

8 August 2012

To whom it may concern,

Re: Joint comment on the Spatial Planning and Land Use Management Bill

This letter has been prepared as a joint submission from civil society organisations listed below on the Spatial Planning and Land Use Management Bill (SPLUMB) that is currently in front of the Portfolio Committee on Rural Development and Land Reform.

As has been noted by many commentators, this is a long awaited and sorely needed piece of legislation to regularise planning and land use management across the country. The creation of an overarching spatial planning and land use management system for the country is a complex undertaking, requiring many threads of sectoral interests to be interwoven, but the Department has done little to facilitate substantive input, particularly from organisations that work with or advocate on behalf of the poor. **Despite the lengthy process of producing such legislation, with its roots to be found in the White Paper produced in 2001, the process has overall been characterised by a lack of public participation and transparency on the part of the responsible Department.**

The current haste to produce a piece of legislation before the deadline created by the Constitutional Court has further narrowed the opportunities for substantive impact by key stakeholders. For example, in a recent presentation to the Portfolio Committee, the Department noted that 110 submissions were received on the draft that was released for public consultation in June 2011. **While the current version reflects a number of changes in line with some of the suggestions made, a great deal of the substantive contributions that were made have remained un- or under-addressed.** The statement produced by the Department accompanying the latest draft further reinforces the impression that it will try to address the deficits of the Bill through a process of building the provinces' ability to produce legislation and local government's ability to comply with the new legislative framework. Beyond the logistical complications of pursuing such a strategy, its success is likely to further entrench the compliance-driven mindset that is currently at the heart of the ineffectiveness of existing legislation (such as the production of coherent and compelling Spatial Development Frameworks). Furthermore there remain a number of key deficits in the Bill that cannot be overcome by strengthening capacity. Most worryingly, these relate to:

- an ongoing lack of clarity about the respective powers and functions of the different spheres of the state;
- the promotion of an integrated approach to urban informality, spatial inequality or environmental sustainability;
- the capacity constraints within the planning profession that implementing the provisions of the act will necessitate; and
- the appropriateness of present land use management tools within the context of communal areas.

Attached to this letter are a number of submissions prepared by individual NGOs on the original draft of the Bill. While some references to specific Sections may have shifted, we believe that the vast majority of the comments apply equally to the current Bill as they did to the previous draft. We therefore urge the committee to take into consideration the deficits and suggestions made by a diversity of NGOs with differing and valuable experiences of working across the country.

We would like to highlight the following two clauses in the bill, which we fully support and would not like to see be removed in any potential modifications to the bill:

- Section 201(k) where Municipal spatial development frameworks must identify and designate areas where incremental upgrading approaches to development and regulation will be applicable; and
- Section 57 where any power or performance of a function in terms of this act may not be impeded or stopped solely on the ground that the value of a property is affected by such power of performance of function.

In line with previous recommendations we made in relation to earlier versions of the bill we would like to see the following (or similar) clause introduced into the act bringing a social function of land perspective to planning in the country:

“The principle of spatial justice whereby: 7(a)(vii): the social and environmental value and function of land must be taken into account when making decisions in relation to this act.”

Given the serious nature of many of these comments (e.g. the appropriateness of present land use management systems within communal areas, the lack of clarity of some powers and functions between provincial and local government), we would strongly consider the reconsideration of the substance found in the current Bill. In its current version it is unlikely to result, as envisaged, in “the inclusive, developmental, equitable and efficient spatial planning at the different spheres of government.”

However, if Parliament feels compelled to pass the Bill in its current form, we would strongly urge the Department to establish a clear monitoring and evaluation system, including a panel composed of competent role players drawn from a cross sector of society, that acknowledges and responds to the need for the regular review. **It is critical that we learn from the experiences emerging from the implementation of the legislation and systematically work towards improving planning law in the country.** To ensure that such a review occurs, a clause could be introduced to the act in section 9 or chapter 7 on general provisions that reads as follows:

“The minister must establish a commission made up of competent role-players drawn from a cross section of society to undertake regular reviews at least every 5 years on the appropriateness and effectiveness of planning legislation in contributing to the development objectives of the country and achieving the principles as outlined in this act; and make recommendations to the minister on how planning legislation can be modified and improved.”

Your consideration of this letter and the attached contents is greatly appreciated. For more information contact Tristan Görgens from Isandla Institute at (021) 683 7903 or tristan@isandla.org.za.



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