



Do Informal Land Markets Work for Poor People?

An assessment of three
metropolitan cities
in South Africa

Literature review

Isandla Institute and
Stephen Berrisford Consulting
with Progressus Research and Development



Urban LandMark

MAKING URBAN LAND MARKETS WORK FOR THE POOR

May 2007

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Acknowledgements

eThekwini: Mark Byerley, Faizal Seedat, Naroj Ramphal, Peter Gilmore,
Helene Epstein.

Ekurhuleni: Bernard Williamson, Alida Kotzee, Neville Chaine, Peter
Swanepoel

Cape Town: Norah Walker, Jens Kuhn, Keith Smith, Craig Haskins

Thanks also to all the participants of workshop, the councillors and
communities and professionals that participated in the research. A special
thanks to Owen Crankshaw, Firoz Khan and Lauren Royston for insightful
comments during the research process.



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with



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1 Introduction

The literature on urban land generally suggests that there is a straightforward, albeit complex, relationship between (formal) urban land management processes and land markets and informal land markets. Researchers and policy makers understand that the interplay of urban management processes and markets either ‘force’ or encourage people to resort to informal land arrangements. On one side urban land management processes and policies and the land market are arrayed to constitute formality. On the other side, the somewhat anarchic and unregulated activities (usually of poor people) are gathered together under the rubric of informality. Separating the two is a range of ‘barriers to entry’ inherent in the formal policies and urban land management systems and the market.

In this review however, we argue that for researchers and policy makers to suggest that there is a uni-directional relationship between informal land dynamics and land management processes is only half the story: informal land dynamics and land management processes are more complexly intertwined than the current literature suggests. There is a need to think about how processes in different parts of the city co-constitute each other and gain their meaning and social value in the overall process we call the social production of the city (Calderón Cockburn 1999a). As will become evident through the review, the view that informality and formality co-constitute each other has serious implications for interventions in urban land systems in that it opens up new possibilities for addressing the land processes that appear to impoverish large numbers of urban residents.

The aim of this review is to provide an overview of two distinct sets of literatures that are often related and sometimes overlap. The first is the literature related to informal market dynamics and understandings of informality. The second includes an international review of the dynamics and management of urban land systems, but with a specific emphasis on countries in the South.

The review begins with a methodological note (Section 2) before drawing on a few of the important studies of (informal) urban land markets in Africa to highlight key issues that have structured recent debates (Section 3). This is followed by sections that examine how urban land markets are understood (Section 4) and how these understandings relate to urban land management processes (Section 5). In relation to Sections 4 and 5, Section 6 reviews the literature on informal urban land markets. Finally, Section 7 presents different ways of thinking about land and law that are necessary to sustain an alternative view of the relationship between formal and informal urban land markets.

2 Methodology

The review is based on a literature search of major journals relating to urban issues, the catalogue of the British Library, journals relating to land management systems, as well as journals covering legal issues. This has been complemented by the project team’s existing knowledge of research literature generated in relation to informal economy issues, poverty, and urban land management systems. The review included

an Internet scan of important websites such as the Lincoln Land Policy Institute, UN Habitat, and UN Commission for the Legal Empowerment of the Poor.

3 Recent research

In comparison to research and activity in relation to rural land market issues in Africa, urban land markets have tended to receive relatively little attention (Kironde 2000; Mattingly 1991; Mooya and Cloete 2007). In South Africa this is reflected in the lack of state institutional responsibility for urban land management systems. Urban land issues have tended to fall between the Department of Land Affairs and the Department of Housing while the Department for Provincial and Local Government has been left to pick up other issues. The result in South Africa has been that urban land management issues have suffered from “policy and implementation neglect” (Royston 2002, 176).

While recent urban land market research does not compare in output and policy interest in comparison to rural land market research, there have been a number of important contributions to our understanding of African urban land issues. These studies are important points of reference for any new work on urban land systems and for this reason are summarily presented now. The purpose is to provide a set of reference points in the literature as well as an indication of the foci of recent research.

The first study to draw attention to is that undertaken by Robert Home and Hilary Lim. They aimed to explore the role of local **land titling in poverty alleviation** in peri-urban settlements under different land tenure regimes, comparing the experience of selected African and Caribbean countries within the commonwealth (Home and Lim 2004). This research was framed in important ways by the claims made around tenure reform by Hernando de Soto and his Peruvian Institute for Liberty and Democracy (cf. de Soto 1989, 2001). De Soto is arguably an important figure in issues relating to urban land management and informality and one of the important studies in Africa is his Institute’s study of informal land markets in Tanzania. This review will return to this study shortly and de Soto’s ideas and claims more generally in the section on land tenure later. For the moment, it is useful to outline Home and Lim’s main conclusions that informal land issues are more complex than that suggested by a direct relationship between tenure reform and poverty alleviation, that they did not find evidence of the benefits of urban titling claimed by de Soto, and that states should generally “soften their hostility to ‘squatter’ settlements” (Home and Lim 2004, 154).¹

Overlapping in time, if not in aim and scope, has been the study on six Anglophone African cities led by Carole Rakodi and Clement Leduka (2003).² The focus of this study was to analyse the characteristics of **informal land markets and delivery systems**, to increase the institutional understanding and assess the strength and weaknesses of alternative land delivery mechanisms, and to make recommendations for policy. The conclusions of this study highlighted the importance of an historical

¹ For a thorough exploration of the relationship between land markets and poverty alleviation in the South African context see Manya Mooya and Chris Cloete (2007).

² The six cities were Eldoret, Kenya; Enugu, Nigeria; Gaborone, Botswana; Kampala, Uganda; Lusaka, Zambia; and Maseru, Lesotho.

understanding to land laws and confirmed the profoundly gendered nature of informal land delivery systems in these cities. Their study also concluded that informal land delivery is the main channel for poor people to access land and that non-commercial land access is now restricted. These restrictions mean that new and poor households face difficulties in accessing land for housing and that the vast majority of poor people now purchase land. Poor people that are unable to purchase land become tenants, and in practice, most poor people are tenants. Rakodi and Leduka (2004) highlight that informal land delivery systems build on earlier practices and respond to state land management system failures. The advantage of informal land delivery systems is their ability to provide a high volume of land while; the disadvantage is that the location of the land made available is often inappropriate. In their view, poor people choose informal land delivery systems over formal land systems because of informal systems' user-friendly characteristics and greater social legitimacy. The researchers chose to value poor people's choice to operate in the informal land delivery system rather than see 'barriers' (Rakodi 2005). However, the study highlights that although informal land delivery systems are resilient, they are under pressure. Rakodi (2005, 2) turns around the argument that there are barriers to the formal system and suggests that the success of informality can be attributed to their practical attributes and social legitimacy. Her argument is that policies have failed because they have not been based on an understanding of the social rules governing how people act in partly commercialised informal land systems (Rakodi 2005, 1).

The next important study is that of de Soto's Institute for Liberty and Democracy in Tanzania. Although this study and the policy changes that are anticipated to follow are only focused on Tanzania, this work can be regarded as part of a broader international process linked to a high-level United Nations Commission on the Legal Empowerment of the Poor.³ The aim of the study was to get as "complete as possible a picture of how Tanzania's extralegal economy actually operates and how the official system interacts with it based on the conceptual framework that has been developed and advocated by de Soto over the years (de Soto 2006, 19).⁴ The result was a double series of recommendations. The first focused on 'top-down' **reforms** to adapt existing **legal institutions** to meet the needs of poor people. The second highlighted 'bottom-up' reforms which built on and formalised the extralegal 'archetypes' of practices of poor people (de Soto 2006, 55). Understandably, such a study, that includes the support of Tanzania's ex-President Mkapa, has attracted a lot of attention and critique.

The fourth study that requires mentioning in this section is research on 'neo-customary land tenure' in African cities.⁵ Alain Durand-Lasserve, Michael Mattingly and Thomas Mogale have led the study. The aim of this study is to highlight and then clarify dynamics at the interface between formal and customary land tenure systems. 'Neo-customary land tenure' is defined as land for housing that is provided by a catch-all understanding of informal processes that combine customary practices, other informal and formal practices. 'Neo-customary land tenure' is understood to involve social institutions, including central and local government institutions but the basis remains the groups that make land available to their members.⁶

³ See <http://legalempowerment.undp.org>

⁴ See also Lusugga Kironde (2006).

⁵ The project includes a South African case study: Mandela Village north of Pretoria.

⁶ See Durand-Lasserve (2005).

Within South Africa, the report completed by the Urban Sector Network and Development Works (2003) aimed to highlight key urban land issues and identify gaps in policy and practice. The study provides a relatively recent quantitative and qualitative overview of urban land issues. The USN and Development Works' (2003) concluded that there were forms of **market failure** because of:

- Apartheid urban patterns
- Emergence of a gap in the housing market
- Lack of access to appropriate credit
- Lack of low income estate agents
- Complex property transfer procedures

The report assumed that although the current legislative configurations were too complex and created barriers for poor people to access land the system needed to be transformed. In the view of the report, more flexibility was needed in the system to ensure that poor people could access urban land that was underpinned by “documented property rights that are defensible in court and which, in the case of ownership, are tradable on the property market and which can potentially contribute to using property as collateral for credit” (USN and Development Works 2003, 4).

Paul Jenkins (2001; 2002; 2004) has had a long standing interest in urban development in Mozambique and his work on urban land markets for housing in Maputo have yielded important insights. He adds his voice to a growing call to see cities and the activities of urban residents differently (cf. de Boeck and Plissart 2004; Robinson 2006; Simone 2004). Jenkins (2002) points out that we are now focusing on how African **urban dwellers adapt the city** to something more suitable to their needs rather than as previously where the focus was on how they adapted to urban life and wage employment. He “recognises that the formal land market in many developing countries will not act in the foreseeable future on behalf of the urban poor” (Jenkins 2001, 642) and therefore, the “answer is thus not to find ways to regularise the informal, as this runs the risk of just providing new systems for recognition of land rights which are limited and corrupt, and exacerbate social exclusion, but to base the systems on the cultural values and social mechanisms that actually operate – i.e. adapting the formal system to the informal reality” (Jenkins 2002, 4).

There is relatively little research into informal land markets in South Africa. There are only two such studies which we are aware of – Boaden and Karam (2000) and the Rutsch Howard Consortium (2003). Boaden and Karam (2000) use the housing market as a conceptual framework to analyse recipients of subsidised RDP houses selling off their units at less than the initial cost of supplying them. The aim of the research was to provide greater clarity on why new owners sell their units so soon after being allocated them and at a lower price than the cost of the state providing it. Their analysis is more of the housing market than the land market, nevertheless, it is important because it starts to address issues related to informal sales.

Boaden and Karam (2000) draw on existing research such Catherine Cross' (c.f. 2002) insights that the urban model of accessing land derives from experiences of the rural model in that newcomers will approach the figure of authority for permission to reside in the area. Davies (1998) further specifies these ideas by identifying three key behaviour patterns in South African urban informal settlements. Firstly, that there is a communal and individual bias in land tenure. Secondly, that there is usually a period of sponsorship and probation before a new resident is accepted into an area. Thirdly,

that allegiance and affiliation to a local group, such as a political party, is often required before a newcomer is accepted. They start to look at transactions in informal settlements and informal transactions in formal RDP housing projects and to what extent renting is occurring in informal settlements. They found it difficult to ascertain whether transactions were formal or informal because respondents were not clear themselves (Boaden and Karam 2000, 6). They used an open-ended questionnaire in four settlements (Delft and Du Noon developed with project subsidies), Atlantic Heights (consolidation project) and Philippi East (informal settlement)).

In Atlantic Heights, the development trust of the area estimated that approximately 8 per cent of recipients had elected to sell their units once the pre-emptive clause had expired (Boaden and Karam 2000, 8). In the informal settlement of Philippi East, the structures were sold but not the land as this was regarded as belonging to somebody else. This is an interesting recognition of formal land ownership. There did seem to be evidence of brokers emerging in the formal settlements although no information was obtained on how much the units were being resold for.⁷ In terms of dispute resolution the levels of the process related to: between the parties, resorting to the civic organisation, resorting to the police. However, the local authority was considered not to be a point at which to resolve disputes because they were considered as discouraging renting.

It appeared that the transactions resulted in downward raiding. The value of the sales seemed to have an upper limit of R10,000 while the lower limit ranged considerably. This didn't seem to reflect the value of the land or infrastructure. Often properties seemed to change hands so that other land uses, particularly commercial uses could be pursued. In such cases, location seemed to be important but Boaden and Karam found that in general, location within a project area did not seem to be an important factor affecting the value of a dwelling (2000, 14).

In conclusion, Boaden and Karam found significant incidences of buying and selling of subsidised housing. These activities tended to occur in two phases, immediately after allocation and then more gradually as the recipients could no longer afford the living costs associated with service provision. They estimated that between 10 and 30 per cent of houses could have changed hands at least once. The seller is usually under duress in the formal settlements but less so in the informal settlement.⁸ It is interesting

⁷ The role of informal land brokers is well developed in other countries. For example, Edsel Sajor (2005) shows that attempts by land brokers to professionalise and exclude what were considered to be informal land brokers broke down in Cebu City, Philippines. This was because of weaknesses on the part of the state to effectively regulate the system; the value and indispensability of intimate local knowledge; and the relative power of large land buyers over formal land brokers in transactions that were historically conditioned. This led to hybridised networks that consisted of both formal and informal land brokers which leads to the conclusion that there is nothing inherently incompatible between informality, modernisation and high-performing land markets.

⁸ Distress selling is a pervasive feature which the middle classes are able to take advantage of. Thirkell (1996) looks at the involvement of the middle-classes in informal land markets through processes of 'downward-raiding' in Cebu City, Philippines. Thus where informal land transactions were seen as a strategy primarily of poor people, increasingly wealthier people are engaging in these practices. The answer for the participation of middle classes is that the cost of formal options is increasingly out of their reach and the increased confidence in informal land markets. The increase of middle-class people in informal settlements is considered to be beneficial to poor residents because the process of infrastructure provision tends to be speeded up. However, the participation of middle-classes in wider market activities such as acquiring plots, bargaining and the timing of their occupation tended to

that they found that delays in providing transfers increased the chances of informality. This level of informal transactions was also found in the research undertaken by the Finmark Trust on Township Residential Property Markets. This research found that over a five year period many households had transacted by purchasing a house from someone else (Nell, Gordon, and Bertoldi 2004). While this study was focused on the housing market, it is indicative of significant levels of transacting that may or may not have included land in the calculation.

Settlement type	Percentage
informal settlement	63
Site-and-service settlement	14
RDP housing project	12

Source: (Nell, Gordon, and Bertoldi 2004)

The Rutsch Howard Consortium (2003) looked at land markets that were bypassing formal land tenure mechanisms and the deeds registration system on the periphery of Durban. In 2001, a survey of Folweni showed that “there was an informal or extra-legal land market operating and that it functioned well within its local context” (Rutsch Howard Consortium 2003, 3). In a follow up survey in 2003 there was an opportunity to establish what impact an upgrading project that would deliver full services and freehold tenure to the residents would have on the operation of the informal system.

The study found an important role for an external witness to the transaction. This could range from the councillor in the area, to the Izinduna, the police, a community leader or some other mutually agreed upon person. In some cases, attorneys (but not necessarily conveyancers) were approached to confirm the value of the property and witness the transaction suggesting a new interface between formal and informal systems. The immediate cause of the extra-legal land market are traced to “the complexity of the formal system which is not often understood, is time consuming and is expensive” (Rutsch Howard Consortium 2003, 12). The origins of this are traced back to a bureaucratic vacuum that emerged around the social and political changes that occurred in Kwazulu-Natal in the late 1980s and 1990s, the collapse of influx control and huge population movements. Inevitably, people drew on their experiences and histories of rural land tenure arrangements and adapted these to bring some measure of legitimacy and stability to the land market. Despite these factors, they make the point that actors in informal land markets consider their arrangements “to be *in lieu* of the formal system of land registration and not in substitution” (Rutsch Howard Consortium 2003, 14). The research sets out to link the extra-legal to the legal. The conclusions that emerge are that the extra-legal system “operates as the default paradigm, ... is not hostile to the formal legal land market and tenure regime, and is functional” (Rutsch Howard Consortium 2003, 37).

In a review of land availability issues Todes et al (2003, 261-268) identified the following factors as restricting the availability of land in three of South Africa’s metropolitan areas – eThekweni, Cape Town and Port Elizabeth (Nelson Mandela Metropolitan Council):

adversely affect poorer households.

- competing land use claims to land between residential and industrial and commercial uses (and environmental uses)
- considerable amount of well-located land is privately owned forcing the local authority into a reactive mode
- uncertain ownership within the state of well-located land
- institutional fragmentation within the state hampers co-ordinating responses
- level of housing subsidy amount used for land is below the market value of well-located land
- political issues such as Ingonyama Trust
- NIMBY factors
- Complexity of devising projects that can get around these issues are resources and time intensive.
- Money allocated to poorly performing projects in peripheral locations remains locked in these projects
- Difficulties in the administrative system mean that centrally located projects are under pressure where the costs are higher.
- Absence of a land policy linked to spatial framework

To round off this list of recent research, which is by no means exhaustive, we consider Adarkwah Antwi's work on Accra, Ghana (Antwi 2002; Antwi and Adams 2003; Antwi and Deakin 1996; Antwi and Omirin 2006). Antwi (2002) points out that informal land systems tend to be considered by policy makers as inefficient and as responsible for problems such as the lack of allocation of land for recreation/education/ public uses within informal settlements. In addition, traditional land owners are identified as being responsible for "high and escalating land prices, control who obtains land, the extent of land released, and charge arbitrary prices reflecting some non-economic attributes of purchasers" (Antwi 2002, 7). The argument goes that government intervention is needed to solve these problems. However, as Antwi notes, many assertions about informal land markets are not based on any empirical evidence. In the settlements in Accra, Antwi found that traditional landowners do not control the market, the choice of who is granted land is determined by ability to pay and that land prices are not often high and determined by market conditions. The results also suggest that bureaucratically supplied attributes of markets such as proof of titling and registration are completely irrelevant to this market (Antwi 2002, 21). This leads Antwi (2002, 22) to argue that "future formal policies and practices of land management should be viewed in terms of market regulation, not intervention".

Although these studies have all had different aims to the research being conducted now, they highlight important themes that both help frame and differentiate the current research. Important themes that emerge relate to land titling and legal reforms, the relationship between poverty and land, delivery systems and urban policies and land markets and forms of market failure. Despite this work, there remains widespread agreement that planners and policy makers lack basic information on African urban property markets and consequently how to manage urban land more effectively. In the following section, we turn to consider literature related to land markets before turning to the management of urban land.

4 Land markets

There was general recognition in South East Asia that the informal and illegal land markets were the main ways in which people accessed urban land (Angel et al. 1983). Calderón Cockburn (1999b) reached the same conclusion for Latin American cities by the end of the 1990s. Rakodi and Leduka (2004) have recently found the same conclusion for six cities in sub-Saharan Africa.

Generally the literature has tended to divide into two areas. Those that see informal land markets as arising from the *logic* of the capitalist land market. This view tends to associate the activities of agents in land markets with the general framework of the mode of accumulation. The other view is that it is the costs associated with *legality* that explain the informal land markets. This leads to the conclusion that radical regulatory reform is required and the development of a land market is considered a positive outcome.

Kironde (2000, 153) sets out a general understanding of urban land markets in Africa. In terms of this general understanding, an urban land market is considered to be a “framework in which those seeking land, and those owning or controlling land, are brought into transaction in order to effect access to land by the land seekers”. The understanding of the market framework is essentially prescribed by definitions of who participates in it and their assumed rationalities. For example, Mooya and Cloete (2007, 152) define the land market in terms of categories of agents such as ‘users’, ‘investors’, and ‘developers’. These categories give rise to ‘letting markets’, ‘capital markets’, and ‘development markets’ respectively. What is important to note is that these understandings are based on theoretical abstractions rather than observations of actual economic practices. The distinction between theoretical abstractions and actual economic practices around land transactions is an important one and we will return to it later.

For David Dowall (1993, 3), land markets perform two additional functions. Firstly, to allocate land so that the quantity of land supplied equals the quantity of land demanded and thereby ‘clearing’ the market, and secondly ensuring that land is efficiently used. The demand for land is understood as a demand derived from the demand for different economic activities (Dowall 1993). Efficient land markets therefore not only allocate land to maximise social welfare they also allocate productively amongst land uses (Harvey and Jowsey 2004). Different land uses, have differing potential to contribute to economic growth. The land market “encourages developers to develop sites to their highest economic potential, picking that use and building at that density that will yield the highest residual land value. Any bid to buy land to be used for a lower intensity use will lose out to bidders who will be able to make a higher offer” (Dowall 1993, 7). Maintaining efficient land markets requires the (local) state to eliminate barriers to entry, promote competition, and avoid unnecessary regulation that restricts the operation of the market (Dowall 1993, 11). The acceptance of this view of land markets, introduces the possibility that markets are understood to be unable to work for poor people.

There has been relatively more research conducted on rural land markets and it is instructive to borrow selectively from insights generated from such work. The dis-equalising effects of transactions costs have generally resulted in policy makers

