques of the ‘blanket titling’ often

attributed to De Soto in Gilbert, 2009, Napier, 2013, Fernandes, 2001; Elhadary et al. 2012), many authors have suggested more complex terminology for understanding land rights and tenure systems. For example, Royston (2013) discusses the 'land rights continuum' and Marx (2007) discusses the continuum between 'socially driven' and 'financially driven' market transactions. The GLTN has also been working to develop the Social Tenure Domain Model, which allows for the documentation of overlapping, contested, and diverse rights (Lemmen, 2010).

4.2 Implementation challenges and contradictions in SSA cities

In most SSA cities, there is a disjuncture between the drafting of plans and regulations and implementation. Since implementation ultimately impacts on urban outcomes, Berrisford (2011) argues that discussing planning in isolation from implementation is useless.

In practice, planning in SSA cities faces a difficult paradox. On the one hand, planning and land use regulation needs to provide certainty and assure standards are enforced for the public good. On the other hand, there is a clear need to allow development, support the (often precarious) survival strategies of the poor, and adeptly deploy the limited resources and capacity of the state to respond to unforeseen situations.

In unpacking this paradox, we have identified the major challenges documented in the literature on planning in SSA cities, including:

Capacity: In the context of urban planning, Goodfellow, drawing from Putzel, defines state capacity as "skills, formal institutional systems (e.g. regarding policy formulation and financial management), number of educated personnel, and financial and technical resources within the state bureaucracy" (2014b:5). Historically, SSA cities have lacked well-resourced and technically capable administrations to implement urban plans (Berrisford, 2013; Todes et al. 2010). These capacity constraints are compounded by resource constraints given the limited tax base (Watson, 2011; UN Habitat, 2009). Jenkins (2000), drawing on the case of Maputo, notes that the difficulties in implementing urban change in a context of 'fragile' local governments' is often overlooked.

Laws and policies do not match the institutions: Plans and regulations require the ongoing use of tools, systems, and institutions which are capable of enacting and enforcing them. There is substantial evidence that suggest that even the most progressive laws and policies require 'fit for purpose' and capacitated institutions to drive them. In the absence of effective institutions to implement planning and land use management, land

use regulations become the 'tool' which gives effect to urban plans. However, while land use regulations describe what cannot be done, plans present what should be done. This presents a fundamental contradiction.

Plans often disconnected from reality: Plans, particularly those developed by designers and architects from abroad, tend to be out of sync with the pace and nature of the local development context. These plans often allocate land for various developments (commercial, industry, housing etc.) where there is insufficient market take up for such land uses. Plans often boast new state infrastructures, like stadia, universities, highways, and airports with little recognition of existing commitments of line departments and budgets. Likewise, the standards imposed on development are often very high and require more prescription than is implementable. However, the challenge of building more realistic plans is a difficult one given the lack of reliable data (which would be needed to track the development of the city) and the need for health, safety, and environmental standards to be adhered to.

Certainty in a context of rapid change and informality: One of important roles of plans is to offer some level of certainty to investors, the impression that development is not a 'free for all' but will conform to certain rules, regulations, and spatial arrangements. As Gunder and Hillier (2009) write "what purpose does a blueprint, a master, or a strategic plan serve, but to provide a template for future certainly of land use of spatial design?" (24). However, urbanisation rates and demographic changes have unfurled at an unpredictable pace, ultimately leading to informal and extra-legal development becoming the norm, rather than the exception (Goodfellow, 2014a: 84; Pieterse, 2008). With 60 percent of urban Africa living in 'slums' which do not conform to plans and land use regulations, tensions arise between the need for certainty, the survival of the urban poor, and the many development imperatives to which resource-strapped states must simultaneously attend (Fox, 2014).

Attracting investment to SSA cities: In some case, the perceived need to attract development – of any kind and in any location – is so great that it dwarfs even rational and rigorous planning processes. This is not irrational given the need for economic development on the continent. As SSA cities compete for global investment, states tend to relax plans and regulations in favour of creating the most favourable conditions for capital investment (Watson, 2013). In contrast, developments for and by the poor are generally not regarded as worthy of this relaxation. The poor and the lower middle class experience the brunt of plans and land use regulations.

Politics and governance: While planning is often seen as a technical exercise, many authors point to the way in which local political processes impact on the implementation of plans and regulations. Here, the complexity of the state is highlighted (Davidson, 1996). Rakodi (2003), for example, points to the tensions and alliances between spheres of government (central and local) and between politicians and bureaucrats. In addition, aid organisation, NGOs, and social elites, serve as political players, impacting on planning implementation (Büscher and Vlassenroot 2010; Goodfellow, 2010; Norton-Griffiths, 2010). It is therefore impossible to ignore the political context within which plans are created and implemented. The role of governance in planning processes is apparent in much of the literature examined.

4.3 Planning outcomes in SSA cities

Over the decades, planning in SSA cities has remained a challenge. The majority of households in urban areas live in slum areas (also referred to as informal, irregular or unplanned) (Fox, 2013). Infrastructure connections link formal areas, skipping over unplanned areas and creating urban enclaves of wealth and poverty, what Pieterse refers to as 'slum urbanism'.

On the periphery of cities, where the urban fabric meets the rural surroundings, low density peri-urban urban development can be found. Here there is steep competition between land uses, as the city expands informally (Mbiba and Huchzermeyer, 2002; Braimoh and Onishi, 2007). Land markets in these areas, as well as in some of the formal areas, operate by their own rules and often without due process and documentation. The reality that operates below regulations, plans, and policies involves a rich diversity of tenure options (Napier, 2013). The peri-urban fringe of Maputo is particularly well known for the way in which residents have create systems for development and land transaction which mimic formal processes (Nielsen, 2011; Earle, 2014).

New formal suburbs are also forming in and around cities. Some of the newer suburban developments may be entirely built by private companies complete privately financed with infrastructure and social amenities (Kihato, 2012). It is not uncommon that the extension of urban infrastructure in SSA cities is driven by the ad hoc development of projects, such as housing estates or malls in and around urban centres (Ibid.).

In the foreseeable future, much of the already heavily burdened infrastructure assets in SSA cities will reach the end of their lifespan (Briceño-Garmendia et al., 2011; Pieterse, 2008). From water treatment facilities to electricity plants, this infrastructure requires substantial capital

investment to upgrade, replace and expand urban assets. This begs questions such as 'should the same types of infrastructures be upgraded and built, or should new - and possibly more sustainable and inclusive - infrastructure be explored?' and 'who will fund this infrastructure and under what conditions?' both of which have direct implications for future planning and regulation.

5 Global and Regional Perspectives

Few development organisations have ignored the overwhelming importance of cities in development². Within this context, leading institutions and academics agree that SSA cities are burdened with antiquated and inappropriate plans and development controls, which fail to respond to the social and economic contexts (Todes, 2009; Tibaijuka, 2006; Turok, 2014). The following section summarises the key voices in the debates.

5.1 Global perspectives

The World Bank, UN-Habitat, and the Cities Alliance are three important global voices in the urban planning debates. All three institutions are concerned that regulations in SSA cities are overly restrictive, unresponsive to the socioeconomic realities. The World Bank argues that urban planning should be more sensitive to the needs of the market, creating investment certainty for both households and businesses. Decentralisation, transparency, and collaboration, all part of the larger 'good governance' discourse, are seen by the World Bank as important for economic growth and efficiency. The UN Habitat, has a strong focus on strategic spatial planning, advocating for both city strategies and National Urban Strategies. UN Habitat stresses the importance of participatory planning, emphasising the need for inclusive development and more appropriate address of informality in planning. The Cities Alliance has largely been focussed on 'Cities without Slums', advocating for planning standards which are appropriate for slum upgrading. Countries, NGOs, and multi-lateral organisations (such as UNEP and UN Habitat) are members of the Cities Alliance (Cities Alliance, 2000; 2013).

² World Bank's (1991) Urban Policy and economic development: an agenda for the 1990s and UNDP's (1991) Cities, people and poverty: urban development co-operation for the 1990s. Also see Cities Alliance, ICLIE and UNDP: Liveable Cities: the benefits of urban environmental planning.

5.2 Donor perspectives

The Department for International Development (DfID) and the Swedish Development Agency (SIDA) are important donors who are shaping the planning agenda in Africa (GIZ and US Aid are two others, but a comprehensive review of all donor positions is beyond the scope of this report). DfID has focused their attention on the need to ‘link the green and brown agendas’, public private partnerships (PPPs) and shared economic growth. Additional attention has been given to the need for the development of mixed-use zoning and the importance of property rights. SIDA has focused on the need for urban integration, cooperation between the informal and the formal sector, and consideration of more flexible tenure systems.

5.3 Regional perspectives

There are a number of important regional institutions including UNECA, African Development Bank, and AMCHUD. In the planning domain, UNECA has expressed the importance of mainstreaming urbanisation into existing policy frameworks (such as economic policy) (UNECA, 2014). The African Development Bank has focused on the development of inclusive economic growth strategies which balance the need for social development and the protection of nature resources. AMCHUD’s voice is highly influenced by UN Habitat, their key international partner. A review of statements following each conference reveals consistency in their approach. The evolution of the meetings also shows movement from statements towards potential solutions or outcomes, for example from “implementing a monitoring and evaluation mechanism for urban governance reforms” (AMCHUD I) to “adopt the Review and Monitoring Mechanism on Housing and Slums as a tool” (AMCHUD II). Further, specific “themes” for each meeting, given below, change the focus accordingly.

Meeting	Focus
AMCHUD I Durban 2005	Decision to establish the African Ministers Conference on Housing and Urban Development as the consultative mechanism on the promotion of sustainable development of Human settlements in Africa
AMCHUD II Abuja 2008	Leveraging resources in the provision of housing and infrastructure and slums
AMCHUD III Bamako	Land governance: promoting housing reforms that can make land available for sustainable urbanisation and bring housing

2010	opportunities at scale as a key element in slum prevention
AMCHUD IV Nairobi 2012	Territorial Planning and Access to Basic Services for all with a subtheme on implications of climate change for Territorial Planning and Access to Basic Services in Africa
AMCHUD V Ndjamena 2014	Case studies in Financing Human Settlements in Africa: Appropriate legislative frameworks and innovations in Implementation

5.4 Comparing perspectives

What these global, donor and regional voices show is a growing convergence in thinking among the leading institutions in the urban sectors. In particular, support for poverty alleviation, devolved decision making, and urban integration are evident among most institutions. In addition, the World Bank, UN Habitat, and more recently DFID, three of the most prominent global institutions in the urban sector, have expressed increasing interest and support for innovative and land based financing tools. For example, the World Bank recently published two documents. One was entitled 'Financing Transit-Oriented Development with Land Values' (2015) and the other 'Harnessing Urbanization to End Poverty and Boost Prosperity in Africa' (2013), both integrally concerned with the financing of urban infrastructure. Similarly, UN Habitat is currently in the process of promoting 'Land-Based Financing (LBF) toolbox' (the term that they use for 'land value capture' and related instruments). In a number of cases (such as the Urban Management Programme (UMP), established by the World Bank and UN-Habitat and a precursor to today's Cities Alliance), these institutions have worked collaboratively in an effort to build the institutional capacity needed to drive this agenda.

Given the size and complexity of the many development organisations working in the urban sector, it is difficult to analyse their divergences, most of which seem to be drawn more from the practicalities of their respective roles than from divergent ideological perspectives. For example, in the African context, World Bank has tended to have a strong grasp and focus on the economies of countries and finances of urban areas. The World Bank tends to focus on economic growth and poverty reduction (see the World Bank's 2009 Urban Strategy, *Systems of Cities: Harnessing Urbanization for Growth and Poverty Alleviation*). Local government creditworthiness has been one of their recent focus areas given the major infrastructure backlog in many developing cities (World Bank, 2013). This has been particularly important given their role in infrastructure lending.

In contrast, UN Habitat has tended to have a stronger focus on urban planning, tenure, and human settlements. The primacy given to planning and urban design is clearly articulated in the 2015 'International Guidelines on Urban and Territorial Planning'. This is, however, shifting as UN Habitat moves to assert its 'new agenda', said to include: urban planning, urban economies and municipal finance, and urban legislation. This arguably represents a shift away from the focus on housing and sustainable human settlements articulated in the Istanbul Declaration on Human Settlements and the 'Habitat Agenda' with implications for their future work. The implementation of UN Habitat's 'New Urban Agenda' will be discussed at the 2016 Habitat III. Despite this shift, UN Habitat remains the leading advocate for urban planning.

There are a number of other areas where differences in approach can be seen. While the World Bank has been seen to shift its views on the benefits of private property and the importance of titling depending on the context, UN Habitat has taken a much stronger stance on the problems of focusing too much of legal title. UN Habitat has more often stressed the importance of participation and 'community voice' in development projects, whereas the World Bank has maintained the importance of engaging a range of public and private stakeholders in planning and decision making processes, while seeking to steer clear of politics.

6 Emerging themes in planning and regulation: expert opinions

In planning discourse and practice, a number of important themes have emerged over the past two decades. With weakening faith in traditional master planning and land use regulations, other planning approaches and frameworks have been advocated for by experts in the planning and urban development sectors. In the section that follows, themes arising from a review of 'alternatives to master planning' are discussed, drawing on the global and regional views as well as the findings in the literature. Finally, the extent to which there is practical evidence of the effectiveness of these alternatives is discussed.

6.1 Strategic planning

Strategic planning is currently the most advocated approach to city planning (Allmendinger and Tewdwr-Jones, 2002). Strategic planning, of which the City Development Strategies (CDS) are the most common tool, is a composite of 'structure planning' on the one hand and 'action planning' on the other (Davidson, 1996). From structure planning, strategic planning

draws a big picture framing. The spatial focus is on the structuring elements of the city (UN Habitat 2009). The plan does not control everything or seek to provide development prescriptions for all parts of the city. Rather a strong strategic plan will aim to create an integrated framework for the planning of critical infrastructures and articulate the hierarchies among them (Watson, 2009b). From action planning, strategic planning draws the attention to project implementation, with a particular focus on catalytic interventions. While action planning has spatial outcomes and often focuses on area based projects, the focus is necessarily on process. Strategic planning has faced a number of challenges. One of the major challenges has been the linking of new strategic plans with existing sector plans, such as for water, housing, and electricity (UN Habitat, 2009, Todes, 2009). Individual sectors and departments have often planned and budgeted using their own goals and frameworks and have been resistant to changes imposed through strategic plans. Another common challenge is a lack of follow through on strategic projects. It is common that planned 'catalytic projects' are never implemented.

To overcome these challenges, strategic planning has increasingly focused on building and tooling the institutions mandated with planning functions, rather than the plans themselves. This is best encapsulated by integrated development planning in South Africa, which provides the tools for municipal planning to be linked to budgets and spatial plans. The spatial showpiece is the municipal Spatial Development Framework (SDF), a strategic plan intended to give guidance to public sector spending and facilitate private investment. The efficacy of spatial frameworks in South Africa has been questioned, however, in that they do not necessarily provide the strategic direction and detail necessary for political certainty. Todes (2009) refers to a number of studies that decry their inability to give clear direction and guide infrastructure investment and land use decision-making. Furthermore, Watson (2009) warns against direct uncritical replication of the South African approach due to the relative lack of resources and state capacity elsewhere in SSA.

Unlike traditional master planning, strategic planning has a large focus on stakeholder participation (Albrechts, 2004). Those affected by the plan are meant to be part of its formation. Since the 1990's there has been a rise of participatory planning approaches (Mitlin and Thompson, 1995; Miescher, 2012).

There are two main 'camps' in the planning and participation debate. The first camp sees participation as an instrument for improving plans. The logic is that better plans can be created if there is by-in and stakeholder

commitment to the implementation and fulfilment of the plans. Non-state actors (particularly the private sector) are seen as increasingly central due to the diminishing role of the state in the direct provision of urban services (Davidson 1996). To this end, Miescher (2012:1) argues that better congruency between those who are drafting plans and those who are implicated in them is necessary for “best for all” results. The second camp is more concerned with the exercise of active citizenship and ensuring that the voices of citizens (particularly the poor) are incorporated into planning processes (Miraftab, 2009; Mitlin and Thompson, 1995).

6.2 National Urban Strategies

As cities increasingly become the focal point of development, many organisations call for “transformative national urban policies” (AMCHUD, 2012), or “national urban strategies” (UN Habitat, 2009) which can cope with the environmental, social, and economic challenges associated with urbanisation processes (Badarulzaman et al., 2013: 62; UN Habitat, 2009: xxvii).

While master planning’s centralised decision making has been highly critiqued, national governments remain important actors in the development of cities. Turok and Parnell (2009) argue that national governments are best placed to map and support long term trends in relationship to cities, towns and rural areas. In addition, national governments have powerful policy tools, not the least of which is the ability to invest in large scale infrastructures and devise relevant urban legislation. According to Turok and Parnell (2009), national urban policies should be seen as a complement to local strategies and should focus only on patterns and processes of national significance.

Older generations of national strategies tended to be anti-urban, seeing the growth of cities as the ‘problem’ needing address (Harris, 2014). South Africa’s apartheid planning, for example, sought to limit the growth of cities by locating non-white households in peripheral townships and rural homelands. In SSA, the embrace of the urban has been slow in coming. In many SSA cities, the first post-colonial attempts to radically shift national urban development patterns were in the period following independence. In an effort to symbolically break the colonial development pattern, new capital cities were developed under the popular planning paradigm of ‘growth poles’ (UN Habitat, 2014; Abubakar and Doan, 2010). The 1980s ushered in a second wave of interest in national urban strategies (Rogerson, 1989 (see Rethinking National Urban Policies: Lessons for South Africa)). The majority of these have sought to create more attractive cities for

lenders and investors as well as draw development and migration towards secondary centres.

However, there is substantial evidence that popular urban growth preventives such as rural development programmes, draconian measures to stem migration, or intentional degeneration of capital cities (known as the Havana Strategy) tend not to reduce the pressure on primary cities (Richardson, 1981; Angel 2011). Moreover, as Richardson (1991) writes, “the efficiency merits of slowing down primacy are dubious. The statistical association between increasing primacy and faster economic growth is well known” (276). Over the past twenty years, substantial evidence shows the importance and potential of cities in addressing issues of resource efficiency, job production and other urban imperatives.

More recently, a number of SSA countries, including Kenya, Uganda, Mali, Nigeria, Uganda, Mali, Rwanda, and South Africa have created new national urban policies or frameworks. These strategies seek to embrace urban growth and transformation (UN Habitat, 2014a). However, the difficulty implementing these plans has not gone unnoticed. In the case of Rwanda, Nigeria, Mali and Mozambique, the UN Habitat notes that limited technical capacity largely hinders effective implementation. Often strategies are never used at all. In Nigeria, the federal system is a further stumbling block as it limited the power of governments to implement national plans. In Kenya as well as Uganda, capital cities have been sites of political controversy and opposition support; this had led to party antics and tensions, undermining the intent of the national policy processes.

6.3 City Development Strategies

At the scale of the city, City Development Strategies (CDS) have become the most common strategic planning tools in developing countries (Badarulzaman et al, 2013:63). The CDS process was first developed by the World Bank, in conjunction with UN Habitat, in the early 1990s, a collaboration which eventually led to the creation of the Cities Alliance. City Alliance CDSs are similar to the ‘City-Wide Strategic Plan’ more recently developed by UN Habitat and the Global Land Tools Network (2010).

Cities Alliance (2014) defines a CDS as:

“[a]n action-oriented process, developed and sustained through participation, to promote equitable growth in cities and their surrounding regions to improve the quality of life for all citizens”.

CDSs are designed to help cities reach new levels of productivity, efficiency, and service delivery by focusing on the enabling conditions for growth. Cities Alliance (2000) defines these conditions as good urban governance, fiscal balances (credit worthiness), liveability, and competitiveness. To this end, CDSs are generally 20-30 year strategies with a limited number of catalytic and high leveraging initiatives (Cities Alliance, 2005; Dodman et al., 2014). Strategies of this nature have been developed by over 200 cities globally, supported and sponsored by City Alliance members.

Since participation is seen as central to CDSs and City-Wide Strategic Plans, tools and techniques have been developed for stakeholder engagement (Lipietz, 2008). Among others, these tools include focus groups, participatory diagnosis, the creation of databases and indicators, stakeholder analysis and mapping, 'urban pacts' sanctions by stakeholders (Attahi et al., 2009, UN Habitat, 2010). These processes are intended to create an 'agreed upon vision' for the city (Cities Alliance, 2005).

However, Rakodi critiques the CDSs fixation with consensus, arguing that it is often not possible to reach full agreement; no matter how much participation is undertaken some interests will be marginalized and others privileged (2003). Robinson (2008), reflecting on the South African CDSs, notes that "the field of power relations involved in the process of visioning city futures poses severe challenges to progressive outcomes" (86). While participation, particularly of the poor, is often stressed, CDSs are often critiqued for being neo liberal, since they tend to focus on business, economic development and competitiveness (Lipietz, 2008).

By most measures, the success of CDSs has been varied and patchy. While there have been individual country assessments, there appears to be only one systematic review of the CDS approach which has been undertaken (from here forward referred to as the Review). This was commissioned by the Cities Alliance in 2005. The Review looked at a number of cities, three of which were in Africa. These included: Johannesburg, Karu, and Kigali. The Review sought to assess the impacts of CDSs on city development. While monitoring and evaluation (M&E) is said to be integral to the development of CDSs, the Review argues that there has been little systematic monitoring in most of the cities. The Review goes on to argue that monitoring is difficult for a number of reasons including: that CDS results take a long time to emerge, there may be political and social change in the process, national level indicators and data are insufficient to track progress, and causation is very difficult to prove.

However, the Review offers a number of useful findings. In terms of the relationship between local strategies and national legislation, the report

notes that “it appears from the case study cities that institutionalisation of the proposals emerging from CDSs has not been strong unless there are complementary systems mandated by central governments that offer a suitable framework” (p. 7).

Echoing the Review, a number of other country studies stress the importance of institutions tasked with implementation. Weak municipal finance systems, weakened nation states, unfunded mandates pushed onto local governments, lack of alignment with national planning systems, and lack of investment follow-through from the state and private sector are common concerns (Watson, 2009b; Dodman et al., 2014). For example, in the case of Tanzania, Watson (2009) notes that the CDS for Dar es Salaam does not align with the regulatory tools (such as land use regulations) severely compromising implementation. These challenges limit the capacity of the state to shape development and offer a certain and responsive urban development framework. In many countries CDSs undoubtedly go some way in addressing the flaws of master planning (Halla, 2002). However, they should not be seen in isolation from the broader planning system or as a silver bullet solution to urban development.

6.4 Urban expansion

One of the key themes in current urban planning debates is how to plan for urban expansion and the future urban growth of existing urban areas. The ‘Urban Expansion Project’ (UEP), situated within the New York University School of Business, is a key contributor to this debate. Composed of a team of technical experts, UEP is intent on working with cities which wish to proactively respond to urban expansion and the future land demands in cities. The core argument of the project is that cities are expanding and that trying to constrain city expansion will likely result in 1) increased land and housing prices and 2) haphazard and unplanned peripheral development. It makes more sense to plan ahead for this expansion than to retrofit areas after people have settled (Angel et al., 2013).

The methodology of the UEP follows four steps. The first step is to create realistic projections of urban growth and estimations of the future need for land. The second step is to ensure that cities have the appropriate functional jurisdictions over the projected areas where the city will expand to. The third and fourth steps involve a planning exercise identifying core elements of the city structure, in particular, the networked infrastructure such as transportation and piped water. The necessary land should be acquired by the city for these future infrastructures and protected from informal and ad hoc use. Finally, the city should identify a selected hierarchy of public spaces which can be protected with institutions and civic

organisations. According to Solly Angel, the leader of the UEP, planning for future expansion should also work with brownfield projects (under developed or underutilised sites) within the existing city fabric. Cities can simultaneously expand opportunities within the city core by easing restrictions and allowing for densification (using building height and FAR). This methodology is underway in Ethiopia where the Urban Expansion project team is working with Ethiopia's Ministry of Urban Development and Construction in four cities: Mekelle, Bahir Dar, Adama, and Hawassa (Angel, 2013).

6.5 Planning with informality

In many SSA cities, informality is the norm, not the exception. UN Habitat (2008) notes that sixty percent of Sub-Saharan Africa's urban population lives in slum conditions. In many parts of Africa, informal economies are the 'real economy', accounting for the majority of transaction and employment (UN Habitat, 2014: 134; World Bank, 2013; Lund and Skinner, 2004).

'Planning with informality' is an approach to planning which seeks to revise plans and policies with the view of supporting the informal sectors of cities. The discourse emerged, in part, as a response to the violent 'slum eradication' campaigns undertaken with the intention of creating orderly and modern cities. Many academics find this approach particularly compelling (Pieterse, 2008; Watson, 2011).

While planning with informality is difficult, informal settlements are one arena yielding practical instruments. Progressive, and where possible *insitu*, upgrading of informal settlements has been advocated for by many donors and academics (UN Habitat, 2004; UN Habitat, 2009; COHRE, 2006). Upgrading measures include ensuring tenure security by using flexible and incremental tools, rather than fixating on with formal ownership (Deininger and Jin, 2006; World Bank, 2009: 19). *Insitu* and incremental upgrading require a relaxation of standards, zoning, and other land use regulations, while ensuring that basic health and safety measures are enforced (a tricky balance to attain). For example, studies in Tanzania to show that problems with the formal planning system can be improved by including the informal planning system into decision-making. In contrast, failure to work with informal and peri-urban communities when expanding the boundaries of the city can result in insecurity, elite capture of land value, and intense conflict (Adam, 2014; Kombe and Kreibich, 2000; Kombe, 2005; Allen, 2003). Incremental approaches to tenure as well as construction are seen as more relevant to developing countries because of the low levels of affordability (Sida, 2007). An important aspect of upgrading is also the provision of services and investments in public infrastructure (World Bank, 2013).

6.6 Community led planning

While planning in its more conservative sense falls within the ambit of the state, planning is often initiated by groups which are not formal institutions, such as NGOs and CBOs (Watson, 2002). Recent attention has also been given to how communities and civic organisation participate in collaborative planning partnerships with state institutions and 'insurgent planning' (Miraftab, 2009; Baumann et al, 2013 in Satterthwaite and Miltin).

The most well-known case is the work of Slum/Shack Dwellers International (SDI) and their affiliated branches in a number of SSA countries. SDI is known globally for its community planning method. The most notable aspects of this method include creating local savings groups and 'Urban Poor Funds' (UPF) towards the investment in urban infrastructure. According to the SDI website, "by combining the savings of the poor with the external contributions the savings leverage, national Urban Poor Funds gear up capital for large-scale construction and infrastructure development." Another notable aspect of the SDI methodology is the community enumeration and mapping (see Banana et al. 2015 for an example in Zimbabwe). These maps serve as detailed spatial and socio-economic profiles of settlements. They also serve as tools to 'reblock' settlements. Reblocking settlements involves a negotiated rearrangement of shacks in order to make space for networked infrastructure and facilities.

Similar to the Urban Poor Funds are the Community-Led Infrastructure Finance Facilities (CLIFF) which allow community groups to apply for venture capital for infrastructure and housing projects (Miltin, 2008). The CLIFF approach, developed in India, is currently being tested in numerous places in SSA (such as Nigeria, Angola, South Africa, Tanzania, and Uganda). According to Cities Alliance, the lead global partner, CLIFF projects must be financially viable and supported by local authorities (Jack and Morris, 2005). This helps to ensure that both the projects and the facility are sustainable. Jack and Morris (2008) emphasise the importance of working with capacitated communities though well-established NGOs, such as Development Workshop in Angola and NACHU in Kenya³.

With the exception of Iben (2009), there is little academic literature written on the use of the CLIFF model SSA cities. The only assessments of the CLIFF programme can be found in annual documentation produced by

³ NGOs like Habitat for Humanity, Africare, and many others, while often claiming to undertake community development, focus specifically on the construction of housing, often in the most emergency situations.

Homeless International (now REALL). These reports point to some of the challenges faced during pilot project implementation in Africa, most notably delays caused by land claims disputes and capacitation challenges of local partner NGOs (see Homeless International, 2013 and 2014). The reports note the challenge of reaching housing delivery targets and scaling up delivery.

However, the vast majority of planning achievements made by the poor are not through organised networks which operate at the scale of the city or country. A number of authors have explored the ways in which the urban poor improvise individually and collectively – creating their own rules, regulations, and services (Gandy, 2005; Simone, 2004; Silver, 2014). Mirafteb (2009) describes the ‘insurgent planning practices’ of the poor which sit outside of sanctioned spaces for community participation and ‘invent spaces’ which allow their voices to be heard in planning processes. Silver writes “[i]nstead of a reliance on the state and large-scale capital investment, improvisation allows urban dwellers to prefigure their own futures” (12). The unregulated mini-bus or *matatu*, industries in many SSA cities are a good example of this.

However, it is important not to glamourize these practices of survival. The African Centre for Cities (ACC) notes that “[t]he flipside of weak governance is often disempowered civil society interests...the incredibly rich seam of social capital does not get mobilised for effective democratic urban governance and management” (2015: 14). This issue is one which approaches focused both on community and informally must content.

6.7 Participatory and Inclusive Land Readjustment (PILaR)

Participatory and Inclusive Land Readjustment (PILaR) is a tool developed by the UN Habitat which adapts the more traditional tool of land readjustment for the context of developing countries. Land readjustment (in the more traditional sense) is a tool which aims to support planned and managed urban extension and densification. The methodology is outlined by UN Habitat (2014b):

“[t]his technique brings a group of neighbouring landowners in a partnership for voluntary land contribution or sharing, joint planning and the servicing of their adjoining plots. It includes an equitable sharing of the costs and benefits of projects among public bodies, landowners and developers. The surrender of land for infrastructure and other public space needs, and sometimes also for sale to offset

infrastructure costs, is a key characteristic of land readjustment” (p. 2). Central to this approach is land sharing or pooling⁴.

UN Habitat (2014b) notes that in a developing city context, the more traditional approach to land readjustment needs to address issues of inclusion and sustainability. Particular emphasis is placed on engaging poor and marginalised groups. However, the basis remains focused on the sharing of increased land values gains through the investment in infrastructure. The emphasis, therefore, is on being participatory and inclusive in its outcomes. The key outcomes which the process seeks to achieve is: more optimal use of land, improved infrastructure and public space provision, community ‘buy in’ and improved institutional capacity for community engagement, land value sharing, increased the supply of affordable serviced land, and most connected and mixed use towns and cities. The logic behind this programme is that there is a lack of well-located serviced land suitable for development. There is also limited planning and a lack of tools to negotiate the more political and negotiated aspect of planning.

The approach is currently being tested in Colombia as a UN Habitat flagship project. Many authors have written on the potential of land adjustment in Africa: examples include: Botswana (Fourie, 2004), Ethiopia (Adem, 2015). The Global Land Tools Network has, on a number of occasions, brought SSA countries together to discuss the possibilities of using land readjustment (particularly land sharing) for slum upgrading (the Global Land Tools Network has written country reports for Ghana, Kenya, Namibia, and Rwanda).

6.8 Efficient cities

It is widely recognised that urban areas contribute disproportionately to national productivity (UN Habitat, 2013, World Bank, 2013). This is largely because of ‘the urban dividend’ and the many benefits of agglomeration and economies of scale (CoGTA, 2013). The World Bank (2013) writes ‘it costs

⁴ Land sharing and pooling are often used interchangeably. However GLTN argues that they are two different processes. GLTN writes ‘[I]and pooling is a form of land readjustment whereby the whole process is under the responsibility of a public agency, with all rights holders in a compulsory partnership.’ Land sharing is when land is privately owned and the owner agrees to lease or sell the occupied parts to the residents at under value.

almost three times as much to provide piped water in sparsely populated areas' (1). However, cities, particularly in the Global South are often critiqued for being 'inefficient', failing to capitalise on the opportunities which cities enable.

There is a large body of work on efficient and 'smart' cities which is beyond the scope of this review to cover in full. Suffice to say, efficient city discourses are their core about costs and benefits. How does a city minimize its resource investment while maximising the benefits it gets in return? And how are these costs and benefits measured? It is often stressed that such costs and benefits should take into account social and environmental impacts, in addition to the more standard measures of economic and financial efficiency (World Bank, 2012).

For planners, this involves ensuring that interventions and investments which they plan a) respond to several urban imperatives simultaneously, b) make informed trade-offs in terms of short, medium and long term costs and benefits and c) have 'catalytic' impact thus inspiring other actors to invest (Development Planning Unit, 2012; World Bank, 2012). Planners involved in drafting laws and regulations can address the inefficiencies caused by inappropriate regulation and cumbersome approval processes. Bertaud (2013) argues for consistency between the planning of infrastructure and the land use regulations of the city: he states: "[u]rban productivity depends on spatial concentration which allows rapid exchanges of labor, information, good and services within and urban area" (p. 2) He goes on to stress the importance of consistency between land use patterns and transport systems in building efficient cities noting that inappropriate restrictions on sites hinder the ability of the user to maximise its efficiency. For example, restrictive zoning can limit the uses of a site while a mixed use development would allow for greater efficiency and productivity.

A sub strand of efficient cities discourses is the call for more competitive cities and city regions (OECD, 2006). Cities are encouraged to compete with one and other, and regionally, for global investment. To this end, a catalogue of indices has been created to rank and compare cities. Within this framework, competitive cities are global players, which maximise their competitive advantages and attract local and global investment. Competitive city discourses are largely driven by neo-classic theory and thus argue that competitive market systems are, by their nature, the most efficient distributors of goods and services. Markets with minimal restrictions are seen to be the most efficient. The African Development Bank's Urban Strategy places emphasis on creating the conditions to support city competitiveness, and has identified the three areas of

infrastructure, governance, and private sector development as key to fostering economic and social development (African Development Bank Group, 2011). The World Bank's Urban and Local Government Strategy notes that it is vital to remove government failures such as inappropriate regulations or corruptions that may stand in the way of local and international investment (World Bank, 2000: 51).

The focus in the case of the competitive city model is on efficiency for the sake of economic growth, rather than for environmental or social benefit. However, as Turok (2014) points out, the form of economic growth determines its developmental capacity. He writes "the resource-based character of [Africa's economic] revival is not conducive to inclusive growth and large-scale job creation" (p. 24), noting that in places where economic and political elites and expatriates benefit from extractive industries, they drive up the price of housing, vehicles, and consumer goods, speculate on land, and underpin import-driven consumption.

6.9 Governance and institutions

In most development discourses, the central importance of institutions and decision making is recognised. In line with this, planning discourse has shifted attention from spatial plans for the built environment and towards efforts to reform the underpinning institutions. This shift is on the back of the acknowledgment that plans, laws, and policies do not realise on their own. Governance structures, including institutions and systems, mediate and give effect to plans and policies (Galal and Razzaz, 2001).

Governance has to do with the way decision making takes place and how those decisions are implemented. "Good [urban] governance', a popular buzzword in development discourses, adds normative values (Obeng-Odoon, 2013). Therefore, different institutions have defined it based on their own principles. The World Bank, for example, tends to focus on accountability, transparency, and public leadership. Other organisations focus on democratic tools, social and economic rights, and 'pro poor' policy. In short, good governance has become a catch all phrase which requires its users and advocates to articulate specifically what constitutes 'good'.

The literature provides a range of examples of the pitfalls of overlooking the issues of governance. When governance focuses too narrowly on the state, other actors, from informal taxi operators to local councillors, may try to derail planning processes. As previously discussed, authors interested in community planning or planning with informals tend also to stress the issues which arise when the poor are not given voice in planning processes (Owusu and Afutu-Kotey, 2010; Watson, 2009b; Satterthwaite and Mitlin,

2013). In reviewing Zambia's legal reform process reform, Berrisford (2011b) argues that incremental rather than sudden reform would be more effective, especially where institutional coordination is lacking. In the case of South Africa, Harrison (2001) explains the negative implications of having planning responsibilities awkwardly split between the three spheres of government on the integrated development planning process. Foster et al. (2009) use the term: 'Angola mode' to discuss the agreements made between nations to trade infrastructure for natural resources, the outcome of which has been disconnected housing projects on the outskirts of Luanda which show little regard for planning principles (Benazeraf and Alves, 2014).

One of the key questions in the governance debates is where decision making should ideally lie. Decentralisation and principle of 'subsidiarity' have been common pillars in policy implementation debates since the 1990s (Ndegwa and Levy, 2003). Local governments in Africa have historically only been implementers of national policy. In many cases they have had little political power, particularly in the Francophone countries where the French tradition of centralisation was greatest (Ibid.). There is, however, ongoing interest in devolving decision making responsibility to local governments administrative, political, and financial decentralisation of various degrees is evident across the continent (Wekwete, 1995). Most notably, rapid decentralisation (in contrast to incremental reform) is evident in Uganda, South Africa and Ethiopia (Ndegwa and Levy, 2003).

The rationale behind decentralisation is that the rate of urbanisation and the emergence of megacities require a political and economic shift of power to the city level, and that this must be reflected in a parallel institutional shift (Cities Alliance, 2000). The ACC writes

"[t]echnocratic top-down programmes and solutions will not work because each city and town is unique and will need to draw on the collective resources of all actors affected to produce "fit-for-purpose" reforms. That said local innovations become a lot easier if there is a coherent and high profile national programme of deliberation and action to drive systematic urban transformation." (2015).

Clos (2012) argues, in his capacity as head of UN-Habitat, that this should rather be called "local government empowerment" because in essence it empowers local governments to raise taxes, to create local fiscal systems, and to make context specific decisions which reflect their asymmetry.

In many countries, decentralisation efforts initiated by global funders have not led to the intended outcomes. The ACC (2015) notes that this may be

because decentralisation needs to be nuanced for different types of urban areas with different capacity and resource opportunities. The United Cities and Local Governments of Africa (UCLGA) – a network of local governments – has highlighted the need to understand the local capacity needs for effective decentralisation (UCLGA, 2007). Many SSA countries have adopted decentralisation policies which have not been accompanied by the necessary legal instruments and capacity that give power and recognition to local forms of government. In some cases, decentralisation has been stalled by bureaucrats and politicians intent on retaining power (Ndegwa and Levy, 2003). However, even where formal decentralisation efforts have been underwhelming, urban areas in Africa tend towards supporting opposition parties, representing a sort of home-grown political decentralisation and a sizable opposition to central government control (ACC, 2015).

A number of authors argue that effective planning cannot be achieved without first ‘fixing’ the governance issues evident in SSA countries and cities (Rakodi, 2001). This is a compelling argument which forces built environment professionals to understand the institutions and politics through which plans and regulations are implemented. However, given the range and complexity of governance issues in SSA countries and cities, it is not practical to abandon planning indefinitely. In addition, effective planning should not be conflated with democratic planning. Apartheid planning in South Africa is but one example where planning was very effective at achieving the goals set out the apartheid state.

It is therefore essential to understand what planning measures are useful within the context of each city and country as well as how to balance the top down tendencies of ‘effective planning’ with the more bottom up requisites of participatory and decentralised governance. Echoing this, Pieterse (2004) writes “planning is considered to be effective when it realises its limitations in terms of powerful market forces, vested interests in planning institutions, and the autonomous initiatives of the poor which makes rigid approaches simply unenforceable” (p. 3). It is important in this context that planners concerned with governance identify that which can be contributed despite governance challenges without reducing itself to a technocratic and bureaucratic discipline devoid of political and power.

6.10 Master planning 2.0

While old style master planning has gone out of fashion, a new wave of master planning is under way. Cities, seeking to increase their attractiveness to investors, hire global design, architecture, or economic development firms to create new plans for their cities. These master plans take a number of forms. The most dominant are a) design or planning

overlays where the city, in whole or in part, is completely reimaged or b) where an entirely new city is planned on a green-field or rural site.

New cities in Africa are often build by private developers and envisaged as elite enclaves (exist in cases when new cities are intended to migration pressures on urban centres, such as in Cape Town or Cairo). By and large, the marketing language is about moving away from the messy, congested, city towards a new, ordered metropolitan, inhabited by blue-chip companies and conveying a Singaporean sense of well-being and order. In some cases the focus is on creating new zones where regulation is minimal. For example the 'Charter Cities' initiative looks at building new cities to fast track reform and which are 'special zones' for development. Special zones aimed at drawing Chinese investment to Africa are also being established in countries like Ethiopia and Zambia.

Watson (2013) argues that these 'fantasy plans' are likely to be more problematic than old-style colonial master planning as they ignore the facts of informality, poverty, and weak institutions. For example, in Kigali, Rwanda, where master planning is generally believed to be "working", the government hired an American firm 'Oz' to develop the master plan and Surbana, a Singaporean firm, to create detailed plans; slums (which do not fit into these plans) have been effectively demolished (Goodfellow, 2014a). There has also been substantial critique of deregulation zones in terms of labour practices and negative environmental impacts (Brautigam et al., 2010).

While infrastructure is often seen as a 'public good' which the state should provide, the infrastructure for megaprojects in SSA cities is often provided by the private developer who assume the role of the state (Kalabamu, 2011). This is the only option for the developer when the state lacks the capacity and resources to assist. While there are some positive outcomes of private infrastructure provision (such as experiments with green technologies), the state has no legitimate claim to capture the value created by this infrastructure provision and thus little recourse for addressing issues of growing inequality caused by enclave developments. In addition, the shorter time frames for project finance discourage developers from pursuing products which have not already tested in the market. This leads to a reinforcing of the status quo of urban development.

7 Regulatory Interventions to Implement Planned Development

The purpose of this section is to look at innovative mechanisms that recognise informal and incremental land development processes, land tenure, and land use regulation. This section is structured to address two broad categories of regulatory mechanisms:

- Those that constitute the introduction of new, innovative legislation designed specifically to effect appropriate land development procedures and secure forms of tenure for informal settlement upgrading
- Those that have relied on the amendment and innovative application of existing laws in informal settlements in order to achieve those same outcomes.

7.1 Legal Reform through the introduction of New Laws to address Informal Settlements

Examples of new laws that were introduced will include an exploration of the mechanisms in the *Zambian Housing (Statutory and Improvement Areas) Act* and *Namibia's Flexible Land Tenure Act*. In both these instances the central government promulgated entirely new laws that enabled the legal declaration of two types of areas where low income housing could be either provided or upgraded – one area being more formal and the other being less formal where each had particular rules that applied, in line with their level of formality.

7.1.1 Legal declaration of statutory and improvement areas in Zambia

While land development and land use management in urban, local authority areas, is governed by the *Town and Country Planning Act CAP 283* in Zambia (Simposya, 2010, p. 12), this legislation was initially used largely to demolish unplanned or informal settlements because they were illegal. Instead of amending this law to accommodate informal settlement upgrading and land use management, the government of Zambia introduced a new law that enabled unplanned settlements to be upgraded. This is the *Housing (Statutory and Improvement Areas) Act 1974, CAP 194* (Government of Zambia, 1974) . It heralded in a departure in government's approach to informal settlement upgrading as up to that time the dominant approach was to demolish informal settlements (Simposya, 2010, p. 6). Its promulgation fell squarely within the *Second National*

Development Plan period (SNDP 1972 – 1976), ten years after independence was gained in 1964 and at a time when urbanisation was creating significant housing shortages and the number of unplanned settlements was on the rise (Simposya, 2010, p. 2).

The Housing (Statutory and Improvement Areas) Act, introduced as long ago as 1974, was very innovative in its approach to providing legal mechanisms to upgrade settlements by providing secure tenure, planning and services in designated areas (Van Asperen, 2012, p. 12). It does this through the Ministerial declaration of Statutory and Improvement areas. It is based on providing more simplified forms of tenure that are managed at local authority level rather than the national formal survey office and deeds registration requirements necessary to issue formal leasehold forms of tenure. The tenure forms include simple Occupancy Licences in Housing Improvement Areas and Certificates of Title in Housing Statutory Areas (Government of Zambia, 1974).

A Statutory Housing Area is declared through a statutory order by the Minister if it falls within a local authority area, is mostly owned by the local authority and a plan of the area, called a Statutory Housing Area Plan, is prepared and the areas surveyed and the plan sent to the Surveyor General, the Commissioner of Land and the Registrar of Lands and Deeds (Sichone, 2012, p. 126)⁵. Statutory Housing Areas are gazetted in a schedule in terms of the Housing (Statutory and Improvement Areas) Act and are intended for site and service development (i.e. the land is planned and services installed before occupation of the area) and a more secure form of tenure which is a form of (renewable) 99-year leasehold Certificate of Title is issued to residents (Sichone, 2012, p. 127). The issuing and management of the certificates is undertaken by the local authority (decentralised) and it must establish a registry with a registrar and keep records of the leasehold certificates (Sichone, 2012, p. 127).

In similar fashion, Housing Improvement Areas are declared for areas that are already settled and in need of upgrading. The development requirements for Improvement Areas are less onerous and the local authority prepares a sketch plan that is lodged with the Commissioner of Lands and the Registrar of Land and Deeds. Instead of Certificates of Title, occupants in Improvement Areas are issued with 30-year Occupancy Licences. An Occupancy Licence relates to the right to occupy the land under and immediately surrounding the house, identified by a serial number on an aerial photograph rather than an identified plot of land (Sichone,

⁵ Dissertation by F. Sichone titled “the System of Land Alienation in Zambia” completed in 2012

2012, p. 129). The nature of the occupancy rights that the holder obtains includes occupation for the holder and immediate family, but also includes obligations such as paying for services and land rates and the holder may not sub-let without permission (Sichone, 2012, p. 130).

In Zambia where there was little government subsidy for the upgrading of informal settlements, a key rationale for declaring areas as Statutory or Improvement Areas was to introduce obligations for residents to contribute to the upgrading and maintenance costs through service charges and land rates (Sichone, 2012, p. 130). Studies of Improvement Areas show that there has been some improvement to services but housing structures remain informal and even hazardous (Simposya, 2010, p. 16). The lack of funds for upgrading services, providing educational and other community facilities and weak institutional structures at local authority level are all seen as contributing factors to hindering implementation of upgrading (Simposya, 2010, p. 2), despite the declaration of Improvement Areas.

The Housing (Statutory and Improvement Areas) makes the National Housing Authority or the local authority the planning authority for declared areas rather than the planning authorities created by the Town and Country Planning Act. This has raised a concern about who does the planning of these areas due to the dislocation between the housing and planning aspects of upgrading (Sichone, 2012, p. 135). However, as a separate, autonomous law, like Namibia's Flexible Land Tenure Act, it was able to exclude the provision of other laws that would normally apply to the development of land, such as the Town and Country Planning Act, the Land Survey Act and the Land and Deeds Act. This approach, which was echoed in the now repealed South African Development Facilitation Act of 1995, enabled less onerous measures to apply in the declared areas and released them from the bureaucratic and more costly requirements of development required by those laws. Additionally, the Land Act which prevents illegal occupation of land does not apply (Sichone, 2012, p. 138) preventing the removal of occupants from Improvement Areas and providing increased tenure security.

The declaration of Statutory and Improvement Areas is also innovative in the context of the legal framework of Zambia in that it allows for both the introduction of alternative evidentiary forms of secure tenure and the decentralised management of the tenure rights. Improvement Areas allow secure tenure to be granted prior to the development process, securing occupation and removing the threat of eviction of occupants from the settlement.

7.1.2 Flexible Land Tenure Law Reforms in Namibia

Namibia has a formal land development and planning system in urban areas that is based on land development laws such as the Township and Division of Land Ordinance, 11 of 1963 or the Town Planning Ordinance, 60 of 1954 (Lewis, 2007, p. 1) to demarcate land parcels which are then serviced, surveyed and owners receive freehold title that is registered in the Deeds Registry Office. This is very similar to how land development in formal areas of municipalities occurs in South Africa.

However, this is a cumbersome and expensive process and excludes the majority of the population, especially the poor, preventing them from obtaining freehold title (Mandimika & Matthaei, 2014, p. 14). In Namibia most Namibians were denied access to freehold land and consequently informal settlements were growing in all the cities and towns. It is estimated that there are 135 000 families, consisting of at least 540 000 individuals, living in more than 230 informal settlements across Namibia (Nakale, 2013). The government of Namibia, through a very long process beginning in the 1990's developed an innovative, new system of land registration and title that can over time result in freehold title for owners, to address this growing chasm between formal and informal systems.

This was embodied in the Flexible Land Tenure Act, 4 of 2012 (Government of Namibia, 2012). Several authors have written about this new form of land registration, mostly in 2005 and 2006 (Christensen, Flexible Land Tenure in Namibia, 2005), (Christensen & Hoygaard, Report on a Flexible Land Tenure System for Namibia, 1997), (Odendaal, 2006), (Watson B. , 2006) and several publications by GIZ⁷ after the draft Bill was prepared in July 2004. The Act is now in place and regulations are being finalised⁸.

The objects of the Act (Government of Namibia, 2012, p. 3) are to:

- create alternative forms of land title that are simpler and cheaper to administer than existing forms of land title;
- provide security of title for persons who live in informal settlements or who are provided with low income housing;

⁶ This includes works by Christensen, SF (2005), Christensen, SF and Hoygaard, PD (1997); Odendaal, W (2006); Watson, B (2006)

⁷ GIZ is the German Gesellschaft für Internationale Zusammenarbeit, formerly GTZ and it has supported much of the land reform initiatives in Namibia.

⁸ Discussion with Mr Peter Rutsch, consultant to the Namibia government responsible for drafting the regulations, 16 April 2015

- empower the persons concerned economically by means of these rights

Essentially, the Flexible Land Tenure Act 4 of 2012 (FLTA) introduces a mechanism to designate two types of areas or schemes – Starter Title Scheme areas and Land Hold Title Scheme areas where more informal forms of development and secure tenure can be implemented.

What makes the mechanisms proposed in the FLTS innovative is that it:

- Links to the formal Land Survey and Deeds Registration of the country and operates within that overarching land registration framework – it is a parallel but complementary system;
- It introduces new forms of land title that are recorded and registrable, group-based but individual and hence secure;
- Provides secure tenure that is recorded and managed by a land rights registrar in a register within the local land rights office;
- It takes an incremental approach where an illegal, informal settlement can be upgraded to offer starter title, then land hold titles through to freehold title;
- It introduces land use management through community involvement and the establishment of community associations that are tailored to the needs of the particular type of scheme.

The FLTA does this by creating these two new schemes where new forms of land title are provided. What is important to note is that the concept underpinning the system is to ensure that the schemes and administration of tenure at the local level still links to the national survey and registration system of the country. Hence, when a starter title scheme or a land hold scheme is approved, both the national Registrar of Deeds and the local Land Rights Registrar are notified of the scheme. The Registrar of Deeds is then responsible for making an endorsement on the title deed of the blockerf in the national Deeds Office, to the effect that either a starter title scheme or a land hold scheme has been established on that blockerf. The local Land Rights Registrar is then responsible for opening the local register and recording all the relevant information in a register, issuing proof of tenure (the titles) and managing all transactions going forward. In this way the integrity of the overarching survey and registration system of the county is not undermined, while secure tenure on land that can be upgraded is delivered to the poor. Inside each block scheme, more or less formal arrangements can apply, depending on the type of scheme.

Two schemes are available – Starter Title Scheme and a Land Hold Title Scheme (Mandimika & Matthaei, 2014).

Starter title rights are entry level rights (Mooya & Cloete, 2005, p. 17) and are not registered in the formal Deeds Office but instead are recorded in a register by a Land Rights Registrar at a local land rights office. Starter title grants the holder rights to erect a dwelling within the block, to reside there (occupation) in perpetuity, to bequeath the site and to lease it. It is therefore a secure form of title but is not necessarily based on defined plots within the starter scheme. Importantly, Mooya and Cloete observe that starter title rights provide security of tenure in perpetuity to holders who are occupying land that does not legally belong to them (Mooya & Cloete, 2005, p. 17). The rules that apply within the scheme to all who reside there are determined by the association of the scheme and it includes land use conditions such as the nature of the building, how and where services will be laid and payment for services (Government of Namibia, 2012).

A Land Hold Title Scheme provides tenure that is more secure in that individual plots within the scheme are surveyed, but to a less exacting standard by land measurers and not professional land surveyors and the plots are registered by the Land Rights Registrar in a land hold title register held in the local land rights office (LRO). This is secure enough to obtain a mortgage against the plot (Mandimika & Matthaei, 2014, p. 22). The Land Hold Title Scheme will also have conditions that relate to land use (including side and rear spaces), building control (including height of buildings) which set the management rules for the area (Government of Namibia, 2012).

While the FLTA was only recently promulgated, because of the long history and ongoing consultation on the new law, three pilot projects were established in Windhoek and Oshakati and lessons are being drawn from these that Matthaei and Mandimika have articulated (Mandimika & Matthaei, 2014, p. 25), including that:

- the capacity to implement the schemes is limited, especially in smaller local authorities;
- the cost of establishing the (local) Land Rights Offices and training of staff may be high;
- land hold schemes may never be fully upgraded to freehold due to the high cost of formalising the development and titles⁹;

⁹ According to the FLTA, at least 75% of occupants in a Starter Title Scheme must agree to upgrading from starter title to land hold title and 100% of land hold title holders in a Land Hold Title Scheme must agree to upgrade to freehold (Government of Namibia, 2012)

- the typical size of a scheme, around 100 households, is difficult to manage and sizes of 10 – 30 households seem more suitable from the Windhoek experience;
- municipal planning and plans are weak or lacking in many local authorities and in the absence of integrated planning these schemes may promote urban sprawl or inappropriately located settlements.

Namibia is also in a process of planning law reform as their town planning laws date back to the 1950's and 1960's. They also do not have legislation that explicitly makes provision for a hierarchy of spatial plans although they do have various plans and policies (Raith, 2011). The new Urban and Regional Planning Bill (URPB) has important objectives including the provision of a uniform integrated regulatory framework for planning, land use and land use management; the promotion of co-operative governance and the achievement of land and planning reform and to ensure that there is equity in planning and land use and land use management (Raith, 2011, p. 24). The intentions are therefore certainly in line with achieving a more integrated planning system for urban areas and by implication should be applicable to all areas within the municipality, even where schemes under the FLTA applies. The URPB makes provision for several kinds of plans including several levels of structure plans, local development plans and general plans (survey plans) (Raith, 2011, p. 26). Structure plans are intended to "ensure orderly, coordinated and environmentally sound social and economic development and proper use of land" (Raith, 2011, p. 27). The planning system is still to be introduced and until this is done and formalised through the new URPB, it is unlikely that Starter and Land Hold Schemes will be properly integrated in master plans and infrastructure plans and, while tenure will be secured, access to other amenities and facilities of towns and cities may elude the schemes.

The innovative approach introduced by the FLTA in Namibia is based on principles of social justice and the 'right to the city' objective emanating from a need to redress the colonial and apartheid past. The approach focuses on providing security of tenure through implementing a new law that provides an incremental approach within the existing legal and formal land registration system of the country, while administered locally. The law is newly adopted and while there are pilot projects where lessons are being learnt about implementation, the new system highlights an important need to locate these initiatives within a wider system of municipal planning. Also, notwithstanding the approach addressing security of tenure as the key point of departure, the incremental approach has direct links to upgrading of the schemes and so introduces incremental steps to upgrade services, plot layout planning through basic plans and land use management (through

community 'rules'), giving it a far wider reach than just tenure, which should improve the lives of occupants in these schemes.

7.2 Working with Existing Laws

This grouping of land use regulatory mechanisms addresses instances where existing laws were used but creatively modified and applied, to provide more suitable solutions to developing informal settlements and conferring more secure tenure. The first instance is in Angola where existing national laws were used to implement land pooling or land readjustment to re-configure land that was informally settled resulting in serviced secure land parcels for households.

The other example focuses on how existing land use management regulations, applicable at municipal sphere, were amended and applied innovatively in informal settlement upgrading in two South Africa cities. This includes the general scheme amendment to the City of Johannesburg's town planning schemes to introduce Transitional Residential Settlement Areas which were declared on land with informal settlements and the inclusion of a Single Residential Zone 2: Incremental Housing (SR2) zoning in the City of Cape Town. While, in general, the original laws were not intended for the purpose they ultimately addressed, through ingenuity, modification and application they proved able to deliver mechanisms that facilitate incremental upgrading and delivery of tenure security.

7.2.1 Land Readjustment in Angola

Even though Angola has also undergone land reform and introduced new land laws, unlike Namibia, it has not introduced laws that specifically address incremental tenure upgrading. Instead the pilot programmes on land readjustment are innovative mechanisms to tackle informal settlement upgrading that have worked within the existing laws and also introduced additional administrative mechanisms to secure tenure and incrementally upgrade settlements. The land pooling or land readjustment approach is innovative and a UN-Habitat report on Huambo Land Readjustment study in Angola argues that it has the potential to become an important tool for urban planning and, more specifically, urban development and urban upgrading and that while there is no legal framework for land readjustment, factors such as growing land markets, effective NGO support and strong private sector partners can make land readjustment a viable option for local governments (UN-Habitat, 2013, p. 4).

Angola is a former Portuguese colony that gained independence in 1975 but then went through a protracted conflict period until 2002 when the war

ended. In 2004 a new Land Law was introduced along with the Territorial Planning law of 2004 and in 2008 a Housing Plan to build 1 million houses by 2012 was introduced (Urban LandMark, Development Workshop, 2013, p. 2). With increasing urbanisation and government development programmes that resulted in the removal of informal settlers from the land they occupied, the poor residing in informal settlements were increasingly vulnerable due to their insecure tenure arrangements (UN-Habitat, 2013, p. 12). The Land Law of 2004 provided a three-year period for informal land occupiers to register and apply for formal land titles (UN-Habitat, 2013, p. 12).

Land readjustment or land pooling is not a new concept and is used in countries like Colombia, Turkey and India, amongst others (Haile, 2012). It can achieve many development goals including access to urban areas, the provision of infrastructure services, providing secure tenure to occupants, increasing property values for land value capture and formalising development to generate revenue for local governments (Haile, 2012, p. 11). It is therefore an important tool for upgrading of informal settlements. As the Urban LandMark study for the Tenure Security Facility Southern Africa Project spells out (Urban LandMark & Development Workshop, 2013, p. 82):

“the concept of land readjustment is to assemble small peri-urban or peri-rural land parcels into a large land parcel, provide it with infrastructure in a planned manner, and return a portion of the reconstituted land to the owners, after deducting the cost of the provision of infrastructure and public spaces from the sale of some of the now-serviced land.”

They (Urban LandMark & Development Workshop, 2013, p. 82) further note that

“It is an appropriate solution to the problem of land distribution in areas located on the margins of existing urban areas, and where there is scattered settlement, and where large tracts of land are unavailable for private sector subdivision-type land development. Since many of peripheral settlement plots are not for sale, it is often difficult to find a sufficient number of plots next to each other to develop a rational building development plan. It is also appropriate in older urban settlement areas that need to be reorganized in order to provide access to infrastructure and services.”

In Huambo, Angola, the NGO Development Workshop (DW) piloted a land readjustment project just to the south of Bairro Fátima. Bairro Fátima is a

large informal settlement characterised by uncertain and contested land rights. The land was largely unoccupied and used for agriculture by many families who had been there for a long time even though they had no formal documented forms of title. Their claims were registered and a development plan for the land was created and the land holdings pooled. The claimants received smaller developed plots, the number being determined in proportion to the size of the land they originally pooled which were also registered and had secure title and services. Many were able to sell their additional plots at a higher value than their larger, untitled, un-serviced plots. Additional plots were created, some for commercial uses that could be sold by the local authority or the entity developing the project, to pay for the services. The development plan was laid out using simple technology such as GPS and wooden pegs, rather than expensive land surveying (UN-Habitat, 2013, p. 33).

The land readjustment project resulted in a formalised settlement with a mix of income groups, improved services and recognised occupation rights for occupants. It required considerable effort by DW to mobilise the community and involve them fully in the process, in addition to the technical aspects of layout planning and opening registers and registering titles, which they did on behalf of the Provincial Department of Urbanism and Environment (UN-Habitat, 2013, p. 33). Based on the success of the Bairro Fátima land pooling project, DW were invited to undertake three more pilot projects.

In terms of innovation, the authorities recognised local practices¹⁰ to gain tenure and developed this into a Licence of Occupation that was not provided for in the Land Law of 2004. Essentially the Land law does not make provision for incremental forms of title but it does not prohibit it either (Urban LandMark & Development Workshop, 2013, p. 51), creating space for innovation in incremental tenure. The Licence of Occupation is therefore more of an administrative mechanism that allows occupants three years to obtain legal title (called surface rights that are registered in a Land Registry). These Licences of Occupation, issued and administered by the Huambo Local Authority (Urban LandMark, Development Workshop, 2013, p. 3) have become popular and are the only tenure document the municipality issues so they have, in practical terms, given holders of the licence similar legal protection to that afforded by formal title (Urban LandMark & Development Workshop, Practice Note: Gaining administrative recognition for local land management practices: The case of Huambo,

¹⁰ Often including customary practices where the traditional chief or soba witnesses the transaction and local representatives of a *bairro* approve transactions.

Angola, 2013, p. 3). Hence a new mechanism was created to grant interim tenure security to fill the gap that existed in the current land law but that is linked into the existing land titling system.

Significantly, the land readjustment projects in Huambo have also resulted in the extension of a cadastre, has supported the land titling system and has brought planned settlement to informal areas. Additionally, local communities, through associations have worked out their own land use rules to manage the area and services have been provided in instances where a fund was established (a Trust was established) for this from the sale of additional re-adjusted plots (Urban LandMark & Development Workshop, 2013, pp. 82-85).

Regarding land value capture, within the project, the sale of the readjusted sites, while smaller, enabled finance to be raised for services. However, it is more difficult to do this in municipal-led projects as a fund cannot be established. While land market studies are still being undertaken, anecdotally properties close to the projects appear to have benefited by increased property values (UN-Habitat, 2013, p. 37). The municipality is fairly new and lacking in technical capacity to be able to administer and extend land management and financial systems needed to ensure that property taxes are paid, but they do anticipate earning revenue from property taxes (UN-Habitat, 2013, p. 37). Development Workshop (Urban LandMark & Development Workshop, 2013, p. 85) concludes that:

“land pooling provides a market-framework for regularizing these informal settlements, and providing sustainable and affordable infrastructure and services while enhancing the land tenure rights and protecting the property assets of the poor”.

7.2.2 Land Use management Regulations in South African cities

Land use management in many British colonial African countries, such as South Africa, has its origins in British town planning activities that developed initially in response to the negative urban impacts of the industrial revolution. They were essentially aimed at improving health and safety by regulating overcrowding, pollution, inadequate services, facilities and amenities. The land use controls were intended to better organise urban space and produce ordered, safe, hygienic living environments (Charlton, 2008, p. 6).

In South Africa and Namibia the land use management system was overlain by apartheid objectives and Mammon explains that in South Africa ‘between the 1960s and the 1980s, the ‘contents and object’ of local government

planning were focused on land use and development control measures that emphasised the separation of land uses in support of modernist planning and at the same time reinforced the intent of the Group Areas Act to separate citizens into racially defined 'group areas' (Mammon, 2008). Charlton points to several authors who in essence explain that the land use management systems attempt to promote orderly development which does not necessarily resonate with how the poor access and manage land (Charlton, 2008, p. 7).

Land use is conventionally regulated both internationally and in Africa through laws that determine and establish the land use zoning of land. Zoning instruments typically include zoning schemes that are documents that determine what the land may and may not be used for, the density and intensity of the use of the land, position of buildings on the land, the height and amount of building that can be developed (City of Johannesburg, 2009, p. 47).

Land use management is seen as the product or activity that is carried out after land has been developed using land development laws and therefore is often included in land development laws. For example, in South Africa, there are provincial land development laws that set out the land development process and requirements which incorporate provisions for zoning schemes to be imposed on the developed land to regulate the ongoing use and development of the legally developed land. Land use management is therefore usually seen as the mechanism to ensure that the development achieves the outcome of the initial development concept and plan that was approved for development. Land use management and regulation therefore mostly follows development rather than being a leader of development.

However, more recent reforms to planning legislation in countries such as South Africa are explicitly linking strategic and spatial planning and plans to land use schemes in order to ensure that development is guided within the broader development policies of government. The Spatial Planning and Land Use Management Act, 16 of 2013 (SPLUMA) is one such new law. Also agencies such as UN-Habitat are increasingly promoting the role of spatial planning in integrating a range of public sector plans (such as infrastructure, transport, environment) (UN-Habitat - UN Human Settlements Programme, 2009), a position that is very much embedded in the approach to SPLUMA in South Africa.

The land development laws that land use management derives from are often seen as too formal, rigid in their application, have onerous requirements and therefore take a long time to obtain official approval and

are costly to implement (South African Cities Network, 2011, p. 2) The UN-Habitat report on Planning Sustainable Cities therefore poses the conundrum:

‘that city governments themselves are producing social and spatial exclusion, and environmental hazards, as a result of the inappropriate laws and regulations which they adopt. The problem is an obsession with the physical appearance of cities rather than valuing and building on the social capital that is frequently created in poor or low-income communities’ (UN-Habitat - UN Human Settlements Programme, 2009).

This is a widespread phenomenon of urbanisation in developing nations and has resulted in governments and development agencies adopting different approaches to managing informality. There are approaches that range from supporting regularisation using formal laws to those that build on recognising informal systems. The growing discourse on how to handle informality has also spilled over to planning education and training curriculae and there are now several calls for mainstreaming new approaches that are innovative and recognise how the poor access and develop land . Importantly, Watson and Agbola (Agbola & Watson, 2013, p. 3) note

“that conventional planning practices and systems that are trapped in the past are failing...and that planning is the single most important tool that governments have at their disposal for managing rapid urban population growth and expansion’ and that change depends on planners who are innovative problem solvers”.

Land use management and regulation has not generally been a focus of innovation as more attention has been given to land administration and land law reform as a means to increase access to land and secure tenure for the urban poor. However, the City of Johannesburg was able to use land use regulation effectively to secure legal recognition of tenure and undertake incremental upgrading through a land use management approach.

City of Johannesburg

The City of Johannesburg (the City), working with Urban LandMark, developed an approach to securing tenure during incremental informal settlement upgrading that was based on a land use management approach (Urban LandMark, 2010, p. 17). It is innovative in that it is not common for land use management approaches to be adapted to include security of

tenure. This new approach formed the cornerstone of the City's regularisation approach and was an interim measure (City of Johannesburg, 2011, p. 21) prior to full formal land and housing delivery through the housing subsidy programme financed by the national government.

The City planners in the Johannesburg Department of the Development Planning and Land Use Management (DP&UM) developed an approach that declared land parcels upon which informal settlements were established as "Transitional Residential Settlement Areas (TRSA)" by using the Provincial planning legislation that governed town planning (zoning) schemes (City of Johannesburg, 2008, p. 4). The approach borrowed from mechanisms used in Brazil where Zones of Special Interest (ZEIS) were declared over areas where *favela* upgrading took place (City of Johannesburg, 2011, p. 15). The philosophy of social justice and rights to the city that underpinned the Brazilian City Statute (UN Habitat, 2002) struck a chord with the then mayor Amos Masondo, which led to the city proposing this new approach (City of Johannesburg, 2011). The mechanism uses the town planning legislation to amend the town planning schemes that applied in the areas where the informal settlements were located to include TRSAs and provide a definition of such areas and the rules that would apply in TRSA. It then listed the land portions with informal settlements (on municipal-owned land) and declared that such areas would become TRSAs. The amendment to the town planning schemes was called (Amendment Scheme 9999) and the development rules we set out in Annexure 9999 (Provincial Gazette Notice 143, 2009). The effect of this was that a TRSA became a legal land use, and the land use of 'informal settlement' was no longer illegal.

The City of Johannesburg called this approach 'regularisation' as distinct from full formalisation where land development laws were used to formalise the settlements. The declaration of TRSAs brought the informal settlements into the land use management regulatory system, allowed public funds to be allocated for servicing the areas and is a means of providing legal recognition to such settlements (Urban LandMark Practice Note, 2013, p. 2). It is not a full land development procedure which in South Africa is a lengthy and expensive process requiring several authorisations, such as environmental authorisation but is rather a management approach that legalises the settlement prior to full development. It was seen as an incremental stage that could be used to recognise and manage informal settlements until such time as they could be formalised.

The development rules set out in Annexure 9999 included several important aspects that relate to the physical upgrading of TRSAs as well as securing tenure for occupants. It included:

- The introduction of planning through a basic layout plan using aerial photography, that includes roads and road access (to provide a street address for the settlement) and the identification of sites for social facilities;
- The identification of individual structures and recording their location with a hand held GPS instrument;
- The provision of basic services and later more permanent services when the basic layout plan is approved;
- Community participation in all the steps of upgrading;
- An incremental approach that allows the initial informality to exist until the basic layout plan is approved by the municipality, thereafter individual sites can be identified and land use management and building rules in the Annexure then apply;
- Land use management rules include the density of the structures, the number of dwellings on a plot, building lines, the height of buildings and the coverage of the plot and procedures to change a land use or apply for building approval;
- The issuing of “occupant permits for a residential unit” as a form of tenure security and recording these permits in a register, held by the municipality (Provincial Gazette Notice 143, 2009, p. 4).

The City actually declared 20 settlements¹¹ this way and proceeded to prepare basic layout plans for several of them (City of Johannesburg, 2011, p. 29) but progress was slower with implementation after the Steering Committee was abandoned and the approach was moved the City’s Housing Department (Abrahams & Mogotsi, 2013, p. 11). However, up to 35 000 families benefited from increased tenure security and improved services when more standpipes were installed, toilets provided and refuse removal services introduced (Abrahams & Mogotsi, 2013, p. 12) .

However, its impact has been more far-reaching, particularly in influencing policy and conceptual thinking on incremental tenure provision. Urban LandMark realised the potential that land use management approaches have in securing legal recognition of tenure in informal settlement upgrading and has included it as a category or route (Route 7 – legal recognition) to incrementally securing tenure (Urban LandMark, 2010), (Urban LandMark Practice Note, 2013, p. 4)¹². In addition, it has informed

¹¹ Some reports indicate that 23 settlements were declared. To provide context, the City of Johannesburg identified 180 informal settlements in their municipality at that time.

¹² This practice note is based on a technical report compiled for Urban LandMark and the Tenure Security Facility Southern Africa, written by Gemey Abrahams entitled: Incrementally

the National Upgrading Support Programme (NUSP) of the National Department of Human Settlements in their training material for municipalities (NUSP, 2015)¹³ and most recently by the Housing Development Agency (HDA) in formulating a response to informal settlement upgrading¹⁴.

As Abrahams writes in the Urban LandMark Practice note

“[a]s a legally-based intervention, it provided residents with greater tenure security, because Regularisation has the potential to ‘lock’ a range of interventions into a legal instrument. Mechanisms such as a basic layout plan, occupant permit, a register and enumeration become a legal requirement for the municipality once an area is declared a TRSA. It also enables an area to be serviced, because the legal status can unlock bigger municipal budgets. Regularisation uses existing planning instruments and applies them to the contexts of informal settlements. The scheme amendment mechanism is a simple and effective tool that adapts an existing mechanism to confer legal recognition on informal settlements in which upgrading through the housing subsidy may take a long time.” (Urban LandMark Practice Note, 2013)

City of Cape Town – SR2 Zoning for Informal Settlements

While the regularisation approach used in the City of Johannesburg relied on an area being legally declared as a TRSA through a general town planning scheme amendment, the City of Cape Town (CoCT), South Africa, introduced a zoning category to rezone areas with informal settlements in their revised, integrated Zoning Scheme Regulations in 2013.

While this approach has its origins back in the early 1990’s when the Provincial government in the Cape introduced a new zoning category called “Informal Residential Zone” to all town planning schemes in 1992, by doing

Securing Tenure in the City of Johannesburg: Assessment and impact of the City of Johannesburg’s Regularisation approach. The Tenure Security Facility Southern Africa is a project of Urban LandMark, funded by the Cities Alliance Catalytic Fund with co-funding from UKaid.

¹³ The training material was prepared for NUSP by Shisaka and Lauren Royston and Gemey Abrahams wrote module 7 on incrementally securing tenure.

¹⁴ This work is ongoing and not published yet, but involves the development of an approach to incrementally upgrading tenure and informal settlements on customary land. The use of land use management instruments such as the regularisation approach used by the City of Johannesburg has informed approaches to securing legal recognition of tenure.

an amendment to the Land Use Planning Ordinance, 15 of 1985 (Cape Provincial Gazette 465, 1992), the City built on this concept and developed it as an instrument to facilitate informal settlement upgrading. The City of Cape Town has been grappling with the increase of informal settlements in its metropolitan jurisdiction and estimates in 2012 indicated that there could be as many as 141 765 informal dwellings in 378 informal settlements (Housing Development Agency, 2013, p. 35). The Informal Residential Zone that was created in 1992 provided a simple set of land use rules including the distinction between shelters (informal structures) and dwelling houses (brick structures), position of structures, parking and land uses (residential and streets). This informal residential zoning was applied by the CoCT in several instances, most commonly when land was designated and developed for low income housing using the Less Formal Township Establishment Act 113 of 1991¹⁵ (Republic of South Africa, 1991).

With the reforms at local government sphere in the late 1990's in South Africa, new municipalities were created that were made up of many towns in some instances, each with their own town planning scheme. The CoCT embarked on an exercise to integrate all existing town planning schemes and promulgate a single amalgamated Zoning Scheme Regulation which was passed in 2013 (City of Cape Town, 2013). Included in the new Zoning Scheme Regulation is a zoning category called "Single Residential 2: Incremental Housing (SR2)"¹⁶. The SR2 zoning according to the CoCT Zoning Scheme Regulations (City of Cape Town, 2013, p. 34) has the following purpose:

"The SR2 zone facilitates upgrading and incremental housing from an informal settlement to a formal settlement. SR2 may apply to individual land units or to blocks containing an informal settlement. In recognition of the realities of poor and marginalised communities, development rules are not very restrictive and local employment generation is encouraged within this zone. Once upgrading of an area has reached an appropriate stage, as determined by Council, it is

¹⁵ The Less Formal Township Establishment Act 113 of 1991 was introduced by the apartheid government in South Africa to provide for the development of site and service schemes (less formal development) and upgrading of informal settlements in a less regulated manner. It addressed the development procedures to formalise the settlement which was then deemed to be a settlement developed in terms of prevailing planning laws. At that point, the Informal Residential Zoning was applied as the land use management instrument in these areas.

¹⁶ There is also a Single Residential Zone 1 which is for predominantly single-family dwelling houses or what is also called conventional housing in the Zoning Scheme.

contemplated that the area may be rezoned to SR1 or another appropriate zone.”

What is important is that the SR2 zoning can apply to an area that does not have defined internal plots and provides more of a ‘blanket’ zoning over the informal settlement but when individual plots are identified the zoning will then also apply to all plots, implying its application in an incremental upgrading process. It is also seen as a form of zoning that can be ‘upgraded’ or rezoned to the more conventional residential SR1 zoning when the development of the informal settlement has reached a more formal (or “appropriate stage” as indicated above) developmental state. It is therefore conceptualised as a zoning category that can be used specifically to assist in the incremental upgrading of informal settlements (City of Cape Town, 2013, p. 34). This implies that the zoning category can apply to land before full township establishment (formal land development) has taken place and used to regulate the land uses within the settlement even before the area is formally developed.

This is innovative in that it is the zoning or land use management instrument that gives the settlement a legal status and hence legal recognition and legalises the land use “informal settlement” all prior to embarking on the formal land development process. Where SR2 is applied to land that has not been formally developed it allows for multiple uses on the land area of the settlement to accommodate the informal activities and hence provide legality to the area (City of Cape Town, 2013, p. 34).

The SR2 zoning includes a set of development rules for the zone (City of Cape Town, 2013, p. 34). These development rules apply to a situation where the settlement has not undergone formal development as well as rules that apply once more formal development occurs. For settlements that are not formally developed, informal house structures (called shelters) are permitted but are not subject to building regulations and remain the responsibility of the house owner, no parking restrictions apply and less onerous building lines and spaces between buildings (for health and safety) apply. Informal trading can occur so long as it does not occur in permanent structures. Later when the area becomes more formalised, permanent houses can be built that need Council approval in terms of building regulations, stricter site development conditions apply and informal trading structures can be upgraded to house shops that have basic health, safety and nuisance rules that must be adhered to (City of Cape Town, 2013, p. 34).

What this SR2 zoning therefore does is provide a mechanism to legally recognise an informal settlement and begin upgrading interventions prior to

embarking on a formal development process. Formal procedures can take several years and this zoning provides a level of blanket tenure security for the settlement while the formal process is underway (Royston, 2014, p. 19).

However, while blanket tenure is provided, what SR2 does not do is provide individual forms of tenure security to occupants. Being a land use management instrument it does not explicitly address the provision of individual, recorded forms of land tenure. It is therefore different from the City of Johannesburg's Amendment Scheme approach to transitional residential settlement areas which allowed for certificates of occupation to be issued as a requirement of the zoning. However, during the upgrading of Monwabisi Park in Khayelitsha, the CoCT was requested to consider issuing forms of tenure such as Occupation Agreements to occupants in the settlement (Abrahams G. , 2013, p. 36). The CoCT was not entirely opposed to this as in the past they had issued registration cards in certain informal settlements (Western Cape Provincial Government and City of Cape Town, 2005, p. 122) and draft occupation agreements were prepared for consideration by the City.

The Monwabisi Park upgrading process provided considerable learnings to Urban LandMark and Sustainable Urban Neighbourhoods (SUN) Development¹⁷ who were involved in its upgrading (Abrahams G. , 2013, p. 7). The learnings encompassed aspects of securing tenure incrementally in informal settlements but also provided important new ideas on how land use management mechanisms can provide legal recognition to settlements and open up new routes to securing legally-recognised forms of tenure. Although there had been numerous administrative interventions¹⁸ that resulted in tenure security, the settlement had not undergone a formal land development process and through consultation with the authorities it was agreed that it be upgraded using the provincial land use legislation and zoned SR2 (Abrahams G. , 2013, p. 19). SUN Development had invested considerable time and expertise in developing a workable layout plan (they

¹⁷ In 2012 and 2013 Urban LandMark and the Tenure Security Facility Southern Africa provided support to Sustainable Urban Neighbourhood (SUN) Development in the upgrading of Monwabisi Park in Khayelitsha, in particular to develop incremental tenure mechanisms.

¹⁸ SUN worked with the community to develop a Community Action Plan that was endorsed by the Mayor, undertook a community survey and numbered shelters and prepared a detailed Spatial Reconfiguration Plan or Development Framework, basic services were installed and some community facilities provided which were all administrative actions that secured tenure for the occupants (Urban LandMark Practice Note, 2013, p. 2), even without a physical form of recorded tenure.

called it the Spatial Reconfiguration Plan) of the settlement that divided the area into smaller neighbourhood blocks. In order to accommodate an incremental development process the CoCT planners suggested developing a set of neighbourhood block rules and including them in the Precinct Plan that once approved would be used to manage the neighbourhood blocks (Urban LandMark Practice Note, 2013, p. 3). This was an innovative inclusion into the planning approach of the City because there had previously not been any developments that adopted a neighbourhood block subdivisions design and so the City had no precedent for managing neighbourhood blocks.

The City of Cape Town has therefore displayed the ability to adapt existing laws for application in informal settlements, through expanding on the concept of the old informal settlement zone and including it in the new Zoning Regulations and secondly by being open to including occupation agreements that could be linked to the SR2 zoning to provide residents with proof of occupation of their sites and thirdly by being creative about using block layout plans as an interim stage in the formal development process and linking the management of these blocks to development rules in a Precinct Plan. All these innovative measures illustrate that the current land development and land use management laws are not specifically geared towards *in situ* upgrading but through adaptation and modification they can find application in informal settlement upgrading.

7.3 Reflecting on the five examples

The five examples in this report illustrate how governments in different countries in Southern Africa have addressed the increasing phenomenon of informal settlements. Some, for example Zambia and Namibia, have chosen to implement legislation specifically crafted for providing legal procedures to upgrade settlements and confer secure, recognised tenure. Others such as in South Africa and Angola, have used existing laws intended for more formal forms of development and applied them innovatively to achieve similar outcomes. What they all have in common is that they all rely on the identification and subsequent declaration of the informal settlement as a specific type of development area or scheme. In Namibia and Zambia two types of settlement areas were identified where informal settlements could be upgraded *in situ* or where more formalised site and service developments could occur. Both introduced secure tenure forms in the two areas, one being limited to occupation rights and the other providing rights more aligned to the formal property regime in the respective countries. In South Africa the zoning of the land use permitted the settlements to be legally recognised and services installed.

A second characteristic is that all the schemes introduced less onerous development requirements for the declared areas as the formal system of land surveying and deeds registration are expensive, have onerous requirements and are inflexible for poorer households. Interestingly, Namibia developed a land development “system within a system” meaning that it kept the formal land survey and registration of the country intact and allowed less formal rules to apply in the starter title and land hold schemes. The City of Johannesburg’s Transitional Residential Settlement Areas used simplified requirements that mirrored the more formal systems allowing for aerial photos and GPS points to identify sites rather than full survey and layout planning requirements.

A third important common feature is that all the tenure forms that were granted were issued and managed at local government level indicating a shift from a centralised approach often characteristic of land management in SSA countries. While in Zambia and Namibia local registries were established through statute and legally governed forms of title issued locally, in Angola and South Africa the occupancy licences or certificates were crafted locally and represent a form of administrative evidence of tenure.

Fourthly, all mechanisms represent a desire by authorities or developers to find unique ways to confer a legal status on the informal settlements in order to promote upgrading. As mentioned, declaring the settlement is the predominant way this is done with the overall intention of excluding the existing laws of the land from applying in the areas so that they are no longer identified as illegal and subject to censure (e.g. evictions) by those laws. Hence declaration usually went hand in hand with a set of new rules that applied in the declared areas and like in Zambia this explicitly excluded other land laws from applying.

Fifthly, most of these innovative mechanisms promoted incremental forms of tenure that authorities saw as being able to be upgraded over time and as the development needs of the area permitted or were desired. In Namibia an informal settlement could begin as a Starter Title Scheme, be converted to a Land Hold Title Scheme and later even fully developed to enable full freehold title. Similarly, the City of Johannesburg saw TRSAs as an interim development stage while the local authority waited for a full upgrading to be scheduled and budgeted from national housing subsidy funds. In the City of Cape Town, the SR2 zoning could be upgraded to more conventional residential zoning when the settlement has been developed to higher standards. Hence, incrementalism is present in the conceptualisation of many of these approaches.

While ongoing research will be needed to ascertain whether the mechanisms are fully successful from the experience of occupants in such areas and how they promote land markets and improve lives, the evidence from Angola indicates that the land markets created by serviced sites have led to the economic upliftment of new land owners and in Namibia land hold title schemes do permit mortgages to be taken out. What is certain is that all the mechanisms have removed the threat of removal of informal settlements and provided governments with a mechanism to legally intervene to improve the lives of residents through providing secure forms of tenure and improved services.

8 Does planning improve SSA cities?

The vast majority of SSA countries have established planning systems. These systems generally include city (master) plans and land use regulations. However, the design of these systems and the extent to which they are implemented varies considerably. Therefore, instead of trying to bifurcate between those with and those without planning, it is more useful to identify the conditions which facilitate effective implementation of plans and regulations (while maintaining that the positive benefit of this implementation is subjective). Put simply, what makes a city more likely to implement their plans and land use regulations and what hinders implementation? From here, it becomes possible to query what types of plans and regulations support the development objectives of the city (a necessarily political and ideological endeavour).

While technical and budgetary capacity are often presented as the most important condition for effective implementation, drawing comparison between Kampala and Kigali, Goodfellow (2014) points to the important role which political incentives play in implementation processes. He argues that, despite similar planning frameworks, property development decisions in Kampala are driven by 'political bargaining' negotiated by both the urban poor and the elites. The outcome is a city wherein the overwhelming majority of development does not comply with planning frameworks. In contrast, in Kigali, the state has resolved to demolish all contravening developments in the name of the master plan leading to the near eradication of informal development. This, he suggest suggests can also be read though a political lens, given the Rwandan state's need for political legitimacy. A number of other articles argue that the implementation of planning rules and regulations is contingent on the perceived cost to benefit of compliance efforts (for example see Awuah and Hammond, 2014 on Accra).

These authors take us some way in understanding the role that political systems might play in the implementation (or not) of urban planning systems. However, there is a need for much more extensive comparative work. In addition to a honing of our understanding of the relationship between planning and politics, it is imperative to also explore the relationship between economics and planning. Looking at key economic factors (such as effective demand for urban space, resources/finance, and development costs) offers additional insights into the discrepancies between the visions of urban plans and implementation on the ground.

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