THE MANDELA INITIATIVE
Dialogue and action to overcome poverty and inequality

SERI — socio-economic rights institute of South Africa

AFRICAN CENTRE FOR CITIES — urbanism from an african perspective

University of Cape Town

Theme: Informalisation, Urban Poverty and Spatial Inequality

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1. What are the major issues you have identified about the manifestations of structural poverty and persistent, deep inequalities in urban land rights?

Urban land rights patterns in South African cities are still deeply influenced by the historical legacy of colonial and apartheid racial spatial planning. The apartheid state systematically established and maintained a complex legal framework that prohibited black people from legally owning land. The system ensured that the degree of tenure security to which black people were entitled was more precarious than the tenure security to which white people were entitled. The land rights that were made available to black people were limited to customary land rights in the homelands or statutory land rights that provided for a permit-based system. The result was that black people, the vast majority of the South African population, remained perpetual tenants in urban areas.

When apartheid racial influx control regulations collapsed in the 1980s, there was rapid migration to urban areas. With insufficient supply of affordable land and housing, people settled on vacant land. People settled on the periphery of urban areas or deemed 'unsuitable for development'. In cities which experienced a hallowing out of the city centre, the exodus of established businesses from CBDs and the influx of excluded, poor residents from former black townships led to the occupation of an increasing number of vacant inner-city buildings. While these buildings offered housing to the poor, the occupiers' tenure was often extremely precarious and the conditions in these buildings often hazardous or unsafe. Whether

About this brief

This brief was commissioned by the Mandela Initiative to help inform a synthesis report on its work since the 2012 national conference, Strategies to Overcome Poverty and Inequality, organised by the University of Cape Town. The MI provides a multi-sectoral platform to investigate and develop strategies to overcome poverty and reduce inequality in South Africa. While the Nelson Mandela Foundation is a key partner, the Initiative has relied on collaborations between academics and researchers, government, business leaders, civil society, the church and unions.

The synthesis report serves as a framework for reporting on the work of the MI at a national gathering on 12 – 14 February 2018 at the University of Cape Town. The MI Think Tank has identified the objectives for the gathering as:
- to anchor the contributions of the MI within an analysis of the current South African political and economic context;
- to share the recommendations emanating from the MI-related work streams at a policy/strategic level to advance the goal of eliminating poverty and reducing inequality;
- to critically engage with the potential impact of the recommendations on eliminating structural poverty and inequality; and
- to discuss ways of promoting popular conversations and debate about what needs to be done to eliminate poverty and reduce inequality, beyond the MI.

The synthesis report aims to assist participants to prepare for the national gathering. The report drew on findings from the sectoral research projects of Think Tank members; the MI's Action Dialogues; a report on an MI Community of Practice workshop with research chairs from different universities to identify cross-cutting themes emerging from the MI's research programme; and the work programmes of others who have expressed an interest in contributing to the goals of the MI.

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settled under a power line, on the urban edge, or in a 'bad building', the urban poor's efforts to secure tenure has been a challenge.

The state has sought to rectify the tenure insecurity of the poor by providing free housing through state-driven projects (i.e., Reconstruction and Development Programme [RDP], or Breaking New Ground [BNG] housing). In these projects, beneficiaries are granted freehold title to their land, subject to the condition that they cannot sell it for eight years. In many areas, however, undocumented sales have led to the informalisation of the tenure system.

Notably, urban land reform beyond the RDP housing programme has been limited. By and large, urban land rights and patterns have remained intact. While the legal mechanisms that held apartheid in place were dismantled shortly before South Africa's political transition in the early 1990s, the inertia of the urban land market – coupled with the state-driven housing programme – has perpetuated the tenure insecurity of the urban poor.

2. **What do you think are the main reasons for the persistence of the deep inequalities and poverty in the context of urban land rights? These can include policy, capacity or implementation constraints/problems.**

There are several reasons why the poor's urban tenure security remains a challenge:

- **Exclusive land markets**: Urban land markets continue to produce housing and settlement opportunities which are unaffordable to the urban poor. The structural defects of these markets are worsened by localised practices of land grabbing, speculation, land holding, and housing market scams.
- **The design and implementation of the housing and upgrading programme**: The housing subsidy programmes (the project-linked subsidy, the Integrated Residential Development Programme and the Upgrading of Informal Settlements Programme [UISP]) have all been implemented in a way that emphasises the provision of freehold tenure. While these programmes do provide rights, these rights are often to land which is located on the urban periphery. The land is therefore rarely well-located, offering limited access to employment and economic opportunities, and other essential social amenities. This has been exacerbated in recent years with the Department of Human Settlement's embrace of 'mega-projects' and the state's fixation on free-standing and low-density housing for the urban poor. In addition, many of these programmes have failed to acknowledge and work with the 'social tenure systems' that are often already in place in communities.
- **Unintended consequences of formalisation**: The South African state's fixation with providing freehold tenure is well documented. While the effort to provide the urban poor with a tangible asset is laudable, the systems to support the development of a functional housing market have been systematically undermined. The eight-year sale restriction of state-subsidised housing, the title deed backlog, the complexity/high costs of title transfer and other factors have led to the informalisation of the titling system. Ultimately, the obsession with formalisation undermines the urban land rights of the poor and (often) fails to contribute to real wealth distribution.
- **Gentrification and state-run urban regeneration programmes**: Inner-city regeneration programmes, often under the banner of 'city clean ups' or 'world class city making', have led to the displacement of the urban poor from well-located areas to the urban periphery. Some examples

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include the eviction of people from 'bad buildings' and the forced removal or relocation of those dependent on the informal economy (e.g. informal traders or waste-pickers) from city centres. These processes underline poor people's ability to both live and work in the city.

- **Assumption of unlimited property rights**: Within South Africa, it is commonly believed that private property rights are absolute. This belief is particularly strong in urban areas where municipalities have done little to address speculation, gentrification, under-utilisation of well-located land and other challenges. The belief that private property rights trump all other rights (for example, the poor's right of access to adequate housing etc.) continues to impact on poverty and inequality in cities today.

3. **What is being recommended at a macro policy/strategic level to deal with the major issues you have identified?**

Many important efforts have been made to address the challenges spelled out above. These include:

- **SPLUMA**: The adoption of the Spatial Planning and Land Use Management Act 16 of 2013 (SPLUMA) is aimed at developing a "uniform, effective and comprehensive system" for planning and land use management that promotes "social and economic inclusion". A number of progressive principles underlie the Act and aim to address spatial injustice and apartheid spatial planning patterns. For example, the Act requires that municipal by-laws and land use schemes incorporate provisions that "enable redress in access to land by disadvantaged communities", "accommodate access to secure tenure and the incremental upgrading of informal areas", promote affordable housing, and "permit the incremental introduction of land management and regulation in … informal settlements, slums and areas not previously subject to a land use scheme".

- **Incremental tenure**: Incremental upgrading is one of the key attempts to overcome the current, unsatisfactory approach to tenure security. Incremental tenure regularisation, rather than simply formalisation, has been advocated for in many cities (and is being practiced *de facto* in some places). The UISP also makes provision for incremental tenure arrangements. However, the state has not made optimal use of the UISP and has consistently failed to deliver on its targeted objectives for upgrading projects.

- **Rent control regulations**: There are various civil society and grassroots-led efforts underway to create legislation and regulation around urban rent control. These efforts have been pushed by activists who are concerned with evictions and market-led dislocations.

Additional efforts should be undertaken. These include:

- **Release of well-located state land for integrated housing developments:** This will require national, provincial and local governments (as well as state-owned enterprises) to conduct comprehensive urban land audits and identify land that might be suitable for housing developments. There is also a need to embrace the 'social value' of urban land, as well as a more transparent and socially orientated approach to the portfolio of state assets.

- **More creative implementation of current policies**: There are various mechanisms and instruments in the existing legal and policy framework that could be used more creatively to address the legacy of apartheid spatial planning and tenure insecurity of the urban poor. For example, SPLUMA makes provision for municipalities to designate special land use zones "to address [their] developmental priorities". These zones could be used to grant greater tenure security to people living in informal settlements. Other examples include provisions in the Housing Act 107 of 1997, which allow the

state to purchase or expropriate occupied land for housing development; or provisions in the Rental Housing Act 50 of 1999, which allow the Minister of Human Settlements to make rent control regulations. The current lack of creativity can be attributed to a number of factors, including lack of awareness of the legal framework, lack of political will, fear of non-compliance, and officials' discomfort of working with communities.

- **Targeted expropriation of land**: The state could use its powers of expropriation more strategically and effectively to curb speculation and (where land has been occupied) enable upgrading. There has been an understandable reluctance on the part of the state to expropriate urban land, however, it is a potentially useful tool which should be utiliSed when needed.

- **Understanding social tenure systems**: It is important that efforts are made to understand the social tenure systems that exist in communities – how these systems operate, what they offer people, the extent to which they are considered legitimate, their level of precarity, etc. It is also important to recognise the limitations which legal tenure and rights-based frameworks holds; while legal rights are critical, they are not sufficient to ensure security, and social dimensions of tenure and rights should also be considered and incorporated into policy and practice.

4. **What do you think the potential impact of the recommendations will be on eliminating structural poverty and reducing inequality?**

As has always been the case in the urban land and housing sectors, well-intentioned policies have not always had the desired impact and outcomes. In many cases, national efforts to address complex issues have created their own externalities and challenges, the poor bearing the brunt of these decisions.

That being said, if urban authorities are able to carefully intervene in land markets, through the strategic use of their own resources (subsidies, land, etc.) as well as through regulatory mechanisms (taxing or expropriating vacant land, etc.) there is scope for improving poor people and communities' urban land rights. The question remains whether urban authorities are both able and willing to undertake this task in a meaningful, progressive, and competent manner.

For more information on the Mandela Initiative: