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Informal Settlement Developmental Responses: Tenure & Land Acquisition

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1. Overview of Tenure Responses

Whilst there are a range of potential tenure options and there has been much debate on the use of alternative forms of tenure, in reality the work-able options available for a municipality are somewhat limited. The following table however provides an overview of different tenure options and their potential relevance and usefulness for informal settlement developmental responses:

| Tenure 'Continuum': Relationship between Different Tenure Forms and the Developmental Responses / benefits they Could Enable: | | | | |
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| Form of tenure | Characteristics | Benefits conferred & appropriate developmental responses | Commentary | Viable for Delivery at Scale |
| 1. Municipal statement of recognition ¹ (e.g. Council resolution adopting certain settlements as being 'informal settlement development areas'). | 'Collective' (settlement level) & unregulated ² | <ul style="list-style-type: none"> ○ <i>Confers</i>: Functional security of tenure / freedom from fear of eviction ○ <i>Enables</i>: Basic / emergency infrastructure (e.g. water, sanitation, road access). Other basic services (e.g. solid waste collection, fire protection, primary health care, education, public transport). Livelihoods responses (e.g. food security, micro enterprise development, LED, job creation). | Enabling, cost effective and streamlined. Lays a good foundation for further tenure responses | Yes. Interim and emergency basic services |
| 2. Informal Settlement special zone | 'Collective' (settlement level) & unregulated | <ul style="list-style-type: none"> ○ <i>Confers</i>: As for '1' (Functional security of tenure / freedom from fear of eviction) ○ <i>Enables</i>: As for '1'. In addition it would provide additional security for the municipality to acquire the land in question and provide full services (provided full upgrading for the settlement is on its short term plans). | Being piloted by City of Johannesburg. Adds an additional level of planning regularisation at additional effort and costs | No. But consider testing via pilot projects. |

Increasing tenure security, difficulty, complexity & cost

¹ Such a statement would need to be informed by an assessment and categorization of informal settlements. It would need to communicate: a) that the municipality recognizes the settlements in question; b) that residents will not be relocated unless there is another housing solution provided; c) that the municipality commits to work together with the settlements in question regarding the provision of certain basic services.

² This means that the community has a right to remain in the settlement, and indeed may have the right to the provision of certain emergency services. However, no attempt is made to intervene or control at the individual tenure level, nor would such intervention be realistic or advisable at this stage.

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| <p>3. Community administered register³</p> <p><i>(does not require an IS zone as a pre-requisite)</i></p> | <p>Individual & informally regulated</p> | <ul style="list-style-type: none"> ○ <i>Confers:</i> Some level of tenure security to residents <u>PROVIDED</u> the local administering structure is relatively accountable and free from partisan influence ○ <i>Enables:</i> A community register may assist in various ways: <ul style="list-style-type: none"> ○ regulating uncontrolled additional influx into a settlement; ○ limiting increasing and problematic densification; ○ facilitating the allocation and re-allocation of sites. ○ enabling residents to get a letter from the municipality / ward councilor confirming their de-facto residence in the settlement, which can in turn assist in gaining access to employment, schools, and health care. | <p>Has limited enforceability. Unlikely to be significantly supported by Municipalities. Could however be a pre-cursor to a Municipal register.</p> | <p>No. But consider testing via pilot projects where municipalities have interest.</p> |
| <p>4. Municipal / state administered register⁴</p> <p><i>(does not require an IS zone as a pre-requisite – but municipalities may regard this as preferable)</i></p> | <p>Individual & formally regulated</p> | <ul style="list-style-type: none"> ○ <i>Confers:</i> A high level of tenure security to residents. ○ <i>Enables:</i> A municipal register may be considered in a sufficient form of tenure for the delivery of top-structures, in which case the provision of a certificate may be provided upon request / as and when the need arises. In this case the register is a pre-cursor / intermediate step to a locally administered tenure certificate. | <p>Has significant potential in the long term as a more flexible, cost effective and appropriate alternative to title deeds.</p> | <p>No. But consider testing via pilot projects where municipalities have interest.</p> |
| <p>5. Locally administered tenure certificate (e.g. Municipal certificate of</p> | <p>Individual & formally regulated</p> | <ul style="list-style-type: none"> ○ <i>Confers:</i> A very high level of tenure security to residents. ○ <i>Enables:</i> <ul style="list-style-type: none"> ○ <i>Top-structures:</i> If related DoHS policy issues can | <p>Has significant potential in the long term as a more flexible, cost effective and appropriate</p> | <p>Yes. But needs to be tested via pilot</p> |

³ NOTES: 1) In this scenario, the state does not attempt to record, regulate or control individual tenure, nor does it regard this as being necessary or functional (e.g. due to the risks of disrupting or threatening local power bases). In the event that the Municipality feels that it needs to exert such control, then a municipal register would probably be a better means of achieving this. 2) It may be an option for a municipality to recognize such a register where it and the local community structure has general community recognition (and perhaps also recognition by the ward councillor). It would however probably be unwise for the municipality to take the additional step of obtaining or utilizing the community's register because: a) this would expose the identities of residents, including illegal migrants or those involved in illegal activities, and therefore have the potential for generating conflict and fear; b) this may create the expectation of a higher level of government response (e.g. provision of a housing subsidy); c) this would tend to confer an unintended level of legitimacy or authority on the community register. 4) In cases where no register exists it may be inadvisable for the municipality to initiate or facilitate a community administered register for a range of reasons.

⁴ NOTES: 1) A key issue which the municipality needs to consider is whether or not it is functional, necessary or realistic to either: a) have a record of residents (e.g. a community register); b) go further and exercise regulation and control over individual tenure. This decision will no doubt be in large part determined by specific circumstances (both within a settlement as well as in respect of particular municipal dynamics and aspirations). 2) Locally administered" means that there is a local / area level person / office that is accessible to residents on a day-to-day basis. 3) Reasons for a municipality considering this form of individual tenure might include: a) situations where there are obvious and problematic abuses of people's functional tenure rights which cannot be tolerated; b) instances where the municipality needs to know more about individual residents (e.g. their immigrant status; whether or not they have received / are receiving other grants; gender and age profile etc); c) instances where the municipality considers it unacceptable or problematic to provide basic service delivery to non-citizens or illegal immigrants.

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| occupation / PTO / Deed of grant) ⁵ | | <p>be addressed, this should be sufficient for the delivery of top-structures (although it is considered that a local register may also suffice). It is important that certificates can be generated quickly and accurately for residents as and when necessary). This naturally imposes an additional administrative burden on the municipality.</p> <ul style="list-style-type: none"> ○ <i>Transactions</i>: More streamlined and cost effective local property transactions. May help reduce informal transactions. ○ <i>Upgrade-able</i> to full title | alternative to title deeds. | projects where municipalities have interest. |
| 5. Title deed | Individual & formally regulated | <ul style="list-style-type: none"> ○ <i>Confers</i>: A very high level of tenure security to residents. ○ <i>Enables</i>: Residents to raise bond finance for consolidation / extension of top-structures. Property transactions via deeds office. ○ Residents want to use their house as collateral or security. | Poses major problems in low income communities & low income housing projects. Owners typically sell sites illegally - part due to the 5yr moratorium on selling an 'RDP' house but may also because a title deed is out of 'sync' with traditional property transactions which are undocumented but locally witnessed. | Yes – but only for full / conventional upgrading and until a more streamlined form of form tenure is in place |

2. Achieving Secure Tenure

The nature of tenure provision needs to be appropriate to the level of investment and nature of the developmental response being promoted. Two broad forms of tenure are thus necessary and appropriate for the achievement of this Strategy:

2.1. Secure tenure for interim basic services

The appropriate form of minimum tenure for the delivery of interim basic services should be that of functional, settlement-level (collective) tenure (as opposed to formal and individual tenure) and specifically in the form of a municipal recognition of the settlement in question. Such recognition needs to be based on the rapid up-front assessment of settlements outlined section 1 'Overview' above. It would typically take the form of an approved municipal schedule of projects which would need to be included in the municipality's housing sector plan. This recognition means that the municipality has assessed the settlement as potentially suitable for medium to long term upgrading and that in

⁵ Consideration could be given to the local tenure registration office charging a small handling fee for formalizing property transactions.

the interim, it does will not pursue any actions aimed at eviction or relocation. Although the municipality will in most instances not (yet) own the land in question, it is implicit that it has an intention to do so and that such acquisition will take place when the timing is appropriate. Such recognition means that a settlement is no longer regarded as 'illegal' in the eyes of the municipality, even if the area has not yet been formalized. The very act of categorizing and classifying informal settlements confers a significant level of tenure security mainly through increasing the transparency of future developmental plans and reducing uncertainty over potential relocation. For example, residents of settlements categorized for full upgrading or interim services are assured that they will not be relocated except in the case of those who cannot be accommodated on the site, in which case they will be provided for on another housing project.

2.2. Secure tenure for full upgrading

The appropriate form of tenure for the delivery of a full upgrade should be that individual, formal tenure. Whilst a title deed should be regarded as the 'default' form of tenure, in the absence of any proven alternatives, efforts should nonetheless be made to encourage the testing of other more streamlined forms of individual, formal tenure via pilot alternative tenure projects. The performance criteria for such alternative tenure forms should be as follows:

- upgradeable to full title as and when the need arises,
- locally administered (e.g. by the Municipality),
- easily accessible to residents / owners,
- low or nil transaction cost,
- low administrative cost,
- provides a locally authorized certificate of ownership to the owner.

3. Land Acquisition and its Timing

As with tenure, the need for greater flexibility with respect to land acquisition and its timing is critical for the success of this Strategy. The timing of land acquisition will likewise vary depending on the nature of developmental response being promoted.

3.1. Land acquisition timing for interim basic services

Land acquisition is seldom a rapid or straightforward process and it typically a protracted process. With the exception of land which is already owned by the Municipality or where there is a private owner willing to sell (scenarios only prevailing for a small number of de-facto informal settlements), the process may take anywhere between a year and four years. This includes cases where land is owned by other spheres of government or multiple private land-owners, where there are deceased estates, where expropriation is required, or where land is the subject of restitution. In addition, land acquisition is often very costly, especially where the land in question is well located and developable. Land acquisition in many projects is so complex that it is best regarded as a project in its own right and requires dedicated

funding for the necessary professional land legal and facilitation work which is often necessary. In the case of delivering interim basic services, such protracted delays entirely undermine the core objective of providing rapid relief on the ground.

Consequently land acquisition can and should not be made an essential pre-requisite for delivering interim basic or emergency services and such flexibility becomes a critical success factor for the Strategy given that these responses are the main ones which will enable delivery at scale.

This flexibility is thus central to the overall success of informal settlement responses and without it the delivery of interim and emergency basic services will cease to be achievable rapidly and at scale, a factor which is essential in meeting the targets arising from Outcome 8.

Importantly there is established precedent in this regard in terms of eThekweni's interim services programme. eThekweni has considered the legal implications and has determined that the Municipal Ordinance confers on it the right to intercede on private land where there are health and safety imperatives, as constituted by the typical living conditions within informal settlement. There is also longstanding precedent of MIG investments in infrastructure on non-Municipal land (e.g. land owned by the Ingonyama Trust Board).

The typical concerns raised over the approach arise from the following factors: A) Legislation such as the MFMA which constrains state-funded improvements on private or non-municipal land; B) The traditional housing approach which requires land acquisition before development occurs.

Municipalities will obviously need to consider each settlement and situation on its merits but should have the flexibility to pursue a strategy which works within a particular local context.

3.2. Land acquisition timing for full upgrading

Land acquisition should remain a pre-requisite for full upgrading given the high capital investment and formal nature of the development. However, where interim services are an intermediate step towards a full upgrade, then there should be flexibility to delay land acquisition until the installation of permanent / full services and township establishment is imminent.