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2004
Elsevier
http://hdl.handle.net/10539/11847
Huchzermeyer, Marie. 2004. From ‘‘contravention of laws’’ to ‘‘lack of rights’’: redefining the problem of informal settlements in South Africa. Habitat International vol.28 p. 333–347

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Habitat International 28 (2004) 333–347

HABITAT INTERNATIONAL

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From "contravention of laws" to "lack of rights": redefining the problem of informal settlements in South Africa

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Received 30 August 2002; received in revised form 9 June 2003; accepted 13 June 2003

Abstract

Informal urban land occupation in South Africa is treated in a technocratic manner, consistent with the policy of orderly urbanisation introduced in the 1980s. This approach focusses on the contravention of laws governing property and land use, and accordingly results in most cases in evictions and relocations. A new mandate of the national Department of Housing is to eradicate the phenomenon of urban informal settlements in the next 15 years. This mandate gives new justification to the deterministic approach of eviction and relocation within the government's standardised capital subsidy programme for housing delivery. Legislation has been tightened to enable the repression of new informal land occupations. The recent housing strategy proposal for Johannesburg, which advocates a zero tolerance approach to informal land occupations, remains largely undisputed. However, the media has often sided with the urban poor in recent cases of forceful eviction. This paper argues for a new paradigm, based on the recognition of the infringement of constitutional rights that is enabled by informality. Far from seeing informal settlements as a solution to the housing problem, it draws attention to the multiple levels of exploitation that are common to residents of informal land occupations. A socially compatible approach to intervention is suggested. This starts with mechanisms to protect residents against the infringement of their constitutional rights, rather than acting on their contravention of property laws.
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Keywords: South Africa; Informal settlements; Housing policy; Rights

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doi:10.1016/S0197-3975(03)00058-4

1. Introduction

Policy makers in South Africa have defined the problem of informality in human settlements from a technical perspective, with a focus on the illegality of the settlement process, of the land use and the building type. This definition, which has promoted the socially disruptive replacement of such settlements with formal, standardised units, is based on assumptions of the functioning of the low-income housing market that appear incorrect, when compared to the findings of socially oriented analyses. However, the socially oriented discourse on this topic, while highlighting incompatibilities in the intervention approach, has not presented an alternative definition of the problem of informality. This discourse has therefore had a limited impact on the political discourse on informal settlements in South Africa, which has maintained much continuity with the bureaucratic approach that was mainstreamed in the 1980s. A redefinition of informality in human settlements, and its promotion, is required in order for politicians and their officials in South Africa to recognise and more appropriately respond to the reality of urban land invasions and informal settlements.

This paper begins by situating the context of the current mandate of the national Department of Housing, to address informal settlements. It highlights the danger of a top-down and technically defined approach to fulfilling this mandate. With the example of the 2000 draft Greater Johannesburg Metropolitan Housing Strategy, the paper presents the alarming continuity in expert thinking in dealing with informal settlements in South Africa since the mid 1970s, even before the introduction of the Orderly Urbanisation policy a decade later. The paper asks how the South African government can move beyond the entrenched state of the art, towards greater respect for human rights in the treatment of informality in human settlements.

The paper argues that the problem of informality and illegality in human settlements should be defined from the perspective of those needing to cope with this phenomenon on a daily basis. The legal focus then would not be on the contravention of laws, but on the lack of formal rights, or rather the lack of protection from the infringement of rights by others, including the state. This focus would not lead to a condemnation of the practice of informally occupying land (in the contravention of laws), but to a condemnation of the exploitative and repressive practices that such informality enables. It is the lack of formal rights that allows for exploitation by politicians, by irresponsible or even repressive bureaucracies, and by informally operating groups or individuals in the control over land, access to services, commercial activities, etc. In the final section, the paper asks whether an alternative intervention approach may lead from the recognition of informality as the lack of rights, rather than the contravention of laws.

2. The new mandate of the South African housing department: eradicating informal land occupation

Since late 1999, the question of informal urban land occupation has received national attention, as a result of invasions, evictions and tensions between policy, programmes and the judiciary. In a landmark case in December 1999, the High Court ruled in favour of a group of 510 children with their parents, informally occupying a sports field in the sites and services settlement Wallacedene in Cape Town after being forcefully evicted from adjacent land. The ruling was with reference to Section 28(1)(c) of the Constitution (Republic of South Africa, 1996), which gives children an

unqualified right to shelter. The high court ruling obliged the authorities to provide minimum basic shelter in the form of tents, portable latrines and a regular supply of water, until such time as the parents were able to shelter their children themselves (Davis, 1999).

This ruling was opposed by the Municipality in the Constitutional Court. The subsequent Constitutional Court ruling in October 2000 was based on Section 26 of the Constitution, which defines a right to access to adequate housing, though qualifying this as a progressive right, to be realised within the available resources of the state (Republic of South Africa, 1996). After assessing the government's housing programme, which caters for long-term delivery and not for the immediate needs and crises faced by those living in intolerable conditions, the Constitutional Court ruled that the housing programme should be revised, to ensure that at least "a significant number of people in need are afforded relief" (quoted in Financial Mail, 2000; see also Huchzermeyer, 2003b). In a television documentary on this case, screened on SABC3 (2000) in South Africa, the national Minister of Housing admits that it is "back to the drawing board" with regards to policy for informal land occupation (Hands-On Productions, 2001).

The question of informal urban land occupation again became an embarrassment to the national Department of Housing in February 2001, when President Mbeki addressed the nation at the opening of Parliament. In his speech the President highlighted the government's aim "to conduct a sustained campaign against rural and urban poverty and underdevelopment". This campaign would be implemented through "an integrated rural development strategy as well as an urban renewal programme". While applauding progress with regard to rural development, he added that the same could not be said for the Urban Renewal Programme (Mbeki, 2001, p. 9). The Urban Renewal Programme, with the aim of "further speeding up the pace of local housing delivery," falls under the national Department of Housing (Scheepers, 2001b). As a result of the President's critical words, the Housing Department sees itself mandated to respond to inadequacies that have been identified in its programmes.

Linked to the President's statement at the opening of Parliament is the vision of a "shack-free city". Here the mandate to the national Department of Housing is to "eradicate informal settlements" in the next 15 years (Mphafudi, personal communication, see also Mthembi-Mahanyele, 2001). A socially insensitive interpretation of this mandate was evident in government's uncompromising response to the informal occupation of land in Bredell in Kempton Park, Johannesburg, in July 2001 (Ngobeni & Deane, 2001; see also Huchzermeyer, 2003b). This was followed by government's announcement of intentions to widen the scope of prosecution through an amendment to the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act 19 (abbreviated PIE) of 1998 (Mvoko, 2001), though this has not been followed through to date.

Informal land occupation is officially considered a legacy of the past, from which the new South Africa must progress. It is a legacy that the housing policy launched in 1994 has not been able to redress. And while the 1994 Housing White Paper states that "the time for policy debate is now past—the time for delivery has arrived" (Department of Housing, 1994, p. 4), the national Department of Housing is reopening the debate (albeit internally) on informal settlement intervention and has embarked on a scoping exercise to estimate shack numbers and informal settlement types country wide (Mphafudi, Naidoo, & Lewis, personal communication).

3. South African state of the art: enforcement of law and order

How will the national Department of Housing respond to the data it collects on the scale and nature of informal settlements? The real danger exists, as recognised by national Housing Department officials (Mphafudi et al., personal communication), that the mandate of eradicating shacks by 2015 is translated into a top-down approach. Already, developments in Alexandra Township, one of the five focus areas of the national Urban Renewal Programme,[1] have had a heavy hand in dealing with informal land occupation. The recent forced relocations from a shack settlement on the flood-prone banks of the cholera-threatened Jukskei River in Alexandra to a distant relocation site in Diepsloot, an unserviced area in Roodepoort on the East Rand (some 30 km from Alexandra), prompted media statements such as "Alex removals suggest apartheid-style remedy" (Sunday Independent, February 18, 2001a), "Disturbing echo in Alex removals" (Sunday Independent, February 18, 2001b). With regards to the relocation site, media reports 1 month later were equally critical: "Alex residents moved to Diepsloot still without basic services" (Nhlapo (2001) in the Mail and Guardian, March 16–22, 2001).

As suggested by the media, informal settlement policy in South Africa has not changed significantly with the change in government in 1994. Current practice was mainstreamed with the Policy of Orderly Urbanisation in the mid 1980s, though practiced selectively in preceding decades, and having roots in the liberalising policy proposals of the 1940s, which were not politically sustainable at the time (Huchzermeyer, 2002a,b). The Relocation of shack dwellers to distant greenfield developments was part of the Orderly Urbanisation Policy at its introduction. Officially, it advocated "controlled squatting" on "designated land," through the "upgrading" of invaded land or the "orderly development" of uninhabited land (Cooper et al., 1987, p. 342). "Homeownership" and "realistic standards" were to apply to these developments (Cooper et al., 1987, p. 333), while implementation was to occur through the private sector (Cooper et al., 1987, pp. 333, 334). In practice, selected informal settlements were afforded transit camp status, until such time as a sites and services project was elaborated, and the households could be relocated (Huchzermeyer, 2003a).

Independent Development Trust (IDT)[2] funded sites and services projects of the early 1990s continued this practice, by assigning developers the role of identifying beneficiary communities for large-scale greenfield projects, although some attempts at in situ upgrading were pioneered at this time. The bulk of the post-1994 housing delivery has likewise been on greenfield sites, to which shack dwellers have been relocated.[3]

[1] As mentioned in the presidential speech, R1.3 billion will be spent on "integrated development" of Alexandra over the next 7 years (Mbeki, 2001, p. 9).

[2] The IDT, was set up in 1990 through a government grant of R2 billion, in order to implement the poverty alleviation concepts of the Urban Foundation, a private sector think tank that was formed in response to labour instability in 1976 (Nuttall, 1997).

[3] From 1994 to 1998, the Gauteng Province delivered 61 greenfield projects, with a total of 55,435 stands. Alternative approaches to housing were either still under elaboration, or had achieved a scale in the order of only 1000 units (Gauteng Department of Housing and Land Affairs, 1998, p. 3). A similar trend is evident in Cape Town, where 79% of housing subsidies from 1994 to March 2001 were for project-linked developments, with attempts to maximise project size (Cape Metropolitan Council, 2001).

The definition of informality in human settlements in South Africa, throughout the 20th century, has focussed on the contravention of laws, particularly those protecting private property, and those pertaining to land-use regulations. The threat of informal settlements to privileged property rights, as well as their threat to the security, health and well being of the privileged classes, has justified a socially insensitive intervention through relocation, associated with the enforcement of law and order. As argued by Berner (2000, p. 4), "[i]f illegal settlements are merely seen as a violation of private or public property rights, then the forceful and if necessary violent restoration of these rights is the obvious solution".

In South Africa, the rights of privileged classes were, until recently, underpinned by racially discriminatory legislation, excluding the black population from full citizenship, and by implication from participation in democratic decision-making. Since the gradual dismantling of apartheid legislation, which began in the mid 1980s, the urban land rights of the privileged have been upheld through market-oriented policy and discourse, which associates informal settlements primarily with threats to land values. More subtly, this is supported by the conservationist discourse, which emphasises a causal link between land invasions and the destruction of sensitive habitats and pollution of waterways. This discourse, associating land invasions with criminal intent or unjustified personal gain, has legitimised a socially insensitive intervention through relocation, and the enforcement of law and order.

The draft Greater Johannesburg Metropolitan Council Housing Strategy of April 2001 presents this position very clearly. Under "Housing Challenges", it lists "Land invasions: the Johannesburg Metropolitan Area has been consistently subjected to an ongoing process of illegal land and building invasions that are either politically or commercially driven" (Spadework Consortium, 2000, p. 6). Under its three-pronged response to housing challenges (Land Release, Informal Settlement Upgrading, and Preventing and Containing Land Invasions), the strategy proposes the following approach to dealing with informal occupation of land: to survey all existing informal settlements, to register existing structures, and to freeze the settlements by preventing any additional informal structures. Any new invasion of land, and any expansion or densification of existing settlements will be prevented through the subprogramme on "Preventing and Containing Land Invasions". Through this programme, speedy removal by a "Rapid Response Unit" is envisaged (Spadework Consortium, 2000, p. 26). Strategic land and buildings will be under "surveillance" (Spadework Consortium, 2000, p. 26), and security firms are to be subcontracted to assist with demolition and removal of invaders. Further, it is suggested that

> If the Response Unit is required to move the same person more than 3 times they should report them to the Police and the person should be jailed for a specified period of time. By-laws should be put in place in this regard (Spadework Consortium, 2000, p. 27).

Most alarmingly, this "zero tolerance" policy is to be implemented through a "Legal Campaign" to review and tighten the legislation, to set the necessary precedents, and to lobby for conservative support from the legal sector (Spadework Consortium, 2000, p. 27).

The policy proposal is remarkably identical to policy introduced for "coloured squatting" in 1974. A nation-wide freeze of all coloured informal settlements was applied that year, whereas African informal settlements continued to be demolished en mass, and African women and children were arrested and repatriated to rural homelands. These ruthless interventions were supported by the progressive tightening of the Prevention of Illegal Squatting Act (Huchzermeyer,

1999b, p. 94). With the delivery of formal "coloured" housing, the number of registered shacks in Cape Town was reduced from 27,000 in 1974 to 7800 in 1981 (Howe, 1982, p. 6). However, the official freeze bore no relation to the actual housing need hidden in overcrowded formal housing. As from 1974, new coloured "squatters" were treated under the same preventative legislation as African "squatters", and in the absence of any alternative, "squatting" for African and coloured people alike became a life of repeated harassment, demolition, arrests, and reconstruction of shacks.

The Greater Johannesburg Metropolitan Housing Strategy appears to be no more realistic and no less ruthless. Existing settlements are to be upgraded or relocated at a rate that will take 10–13 years,[4] provided the complete moratorium on informal settlement expansion and land invasion, or the so-called "zero tolerance policy" (Spadework Consortium, 2000, p. 28) is enforced. This is extremely unlikely. Firstly, the "Housing Challenges" section of the draft strategy makes no reference to rates of growth in informal settlements. A freeze of informal settlements can only be implemented if the affected population is stable or decreasing. There are no signs to indicate that this is the case. On the contrary—there is increasing evidence that the HIV/AIDS epidemic[5] in South Africa, which increases household vulnerability, will drive even more households and individuals into selling their assets and moving into insecure tenure, be this a life on the inner-city streets, or in peripheral informal settlements (Thomas & Howard, 1998).

Secondly, informal settlement residents have demonstrated their resistance to external control. Decades of South Africa's recent apartheid history are shamed by vulnerable women and children courageously defying policies of zero tolerance. Their resilience and determination for a survival in the cities remains the same. Sadly, for those still needing to resort to informal residences, insecurity and vulnerability has also not altered significantly. For those that have received temporary legal status, so-called "transit camp" status, a formal development process and relocation may lie many years in the future. Those that have received formally titled plots (in most instances these are in relocation sites distant from the original settlement) face new challenges: individualisation and commodification, social division and segregation, new economic burdens associated with increased travel distances, and ultimately (at least for some) renewed displacement as the subsidised asset (the capital subsidy house) is converted into much-needed cash. This too is restricted by a recent legislative amendment for the first 8 years after possession (Scheepers, 2001a; Republic of South Africa, 2001), though probably not enforceable.

[4] Spadework Consortium (2000, p. 5) estimate 117,000 informal settlement households in the Greater Johannesburg Metropolitan Area, and the proposed target for upgrading or relocation is "at least 8750 households per annum" (Spadework Consortium, 2000, p. 25). Accordingly, it would take at least 13 years to cater for these households.

[5] One out of every seven adults was believed to be infected with HIV in mid 2000 (Thomas & Crewe, 2000, p. 2), whereas statistics from November 2000 indicate that one of every nine people, and one in every four women in South Africa are HIV positive (Department of Health, 2001). A worst-case scenario is a negative population growth rate for South Africa by 2008 (Abt Associates, 2000, cited in Tomlinson, 2001). However, such figures cannot be used indiscriminately to suggest a reduction in the population of the poor—AIDS statistics have at times been used indiscriminately to support particular ideological positions (Gilbert & Walker, 2000).

4. Moving beyond the state of the art?

These processes and implications have been recognised and highlighted in the critical South African research literature.[6] I have asked elsewhere (Huchzermeyer, 1999b, 2001a), why these research insights have not challenged the state of the art of dealing with informal settlements. One reason certainly appeared to be that researchers producing insights into the social implications of the current approach have not developed any clear alternatives for debate (Huchzermeyer, 2001a). The relevant social scientists are not positioned in the policy discourse, which remains dominated by experienced technocrats drawing on flawed social paradigms (see Huchzermeyer, 2001a).

Why has this flawed and inadequate discourse and policy on informal land occupation in South Africa endured? One explanation may be drawn from Rein and Schön (1993, p. 145), who argue that "[s]tubborn policy controversies tend to be enduring, relatively immune to resolution by reference to evidence, and seldom finally resolved". They explain this dilemma with reference to "frames" or paradigms, through which people select, organise, interpret and make "sense of a complex reality to provide guideposts for knowing, analysing, persuading, and acting" (Rein & Schön, 1993, p. 146). These frames integrate "facts, values, theories and interests", reflecting "multiple social realities" (Rein & Schön, 1993, p. 145). It is the values and interests reflected in particular frames or paradigms, that appear to resist democratic processes of decision-making over conflicting interests such as informal occupation of land by the urban poor.

In an analysis of the politics of Washington think tanks, Fischer (1993, p. 22) refers to the "theory of technocracy", which explains "a governance process dominated by technically trained knowledge elites," who "replace or control democratic deliberation and decision-making processes…with a more technocratically informed discourse". While Fischer (1993, p. 24) argues that this theory is often applied to scapegoat a "technocratic class" as the obstacle to "democratic socialism", he does acknowledge (almost a decade ago) a new style of policy-making, "a kind of politics of expertise…emerging as part of the contemporary governance strategies".

Technocratic definitions of contentious phenomena such as illegality or informality in human settlements, as well as the selective use of particular social and environmental concepts, clearly play a crucial role within strategies of dominance over the policy discourse, be this by multi- or bilateral agencies, or by the expert local elite. In South Africa, it has been argued that the housing policy process from the early 1990s to date has been dominated, not by civil society, critical academic researchers, or even by the thinking in international agencies, but by the dominant local technocratic elite (see Bond, 1997, 2000; Lalloo, 1999; Huchzermeyer, 2001b). It must be acknowledged, however, that the technocratic approach in South Africa also serves a delivery-driven political agenda, through which the political elite sidelines social movements. If the Department of Housing can still be held to its 1994 commitment to "a partnership between the various tiers of government, the private sector and the communities" within which "all parties…argue for their rights" (Department of Housing, 1994, p. 4), then it

[6] See for instance Huchzermeyer (2001a) for a review of South African informal settlement literature of the 1990s.

should allow for a definition of the problem of informality in human settlements by those actually needing to cope with this phenomenon on a daily basis—residents and their community-based representatives, who struggle to secure a place to live, and to secure the gradual improvement of its conditions.

5. The situation of informal land occupation in South Africa: enabling the infringement of rights

As yet, we have no quantitative knowledge at national level, of the scale of informal urban land occupation in South Africa. The 1996 and 2001 census failed to differentiate between shacks on serviced sites and those on informally occupied land (see Orkin, 1998; Statistics South Africa, 2003), indicating that insecurity of tenure is not an area of national government concern. While it is paramount that we have clarity on the scale and rate of growth of informal urban land occupations in South Africa, policy and legislation should be informed not by numbers alone, but by the qualitative aspects of life in informally occupied urban areas. This should be drawn from the daily experiences of residents and their community-based representatives, struggling to secure a place to live, and to secure the gradual improvement of its conditions.

Anecdotal evidence of the involvement of the Pan Africanist Congress (an opposition party) in the "sale of land" in the recent land invasion at Bredell (Kempton Park) on the outskirts of Johannesburg (see Dube & Bulger, 2001) has popularised assumptions around political and financial exploitation in the informal urban land occupation process. However, neither are all informal urban land occupations organised for political and financial gain, nor are political and financial exploitation the only forms of exploitation enabled by informal land occupation. As long as regulated access to land for the urban poor is not improved (this includes improving the location of the land that is made available to the poor, and the rate at which it is released), the poor have no alternative but to resort to informally occupying land. The unregulated nature of the informal settlement process and its ongoing management opens up opportunities for exploitation at various levels.

At the neighbourhood level, not all individuals are equally committed to the unwritten conduct that governs the use of collective or shared space. The denser an informal land occupation, the less privacy households have, and the more vulnerable they are to disrespect by neighbours. In the densest section of KTC in Cape Town (in excess of 250 dwelling units per hectare),[7] women complained that grey water and sewerage buckets were emptied in the little space there was between shacks. Children had nowhere to play, and the density of the shacks prevented mothers from keeping a watch over their children. Frequent child abuse was associated with the high shack density (Huchzermeyer, 1997).

Beyond the willful exploitation, by child abusers, of the fact that children roam unprotected, children are vulnerable to other forms of exploitation of the unregulated nature of these settlements. A recent media article reported that "[s]tolen electricity claims at least 11 young lives [in the year 2000] in Cato Crest squatter camp" (ka-Manzi, 2001, p. 9). Children are electrocuted

[7] This figure is derived from the shack densities that were analysed in the Nyanga/KTC area in 1995 (see Awotona et al., 1995).

by poorly insulated live electricity wires serving individual households. According to this media report (ka-Manzi, 2001), concerned and outraged neighbours received threats from the perpetrators. In my own research in informal settlements in Nyanga, Cape Town (Huchzermeyer, 1996), households pirating electricity were rendering a commercial service to the squatter community, by selling refrigerated goods and offering entertainment (at a cost). In some instances, owners of such enterprises were living in nearby formal housing, therefore exploiting informality in more than one sense.

The limited status of the interspersed squatters in Nyanga in 1996, with regard to representation in township-wide civic committees and development forums, meant that those having to cope with informality had little power to suggest rules and regulations that might limit their exploitation. This same limitation in representation also meant that squatters in Nyanga were powerless against neglect by local government officials, who collected refuse and night soil irregularly, and were abusive when night-soil buckets were spilling over. Residents and local squatter committees also expressed that their concerns over fire hazards were neglected by those in positions of power (Huchzermeyer, 1996).

This relatively powerless position opens up opportunities for political exploitation from the level of local government councillors, who have the official role of local representation. As representatives of entire wards (including formal and informal areas), rather than individual informal settlements, councillors tend to originate from formal settlements. Even where they are residents of informal settlements, they have tended to represent the formal technically driven system of resource allocation and service delivery, rather than the social realities in informal settlements. Local councillors tend to change sides (see Sithole, 2001), as soon as their positions become jeopardised, as was the experience in four case studies across South Africa, of people-driven initiatives towards informal settlement improvement (Huchzermeyer, 1999a). In this sense, coping with informality implies coping with a system of representation that seldom identifies with the concerns of those living in informal settlements. The introduction in August 2001 of ward committees, has the potential of overcoming this problem. However, it is for individual municipalities to decide, whether these committees have an advisory and communicative function, or whether other functions and powers are delegated. It has been pointed out that there is "as yet no legislation or policy that guarantees that ward committees will become a model for effective community participation" (Hollands, 2001, p. 1).

6. Treating the problems of informality from the perspective of those living in informal settlements

A definition of informality in human settlements from the position of those living in informal land occupations would emphasise the lack of protection against the infringement of rights, rather than the contravention of laws. The Bill of Rights of the South African Constitution (Republic of South Africa, 1996) enshrines the rights "to privacy" (Section 14), "to an environment that is not harmful to their health and well-being" (Section 24(a)), "to have access to adequate housing" (Section 26), and for every child the right to "shelter" (Section 28(1)(c)) and "the right…to be protected from maltreatment, neglect, abuse or degradation" (Section 28(1)(d)). However, the exploitation enabled through informality means that those residing in informal land occupations have no protection against the infringement of these rights.

Exploitation of settlement informality has been recognised in the South African research literature. However, the most influential literature, which is explicitly directed at policy makers, has associated exploitation primarily with community organisations. These are portrayed as being made up of individuals seeking power and personal gain (see for instance Hendler, 1999, p. 136; Tomlinson, 1996, p. 51). The recommendation leading out of this position is one of individualising the relationship between informal settlement residents and the state (see for instance McCarthy, Hindson, & Oelofse, 1995, p. 69; Hindson & McCarthy, 1994, p. 28).[8] By entitling households individually to a standardised, product-linked capital subsidy (even if this entitlement is only realised a decade later), any definition of regulation and intervention is taken out of the hands of community representatives. In effect, this approach, which requires individualisation through the reshaping if not the complete relocation of informal settlements, ignores the possibility that by empowering informal settlement residents through effective protection against multiple levels of exploitation, more socially compatible solutions may be sought.

A shack settlement with a density in excess of 250 dwelling unites per hectare, as with the one portion of KTC in Cape Town mentioned above, clearly requires remodelling into a more adequate spatial arrangement. Despite the spatial inadequacies, residents of this portion of KTC in 1997 expressed their pride in the settlement, their wish not to be relocated, and their interest in solutions (possibly multi-story) that would enable all households to remain in the settlement (Huchzermeyer, 1997). Instead, the settlement has now been replaced through a standardised sites-and-services ''roll-over'' approach (on average, 37 dwelling units per hectare).[9] Most households have been relocated to standardised capital subsidy developments within the ''Integrated Serviced Land Project''. Could a rights-based approach to the KTC settlement have led to a more compact and socially compatible solution?

Returning to the Greater Johannesburg Metropolitan Housing Strategy of April 2000 (Spadework Consortium, 2000), perhaps the most worrying aspect is the conservative project to lobby the legal sector for support of the ''zero tolerance'' approach to new land invasions and to any densification and expansion of existing squatter settlements. In South Africa's transition in the 1980s, the gradual crumbling of the enforcement of apartheid legislation regarding land invasions was associated with courts being increasingly sympathetic to the plight of the land invaders (see Budlender, 1990). This led to transit camp status for informal settlements such as Bloekombos in Cape Town in 1985 (Awotona et al., 1995, p. 4) and Weilers Farm in Southern Johannesburg in mid 1987 (Huchzermeyer, 2001c).

It would be hoped that courts have remained sensitive to the experience of the landless urban poor, and would not be persuaded to support the zero tolerance approach suggested in the Greater Johannesburg Housing Strategy. Indeed, the legal sector has a central role to play in a rights-based redefinition of the treatment of informal urban land occupation in South Africa. This would translate into the condemnation and effective criminalising of the exploitative and repressive practices that are enabled by the unregulated nature of the settlement, and the development of appropriate and enforceable laws and regulations to protect constitutional rights.

[8] For a more detailed discussion of this literature, see Huchzermeyer (2001a).

[9] This figure is derived from the densities that were being implemented in sites-and-services projects in the mid 1990s in the Nyanga/KTC area (see Awotona et al., 1995).

This would involve the development of appropriate forms of tenure security, appropriate regulations governing settlement extension and densification, appropriate regulations to resolve neighbourhood disputes, to protect children from willful abuse as well as negligent environmental harm, appropriate regulations to guarantee rapid response to emergencies such as fires, and appropriate means of guaranteeing fair representation, access to truly integrated urban development, and participation in its definition and implementation.

Such an approach to dealing with informality and illegality in human settlements would go beyond the concept, first promoted internationally in the 1960s (Turner, 1968; Magnin, 1967), that squatter settlements are not a problem but a solution. It recognises that informality in itself is no real solution, unless the effective protection of rights is ensured. This definition also recognises that an informal settlement is not simply a collection of individual households that have found a solution to their individual housing need. Informal settlements are invariably a collective effort to secure access to land and shelter. Collectively, the residents continue to seek the protection of their rights.

The World Summit on Sustainable Development (WSSD) hosted by Johannesburg in September 2002 drew some attention to the South African treatment of informal urban land occupation, though less through its formal agenda, than through demonstrations organised by South African civil society organisations including the newly formed Landless People's Movement. Through its formal agenda, the WSSD provided for the Johannesburg Metropolitan Council to introduce the concept of "sustainability" into its housing strategy (see Syn-Consult and City of Johannesburg, 2001). However, it was not adequately recognised in South Africa that Agenda 21 and associated global declarations commit the signatory governments to "support the shelter strategies of the urban poor" (UNCED, 1992). A common shelter strategy of the urban poor in South Africa involves the informal occupation of land, followed by the construction of temporary shelter, means of accessing basic services and legal campaigns against eviction. If given the necessary support and protection of rights, these strategies would proceed, securing access to credit and subsidies, undertaking spatial and infrastructural planning that would minimise the need for relocation, constructing formal housing (multi-storey where necessary), and ensuring formal access to infrastructure and social facilities. Instead in South Africa, multiple life-threatening hazards are perpetuated through the "return to where you came from" (usually an overcrowded back-yard shack) approach as in the case of the Bredell invasion in July 2001, and the occasional "stay here (or move there) and wait for your capital subsidy house" transit camp approach.

7. Conclusion

This paper does not suggest a solution to informal urban land occupations in South Africa. The causes of this phenomenon as a whole must be recognised in the inequitable urban structure and resulting land market, inadequate policy on urban land reform, unequal access to the urban economy, and inadequate budgetary allocation to the government's housing delivery programme. These areas require active lobbying, for the problem to be tackled at its source. In the short term, it is all the more important to promote improved conditions and formal integration or inclusion for those having to resort to the informal occupation of land. This should start by an official

recognition of the actual problems experienced by residents of informal land occupations. Many levels of exploitation mark this experience. By legally recognising first the lack of protection of their rights, rather than only their contravention of property laws and land-use regulations, mechanisms may be introduced to reduce exploitation by local residents, business people, criminals, leaders, government officials and politicians, thereby protecting against the infringement of basic constitutional rights and reducing vulnerability.

In order for South Africa to move beyond the technically driven and deterministic informal settlement intervention paradigm that was mainstreamed through the policy of orderly urbanisation in the 1980s, the issue of urban land invasions must be placed in the domain of human rights. As a minimum, a rights-based approach should ensure that local and provincial governments are obliged to consider the social and economic impact of their plans on people's lives. Pressure for such an approach must emanate from the public and from civil society organisations. The recent media coverage of land invasions and evictions, which sympathised with the plight of those resorting to informal residential arrangements, and raised alarm at the intended tightening of policy and legislation by national government, has an important role to play in raising public awareness. The urban NGOs in South Africa have not emphasised the need for urban land reform beyond 1994 (unlike the rural NGO sector, which has focussed on unequal land distribution), and appear reluctant to confront current government policy regarding housing. Urban NGOs have yet to position themselves in relation to the politically sensitive reality of informal urban land occupations.

Acknowledgements

An earlier version of this paper was prepared for the N-AERUS Workshop: "Coping with informality and illegality in human settlements in South Africa," Belgium, 23–26 May 2001. Valuable comments were made by Geoff Budlender, Kirsty McLean and Ingrid Jacobsen, and two anonymous referees. A shorter version of this paper titled: 'Redefining the problem of informal urban land occupation: from "contravention of laws" to "lack of rights"', was published in the Annual Report 2000/2001 of the Johannesburg-based NGO Planact. However, the views expressed are those of the author and not of any organisation.

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