EXPLORING SYNEGIES OF LAND REFORM, BIODIVERSITY STEWARDSHIP AND SPATIAL PLANNING

LRBSI Learning Exchange (KZN)

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Background

• SPLUMA was enacted on 05 August 2013
• To be effective after certain regulatory instruments and guidelines have been approved.
• SPLUMA content demonstrate a well balanced environmental inputs at all levels
what does SPLUMA entail?

A Framework for a Planning System for the country (sec 2[2])

Dev Principles (sec 7)

Policies and Legislation (sec 6)

Spatial Development Planning & Frameworks (Chapter 4)

Land Use Management through Schemes (Chapter 5)

Land Development Management (Chapter 6)

other provisions (Chapter 7)
why SPLUMA?

background
± Pre-1994 planning was designed to serve a different political idea – segregation, differentiation, and privilege;
± Multiple laws, multiple institutions and parallel processes instituted by the pre-1994 pieces of legislation;
± Planning legislation were fragmented across the old boundaries of the then four (4) provincial administrations, homelands, and Self-Governing Territories (SGT);
± In 1994, South Africa inherited complex and disjointed planning systems which manifest in unequal, incoherent and inefficient settlement patterns;

Results
± Multiple and conflicting laws and interests, thus Parallel tools, systems and institutions
± Incoherent regulatory systems, and Uncoordinated vision of role-players
± No protection for the poor & no place for former homelands & rural/urban poor. Existing system is only for the privileged
± Distorted settlement patterns, with poorest communities having to travel the longest distances
why SPLUMA?

desired outcomes

± Coherent regulatory framework
± Constitutional synergy (clear delineation, distribution & allocation of powers among spheres)
± Predictable and transparent regulatory system
± Clear, rational and efficient inter-linkages of sectoral and inter-sphere planning tools and policies
The principles of spatial justice
The principle of spatial sustainability
The principle of efficiency
The principle of spatial resilience
The principle of good administration
chapter 3 – intergovernmental support

• National government
  – Minister must provide support and assistance, create capacity: Sec 9 (1) (a)
  – Minister must monitor compliance of municipalities and provinces: Sec 9 (1) (b)
  – Sec 9 (2) The national government must, in accordance with this Act and the IGRF Act, develop mechanisms to support and strengthen: Sec 9 (2)

• Municipal differentiation

• Provinces
  – Provincial legislation
  – May support municipalities SDF, LUM etc
  – Resolve disputes
  – Monitor municipalities and provide support
chapter 4 – spatial development frameworks

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

† The aims of SDF include to promote sustainable functional and integrated human settlements, maximise resource efficiency, and enhance regional identity and unique character of a place.

† All the three spheres must now make SDFs;

† SDF must give effect to National, Provincial or Municipal Planning;

† Sec 12(1)(m) take cognisance of any environmental management instrument adopted by the relevant environmental management authority;

† Sec 12(1)(n) give effect to national legislation and policies on mineral resources and sustainable utilisation and protection of agricultural resources; and
12 (1) SDFs should include previously disadvantaged areas, areas under traditional leadership, rural areas, informal settlements, slums and land holdings of state-owned enterprises and government agencies and address their inclusion and integration into the spatial, economic, social and environmental objectives of the relevant sphere;
Municipality is responsible for Land Use Management

Primary instrument is the Land Use Scheme (LUS)

Municipality must, after public consultation, prepare, adopt and implement a LUS within 5 years of the Act is brought into operation

LUS must be consistent with and give effect to Municipal SDF

All land development applications must be determined within context of the LUS

(b) take cognisance of any environmental management instrument adopted by the relevant environmental management authority, and must comply with environmental legislation;

(f) include land use and development provisions specifically to promote the effective implementation of national and provincial policies; and

An approved and adopted LUS has the force of law and binds all owners and users of land
chapter 6 - land development management

- **Land development applications are determined by Municipalities as the authority of first instance**

- Municipalities are required to establish Municipal Planning Tribunals to discharge this function. Officials may determine limited applications as prescribed by Municipal Council.

- Municipalities **may** co-operate to establish Joint Municipal Planning Tribunals.

- The Tribunals consist of municipal officials and suitably qualified external persons appointed by Municipal Councils.

- Appeals lay to the Executive Authority from decisions of MPTs.

- Appeal to Executive Authority via the Municipal Manager against MPT decision.

- No Appeal may be lodged in terms of Sec 62 of MSA.

- Municipality may establish separate appeal body in terms of provincial legislation.
national interest (sec 52)

dagger A land development application must be referred to the Minister where the outcome of the application affects the National interest (NB: NEMA has similar provision)

dagger The Minister to publish criteria on National Interest after consultation - Sec 52 (6)

dagger The National interest includes:

‡ matters within the exclusive functional area of the national sphere in terms of the Constitution;

‡ strategic national policy objectives, principles or priorities, including food security, international relations and co-operation, defence and economic unity; or

‡ land use for a purpose which falls within the functional area of the national sphere of government.
It introduces strategic and practical instruments, available to all spheres of government, to manage how land is used (development principles, spatial development frameworks, municipal land use schemes, municipal planning tribunals and appeal authorities).

The key instrument dealing with the Concourt Judgment is Chapter 6 of the SPLUMA on Land Development Management. SPLUMA expects municipalities to have arrangements in place to consider land development applications.

Intention is to bring into operation sections 1 – 32 and 55 – 61 of SPLUMA by no later than 01 April 2014, and ready for Chapter 6 by 01 September 2014.

The Administrative / Governance arrangement for steering and managing SPLUMA implementation is being re-evaluated.
IMPLICATIONS FOR THE BIODIVERSITY SECTOR
Areas for integration & alignment: Biodiversity/ spatial Planning

Chapter 3 (Part 1) of NEMBA states that

• The Minister- must prepare and adopt a national biodiversity framework, bioregions and bioregional plans and biodiversity management plans.

• All the biodiversity plans must-
  (a) provide for an integrated, co-ordinated and uniform approach to biodiversity management by organs of state in all spheres of government, non-governmental organisations, the private sector, local communities, other stakeholders and the public;
Areas for integration & alignment: Biodiversity/ spatial Planning (Cont)

Chapter 3 (Part 2: Section 48) of NEMBA stresses the need for Co-ordination and alignment of biodiversity plans

(1) The national biodiversity framework, a bioregional plan and a biodiversity management plan prepared in terms of this Chapter may not be in conflict with-

a) any environmental implementation or environmental management plans prepared in terms of Chapter 3 of the National Environmental Management Act;

b) any integrated development plans adopted by municipalities in terms of the Local Government: Municipal Systems Act, 2000

c) any spatial development frameworks in terms of legislation regulating land-use management, land development and spatial planning administered by the Cabinet member responsible for land affairs; and affected.

d) any other plans prepared in terms of national or provincial legislation that are affected
Chapter 4 (Part A) of SPLUMA states that

- The Minister must, after consultation with other organs of state and with the public, compile and publish a national spatial development framework, Provincial spatial development framework, regional spatial development framework and the municipal spatial development frameworks.

- All spatial development framework must take into account—
  a) policies, plans and programmes of public and private bodies that impact on spatial planning, land development and land use management;
  b) take cognisance of any environmental management instrument adopted by the relevant environmental management authority.
Areas for integration & alignment: biodiversity/ spatial planning (Cont)

NB: There is a need to determine the extent to which biodiversity plans may be integrated into the spatial development frameworks. Ideally it should done as follows:

<table>
<thead>
<tr>
<th>Spatial Plan</th>
<th>Biodiversity Plan</th>
</tr>
</thead>
<tbody>
<tr>
<td>National Spatial Development Framework (NSDP)</td>
<td>National Biodiversity Framework (NBF)</td>
</tr>
<tr>
<td>Provincial Spatial Development Framework (PSDF)</td>
<td>Bioregions and Bioregional Plans within boundaries of a particular province</td>
</tr>
<tr>
<td>Regional Spatial Development Framework (RSDF)</td>
<td>Bioregions and Bioregional Plans within identified / declared region</td>
</tr>
<tr>
<td>Municipal Spatial Development Framework (MSDF)</td>
<td>Biodiversity Management Plan</td>
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</tbody>
</table>
Areas for integration & alignment: biodiversity/spatial planning (Biodiversity Management Agreements)

- Section 44 of NEMBA states the Minister may enter into a biodiversity management agreement with the:
  - person, organisation or organ of state identified in terms of section 43(2), or any other
  - suitable person, organisation or organ of state, regarding the implementation of a biodiversity management plan, or any aspect of it.

The DRDLR encourages land reform beneficiaries to embrace the implementation of biodiversity management plan in areas identified by SANBI. It contributes to the Land Reform Biodiversity Stewardship Initiative (LRBSI) whereby land reform beneficiaries enter into biodiversity management agreements hence contribute to the National Protected Areas Expansion Strategy (NPAES). Currently all land reform projects that lie in areas of biodiversity importance have been spatially identified by the LRBSI.
THANK YOU