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Making urban land markets work for the poor in the context of existing local land access and transfers institutions

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“Informality” as evidence of market and state failure

This paper commences with the position that informality is an expression of both market and state failure. Leaving definitions of informality aside for a moment, the urban context in many developing countries, especially those on the African continent, is a situation of increasing urban impoverishment and marginalization. In South Africa, where a more favourable economic picture is present, ASGISA emphasizes the problem of persistent inequality. ASGISA locates shared economic growth centre stage, the dual economy thesis emphasizes inclusion, while the making markets work for the poor approach aims to increase the participation of the poor in markets on terms that are of benefit to them and to use market systems to meet the needs of the poor. A high degree of conceptual correlation is obvious. The paper returns to this in its conclusion, but begins with the argument that informality is an expression of market and state failure.

The urban context in many developing countries, especially on the African continent, is characterised by rapid urbanisation as well as economic decline. High rates of urbanisation are aggravated by declining disposable incomes among low wage earners, which condemn the majority of urban dwellers to a downward spiral of marginalisation (Khan, 2003). Accelerated globalization and structural adjustment policies combining deregulation measures, privatisation of urban services, massive state disengagement in the urban and housing sector, and attempts to integrate informal markets – including the land and housing markets – into the sphere of the formal market economy and ineffective corrective measures or safety net programmes, have further increased inequities in wealth and resource distribution (Durand-Lasserve, forthcoming). These factors, and the increasing impoverishment which they define, combine to negatively influence land access by the urban poor, and increasingly low and middle income earners. Public policies aimed at integrating irregular settlements within the city have been undermined by a decrease in revenue of urban households. In short, in the vast majority of sub-Saharan African cities, the urban poor, as well as large segments of low and middle income groups, do not have access to land provided by the public and the formal private sectors (Durand-Lasserve, forthcoming). As a

result, they have little option but to resort to the informal sector to satisfy their land and housing needs.

In a recent comparative study of alternative channels of land supply in six African cities, Rakodi and Leduka (2004) identify that most land for urban development has been supplied through alternative channels; “alternative”, that is, to the formal rules set out in legislation and administrative procedures. Due to rapid urban growth, these laws and procedures were unable to cope and the cost of implementation and compliance was too high for low income countries, cities and inhabitants. Limited capacity at national and municipal level ensured the failure of state led approaches to development. Jenkins (2006) adds to the capacity problem statement, describing the existence of informal settlements as being a factor of both state capacity, as well as the capacity of the formal systems to meet demand for human settlements. He argues that demand for land and housing for the poor is much higher than can be met by formal systems which “are relatively weak and often not interested in satisfying this stratum of demand, whether market- or state-based” (p 87). As well as highlighting the failure of formal market systems to meet the needs of the poorest and vulnerable, this quote offers a distinction of either market- or state- based formal systems. Often the literature refers to “formal” as though it is “public” – laws, regulations, procedures. For example Rakodi and Leduka’s (2004, p5) definition of “formal institutions” is; “rules of the game that are explicitly drawn up and defined, in particular state law”. They specify rules to be followed in performing certain activities or fulfilling obligations, in theory enforceable because of state access to legal recourse and coercive state power. In contrast to state dominated approaches, the quote from Jenkins offers a base upon which to build a conception of “formal” as inclusive of private actors and private actions – especially the market.¹

Informality is an expression of market and state failure and yet despite these failures, the poor do in fact access land, in ways that are variously termed “alternative” (for example Rakodi and Leduka, 2004), “unofficial” (Leap, 2005), “unregistered” or “off-

¹ Conceptually, informal may also include both public and private, state and market, but more comments on terminology and conceptual frameworks follow shortly.

register” (Kingwill et al, 2006), “informal” (Huchzermeyer and Karam, 2006), “irregular” (Durand-Lasserve and Royston, 2002), or “extra-legal” (de Soto, 2000). The emphasis in this paper is therefore less about why the poor should access urban land and urban land markets, but more that the poor do, and in a variety of different ways, because the state and market fail to allocate or supply land to the poorer stratum of demand.

However, what do we know about these land access practices? And, are they markets? How quantitatively significant are they? Where land access arrangements include transactions (sale from one party to another), an understanding of whether this constitutes a market or not matters. If approaches intent on making markets work for the poor ignore the multiple means by which the poor access land in the context of market (and state) failure, they run the risk of undermining what already exists to the detriment of the poor and vulnerable. In the absence of recognition and support, gaps between law and policy on one hand and practice on the other are likely to result. This carries the risk of sidelining many vulnerable people, households and communities from development opportunities and access to the economy. Coupled with the recognition granted to the formal rules of the game, in this case the officially recognised channels of supply and registered transactions especially, lack of recognition reproduces the dual economy and perpetuates inequity².

Terminology and Concepts

Part of the problem of not knowing enough, is that the concepts required to recognise, describe and assess the local practices or the reality on the ground, often elude us too. Without the concepts, our ability to name the practices (especially if they are varied and complex) and reference them to a comparative body of evidence is severely curtailed. Without this, our ability to better understand them, develop appropriate recommendations and influence policy intervention (Royston and Narsoo, 2006) is curtailed.

A starting point in this conceptual endeavour is terminology. Terminology tends to unhelpfully, and often inaccurately, polarize descriptions of reality (Leap, 2005), in this

² Adapted from Leap’s problem statement (2004).

case creating an assumption that access and transfer arrangements are either legal or extra-legal, formal or informal, official or unofficial and even market or non-market. In reality, practice is more complicated and transactions are embedded within a larger system of land management, aspects of which are formal or informal to lesser or greater extents.

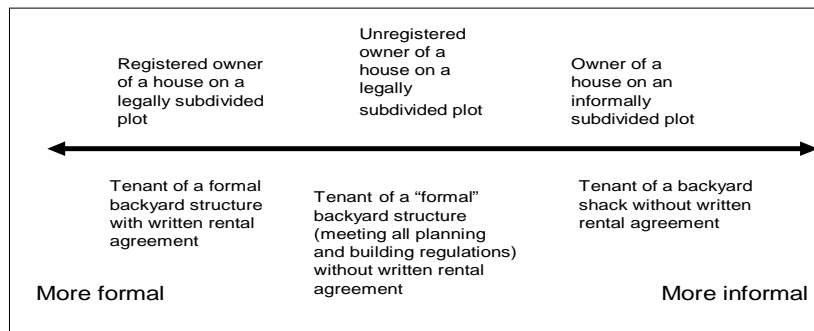
“The terms “informal” and “formal” represent the most obvious terminological form of duality. There are several reasons why these terms are either problematic or misleading, or raise problems in themselves. Firstly the terminology tends to privilege “formal” over “informal” as though formalisation is the ultimate solution. Secondly, and related to the first, is that the term “informal” is suggestive of a disorganized, even chaotic or anarchic “other”, which is at odds with what is often a complex, well organized and regulated set of rules and procedures characterized more appropriately in the plural – heterogeneous systems which vary from place to place, context to context. Thirdly, the dichotomy is itself problematic as it indicates a false polarisation, more appropriately represented as a continuum in which the situation is moving towards more informality or more formality. This movement may be activated at either end of the continuum; in other words, the formal system may activate a movement towards informality, just as the informal system may activate a movement towards formality.

The terms “legal” and “extra-legal” are sometimes offered as a more constructive alternative to “formal” and “informal”. Extra-legal is different from “illegal” as the latter implies subversion of the law, whereas “extra-legal” implies operating “outside of the law” and it can simply mean “beyond the scope of the law or the state’s regulatory framework”. While this is useful, there is the continued problem in the language that the implied solution lies in “legalisation” of the extra-legal in the sense that Hernando de Soto employs the term, meaning that the “solution” lies in legalisation. The state would not look favourably on extra-legal systems as this implies possible anarchy or chaos, systems that are unmanageable. From the point of view of the social reformer, on the other hand, legalisation is not seen as a solution in itself because legalisation may be a mere

formality. Social legitimacy at a local level, as mentioned above, is regarded by many as being as important, if not more important, than the formalities of the law. These terms are therefore all contingent and do not provide ultimate solutions to the problem of terminology.” (Leap, 2005, p13).

Borrowing from this argument about terminology, this paper makes use of the term “local” institutions, in preference to “informal” land market/s. “Local” avoids the polarisation problem and highlights diversity by merely asserting that the market or practice is occurring in one particular place, at a particular point in time. In addition by not naming them “informal”, it does not make the mistake of assuming that the local practices are disorganised, chaotic, anarchic or “other”, but leaves open the possibility of exploring them, recognising them for what they are and finding appropriate ways of supporting them (which may include making markets or the state work better or a combination of both). On the contrary, many local practices exhibit degrees of regulation. For example, Rakodi and Leduka (2004, p6) identify the existence of “embedded social norms and practices, including customary rules” which actors use to regulate transactions in land. Such norms and practices are enforceable because of their local, social legitimacy, rather than the recourse to legal and sometimes coercive state power. Durand-Lasserve (forthcoming) notes how land transactions in what he terms “the neo-customary sector” are being progressively “formalized” (“regulated” may be a more appropriate term for the argument being advanced here) through the use of witnesses to transactions being institutionalised, frequently authenticated by local government administrations. Usually, a “paper” of some sort can be provided, which people draw on to defend their rights. Use of the term “institutions”, rather than “markets” aims for greater recognition of the diverse rules and procedures on the ground, rather than adopting an approach which privileges some institutions (markets), over others (hierarchies, gifts, others).

However, it’s not this simple. The terminological problem is merely a symptom of deeper, underlying problem of bifurcation or duality, which occurs at different levels including institutionally (Leap, 2005). So for example, while “extra-legal” systems may in reality provide socially meaningful regulations to transactions on the ground, at the same time it is a reality that the state displays institutional bifurcation, to the extent to



which state resources are channeled towards the legally recognised as opposed to the legally unrecognised. In this sense institutional bifurcation cannot be ignored (Leap, 2005). Another example (in fact there are countless minor examples) would be in the bureaucratic structures themselves where rules, procedures, criteria are interpreted in many different ways by officials sitting in different places and depending on context (Leap, 2005). In Johannesburg for example, the official practice of informal settlement “registration”, repeated at intervals without an obvious logic, creates a stratified local system of rights in several communities (such as Zevenfontein and Zandspruit), but a system of rights nevertheless, which provide a particular set of conditions that increase scarcity and provide several instruments with which to transact (Development Works, 2005).

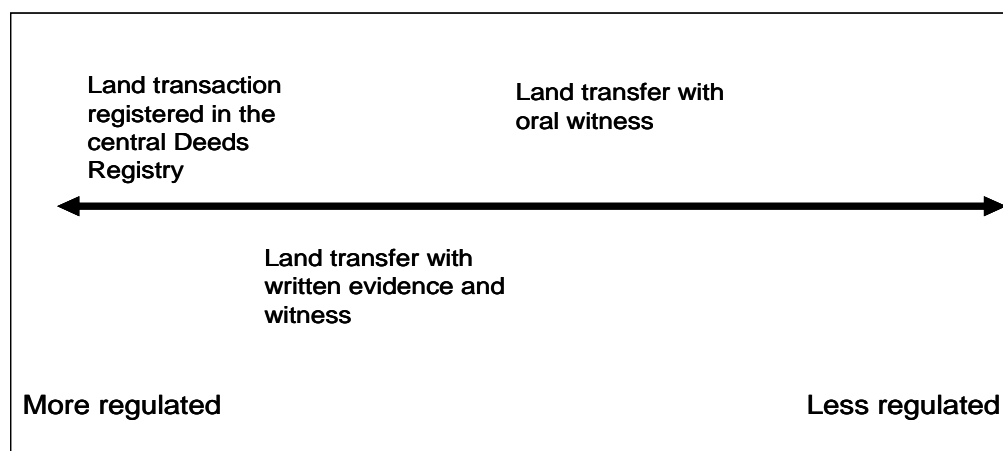
Leap (2005) offers a continuum on informality, from a tenure perspective, as a heuristic device to reflect reality as well as search for solutions to integration.

The difficulty resides at another level too; while researchers embrace empirical complexity, policy makers have a problem with variety (Royston, 2006). Approaches are needed which accommodate variety but categorise it in ways in which the most well intentioned policy can respond. Categorisation is helpful in this respect. Later on this paper will review and suggest categories to conceptually synthesise the multiple ways in which the poor access land (in the context of market and state failure to do so). Now it offers a categorisation of another sort. Instead of a polarisation (is an institution, including a market, formal or informal?), this paper suggests a categorisation of the diverse rules and practices that characterise land management in general and land access and transfers in particular, borrowing from Leap’s four part categorisation of

tenure arrangements in urban and rural South Africa. In this sense the multiple realities are a diversity of institutions (rules of the game) for regulating land access and transfer. These institutions are located within a larger conceptual frame of land management systems which Leap defines as being:

- Customary arrangements
- The ROD (registration of deeds) system
- Local and off register arrangements
- Transitional arrangements.

Adapting this conceptual approach to the urban land market concerns, land transfers and their associated rules and procedures would be positioned along a continuum representing the institutions and their characteristics. Registered transactions would be positioned at one end, while local exchanges characterised by low levels of institutionalisation and regulation would be positioned at the other. A range of land transfers would be positioned in between, with progressively more regulation in closer proximity to transfers registered in the Deeds Office. A similar exercise could be undertaken to locate the range of land access arrangements along the continuum.



Note that the continuum could accommodate both private and public actions and actors, and that their interventions could be classified by degrees of regulation.

The evidence: how the poor access land locally in the context of market and state failure

Having made a case for alternative terminology and for a conceptual framework which enables recognition of diverse practices (rather than a polarity), the paper now turns to what evidence exists of local land access and transfer arrangements.

Recall that the case being made for understanding local practice is that lack of recognition and support, in the context or exclusion from state and market channels of supply, runs the risk of undermining livelihoods and side-lining the poor from development opportunities and access to the economy. In addition, the motivation is quantitative in nature. Although unspecified, “informality” as a proxy indicator for the existence of local access arrangements, indicates a quantum that is numerically significant, but importantly one that is growing. The number of households living in shacks in informal settlements and backyards increased from 1.45 million in 1996 to 1.84 million in 2001, an increase of 26%, which is far greater than the 11% increase in population over the same period (Breaking New Ground).

A review of literature undertaken for this assignment confirms the point that great variety exists in the unofficial ways that the poor access land. This variety occurs between case study settlements in the literature, as well as within them, over time. The poor, excluded from market and state channels, obtain access to urban land by means of occupation, spill-over and encroachment, unofficial subdivision, allocation by local figures of authority or committees and a variety of local rental practices.

In Marconi Beam (Smit, 2006) a group of households occupied part of a well located vacant site in Milnerton owned by Telkom in 1990. It was declared a transit area and after years of negotiation Joe Slovo Park (936 houses) was developed adjacent to the informal settlement area. Freedom Park (Smit, 2006) is another land occupation example.

In 1998 a group of 300 households occupied a vacant school site in Tafelsig, Mitchells Plain, evictions were resisted and now the City has agreed to develop the area. Similarly, in Masiphumelele, Noordhoek (Dewar, nd), households occupied the site individually at which time the primary location imperative was visual unobtrusiveness

and the avoidance of harassment from officialdom. Later, there was official acceptance with authorities clearing and leveling the site and establishing rudimentary infrastructure. In the Gunguluza settlement (South of Uitenhage town centre) (Huchzermeyer, 2004), Mrs Gunguluza and others invaded land zoned for private development.

In the early nineties the residents of a number of informal settlements in Hout Bay were relocated to the Imizamo Yethu serviced-site settlement (Smit, 2006). 3 819 households were residing there in 2003. The Imizamo Yethu informal settlements (Smit, 2006) - the "Shooting Range" and "the Circle" - spilled over from the serviced site settlement. There were 1 892 and 610 households respectively in 2003. An example of encroachment is Mocke Road (Smit, 2006) which gradually developed on South African Railway Commuter Corporation land in Diep River. The residents, comprising 14 households, resisted eviction.

There are many examples of unofficial sub-division. Morkel Cottage (Smit, 2006) is an informal settlement of 83 households on the urban periphery that developed with the permission of the owner. Piesang River Settlement (in KwaMashu) (Huchzermeyer, 2004) is the result of an unofficial land sale that took place in 1960 between an Indian vegetable farmer and an African (black) individual who in turn subdivided and allocated land to other African households, partly in return for payment. The Weiler's Farm settlement (in the Southern part of Johannesburg) developed when the farm owners (the Weiler brothers) had consented to 'illegal African tenants' living on their farm since the 1960s. In 1985 the owner abandoned the farm, permitting 300 residents to remain living on the land. In Zandspruit (Royston and Narsoo, 2006) the part of the settlement referred to as the *private plots* started with pockets of informal structures on the four privately owned sites some of which were named after their original land owners: Mbele (Erasmus), Woolf, Vuku Zenzele and Breaker Brothers. Initially it seems that people were renting sites from the landowners for R150 to R250 per month - a process known in South Africa as "shack farming". In the consolidated oral history of the *transit camp* that was gathered in the research, the residents interviewed identify a period of "shack farming" when one "Mabaso and Son" are said to have sold sites for R200, although they disappeared when it was discovered that they were selling stands

that they did not own. This version of informal subdivision differs from that prevalent in the private sites because the legal owner (i.e. the council) was not informally subdividing, but an individual or company (“Mabaso and Son”) was doing so without the legal owner’s knowledge.

Masiphumelele, Noordhoek (referred to by Dewar, nd) is an example of allocation by local authority figures, in this case a committee. New sites were allocated on the periphery of the existing settlement. Allocation of these sites was undertaken through consultation between the local committee and the new household head. This means of land access is a form of unofficial subdivision in which the allocation occurs via a local authority figure rather than an external land owner. Here there is also evidence of local rental practices in the form of lodging, where small rooms were created by newcomers who did not intend remaining there for long. Dewar records this as a common form of “infill” within the existing settlement. In Zandspruit (Royston and Narsoo, 2006), a rental perception dominates in the understanding of how people currently hold their land in the *private plots*, although the precise nature of the rental arrangement varies depending on who is perceived as the primary owner. In some plots, the period of “shack farming” has lasted longer than in others with the original owner continuing to extract a levy of some sort through an intermediary. In other private plots, the tenure form can be characterised as a sub-letting arrangement from a shack owner who is living elsewhere (who in turn is either informally renting from an original owner or someone else). This represents an informal market within an informal market. A third informal rental variant is present in the public site, commonly understood as backyard shacking in terms of which officially recognised occupants are renting out backyard space (or shacks) to third parties.

Looking further afield, Rakodi and Leduka’s study (2004), addressing the problem that insufficient knowledge exists about alternative channels of supply, confirms a multiple reality in the ways in which land is supplied in contemporary African cities. They provide the following categorization of the varied land supply channels:

- Allocation of public land
- Purchase of land through the market
- Delivery of customary land through state sanctioned channels

- Delivery of land through customary channels to members of the group
- Purchase of customary land
- Allocation by officials
- Self allocation

They note squatting or membership of indigenous rights- holding groups as “non-commercial” but highlight the increasing non-availability of such channels. On whether any of these channels supply land to the poor, they note that the poor can access risky land but are less and less able to access land via purchase, as purchase is restricted to those who can afford it, who have the financial means for purchase. Channels for purchase include the sale of customary land; informal subdivision; “sale” and the purchase of undeveloped land. For the poor, plot sharing, subdivision by a parent for a child and inheritance are important means of access. Tenancy offers by far the most accommodation to the poor. They also note that the purchase of existing properties in informal settlements increases as settlements age (i.e. the secondary market).

Turning to more generic evidence on the matter, Durand-Lasserve and Royston (2002) offer three categories of land development falling outside of the state and the market namely informal subdivision, squatting and informal rental.

- Unauthorized land development or **informal subdivision** is the main type. Unauthorized land developments are a widespread phenomenon on the fringes of most developing cities. Most often, such settlements have developed on private agricultural land, frequently outside the municipal boundaries. In most sub-Saharan African cities, customary owners are the main providers of land for housing, even if their right to the land is not formally recognized by the state.
- **Squatter settlements** are a second type of informal settlement, found on the urban fringes or in centrally located areas, mostly on public land but also – less frequently – on private land, especially when disputed. These can be the result of an organized ‘invasion’, or a gradual occupation. Contrary to common belief, access to squatter settlements is rarely free. An entry fee must generally be paid to an intermediary, or to the person or group who exerts control over the settlement, and sometimes also rent.

- **Informal rental housing** is a third category and covers a wide range of situations and levels of precariousness. Rental is the most common form of tenure in formal as well as in informal settlements. Tenants and subtenants form a heterogeneous group. They can be found in unauthorized land developments, in squatter settlements or in dilapidated buildings in city centres. Backyard shacks, prevalent in some of South Africa's cities, are an example of informal rental housing.

The evidence: how the poor transfer land in the context of state and market failure

Turning now to the evidence of local land transfers, the FinMark Trust Township Residential Property Market (TRPM) study found that 63% of households living in informal settlements had transacted in the secondary market by purchasing a house from someone else over a period of five years. In the same period it was estimated that 14% of households in site and service settlements and 12% in RDP housing settlements had transacted informally.

The emergence of an informal property market in the urban and peri-urban areas (whereby subsidized properties are informally bought and sold for a fraction of their replacement value) was identified as indication of the inaccessibility of the formal system in DFID's Urban Land Scoping Study (USN and Development Works, 200?). The urban scoping report identifies a range of reasons for why the formal low income property market is not functioning properly. Examples of these are apartheid urban patterns, the emergence of a gap in the housing market, lack of access to appropriate credit, lack of low income estate agents and expensive and complex property transfer procedures.

In a Public Service Commission evaluation of the national housing subsidy scheme (RSA, 2003), the existence of a housing market was identified. In 40 housing projects investigated, 19 gave reports of the sale of the subsidy houses, 13 reported rental of backyard shacks and 13 reported the letting of rooms within the subsidy house. In one project 75% of residents were not the original subsidy recipients. The report assumes

that all sales are informal, due to the moratorium on the sale of subsidy houses³. Houses are sold at far below the subsidy value. For example: in Mamelodi Ext 10 for R4 000, in Diepsloot West for R3 000 to R20 000 and Boikutsong for R5 000- R7 000. There is also one case in Masithembane where the sale of the subsidy house followed “a more formal route”. The community representative at the Masithembane Consolidation Subsidy project reported that beneficiaries were selling houses through the local Housing Association committee, and done through a legal representative. The selling price was above R7 000. In some instances the subsidy was used to build a structure for the purpose of letting out and bringing in an income to the beneficiary household. For example, the local authority official for the Freedom Square project reported that people rent out the houses, make an income from this, and go back to live in informal settlements.

In Joe Slovo Park, a subsidized housing project in Cape Town, 30% of houses had been sold five years after project completion (Kingwill et al, 2006 citing Jacobsen, 2003). Almost all property sales were informal i.e. they were not formally registered. Evidence is cited of people renting out houses they did not own and of street committees deciding on occupiers so that sometimes legal owners were unable to occupy their houses.

Rutsch (2004) describes the operations of an informal land market, in which transactions occur but outside of the formal system which was considered by people as remote, expensive, complex and burdensome. He describes how houses in low income housing estates such as Folweni and including Umlazi and KwaMashu, would be sold by the person recognised by South African law as the registered owner of the land to a buyer. The purchase price would be paid and the title deed, usually a Deed of Grant or a Right of leasehold would be handed over, in the presence of the witness usually an induna, or by other individuals with status in society (a municipal councilor, a lawyer, a

³ However, it would be a conceptual leap to conclude that sales would be formal if the moratorium were not in place, given evidence elsewhere of the functional elements of some local land markets. Literature and evidence suggests that the lack of registration has much to do with the system (accessibility, legitimacy and so forth), as well as the moratorium.

priest), without being registered at the Deeds Office. He notes that the system offers very limited legal foundations and confers very limited legal rights to land which may be defended against third parties in a court of law. But where any occupier of land or party to any transaction involving land under the system is deprived of his/her right, then he/she may sue in contract to defend that right. However, he regards improvements as a waste because any improvement fixed to the land vests in the legal owner of that land.

In another source on Folweni, von Riesen (RH consortium, 2004) describes the operation of “alternative extra-legal land markets” in which local councilors have taken over the role once assumed by traditional authorities in brokering and validating land transactions. She emphasizes the functionality and adaptability of this market.

Qualitative research on conflict in Zandspruit (Royston, 2006 and Royston and Narsoo, 2006) identifies that rules and regulations for the purchase and resale of land, for allocation and demarcation and for recording exist in this informal settlement. These are varied in nature and in their codification and enforcement. Residents perceive that they can sell their sites with approval from the committee, unless they are renters. Police play a role in witnessing as they verify affidavits. Although the sale of stands is not officially permitted, recognition of the practice is widespread locally and among stakeholders. Various “registration forms” are used as documentary evidence of transfer and rights. Local rules may mimic council rules in some respects, but they do not operate within what council considers to be legitimate bounds. However, evidence seems to exist of local rules being broken too (such as committee leaders selling sites themselves).

High turnover of beneficiaries in a greenfield housing project in KZN is quoted in Shisaka (2003). Numerous informal transactions are reported where units were purchased by occupants who were not original beneficiaries for between R4000 and R6 000.

Comments on the evidence of local access and transfer arrangements

The knowledge base is a problem here. Our evidence and understanding of local access and transfer arrangements is insufficient. We know that land sales take place, but we do not know enough about the local institutions (rules of the game) governing these transactions. Are these markets, hierarchies, gifts or networks? We can't say enough about the scale of these practices – just how significant are they? We can't say whether this evidence is indicative of a local land market, although we can surmise as much, because there is some evidence that exchanges are commodified. Royston and Narsoo (2006) assert that a larger body of evidence is needed than is currently available in the mainstream policy discourse, proposing that assembling a body of evidence significant enough to enter this discourse is critical in the current policy environment due to the significance accorded to notions of assets, titling and the property market. Without the descriptive information base, little can be said about functionality.

Although some of the reviewed literature analyses how the markets work (see above), evidence is scattered and partial. What exists, suggests both positive and negative performance for the poor. Positive perspectives on functionality include accessibility, adaptability and social legitimacy. Negative perspectives suggest susceptibility to exploitation of the rules (and by implication of the more vulnerable). The occurrence of conflict may also have a bearing on how functional the local rules are, although the relationship between occurrence of conflict and functionality of local institutions may not always be a direct one. ⁴

As a result, this paper can offer little conclusive evidence or analysis about whether or not these institutions are functional and efficient (irrespective of whether they are markets or not). However, what can be offered at this stage of knowledge development

⁴ For example, conflict in Zandspruit was overtly attributed to crime and in the minds of residents, crime was associated with the presence of foreigners. Thus violent conflict took on xenophobic characteristics. However, on closer inspection land access may have been a more fundamental factor.

on the matter is an approach to determining the basis on which the institutions governing such transactions could be said to be functional for the poor or not.

What would pro-poor outcomes be?

Little can therefore be said on whether these local access and transfer arrangements work for the poor, in the light of an insufficient body of evidence about the land transfer institutions in particular. However, this section suggests what outcomes could be considered pro-poor, were this evidence to hand. This is a preliminary framework for assessment, which would benefit greatly from interaction, an opportunity that the Urban LandMark programme potentially offers.

Pro-poor outcomes would be that:

1) Tenure security is increasing

Secure tenure is about defensible rights and enforceable duties to property and benefits flowing from it; and rules, procedures and systems for managing these property rights and duties (Leap, undated). Indicators of secure tenure are:

- People's rights are becoming clearer, people know better what their rights are and they are more able to defend these rights
- Land rights administration processes such as application, recording, adjudication, transfer, land use regulation and distribution of benefits are becoming clearer, better known and more used.
- Authority in these processes is becoming clearer, better known and more used
- There are more and increasingly accessible places to go to for recourse in terms of these processes and these are becoming clearer, better known and more used.
- Land rights administration processes are becoming less unfairly discriminatory against any person or group
- Bridges are being built that span the gaps between actual practice and legal requirements
- Benefits and services are becoming as available to people as they are within the registration of deeds system.

Rakodi and Leduka's criteria (2004) on tenure security enquire whether tenure is secure for investment. What threats exist to security of tenure?

2) Access to livelihoods is increasing

The practices should not erode assets or undermine livelihoods (from Moser, 2006). Access to disadvantaged groups is particularly important - does it deliver to poor households and women? (Rakodi and Leduka, 2004). Here we would add a vulnerability perspective, including HIV and AIDS.

3) Access to broader opportunities is increasing

For Leap this means access to services and economic opportunities (Leap, 2005). Rakodi and Leduka (2004) enquire: Has access to services been accommodated in advance, on subdivision or subsequently? In the asset building literature, this means access to opportunities to build assets, enabling accumulation and longer term consolidation of assets (Moser, 2006). Better returns could also be included here (DFID, 2005).

4) The scale of supply is increasing

How much land is being supplied by the channel? What prospects for the future? (From Rakodi and Leduka, 2004)

5) The risks and costs of exchange are decreasing

This means reducing the costs and risks associated with exchange (relative to what?) (Dfid), and lowering transaction costs. For Rakodi and Leduka (2004) - is it affordable to those seeking land and will it continue to be?

6) Equity is increasing

The distributional and equity concerns associated with MW4P have relevance here. Freedom of exchange and transaction (Dfid). Gift invokes kinship and dependency, purchase implies exchange and equality (Lentz, 2006); equality of asset holding (Jones, 1999); more equal distribution of resources.

7) Disputes are being resolved

Are dispute resolution mechanisms available, and socially legitimate (Rakodi and Leduka, 2004)?

What would an institution that works for the poor look like?

Assuming we knew more about the local access and transfer practices, assuming we knew what we were looking for as a set of pro-poor outcomes, how would we recognize whether the rules governing them were functional for the poor or not? These indicators would need to be applicable to a range of institutions, were the approach being advocated here to be effective.

To begin with, Porteous (2004) offers a series of indicators of a market that works for the poor. It may be helpful to consider the extent to which local social rules of the game are functional for the poor in terms of these criteria as well as markets, adapt them and expand on them, borrowing from other literature on the informal land access channels. This approach is favourable as it provides a means for bridging the gap between two camps – one which is pro-markets (as being fair and equitable) and anti-informal (often viewed as corrupt, illegal, criminal etc) and the other which is anti-markets (inaccessible, inappropriate, inequitable and unaffordable) and pro-informal (the reverse) by providing a framework within which to deepen our understanding of how functional the system is, whether formal or informal, market or non-market or more likely, somewhere in between. This may enable us to interrogate the local practices, with local actors, to determine whether the institutions regulating land management, access and transfer arrangements in particular, work for the poor or not.

According to Porteous, a functional institution is one that works at all. In addition to consumers, there must be (1) an institutional foundation comprising of the laws, rules and regulations, (2) organisations which provide services in the market, and (3) support organisations that provide intermediate services to market players and regulators.

Although a coherent body of evidence is absent, and by implication a quantification of scale, we know from the evidence of local land access arrangements that there are

consumers. We have some, although not enough, evidence of the local rules of the game or institutional foundation. Regarding organizations which provide services in the market, we have examples of witnesses (local authority figures such as local councillors, community leaders, traditional authorities and police officers) and of evidence of transactions (either written or verbal evidence, including affidavits and various registration forms). Regarding support organizations, we have evidence of agents or brokers, and even a version of property managers (the intermediaries who collect the “rental” fees from certain categories of residents) but we don’t know enough.

Conflict should feature in some measure in the indicators. Does the occurrence of conflict suggest that the institution is not functional? Does the existence of procedures for dispute resolution, and their use, suggest that it is? Are conflict resolution mechanisms elements of support organizations in the market?

If local institutions are to work better for the poor, then Porteus’ characteristics are a useful conceptual point of entry. Is there an institutional foundation? And borrowing from Leap’s tenure indicators, are the rules becoming clearer, better known and more used (Leap, pamphlet on indicators). In summary:

- Are there consumers? In particular, are the poor participating?
- Are there rules and procedures governing access and transfer?
- Are there organizations which provide services in the market?
- Are there support organizations?

Another indicator of a functioning market is that it expands the choices available to poor people (building from Amarta Sen’s concept of development as expanding choice to poor people). Choice is a highly relative concept in the kinds of exclusionary situations being explored here, where markets are thin and the risks and costs of participation too high. The very existence of local access and transfer arrangements is evidence that (formal) markets are not working and as such local institutions can be seen as alternatives in and of themselves, and in terms of this characteristic an indicator of functionality. On the other hand, choice is of very limited application in

such situations and expanding opportunities for land access can hardly be argued with.

A third indicator of a functioning market is one that is accessible and appropriate to the poor. But as Porteous asserts, in this context accessibility and appropriateness are not easily definable as they are in everyday life, “they can be slippery concepts”. What may be important here is that officially recognized institutions are reflective of existing practice and that they benefit from social legitimacy. Porteous points out that even if the market is accessible the poor may still choose not to use it. Thus, a market which works for the poor is the one in which usage of the product by the poor is increasing over time (who is using it on an ongoing basis?). At a very general level, the scale and persistence of informality (Huchzermeyer and Karam, 2006) indicate that the poor are in fact using local practices in an ongoing way. Their diversity may be suggestive of alternatives, however choice is limited and the basis of participation in local practices is exclusion from state and market based land access and transfer and transfer arrangements.

Recommendations: Contributions to an agenda for action

The recommendations in this section are offered as items on an agenda for action. Three conceptual points of departure inform the recommendations:

1. recognition and integration
2. state-, market- and locally-based institutions
3. local and city wide interventions

Item 1: Recognise and support the variety of ways in which the poor access land, and search for solutions to integration

The first is recognition and integration, derived from the concept of the continuum and problem statement associated with it:

In the context of market and state failure, the poor access land in a variety of different ways, many of which are not recognized, valued or supported. If approaches intent on making markets work for the poor ignore these multiple

means, they run the risk of undermining what already exists to the detriment of the poor and vulnerable. In the absence of recognition and support, gaps between law and policy on one hand and practice on the other are likely to result. This carries the risk of sidelining many vulnerable people, households and communities from development opportunities and access to the economy. Coupled with the recognition granted to the formal rules of the game, in this case the officially recognised channels of supply and registered transactions especially, lack of recognition reproduces the dual economy and perpetuates inequity.

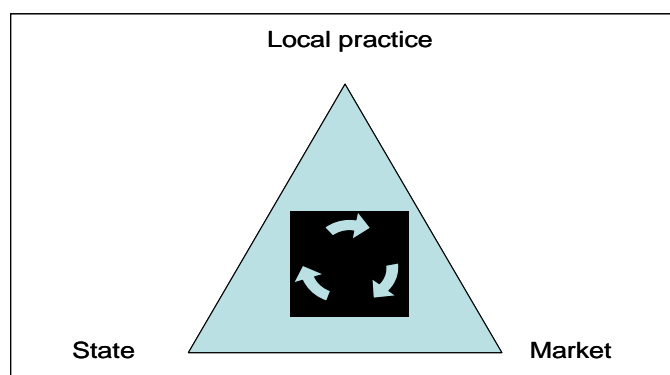
For Leap (2005), the concept of recognition is an attempt to provide an intermediate tool for describing the legitimacy of tenure arrangements that fall between legally acceptable on the one hand and socially unacceptable on the other. The term “extra-legal” has often been used to depict this range of tenure arrangements but its focus on legality directs attention only to law rather than the processes and procedures by which a set of tenure arrangements may become socially legitimate. Adapting this approach, an act of recognition from the perspective of the state could include utilizing local practices of informal settlement registration to commence a decentralised local system of land rights record-keeping, which should contain a geo-spatial component. Such recognition would begin to provide an incremental base for securing the tenure of the urban poor, and supporting their livelihood and asset building strategies, depending on their vulnerability status. Note that this approach is outside of the dominant cadastral model (the registration of deeds system present in South Africa).

Integration implies the need to identify how various local rules and procedures contradict, support or elude the state and market derived arrangements for land access and transfer in the country. This is necessary because interventions must address the officially recognised channels of supply and transfer arrangements, which receive political approval and financial support despite their failure to service the needs of the majority. Identifying precisely issues of articulation will assist in showing how both the market and state official systems fail and what possible areas interventions should focus on. The integration emphasis would be on defining socially meaningfully and socially legitimate rules and institutions which can offer more of the benefits that

inclusion into the so-called first economy and “formal” system of rules and procedures. An integration approach is different from “third-way” thinking which, in short hand, has shifted the emphasis from “safety-nets” to “trampolines”. In terms of the latter, interventions must assist the poor to bounce up and out of poverty, rather than perpetually preventing them from falling through the net.

Item 2: enhance the pro-poor functioning of state-, market- and locally-based institutions

Implicit in the problem statement is the second point of departure informing the recommendations. It suggests an appropriate approach as being one which enhances the range of institutions which exist to regulate land access and transfer arrangements (within the broader conceptual frame of land management), including market, state and locally based institutions. This triangular conceptualization is represented as follows, and informs the preliminary agenda for action suggested here:



Thus an agenda for action should be holistic in its outlook by contemplating enhancing the capacities of the state, the market and the local institutions to perform better for and with the poor. In being strategic, such an agenda may focus and prioritise, but to favour one corner of the triangle at the expense of another would be to ignore their inter-relationships. Thus a more streamlined subsidy system may encourage private sector actors to participate in land delivery more; or access to credit for those higher up on the housing ladder would influence local practice.

Attention at the state corner of the triangle would need to address issues of both attitude and capacity; political attitudes to informality and capacity for monitoring and enforcing compliance with the regulatory framework, as well as the suitability of the regulatory framework itself. Action at the market corner of the triangle might include filling in the gaps on the housing ladder as well as distributing the benefits of economic growth more equitably, including the benefits of property market appreciation. Action in the local practice corner would be to recognize, support and integrate these, in the context of market and state failures. Supporting tenancy, a significant channel of supply or land access arrangement, would be important here.

Durand Lasserre (Jones' CD rom) makes the point that the ideological position for freer markets is well advanced but that the pre-requisites for effective markets especially in Africa, lag behind. An associated problem with a singular focus on one corner of the institutional triangle (as opposed to the inter-systems approach advanced here) is that it fails completely to address the pre-requisites for effective markets, some of which may be structural in nature.

Item 3: adopt both local and city wide perspectives for making markets work for the poor

As addressed in item 1, a local perspective on making markets work for the poor would imply a programme of support which:

- Supports the consumers
- Supports the institutional foundations
- Supports the organizations
- Supports the support organizations

A first step in supporting these, would be to recognize what they are and how they work. A subsequent step would be to identify opportunities for integration. Take registration as an example. Support for arrangements that are socially legitimacy would be to extend the benefits of recognition afforded to the official access channels and the officially recognised deeds registration, by exploring how to build on local

processes of giving evidence, bearing witness and resolving disputes. However, if the local institutions are in primary service to securing livelihoods, then they would be unlikely to be crafted for exchange and accumulation. The market may never be interested enough in the poorest and most vulnerable. An approach would segments the market, or differentiates the poor, is critical.

A city wide perspective on making markets work for the poor has the potential to aid with the distributional and equity issues that are not directly dealt with by the market. Well functioning / efficient markets can co-exist with widespread poverty (DFID, 2005). Rather than merely focusing on the institutions that are in operation in the places that the poor inhabit, an agenda for action should also contemplate how the benefits of well functioning property markets in specific locations can be shared. Unequal growth in a city's property markets, or exclusion from the benefits of that growth, can be placed centre stage with this approach. Instruments for value capture, linkage and inclusionary housing are suggested here.

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