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Scoping study:
Local Land Registration Practices in Five Settlements in South Africa

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Background

- Starting points of approach include to *work with what already exists*, and where possible to *build on it in ways that gradually secure people's tenure rights*.
- Esp important in informal settlement upgrading in comparison with greenfields development.
- This study a resource in subsequent phases of work in theme area.
- Hypothesis - approach should develop:
  - officially recognised mechanisms
  - to register rights locally and provide evidence to rights holders
  - that can be used to defend claims to productive and residential land use, and for transferability.

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Purpose

- To provide documented evidence of local practices in registering land claims and rights

- To inform the work in the tenure theme area on securing and managing land rights in informal settlement upgrading processes in ways that build on existing practices

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Outline

- Synthesis of key findings regarding local registration practice, and some implications
  - Local registers
  - Forms of evidence
- Overview of five case studies
  - Folweni
  - Kennedy Road
  - Mandela Informal settlement
  - Motala Heights
  - Hangberg

- Margot Rubin undertook the research
- http://www.urbanlandmark.org.za/docs/Local_Land_Registration_Practices.pdf

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Framework

- **Residential use** Yes
- **Productive use** No, but unofficially commercial activities took place
- **Rent, sublet** No, but informal rental
- **Control access** Yes,
- **Sell/buy or inherit** No, not without a court order but unofficial transactions
- **Develop or improve** Yes,
- **Realise benefit or return** No, official sale was not possible buthouseholds did sell
- **Access to services** Varied.
- **Access to formal credit** No.
- **Claims to future development** PTO holders had their rights upgraded to title

General characteristics

- Communities and community structures
  - Evidence that communities and community structures have created their own land registration practices
  - These registered rights and claims exist over, or on top of, the official system of title deed registration applicable to the underlying land
  - Few, if any, are untouched by the hand of the state.

- Municipalities
  - The state has also initiated land registration practices primarily in opening municipal registers of informal settlement occupants
  - Earlier research found that these practices have an important role to play in the land market.

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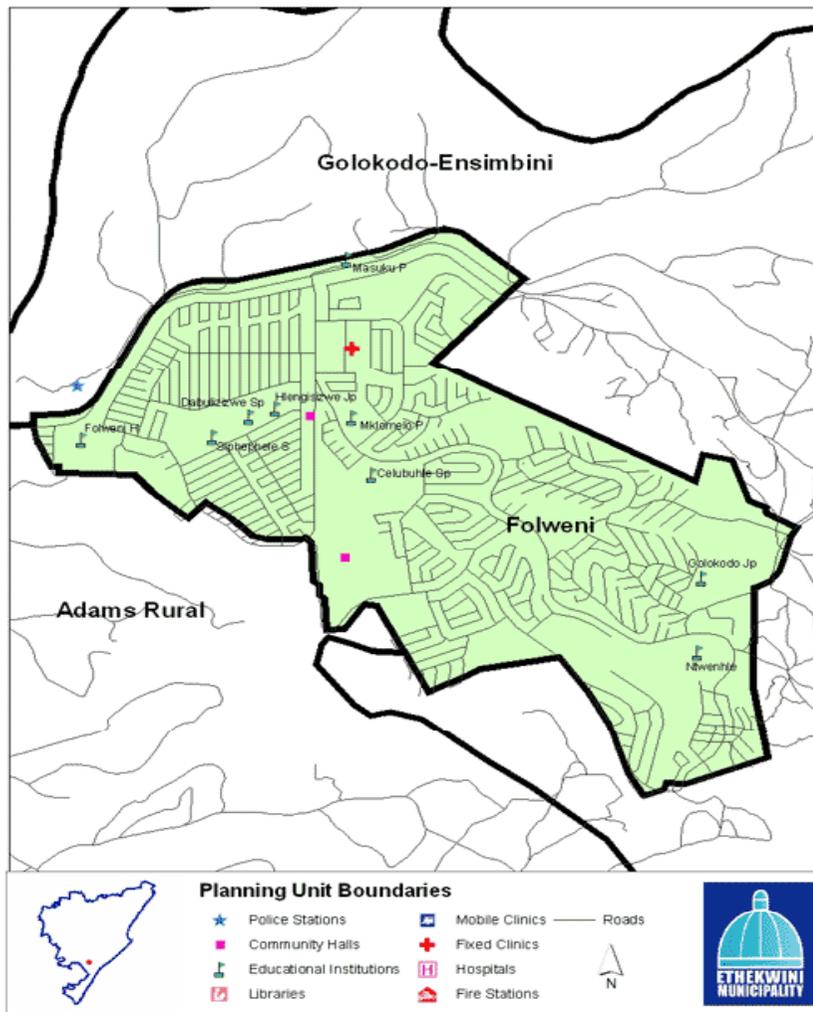MAKING URBAN LAND MARKETS WORK FOR THE POOR

General characteristics

- Hybridised practice
  - The land management arrangements that arise from these community/state interactions and interfaces are best characterised as hybridised forms.

- Diversity
  - They have created sets of claims and rights with varying degrees of social legitimacy.

- *While acknowledging the complexity and plurality that underpins these practices, Urban LandMark's advocacy for recognition of existing practice will be to recommend practical ways of securing land rights as simply as possible.*

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Folweni: Background & Context

- Folweni is a settlement of 40 000 people located in Amanzimtoti south of Durban.

- Origin = forced removals from Umlazi township in 1981

- Folweni established to provide labour force for Durban South Industrial Basin and Durban

- 1980s, 1 653 plots allocated to households and residents provided with PTOs.

- New residents constructed their own units out of wattle and daub and few homes had services, with permission from Induna.

- 1990s private sector concerns built a number of houses in the area.

- Sometime after 1994, when both the Induna and the private sector lost control and councillors stepped into the housing supply breach.

- Councillors brokered sale/rental of properties and provide letters of "ownership" and transfer

Folweni: Land Registration Practice

Planning Unit Boundaries

★	Police Stations	⊡	Mobile Clinics
■	Community Halls	✚	Fixed Clinics
⌐	Educational Institutions	Ⓗ	Hospitals
▨	Libraries	⌂	Fire Stations

Roads

N

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Two kinds of evidence were provided;

- <u>initially</u> official documents i.e. PTOs from the state and allocated by the Induna,

- <u>later</u> unofficial papers such as letters from the Councillors, receipts or sales agreements.

- All of these documents had social legitimacy at local level **but** the state only recognised PTOs.

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Kennedy Road: Background & Context

- Origin early 1970s-80s first settled by 53 families fleeing political violence
- Located close to eThekwini's industrial areas, a landfill, on a steep hillside, &

  adjacent to middle-class residential area.
- The oldest residents claim that the land was given to the them by the landowner.
- Grown over last 30 years now 9 000 residents and 2 600 households
- Gone through a number of registration processes last registration programme was completed in 2000/2001.
- The most recent set of plans involved extensive relocation and met with violent opposition. This resistance gave rise to the social movement known as Abahlali Base Mjondolo (ABM)

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Kennedy Road: Land Registration Practice

Four registers exist:

1. 2000/2001 Municipal register
2. Updated 2000/2001 recording changes
3. Housing Portfolio Book with records of dwellers
4. Community witnessing & memory

Changes in ownership, use, users, rental, looking after are recorded using one of 2,3, or 4.

Conflict is resolved through a community court and all four registers can be used as evidence.

New register is in process as part of upgrading process:

- Senior Citizens, who are original dwellers or have been in residence since at least 1987;
- Residents who are on the 2001/2002 registration list,
- Newcomers who have arrived post 2001/2002,
- & people who have RDP houses elsewhere

Mandela Informal Settlement: Background & Context

- Established in 1990 on the buffer strip between the Botleng township and Delmas in Mpumalanga.

- Settled by ANC activists who invaded the land as a form of protest and young families and single people looking for different accommodation to what was available in township.

- Currently there are between 2000-2500 individuals or 480 households living on the buffer strip.

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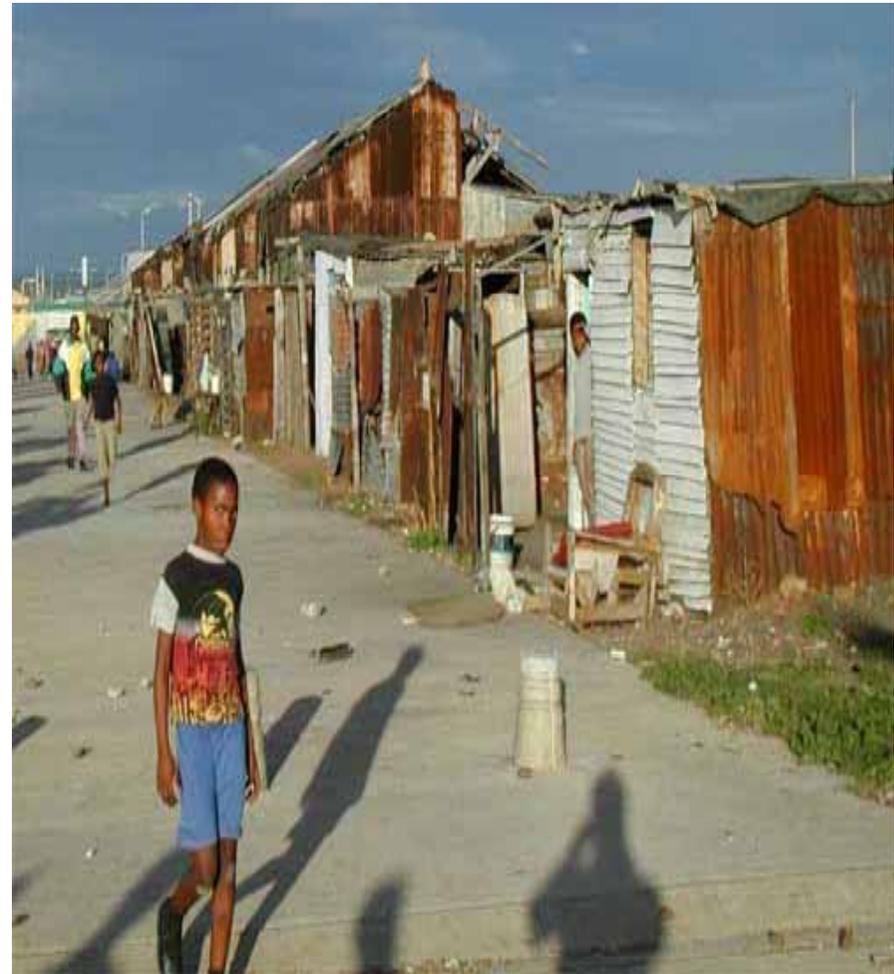
Mandela Informal Settlement: Land Registration Practice

- Not a very organised/ controlled settlement
- Land is accessed simply by staking claim
- Very loose land management
- Transactions are "witnessed" by cultural Induna
- His signature/witnessing is considered to make the transaction legitimate
- Charges for his services
- His testimony is used as evidence if conflicts over land arise

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Motala Heights: Background & Context

- Motala Heights is located in the Durban-Pinetown industrial area
- Constituted of three communities who share the settlement; i) a working-middle class Indian community in the valley, in formal houses with individual ownership, ii) a poor and generally unemployed sector who share the valley but live in informal housing, and rent from the local land owner and (iii) an informal Black community of about 900, living in shacks on the slopes of the surrounding hillsides,
- Originally the valley was settled in the 1920s and 1930s, mainly due to the philanthropy of the landowner, a Mr Motala from India who gave the land to poor Indian families
- The Black community arrived later, attracted by opportunities in the nearby industrial area and was already firmly established by the 1960s.
- The residents have faced numerous threats, particularly people living on the hillside and their homes have been destroyed numerous times

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Motala Heights: Land Registration Practices

Have gone through a number of registration processes:

2000 – Councillor charged residents to register them for housing – false claim

2006 – registration (spray-painted numbers) & relocation

2008 – further registration process by the state but in negotiation with existing residents.

- Current registration is constituted by an official municipal record of existing shacks & tenants.

- Agreement is that the residents must monitor the settlement & control its size & in return will be given formal housing.

- Tenants do maintain and control size for most part but if previous tenants want to return and in good standing then they are allowed in.

- Very little sale or sub-rental due to agreement with the eThekwini

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Hangberg: Background & Context

- Hangberg, Houtbay, consists of three main groups; (i) a wealthy, mostly white, community in the valley; (ii) a poorer, mostly Coloured, community living in hostels and rental housing on the slopes, and (iii) an informal settlement located at the foot of the Sentinel Mountain.

- Informal community, consists of 302 family units, approx 1200 people.

- The hostels, on the slopes of the mountain, built in the 1970s employees of local fishing industry.

- By 1980s housing was insufficient began to build informal dwellings behind the hostels and at the foot of the Sentinel Mountain.

- These units were developed with the consent of the local authority:

- Conditions i.e. two-room structures, using non-permanent materials

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Hangberg: Land Registration Practices

- In 2007 the CoCT in conjunction with the Hangberg in situ Development Association (HiDA) established a moratorium on the development of new bungalows in the settlement,
- Between the CoCT and HiDA, it was agreed that 302 households would be included in the in situ upgrade .
- HiDA and DAG developed a community register, to establish the details of the 302 units agreed as beneficiaries of the in situ upgrade, as well as the status of the rest of the settlement.
- The register is geo-spatially referenced and provides data on who owns what, as well as the size and precise location of each unit.
- The register was seen as the first step in the upgrading process and as a means of securing tenure.
- Changes in ownership, size of plots, are recorded on the system
- Evidence = sales forms and police affidavits held by the HiDA
- The register is also used to ensure that communal spaces are not encroached on and flood water measures are protected.

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Who holds the register?

- Community organisations
  - housing portfolio member's book - Kennedy Road
  - community register - Hangberg
- Municipality
  - housing register – Mandela and initially, Folweni register
- Collaboration
  - Most recent registrations in Motala Heights and Kennedy Road
  - Hangberg - around review and verification

More characteristics of practice

- In parallel
  - Mandela IS: a community based practice of land administration, under the leadership of a local authority figure who operates much like an induna does in communal areas. Municipality has constructed a register of households eligible for housing in two relocation sites, and spray painted numbers on shacks.

- Registers are seldom static documents, change and adaptation
  - Kennedy Road: a register initially devised by the municipality was adapted by the community organisation to reflect changes arising from properties being transferred through either inheritance or sale.
  - Folweni, councillors took on the role of land allocation, in what appeared to be a vacuum left by the traditional authority and unfilled by the state in a context of administrative ambiguity as the area was not officially declared an R293 town, although it was treated like one, for a long period of time.

Municipal registration initiatives

- Do not begin as rights registration processes, but quickly become so
- Start out as population data bases, primarily planning tools intended to identify and quantify households and curtail the growth of settlements so that development plans can be undertaken for a known quantity and, important to municipalities, in order to avoid rapid influx of newcomers once a settlement has been identified for development.
- A municipal register indicates that the settlement has been recognised by the municipality, sending a signal that tenure is substantially more secure, in the sense that the threat of eviction has been removed in the immediate term, although the municipality's plans most often seem to involve relocation elsewhere.
- At the same time a new set of claims to future development are created, for those households on the register.
- In this sense, municipal registration practices should not be seen purely as urban management functions, as they enhance people's security of tenure and create claims to future development for registered households whose stake in a specific future becomes clearer.

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Some implications: Co-operation & common purpose

- The state's upgrade intervention is contested terrain in some places, especially where the intention is relocation, rather than *in situ* upgrade.
  - esp. in the Abahlali-mobilised settlements, Kennedy Road and parts of Motala Heights.
- Population stabilisation requires co-operation from the community and the community representative body, which, in turn, depends on the future plans for the area.
  - Hangberg: more consensus – e.g. no new dwellings could be built
  - Kennedy Road: relocation is being contested by the community organisation; community organisation updates the register with new names resulting from transactions, inheritance and new entry and also utilises the occupation of land around the existing settlement as leverage in its negotiations with the city
  - Motala Heights: history of demolition and attempted eviction, litigation, high levels of distrust between community and municipality
- Common purpose, or a sufficiently shared vision of the future, appears to be a pre-condition for successful state/community collaboration on settlement stabilisation and curtailing population growth.
- Meaningful engagement with community organisations, in structured processes of participation, is essential to achieve this common purpose.

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Some implications: static or dynamic register

- Static registers borne of intentions to avoid rapid settlement growth once an area has been earmarked for development
- Unlikely to serve the needs of dynamic informal settlement communities, nor remain accurate.
- Upgrading interventions should attend to how registers will be managed over time
- In preference to repeated rounds of registration (Motala Heights and Kennedy Road), more flexible and adaptive approach is required which accommodates both the need to plan for a known quantity and to accommodate reasonable changes, such as those arising from transferring rights and claims under agreed conditions.
- Successive re-registration has the tendency to multiply different forms of evidence and create confusion.

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Some implications: static or dynamic register

- It can also undermine community organisation and community/state relationships and exacerbate vulnerability to abuse, especially in a fairly widespread context of long delays in development.

- The location of the register, and who controls it, and the extent to which people have recourse to an external authority, or a recognised community structure rather than an individual, are additional aspects of what needs to be considered in upgrading interventions that work with what currently exists.

- Authority for land management is a powerful tool in communities and it is the vulnerable whose tenure is most at risk from state, community and family, and even market pressures, as in Hangberg.

Nature of rights

- In several cases evidence was found of differentiated rights.
- Kennedy Road: three distinct categories of households with claims to future development that vary based on length of stay.
  - Newcomers have the weakest claim and founders are first in line for housing options.
  - Hierarchy of claims being entrenched in a new registration being undertaken in cooperation between community organisation and municipality.
- Folweni: the upgrade initiative introduced a kind of *de jure* differentiation which was overlaid onto what appeared to be a functional local practice.
  - The upgrading and regularisation process was not able to upgrade the rights of those households with local forms of evidence to title, even although these appeared to have social legitimacy and mimicked PTOs in most respects, save the official certificate.

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Implications

- The *de facto* rights and claims of households should be identified in upgrading interventions, and accommodated, where possible.
- These tenure arrangements go beyond what ownership and rental are conventionally considered to be.
- This is best achieved in consultation with communities and community organisations which are, in many cases, the existing land managers.
- Incremental upgrading approaches secure rights on a more gradual basis, and at first on a less individualised basis, which better accommodates what already exists.

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Evidence of rights

- Tenure security increases when people have evidence to defend their claims.
- Oral evidence
  – local figures in authority bearing witness or giving testimony, such as the councillors in Folweni, the local leader in Nelson Mandela or the KRDC in Kennedy Road, where community memory also plays a role.
- Documented evidence
  – official documents like the letters giving permission to occupy in Hangberg, the PTO certificates in Folweni and the lease agreements in Motala Heights
  – receipts of sale and letters from councillors in Folweni
  – the sales agreements and affidavits in Nelson Mandela
  – affidavits and committee forms in Hangberg.
- Shack numbering
  – Mandela and Motala Heights: numbers, which correlate with the register, spray painted onto shacks.

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Impact of state intervention on local forms of evidence

- State's presence (or renewed presence) on these existing forms of evidence can undermine tenure security, or support it. Collaboration matters.
- "light" intervention
  - a signal about the intention to develop at some point (such as numbers spray painted onto shacks in Motala Heights or the opening of a relocation register in Mandela)
- "heavy" intervention
  - the upgrading of land rights through the application of legislation, as was the case in Folweni with ULTRA and the DFA
- In Kennedy Road and Motala Heights a new register is being developed, while in Hangberg a review of the community register is being planned by the city with the cooperation of the community structure
- In Folweni, upgrading confirmed the validity of the original PTOs but not the unofficial documents that had been part of *de facto* land administration at the time of upgrading.

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Implications for approach

- Identify what exists
  - the existence and status of local forms of evidence
  - the claims that underpin them
- Build on this …
  - Verify or adapt
  - Identify likely consequences for tenure security for different groups
  - Develop co-operative relationships
    - Potential for conflict and de-stabilisation, especially when the stakes are raised with the prospect of development.
    - Cooperative community/state relationships and cohesive, organised communities are important.
    - Interventions which fail to recognise what currently exists, run the risk of undermining both.

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Conclusion

- The study begins to advance an approach to upgrading which works gradually with what currently exists.
- Early steps might be the blanket recognition of settlements, in order to give residents security of tenure, through proclamation or announcement, or more formally, through incorporation into land use management schemes through zoning or re-zoning.
- Other examples of may include the "de facto land analysis" method which was piloted in an informal settlement in 1991 in what was then KwaZulu and the DFA's initial ownership provision.
- Once a basic tenure security is in place, the door can be opened to more collaborative state/community relationships for engaging on the more detailed and then more individualised aspects of tenure regularisation, including working with existing registers and forms of evidence, and the *de facto* rights and claims that underpin them.

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