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Settlement Informality: The importance of understanding change, formality and land and the informal economy.

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1. Introduction

It is widely acknowledged that informal settlements and the processes that lead to their formation and perpetuation are poorly understood (see Environment and Urbanization, 1998; Roy, 2005; Smit, 2006; Misselhorn, 2008). In this paper I attempt to reflect on critical aspects of informality which my exposure to the current shifts and dynamics in the struggle for relevant informal settlement policy and intervention in South Africa have revealed. I start by reviewing the terms applied to settlement informality in South Africa and the focus of their meaning. I trace continuity to date of the conceptualisation that was inherent in apartheid policy, as well as recent shifts that emanate from eradication drives, which in turn reinforce a full circle back to apartheid thinking and practice on informal settlements. I then address what I perceive as important concepts in understanding settlement informality in the South African context – the continuous process of change, the centrality of land and the changing relationship to land, a much ignored formality that is present in informal settlements, and the interaction between settlement informality and the informal sector, particularly in relation to land. I use this to challenge the predominantly quantitative understanding of settlement informality on which city authorities base their intervention. Throughout, I use examples of informal settlements, debates and processes that I have been exposed to, not through structured research, but through active involvement in a small but growing network against repressive informal settlement eradication in South Africa spanning grassroots social movements, their housing rights lawyers and concerned academics, NGOs and practitioners.

2. The nature of settlement informality: what do we need to understand?

2.1 The focus of the terms we use

Definitions of settlement informality tend to focus on the visible, the informal settlements, informal housing, shanty towns, shack-lands, squatter camps, *favelas*, slums – terms abound. With the exception of '*favela*', all these terms are applied in South Africa, with the addition of localized terms such as '*mekuku*' in Gauteng and the northern provinces, '*mjondolo*' in KwaZulu-Natal or '*hokke*' (meaning chicken or livestock-pens) as termed by Afrikaans-speaking informal settlement residents in the Western Cape. These localised terms describe the actual informal structures, the shacks and in their plural refer to entire settlements. A similar focus on the dwellings is found in the official use of the term 'informal settlements' in South Africa. This has its legacy in the Urban Foundations' seminal document *Informal Housing Part 1: Current Situation* (Urban Foundation,

1991:24). It gives the following definition: 'shelter usually constructed with unconventional building materials', thus referring only to the house. This definition underlines the unhelpful housing category in the South African Census 'shack not in back yard' (Statistics South Africa, 2006), which conflates shacks in unauthorized settlements with shacks on legal serviced sites, therefore not revealing the number of households 'occupying land unlawfully' (the legal term in South Africa), living in insecure tenure conditions or in what would be referred to internationally as 'informal settlements'.

This focus in official terminology in South Africa on the nature of the top-structure underplays the importance of land access, land contestation and access to basic services, and is entirely consistent with the focus of South African housing subsidy disbursements on the construction of new housing estates rather than the regularisation and upgrading of informal settlements. In 2008, four years after the introduction of the 'Upgrading of Informal Settlements Programme' (Chapter 13 of the national Housing Code – Department of Housing, 2004c) as part of the new housing policy (see Department of Housing, 2004a) very few applications have been submitted for funding for informal settlement upgrading according to the principles of this programme. As argued by Cape Town-based housing rights lawyer Steve Kahanovitz (2008), the upgrading programme is largely abused to supplement funding for conventional housing programmes. In consistence with this misconception of informal settlement upgrading and focus on the dwelling, officials of the Ekurhuleni Metropolitan Municipality took the SABC (South African Broadcasting Corporation) television crew of the somewhat propagandistic Department of Housing-sponsored 'Breaking New Ground' television series to a site and service area where houses had been built through the household-based consolidation subsidy. The officials explain on screen that this is in situ upgrading of informal settlements (SABC2, screened 8 March 2008). The focus on the house or top-structure is also followed through in the notorious KwaZulu-Natal Elimination and Prevention of Re-mergence of Slums Bill (KwaZulu-Natal Provincial Legislature, 2006) which leaves any mention of insecurity of land tenure out of its definition of 'slum' (Huchzermeyer, 2007b). The definition was amended before enactment in 2007, but no changes were made to the legislation as such to shift away from an emphasis on the top structure (for a critique of this legislation and the context of its enactment, see Huchzermeyer, 2008a).

A fascinating current shift in official definition of settlement informality, however, is explained by Groenewald (2008). One of her respondents is quoted as saying 'Orange Farm [largely a site and service area originating from the late 1980s] from far, even if you don't see a top structure [i.e. you only see shacks] is formal' (*ibid*.:7 – my explanations inserted). Municipal and provincial government officials, in their drive to demonstrate success (for performance management purposes) in eradicating informal settlements by 2014, as mandated by the Gauteng Provincial as well as national government (Huchzermeyer, 2008a), had pragmatically narrowed the definition of 'informal' to those settlements that have no 'layout plan submitted to the Surveyor General' (*ibid*.). While vast areas may visibly be characterized by 'shacks' and until recently were often officially referred to as 'informal settlements', the new definition (rightly) treats site and service areas as already formalized. However, a definitional shift of this nature, based only on an attempt to meet centrally determined eradication targets, is of course superficial and as disturbing as the influential Urban Foundation definition of the 1980s under which site and service areas with shacks were referred to as 'informal'. The newly emerging definition provides no new insight into what settlement informality is, and how it should be responded to.

2.2 Informality as a process of change

As much as John Turner (1968, 1976) famously argued that *Housing is a Verb*, one can insist that 'informal settlement' should be understood as adverb and verb and not adjective and noun, as these settlements are in a process of constant change. For any definition of the phrase 'informal settlement' as adjective and noun, change that is facilitated by the very notion of informality should be central. As the process of informality responds to changing pressures, structures are added, settlements densify or expand, occupants change, a rental market emerges, expands and may be reversed, leadership emerges and is challenged, and as struggles for formal recognition and servicing are fought, sections may be bulldozed, and others densify or gradually consolidate. In South Africa today, this process of change is seldom linear or predictable. A process from invasion through consolidation to formal recognition, legalization and upgrading as described by Makhatini (1994) for Cato Manor in the ambiguous late apartheid years, or similarly by Volbeda (1989) for Brazil, seldom applies today. Instead, informal settlement is a process of frustration over many decades, as typified by settlements such as Harry Gwala (in the Ekurhuleni Metropolitan Municipality), Thembelihle and Protea South (in the City of Johannesburg) (Huchzermeyer, 2009b). Change in informal settlements facilitates on the one hand collective and individual survival, hence collective resistance to 'ring-fencing' (a term used by municipal Land Invasions Units), freezing or control, and on the other hand individual commercial, political and also criminal enrichment, opportunism or exploitation, hence at times subversive resistance to settlement improvement, legalisation or upgrading.

The dominant official solution to informal settlements in South Africa has remained that of erasing the informal settlement and moving households to formal housing. In situ upgrading usually refers to the removal of households from land, replacement of the informal settlement with an orderly township layout mostly at far lower density, thus resulting in the displacement of a large proportion of the original community. Unlawful evictions still occur with no provision of alternative accommodation (see Huchzermeyer, 2003b; Cameron, 2007), often not appealed and resulting in mass displacement. Where there is relocation to temporary relocation areas or to permanent housing developments, a large proportion of non-qualifying or transient households are displaced and informal settlements expand or re-emerge elsewhere, though under the duress of municipal policies of zero tolerance. For Durban, the estimate stands at 40% to 50% of households rendered homeless through relocations (COHRE, 2008:130, citing two sources close to the grass roots). In some instances the vacated settlements are razed to the ground, in other instances re-occupation occurs, to the frustration of housing authorities (see Groenewald, 2008). In KwaZulu-Natal, the Elimination and Prevention of Re-emergence of Slums Act of 2007 (KwaZulu-Natal Provincial Legislature, 2007) provides municipalities with the legal (and forceful) tools to prevent such 're-emergence of slums', and they do make use of them. A June 2008 visit to informal settlements in and around Johannesburg by representatives from the grassroots social movement '*Abahlali base Mjondolo*' in Durban revealed the visible difference between informal settlements in these cities: The Durban representatives noted that in Johannesburg one still sees new shacks erected on the fringes of informal settlements. In Durban, such a sight is now of the past as informal settlements are kept under tight control with constant monitoring and immediate demolition of new structures.

The logic of the KZN Slum Act (KwaZulu-Natal Provincial Legislature, 2007) is that *freezing* informal settlement growth by preventing expansion and densification of existing settlements or new land invasion, is the first step towards eradication. This logic was no different in the height of apartheid. The 1974 freeze of 'coloured' squatting across South Africa coupled with housing allocation only led to a reduction of 'coloured' squatting because of influx control (at that time extended to 'coloured' people) and demolition of any new shacks erected by 'coloured' people (and African people, who were not granted amnesty in the form of a cut-off date for shack construction or informal settlement 'freeze'). The real housing need was met by increased overcrowding in council housing (Huchzermeyer, 2004:100), a trend that is again being witnessed by increasing growth in precarious informal housing in the back yards of formal housing areas (SAIRR, 2008).

Freezing informality of course denies a central characteristic of informal settlements, namely *change*. Freezing (through shack registering – and in Gauteng Province 'bar-coding') indeed is a step towards formalisation, through the means of control. During apartheid, progressive analysts readily associated temporary formalisation of informal settlements into 'transit camps' with state control, and from 1986 onwards under the new policy of 'Orderly Urbanisation', with the imposition of 'order' (Stadler, 1979; Budlender, 1990; Lemon and Cook, 1994). In Huchzermeyer (2003a) the continuity of control into post-apartheid informal settlement policy is demonstrated. In Huchzermeyer (2006) the contradiction between the 2004 Upgrading of Informal Settlements Programme and the 'entrenched political process' (*ibid*.:58) of eradication applying to informal settlements is revealed, with doubts that the 'paradigm shift' that this programme called for would occur. However, recently enacted provincial slum eradication legislation clearly reinforces the continuity of the apartheid policy of control, with the first step of freezing or preventing change. While a judgement on the constitutionality of the provincial legislation is awaited from the Durban High Court at the time of writing in December 2008, the Supreme Court of Appeal, in its judgement on an unlawful eviction carried out by various government departments observes that 'what has happened displays a repetition of the worst of the pre-constitutional past' (Cameron, 2007, also see Footnote 7).

2.3 The changing relationship with land

UN-Habitat defines the noun 'slum' through five conditions which may or may not apply to informal settlements as defined above: Slums as per UN-Habitat (2003) display any of the following: lack of secure tenure, inadequate access to sanitation, inadequate access to water and inadequate shelter, and expose their inhabitants to risk. Where 'slums' refer to informal settlements or unauthorised occupations, it is generally understood that the most important of these slum conditions is 'lack of secure tenure' (Angel, 1988; Lemon, Augustinus, Oosterom and van der Molen, 2007), as without tenure security neither shelter, water nor sanitation improvements can be confidently made. Taken to its extreme in South Africa, the residents of Harry Gwala informal settlement in Ekurhuleni Metropolitan Municipality are told that they cannot receive interim basic services as their settlement is temporary. Eventual relocation is planned and the municipality understands it as a waste of resources to temporarily service an impermanent settlement (Hathorn, personal communication). The entire settlement of over 1000 households had three taps in July 2008 and sanitation is through self-constructed put latrines. Municipal interpretations of the constitutional obligation 'to achieve progressive realisation' of the right to access to 'sufficient access to water' (COHRE, 2008), particularly in relation to

informal settlements, differ across South Africa, City of Cape Town leading with a fairly consistent delivery of basic services to its informal settlements (see Graham, 2006). The Ekurhuleni Metropolitan Municipality's position is at the other extreme. It is economically convenient. As long as insecurity of land tenure is maintained and plans for relocation remain in place, investments in servicing or shelter (whether made by municipalities, NGOs or residents themselves) are at risk of eventually being destroyed.

However, tenure security is not a binary concept consisting only of two extremes – security and insecurity. Most researchers and commentators refer instead to degrees of security (Payne, 2002) or a continuum (Doebele, 1988; Roy, 2005; Marx and Rubin, 2008). Due to non-linear processes of change in informal settlements, the relationship to land must also be understood as shifting ground, leading to a myriad of variations among informal settlements, within informal settlements and over time. The following characteristics that determine this diversity all relate to land and are themselves seldom constant: land ownership; zoning; level of consent of occupation; imminence of eviction and other threats; level of commercialization and prevalence of tenancy relations; settlement size; rate of settlement growth or speed of transformation; density; and level of consolidation and extent of incremental upgrading. Further variables are the extent and frequency of state harassment and control, which, combined with other threats including HIV/AIDS, determine the levels of social stress or fear.

The only land characteristics that remain constant within informal settlements are the date at which the settlement was initiated and its location. However, even location changes in its meaning as occupied land attracts real estate interest in the larger context of urban change and expansion. With growth in the urban economy and increases in the market value of land, *de facto* tenure security may decline as threats of market displacement increase.

2.4 Recognising formality in the informal

Like security and insecurity, the binaries of legal/illegal, formal/informal are challenged with insights into many complex situations that exist between these extremes (Roy, 2005). However, I find the formal/informal binary useful to illustrate the particular way in which one exists within the other. A closer look at the resistance from within informal settlements to displacement and control (or freezing of informal settlements), reveals high levels of structure and indeed formality. One may speak of formality within the informal. At a June 2008 visit to Harry Gwala informal settlement in Ekurhuleni Metropolitan Municipality in Gauteng, we were met by the entire 'Harry Gwala Civic Committee'. Each member was wearing a formal nametag with photograph, name and designation. This is not only a formality in outward presentation of this committee – equally formal are their record keeping, their governance and their efforts over many years to have the settlement recognized and upgraded. Reinforcing this formality, they have secured legal representation from a leading housing rights lawyer, Moray Hathorn of Webber Wentzel Bowen's *pro bono* unit.

Authorities seldom recognize the formal within informal settlements, whether umbrella organisation representing several informal settlements or individual non-aligned settlement committees. Legal correspondence from an informal settlement committee (as in the case of Harry Gwala) is largely ignored or dismissed by the authorities. Instead authorities seek to impose a different formality, one of control. Authorities respond to

informality mostly with a lack of meaningful engagement with the formal structures that represent the informality, its relationship to land and its process of change.

Early in 2008, national government mandated all provinces in South Africa to replicate the KZN Slum Elimination and Prevention of Re-emergence of Slums Act by November 2008 (see Huchzermeyer, 2008a). This instruction ignored the fact that the very same Act is confidently being challenged in court by *Abahlali base Mjondolo* (a formal democratic organisation representing shack dwellers in Durban) through a powerful legal team, which recently secured a favourable Constitutional court ruling on behalf of 'informal' inner city dwellers in an inner city evictions case in Johannesburg (Yacoob, 2008). This ruling requires that municipalities engage meaningfully with all poor communities regarding their housing plans. Meaningful engagement with the formality of informal settlements (which may include powerful formal legal representation) in itself would prevent implementation of the apartheid-style tools of slum elimination and prevention that have been reinforced by the KwaZulu-Natal Provincial Legislature.

2.5 Penetration by the informal sector

A further dimension of settlement informality in South Africa that is poorly understood and responded to in policy is its intersections with the informal sector, also as a process of change. It is important in particular to understand how the informal sector shapes relationships with the land, thus tenure security, how it responds to formality inherent in informal settlements and how it relates to imposed formalisation by city authorities.

Burgess (1978) critiqued the myth (which he identified in John Turner's idealisation of the self-help housing process) that informal settlements are not articulated by the market (see also Ward and Macoloo, 1992). These arguments apply for settlement informality in South Africa, where the penetration by the formal market (through a variety of services and consumables) is often accomplished through informal transactions. In various dimensions, informal settlements are part of the 'informal sector' or the so-called 'second economy', a term introduced with the onset of the second decade of democracy in South Africa. Aside from informal trade in basic necessities through small enterprises, which see their largest growth in informal settlements but are also found in formalised areas of the city (Rogerson, 1996), the informal sector penetrates and shapes or changes settlement informality through shack rental, shack trade and trade in building materials.

However, many informal settlements in South Africa are not strongly articulated by the market. Many are the result of a socially motivated invasion of land, resulting in owner occupation and maintained by strong reciprocal networks and formal governance structures rather than commercialized relations, thus 'a bengin expression of human need' (Huchzermeyer, 2009b: in press – page number to follow). However, the formal governance structures may not be strong enough to prevent informal sector interests from intruding/invading existing settlements, buying up and displacing, often with direct support from local politicians as in the case of Thembelihle in Southern Johannesburg. Anecdotal evidence suggests an increase in informal settlement commercialisation through shacklordism in informal settlements in South Africa, not unrelated to the weakening of the civic movement SANCO's (South African National Civic Organisation's) connection with the grassroots and its incomplete replacement since 2002 with new social movements such as the Landless People's Movement, Anti-privatisation Forum, Anti-Eviction Campaign and *Abahlali baseMjondolo*. In the late 1980s and early 1990s, the civic movement had eradicated the widespread

shacklordism in most informal settlements, chasing shacklords out of informal settlements and instituting democratic committee structures (Cross, 1995), later combined under the unitary umbrella structure, SANCO (Mayekiso, 1996). The Community Leadership Forum in Makause informal settlement in Ekurhuleni is independent of SANCO (which it sees too closely affiliated to the ANC and disinterested in the struggle for access to urban land) and still unaffiliated to any of the new grassroots social movements. Returnees of the February 2007 unlawful forced 'emergency' relocation from Makause to a temporary relocation area in Tsakane, some 40km away, now live as tenants of their former neighbours, as they were forcefully prevented from re-occupying the 200m strip of land that was bulldozed. In this case, commercialisation and densification (both making upgrading technically less feasible) are a direct result of government's unlawful intervention.

In South Africa, studies on the workings of the formal and informal land market for the urban poor (Marx, 2007; Napier, 2008; Marx and Rubin, 2008) are challenged by an unclear distinction between trade of the dwelling and trade of land. Given that state subsidised allocation of urban land happens only within the package of subsidised housing on serviced land, the transition from trade of an impermanent dwelling in an informal settlement to the informal trade of a permanent dwelling that happens be on a fully registered plot, does not necessarily represent a clear transition to informal trade in land or the emergence of an informal land market. This seems to explain why these researchers refer to land and housing markets interchangeably. The point at which an actual land market emerges, with a conscious value given to the parcel of land and not the structure or dwelling, is not clear from these studies. My observation is that in informal settlements in South Africa, the informal commodity is very seldom land. It is restricted to the shack or dwelling, with no conscious commercial value given to the portion of land the dwelling happens to occupy. It appears that it is only with informal settlement formalisation, which includes land titling, that the land is turned into a tradable commodity. However, the formalisation seldom places this newly created commodity in the formal sector. Instead, and perversely, an opportunity is created for an expansion in the informal sector.

It is widely recognised that subsidised titled units (or identifiable units in the process of being titled) are traded informally (Marx and Rubin, 2008) with little protection to the initial 'beneficiary' – no checks against exploitation, no security and no concern for the collective. Factors that contribute to the absence of formal transactions of titled land and units include the cost and inaccessibility of the formal process as well as a five year restriction (reduced from 8 years in 2004) on the sale of state subsidised plots (see Marx, 2007). Nevertheless, regularisation or titling imposes many dimensions of commodification, including land, turning a community into individual consumers that have to fight or compete for their stake largely in the informal market. Commodification that is coupled with the move from informal to formal settlements undermines collective solidarity (see Yose, 1999). The informal formality through which allocation and informal rights to land may have been managed by settlement committees prior to formalisation is replaced by a complex, expensive, inaccessible and restrictive system that is bypassed by the informal trade. This trade has all the benefits of the informal sector – flexibility, low entry costs, competitiveness and ability to respond to demand. However, as the commodity is mostly a desperate household's shelter, the downside of the informal sector – lack of security, no checks again exploitation – lean particularly heavily. There is also evidence that transactions of this nature are often not voluntary (see Karam, 2008).

An incomplete understanding of the interaction between imposed formalisation (the individualised titling of land) and the harmful penetration of the informal sector in the creation of a land market is not only present in influential works such as de Soto (2000), but in most informal settlement 'upgrading' programmes. Ekurhuleni Metropolitan Municipality, no doubt with encouragement from its neo-liberal partner the Cities Alliance, explicitly names its new programme the 'Upgrading for Growth Strategy'. With the economic orthodoxy of urban policy, the temptation always looms to place informal settlement intervention in the realm of economic policy, the reason being the simplistic assumption that a land market can work for (or enrich) the rich as it does for the poor, thus a land asset can be made to create wealth for the poor with no further social expenditure by the state. A current slogan of the British Department for International Development (DFID), which is embraced (but also given more relevant local content) by its South African programme Urban Landmark, is 'Making Markets Work for the Poor'. Abbreviated MM4P, this slogan disingenuously mimics a corporate brand. The message is clear: the solution lies in the market. Ironically, the one thing informal settlement occupants have access to is land. Many have succeeded in defending their rights to it for several decades, at times formally making use of legal representation and the courts. What they need is assistance in accessing basic services, social facilities and housing support. The many failed attempts at making the land market work for the poor have deprived informal settlement residents from land, and in so doing from basic services, social facilities and housing support, because the market displaces them from these benefits – and often it is an informal land and housing market that is unwittingly created.

3. Challenging authorities' understanding of settlement informality

What knowledge of settlement informality is relevant to city authorities? Most municipal officials would respond to any question about informal settlements by presenting numbers of shacks or estimates thereof. The entire drive in South Africa to eradication and control is based on quantitative target-setting with a focus on the informal structure or shack, very distant from the far more subjective aim of improving the lives of informal settlement dwellers in the United Nation's Millennium Development Goal (MDG) 7 Target 11 – which in itself is questioned by a larger enquiry into the relevance of target-setting within the United Nations family (see Huchzermeyer, 2008b). In a context of multi-dimensional change, what is the use of shack numbers? Shack counting and numbering forms part of the monitoring needed for slum eradication. Directly linked to this is a simplistic definition of settlement informality that lends itself to the notion of eradication.

Currently, while there is still no accurate census data on number of households living in informal settlements nationally, individual city authorities will produce a list of informal settlements in their jurisdiction with an estimated or sometimes registered number of shacks in each. Other information is hard to come by. For Harry Gwala informal settlement, it took many legal letters and meetings before the Ekurhuleni Metropolitan Municipality investigated land ownership and exact location of surveyed boundaries of the occupied land. In their drive to evict the community and relocate those qualifying for housing subsidies to an awaiting site, this was irrelevant knowledge. Likewise, level of organisation, density, level of informal investment in shelter and indeed actual 'upgradeability' of an informal settlement is not considered relevant. In the municipality's logic, if earmarked for *in situ* upgrading, standardised plots sizes and conventional housing delivery will require erasing the original settlement in any event. Thus in June

2008, an Ekurhuleni Metropolitan Municipality official informed the Harry Gwala Civic Committee that the still awaited feasibility study had already concluded non-feasibility of in situ upgrading as the municipal owned portion of the occupied land only yielded 380 stands of 250m^2 each. The feasibility study had not engaged with responsive and innovative upgrading possibilities available through the 2004 Upgrading of Informal Settlement Programme (Department of Housing, 2004c) particularly in relation to land, nor with any deeper understanding of processes of change in this settlement and indeed with its formality, e.g. the capacity of the Civic Committee to participate in the search for a solution that would improve people's lives.

As already alluded to above, there is no accurate census data on informal settlements in South Africa (other than at the level of individual enumeration areas), as shacks in unauthorized occupations are counted together with shacks on serviced sites. Why does this matter? The conventional answer is that accurate data is needed for resource allocation (Hasan, Patel and Sattherthwaite, 2005, cited in Huchzermeyer, Karam, Stemela, Siliga and Frazenburg, 2006). A pessimistic response would be that at current rates, a typical city in South Africa is upgrading at the most 3 out of its 180 informal settlements. Each upgrading project takes at least 4 years during which much settlement change occurs, to the frustration of most upgrading methodologies which assume a stable situation, as argued by Kornienko (2008). Information on shack numbers and occupants is quickly rendered out of date.

But what resource allocation does quantifiable data really inform? Accurate data could help grassroots social movements hold municipalities responsible for interim servicing of *all* their informal settlements. However, with the exception of the City of Cape Town, city authorities in South Africa do not interpret this as their obligation. Pithouse (2008b), in his analysis of informal settlement policy in Durban, links this to a shift that occurred in around 2004. Prior to this, the *Electricity-For-All* policy connected shacks in informal settlements to the electricity grid without legalisation of these settlements, and with this came a direct reduction in shack fires and loss of lives and belongings. For Durban, Pithouse (2008a) shows how the increasing focus on eradication of informal settlements by 2014 has discouraged the municipality from allowing any sign of recognition of informality. Despite repeated demands for electricity from the grassroots, the municipality refuses to connect untitled shacks to the power grid. Tragic shack fires have escalated as a direct result (Birkinshaw, 2008).

However, lack of accurate data on the side of authorities has also been used to argue the case of informal settlement evictees. In the Grootboom ruling in 2000, Geoff Budlender (2000) of the Legal Resources Centre, acting as *amici curiea* (friends of the court), cites from the national Departments of Housing appeal to the High Court ruling in this case:

> '... if the applicants and in particular, the first applicant were compelled to provide shelter on a temporary basis as ordered by the Cape High Court, ... the entire housing budget would be swallowed not only by the provision of temporary shelter as determined by the Court but also by the maintenance of these shelters and the services required to be provided'.(Budlener, 2000:paragr 71)

Budlender (2000:paragr.73) argues that

> 'in truth, the government does not know, and has not taken the trouble to find out, how many people would actually qualify, and what it would actually cost, to give effect to the rights determined by the Court *a quo'*.

Budlender (2000:paragr.90-91) continues, regarding the state's contention that the ruling for relief of the affected households was unrealistic and impractical:

> 'There are two approaches which would be unrealistic: [90.1] It would be unrealistic to shut one's eyes to the fact that there are other persons similarly placed, and to pretend that the case involves only the 900 adults and children in this case. [90.2] It would also be unrealistic to pretend that the day after the rendering of judgment in this case, every other homeless person in the country will arrive at a government office, identify himself or herself, and assert the right to a shelter. [91] Adopting the latter course would make it impossible to do the right thing today, for fear that others may arrive tomorrow. It would mean that one can not start the job, because one can not immediately finish'.

Constitutional Court Judge Yacoob (2000:paragr.64) refers to this dilemma in his judgement: 'the contention was that provision for people in desparate need would detract significantly from integrated housing development as defined in the [Housing] Act'. Yacoob accepts the 'scale of the problem', there therefore being 'no sight in end' (ibid.:paragr.65). He acknowledges the lack of information – 'hundreds of thousands (possibly millions) of South Africans live in appalling conditions throughout our country' (ibid.:paragr.80), 'and who are also in urgent need of housing relief' (ibid.:paragr.82), but stops short of ruling that data should be collected. Instead, his ruling relates to the 'Housing Programme', which must be amended to 'provide relief for people who have no access to land, no roof over their heads, and who are living in intolerable conditions or crisis situations' (ibid.:paragr.99).

It took the government four years to make the required amendments, introducing Chapters 12 and 13 of the Housing Code in 2004 (Department of Housing, 2004b,c), though not insisting on their proper implementation. Instead, informal settlement eradication 2014 was squarely on the political agenda (Huchzermeyer, 2008a). In support of the eradication drive, national Department of Housing in 2006 proposed an amendment to the 1997 Prevention of Illegal Evictions and Unlawful Occupation of Land Act (Department of Housing, 2006) which included criminalizing the organisation of land invasions, even if by people living in intolerable conditions. Its official justification for this, was the 'nature and increase of land invasions' (ibid.:9 - paragr.2.5 under 'Memorandum on the Objects of the Prevention of Illegal Eviction From and Unlawful Occupation of Land Amendment Bill, 2006). Borrowing from Budlender's (2000) argument, Huchzermeyer (2007a) in an official submission on this Amendment Bill, asks 'is there any evidence of a gradual or sudden change in nature of and increase in land invasions?' SAIRR (2008) has since confirmed that, due to various factors, possibly including state efforts to eradicate informal settlements across South Africa, growth in land invasions has in fact subsided, with a simultaneous increase in the growth of back yard shacks. According to SAIRR's (2008:1) press release, between 1996 and 2007 'backyard informal structures as a proportion of total informal dwellings grew by 18% while those built in informal settlements declined by 7%'. As a direct consequence of informal settlement management and eradication outsourced to private security companies, the City of Tshwane prides itself on having reduced the number of informal settlements in its city from 60 in 2001 down to 41 in 2007/8, with a total reduction of 1 443 structures. (Huchzermeyer, 2009a).

For civil society as much as for progressive governments or municipalities, it is of course important to properly monitor the scale and nature of informal settlements, including the

change, in order to continuously press for the necessary intervention. According to City of Joburg official Yondela Silimela (2008), a comparison of municipal data-sets on informal settlements had revealed a 7% growth in number of shacks in informal settlements from 2004-2006. This realisation had swayed the municipality's drive of eradication and 'containment' (City of Joburg's term for 'freezing' or the 'prevention of re-emergence') to one of formalisation through minimal intervention by securing tenure and providing access to services (Silemela, 2008; also see Davie, 2008). However, of its 120 informal settlements, the city only deems 59 suitable for such formalisation (*ibid*.), suggesting no fundamental shift in approach, and in particular not embracing the paradigm shift that the 2004 Upgrading of Informal Settlement Programme enabled, in particular with regards to the upgradeability of informal settlements.

While it must be welcomed that progressive officials in the City of Johannesburg are using informal settlement data as evidence to demonstrate to their political heads that the approach of eradication and 'containment' has failed, this needs to be accompanied by an enquiry into the reason for the ongoing change and indeed growth in shacks or informal settlements in that city. In the current case of South Africa, a localised increase in land invasions is very likely caused by the formal and informal land market responses to the 2010 Soccer World Cup, coupled with a general lowering of affordability as transport and food prices increase and HIV-AIDS continues to impact on poor households, causing them to drop down the 'missing rungs' of the imperfect 'housing ladder' or, to state this more directly, often displaced by imposed formalisation from the shelter and land they managed to informally secure over many decades. In a neo-liberal urban context, any effort to relieve the informal settlement situation should involve a constant analysis of the many-dimensional workings of the formal and informal market. What should be prevented, yet is often the reality, is the abuse of accurate informal settlement data to justify repressive eradication of informal settlements in order to enhance growth in the urban land market.

4. Conclusion

Informal settlements, in their change, their relationship to land, their formal organisation and their interaction with the informal economy, are a response to forces and factors that to a large extent can be traced back to conscious government policies and political decisions, often simplistic, opportunistic, blunt and even in contradiction with entrenched legislation. Relevant examples in South Africa are the drive to clean up host cities for the 2010 Soccer World Cup and to eradicate informal settlements by 2014.

Definitions and understandings of settlement informality should not be determined by simplistic and contradictory political decisions, sentiments or mandates. Instead, understandings of settlement informality (including its determination by such mandates) must be used to challenge these same forces. A proper understanding of the interaction between the state programmes/visions/targets, the market and the process of change in informal settlements needs to inform not only resource allocation but also the appropriate framing of informal settlement intervention. The question needs to be confronted, whether an in-depth understanding of settlement informality supports the integration of informal settlements into the market, i.e. *economic policy* (such as Ekurhuleni Metropolitan Municipality's new *Upgrading for Growth Strategy*), or (assuming a capitalist continuum) whether it suggests that informal settlement intervention be treated as a humanitarian response to the imperfections of the market, therefore as social policy, specifically designed to protect from the market, particularly the land market. If the latter, does an understanding and recognition of the formal with

settlement informality help prevent the relationships of patronage that are often associated with social interventions? And does an understanding of the workings of the informal economy help inform an empowering interaction with the segments of the market other than land?

Chapter 13 of the Housing Code, the Upgrading of Informal Settlement Programme, is biased towards social policy in its attempts to alleviate poverty and to promote a land tenure form that will prevent land market displacement. What this programme also allows is proper recognition of and meaningful engagement with the formal within settlement informality – the civic organisations, settlement committees and grassroots social movements. Its funding mechanism allows for the provision of market (and other community) facilities, acknowledging the need to provide interaction with the market. Where it still falls short though, is in recognising change. While it promotes leasehold or even collective rather than individual freehold titling, the Upgrading of Informal Settlements Programme is still a once-off intervention, assuming a stable end state of formal housing is reached in its fourth phase.

The discourse on how to address settlement informality in South Africa has to consider how to refine this programme to resolve its shortcomings (see Footnote 7). However, it needs to go beyond the short term housing programmes set out in the national Department of Housing's 'Code', and must interact with day-to-day municipal practice, particularly in Land Invasion Units, which is underpinned by a National Security (police) and Home Affairs apparatus thus implicated the judgements cited in this paper. Separate from entrenched housing policy, these units and their practice have survived the transition to democracy in South Africa and are now politically tasked with realising a vision by 2014 of not only freezing the informal settlement situation but achieving its complete obliteration. Here possibly lies the biggest clash with the reality of change, formality, land and the informal economy in South Africa's informal settlements, and the biggest challenge for those supporting the formal within informal settlements.

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