

**Notes on Mercy Brown-Luthango's Paper (Development Action Group):  
"Capturing Unearned Values/Leakages to Assist Markets to Work for the Poor"**

**Discussant's Comments**

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**1. Introduction**

The paper brings a fresh approach that addresses practical issues relating to how 'land and property markets can work for the poor' by focusing on the particular experience of how the apartheid state, in collaboration with capital, created immense values from a structured racial separation through targeted public investment in particular (white) areas on the one hand; and completely dysfunctional land and property markets where vast pools of cheap (black) labour was reproduced and maintained through huge public transport subsidies and other draconian statutory controls. The paper's point of entry into the debate of 'making of land and property markets work for the poor' is informed by DAG's vantage position of 20 years of advocacy and lobbying engagements with urban development practice on the ground. While the reality has been that land markets in a capitalist economy in general, and 'racialised capitalism' in particular, work against the poor. The paper therefore suggests that pro-poor urban development praxis in a market-led economy can only emerge through the actions of an interventionist 'developmental' state that has the will and capability to capture 'excess' value created in privileged locations and communities arising from public investment that support booming land and property markets on the one hand; in order to correct market distortions at the lower end of a dysfunctional market.

The paper is therefore premised on a critique of an unchanged practice, which has tended to lag behind progressive discourses that inform the unfolding crafting of post-apartheid deconstruction and policy formulation, institutional reform and statutory frameworks. This disjuncture between policy intent and the reality of urban development practice has been highlighted in various recent commentaries, particularly the reviews on 10 years of democracy in the urban development sector, where massive investments in housing and infrastructure have consolidated the apartheid spatial structure and vision more concretely since the 1990s. What has emerged, as the paper describes, is on the one hand, a state-driven formalized peri-urbanisation of poverty that sits uncomfortably with the informality of marginalized communities positioning themselves more strategically to access urban opportunities by housing themselves in informal settlements.

The unchanging practice manifests itself in a dominant understanding of urban economics that is trapped in the illogic of unsustainable apartheid spatial patterns of development that continues to unquestioningly defend the suburbanization of the poor (now along class or income lines) through increasing expenditures that justify a bizarre acceptance of continuing huge budgets for transport subsidies to support low density urban sprawl despite policy articulation to the contrary. This is also evident in research findings on the nature and forms of inadequate housing conditions and backlogs which occur in the better located informal settlements and overcrowded townships where both dwelling and household densities are very high; yet planned solutions and interventions have not reached similar density levels as advocated by policy. The paper implicitly suggests that the reasons for this include a continued reliance on conventional infrastructure (engineering) standards and planning (layouts, even size & form, location and land) assumptions principles. This helps to explain why current implementation paradigm premised on a state-driven practice of 'delivering' quantifiable/physical objects (eg. housing) has not engendered a participatory development practice but reinforces fragmentation and dysfunctional land and property markets for the poor in peripheral locations – thus a depressed a secondary housing market, for instance.

It is probably useful that some of these grounding remarks could be explicitly incorporated to contextualize and underpin the practice-related entry point of this important contribution to the debate on how land and property markets could be made to work for the poor. The paper seems to suggest that a critique of the

current untransformed development practice, that addresses issues of market distortions and failure has yet to emerge.

## 2. Contextualizing the Paper's Argument.

Contextually therefore, Mercy's paper is a contribution that attempts to close this policy-practice gap in urban development praxis by:

- explicitly acknowledging that there are fundamental polar positions and frameworks over the issue of how land and property markets can work to benefit the poor, within a context of market-driven approaches to urban development that embrace globalization in crafting a development policy framework;
- suggesting that a mediated position can perhaps only be resolved in a concrete engagement in the realm of practice rather than policy-level discursive engagement alone. This is because there is a need to further explore the tensions and interests that play out around the reality of how land and property markets, within a market economy, create or exacerbate poverty, marginalize the poor and force them to create a parallel market and economy (which though equally exploitative, is perhaps more affordable or navigable).
- addressing the centrality of the logic of land and property speculation that drives operation of land and property markets by wooing public sector funding and interventions into favoured sites, and by default, facilitating the red-lining and inaction in less-favoured locations. Speculation therefore tends to direct the movement of development financing – thus the notion that cities, or their residential areas, are shaped by the way they are financed (Pieterse, 2004a and b).

The paper contends that a mediated position will perhaps only come as a result of real compromises in practice informed by an acceptance that new forms of struggles are emerging around the reality of how land and land and property values are created, reproduced and therefore could be equitably shared.

The argument of the paper is therefore steeped in practice and seems to hang together around four practice-related realities that reinforce each other.

### 2.1 *Enhancing the implementation of Constitutionally-mandated social and economic rights.*

Attempts to implement a (human) rights-based approach enshrined in the constitution, increasingly affirmed by the courts (Grootboom, Bredell and recently inner-city Johannesburg) (Huchzermeyer, 2003) requires that the state should find innovative ways to derive additional resources to fulfil their obligation to ensure the realization of the social and economic rights. The emerging doctrine from the progressive aspects of constitutional provisions for socio-economic rights where 'access to adequate housing' for instance, should be realized 'progressively and within the government's available resources' could be strengthened by value capture mechanisms as vehicles for unlocking 'legitimate additional state resources' to ensure that these rights are achieved.

### 2.2 *Deepening the Developmental role of the State.*

The paper suggests that the developmental state debate moves beyond a state that *enables* and *redistributes* resources created from economic growth to one that creates and captures additional value that accrues from past, present and future public and community investment to *ensure* that resources are available to realize the visible achievement of social and economic rights. These measures focus on the strategic and proactive use of planning and development instruments in concert, in space and time. These include:

- Putting in place a sustained, equitable and shared spatial framework to guide public investment and directing state resources (land, infrastructure - especially public transport infrastructure-, and budgets) to enable the poor to access well located sites close to economic opportunities;
- Using public transport investment and corridors (especially rail) and well located state land to define development corridors and bringing people closer to economic opportunity. It is worth acknowledging that densification is occurring in townships and informal settlements in terms of numbers of household rather than dwelling density. Can we learn from this and apply it in planning and development practice and elsewhere?
- Generating more resources by capturing the value, presently lost to the market, that accrues from past, present and future public and community investment to enable the poor to enter the urban economy

(the first and second economy thesis makes little sense until we see the structural linkages between the two; or rather how the former creates and benefits from the latter).

While the paper calls for an aggressive developmental state that has both the will and capacity to reign-in land and property markets in the creating an inclusive urban development, there is need to recognize that the progressive policy gains and intents have not been made 'live' or institutionalized into a functional implementation framework on the ground; or where the ascendancy of technocratic solutions in urban development and planning practice could begin to be replaced by an inclusive and participatory paradigm where communities are the subject rather than object of developmental interventions.

### 2.3 *Correcting Market Distortions.*

While it is acknowledged that past and current market distortions and inequalities in land and property markets were created through an undemocratic system (race based) and continue to be reproduced (in the form of rigid class lines) through an untransformed development practice, there is limited focus by the state to understand and create capacity to intervene in levelling the playfields. The paper's proposals for value capture will help open the debate on urban land and property economics which has tended to feature less prominently in urban development and governance discourses. Initially this could focus on:

- Reviewing existing conventional methods and regimes of generating revenue from state and community investments; and crafting more innovative and legitimate systems for capturing added value;
- Analysis of case studies where unearned value or leakages created by public and community investments are quantified in terms of the extent they have benefited private interests under the guise of luring investment;
- Ensuring that value so captured is directed locally and democratically to redress land and property market imperfections.

### 2.4 *Resolving Contestations over the Competing Ideologies on the Role of & Land Development Law.*

Patrick McAuslan (1980) identified 3 competing ideologies in the approaches to the role of planning or land development law as:

- Traditional common law approach to the role of law: Law exists and should be used to protect private property and its institutions
- Orthodox public administration and planning approach to the role of law: Law exists and should be used to advance the public interest, if necessary against the interest of private property
- Radical or populist approach to the role of law: Law exists and should be used to advance the cause of public participation against both orthodox public administration to the public interest and the common law approach of the overriding importance of private property.

Flowing from the Constitutional commitments for advancing socio-economic rights (the rights-based approach to development) there is need to identify which pieces of enabling legislation related to planning and land development can be used as a platform for lobbying and advocacy in this regard. A cursory look at current statutory framework indicates that in the main, while our policies and legal frameworks have progressive elements in the sense of *having moved down* this spectrum of exclusivity, the balance of forces, interests and therefore practices at play are increasingly skewed to an *upward trajectory* as the emergence and consolidation of a new elites based on crass class lines ascends.

The tensions between constitutional value frameworks, policy intents and the resultant practices play out in who benefits from current distortions in the land and property markets, thereby blurring the kinds of progressive transitions that can be forged to include the marginalized in the workings of land and property markets. One only need to contrast the intents of the Development Facilitation Act (1995) and Breaking New Ground (and its attempts to bring together internal tensions in policy and practice) with the current stasis in creating sustainable human settlements, for instance.

## 3. **Comments on Structure**

Section 3 of the paper drills down to the core of the concrete processes and effects of how the apartheid political economy generated (urban and rural) spatial economic patterns and markets that have remained

resilient in post-apartheid urban development praxis. This suggests that in as much as the implementation of colonial and apartheid development policies involved concerted, aggressive and synchronized state interventions; to restructure the social and spatial geographies of a post-colonial and apartheid reality will probably require an equally (if not more aggressive and sequenced interventions in time and space) to begin to counter the momentum and reality of the interactions between land and property markets in post-apartheid urban (and rural) reconstruction. Central to this agenda is therefore the need for more aggressive developmental state that has both the will and capacity to reign in land and property markets in the creation of sustainable and inclusive urban and rural settlements.

The sections 4 (*Capturing Value for Infrastructure and Services Provision*) and 5 (*Planning and Development Regulatory Instruments*) will need to be streamlined and focused to distinguish between the more market-led and responsive mechanisms that are pre-occupied with in-situ transfers of value, versus those mechanisms that are more amenable to state or community engagements and action for the 'public good' to afford the extraction and redistribution of value generated from public sector investment and interventions. The debate on the type of rating system that is equitable, for instance, could also focus on both the mechanisms for capturing value and the institutional forms that its redistribution may take.

Section 6 (*Implications for the South African context*) will benefit from more focused reworking to reflect on the 'state of the art' in terms of how these mechanisms that can be applied in SA, probably in the form of identification and analyses of:

- The binding constraints and the permissive opportunities (statutory, administrative and policy);
- Relevant local/regional or international exemplars, or a research focus to identify these;
- Stakeholder analysis and likely allies in advocacy and lobbying.

#### 4. Some Conclusions

The paper adds an important dimension to the debate on how land markets can be reigned-in to include the poor, based on a critique of urban development practice in market-led economies. While the local redefinition of 'rules of operation' of urban development practice in the context of globally defined rules will illicit negative and often violent resistance from stakeholders who benefit from the current status quo, the proposals of the paper are not radical but a pragmatic response to correcting structural market distortions that perpetuate a legacy of benefits that accrue to landowners by virtue of past unlevelled playing fields.

It is important to note that the paper acknowledges that the implementation of value capture mechanisms does not ensure the equitable or developmental distribution thereof as the proceeds from sale of state land has demonstrated. While SARS provides an example of how political will and capabilities by the state can be built to generate legitimate resources and tame land and property markets that profit from unearned value created from public and community investment under the guise of rampant speculation and 'free and unregulated markets'.

Value capture is part of a city wide planning approach that opens a whole new frontier of urban development practice that links issues of integration, sustainability, social justice and forms of democratic governance within an increasingly globalized economy where the political economy and political ecology of resource allocation and utilization is intensely contested. This is particularly played out in the urban arena where their manifestations are starkly visible in the breakdown of workings of land and property markets and the resultant forms of poverty that are emerging. This call for different ways of framing the problem through broadening it enough to capture the different facets through one lens as Evans (2002) tries to do:

*Confronting urban liveability requires broaching fundamental debates on the dynamics of the contemporary global political economy. First, there is the question of markets. Neither side of the Manichaeon thinking that pervades contemporary perspectives on markets is very useful to the urban dweller. Triumphalist fantasies in which unfettered markets deliver generalized welfare do little for slum communities... [Nor is] (P)ostmodern romanticism, in which virtuous peasants, as yet uncorrupted by Western culture, cut themselves off from global markets, makes even less sense in mega-cities. Markets have a contribution to make to urban liveability but their contribution is not automatic. Whether markets are part of the problem or part of the solution depends on the contested political processes through which social actors construct and transform*

*them... Confronting the problem of liveability forces us to resurrect the question of alternative agency....Analyzing liveability [and urban land and property markets] also means transposing political debates about sustainability and social justice from fields and forests to the streets, factories, and sewers of the built environment (Evans, 2002: p 3).*

A less emphasized but equally critical issue the paper could look into is the location of local institutional bases for driving *an alternative agency* that can compel the state, which is increasingly locked into, or captured by the interests of capital and the local elites, to capture and redistribute value that accrues from public and community investments that tends to 'circulate' for profit-making and sharing elsewhere. Put differently the question becomes whether the state can be trusted to push value capture and a re-distributive agenda that benefits the poor given a neo-liberal policy framework and practice regime that prevails in urban development praxis in contemporary South Africa (Jenkins, 2002). In DAG's practice, what kinds of mobilizations, alliances and collaborations: locally, regionally and internationally, could emerge or be forged? To wit, the following examples of community mobilization for value capture initiatives come to mind:

- The principled boycott in the late 1990's by the Lotus River, Ottery & Grassy Park community of rates payments to the City of Cape Town premised on the lack of equity in the City's rating system. The community paid their rates into a civic controlled bank account and challenged the City in court for its inequitable rating system;
- Re-constructing and redirecting the struggles and lobbying agenda of the Sea Point domestics to take-on an explicit value obligation and rights-based approach where the rights to living-in-the-city is not based on the benefits of the convenience to this community alone but more importantly to the value this community creates to the unshared liveability the social classes and elites derive and enjoy from their public-subsidised and favoured locations and the lifestyles they enjoy;
- Increase lobbying for sale or privatization of state owned assets (land and infrastructure) whose strategic targeted use could have been used as a lever to include the poor into the mainstream urban economy.

It will be useful to ground the value capture agenda more concretely into the advocacy and lobbying agenda and practice of alternative institutions and agencies that can sustain alternative agency frameworks for a more inclusive institutional architecture in urban development practice.

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