

# The potential of informal land markets to reduce urban poverty.<sup>2</sup> Evidence from South Africa

(Resubmission)

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## Abstract

There is a strong argument that the formalisation of informal land markets can reduce urban poverty. In this view, the potential to reduce poverty lies in the ability of the state to introduce appropriate forms of formality and the intrinsic abilities of markets to generate wealth. Pointing to evidence that the results of formalisation initiatives have been less impressive in practice, I argue that one of the reasons is a failure to analyse informal land markets in their own terms. Drawing on evidence from informal land markets in informal settlements in three of South Africa's metropolitan areas, I

demonstrate how informal land markets can be seen in their own terms and the difference this makes to analysing their potential to reduce poverty.

## **Acknowledgements**

This paper is based on a research project commissioned by the Urban LandMark programme and undertaken by Isandla Institute and Stephen Berrisford Consulting with Progressus Research and Development. I am grateful to Mark Napier, Mirjam van Donk and Stephen Berrisford for encouragement to draw on this material and in addition to Silvia Gullino, Michael Kihato, Sivuyile Maboda, Sue Parnell, Edgar Pieterse and Lauren Royston for many useful conversations. Ann Varley made many useful comments on an earlier version of this paper.

## **The potential of informal land markets to reduce urban poverty? Evidence from South Africa**

The relationship between informal urban land markets and poor people is sustained by a diverse set of views that suggests an obvious potential to reduce urban poverty. For example, evidence suggests that informal land markets now account for the main way in which poor people access urban land in many cities in the developing world. In South East Asia (Angel et al., 1983), Latin America (Gilbert and Ward, 1985; Jones and Ward, 1994; Calderón Cockburn, 1999) and Africa (Kironde, 2000; Antwi, 2002; Rakodi and Leduka, 2004) it is thus increasingly rare that poor people access or hold urban land without engaging in some form of transaction.

It is also broadly true that countries with ‘well-functioning’ (formal) land markets tend to generate more wealth (Dowall, 1993; Deininger, 2003). ‘Well-functioning’ land markets are characterised by clear property rights, ease of exchange and the ability to create multiple and complex rights on the same land parcel (Wallace and Williamson, 2006). In contrast, informal land markets of the poor are limited and limiting. Most famously put by de Soto (2001), the property rights traded by poor people in informal land markets represent ‘dead capital’. That is, these property rights tend to lack clarity, and hence, can neither be widely traded nor effectively leveraged to generate wealth.

Thus, the ‘obvious’ potential of informal land markets to reduce poverty turns on the ways in which they create conceptual relationships between key factors. First, the difficult process of targeting ‘the poor’ is made somewhat easier for the state by the

fact that poor people have ‘self-selected’ to trade and hold informal property rights. Second, interventions that address the informality of informal land markets can be conceived as having the advantage of simultaneously removing restrictions whilst creating generative possibilities (Bloch et al., 2006; Mooya and Cloete, 2007). In broad terms, the formalisation of informal property rights promises a means of facilitating market transactions that can realise increases in land values, and in so doing, reduce poverty. Yet, contrary to the simple conceptual elegance suggested by such an obvious understanding, the results have been less than impressive in practice. Urban poverty rates remain consistently high in many cities in developing countries. Increasingly, there is evidence to demonstrate that initiatives to formalise property rights have failed in their own terms in more cases than it has succeeded (Gilbert, 2002; AlSayyad and Roy, 2004; Bromley, 2004; Home and Lim, 2004; Rakodi and Leduka, 2004).

I suggest that one of the reasons for such a poor record is a reluctance to ask questions about *how* ‘informal land markets’ are conceptualised. In my view, the dominant way of thinking about ‘informal land markets’ has limited researcher’s ability to understand their actual potential to reduce poverty. My argument is that informal land markets do have the potential to reduce urban poverty when they can be conceptualised *in their own terms*. The potential emerges from analysing the social, economic and political processes that constitute, and are constituted by, what are currently categorised as informal land markets. This article draws on research on informal land markets in informal settlements in three of South Africa’s metropolitan areas to substantiate this argument.

I have two issues in mind when arguing that we need to understand informal land markets in their own terms. In an everyday sense, there is a political imperative to reorient dominant perspectives and validate forms of knowledge and practices of more vulnerable and marginal groups in societies and in parts of the world otherwise consigned to the 'developing world'. Clearly, poor people do not exist outside of discourses of 'markets' or 'urban development', but there is a sense in which any attempt to reduce poverty should begin from allowing poor people themselves to express and validate their actions and beliefs in diverse conceptual frameworks. In a theoretical (but no less political) sense, I mean to allow for a more composite and interactive sense of informal land markets to emerge so that their agency to effect change comes into view and we can analyse them in relation to multiple social processes.

My argument is not against the formalisation of informal property rights. There are clear advantages to secure property rights that are supported by the state. Moreover, providing changes are carefully managed, there is little doubt that formal property rights can enhance poor people's livelihoods (Huchzermeyer, 2004). Despite intentions however, initiatives to formalise property rights are clearly outstripped by the rates at which poor people are urbanising (Payne, 2005). This paper adopts a pragmatic view that informal land markets will remain an important mechanism for poor people to access urban land and therefore need to be considered in their own right.

The article is structured in three parts. The first part identifies how two dominant approaches are caught up in set of theoretical challenges that make it difficult to

analyse informal land markets in their own terms. The second part develops two strategies to address the theoretical challenges inherent in the approaches by drawing on evidence from research on informal land markets in informal settlements in South Africa. The third part discusses the difference that conceptualising informal land markets in their own terms makes to analysing the potential to reduce poverty.

The article draws on seven months of field research on informal land markets in three of South Africa's metropolitan areas: Durban, Ekurhuleni and Cape Town (Isandla Institute and SBC, 2007). The research involved surveys and interviews in five different types of informal land markets across the three metropolitan areas. The qualitative research generated 75 in-depth interviews while the quantitative survey drew upon the responses of 465 participants. For the purposes of this paper, I draw on a subset of 45 qualitative interviews and 110 survey responses that were recorded in land markets in informal settlements.

### **Part 1 Theoretical challenges**

Part 1 has two sections. The first section sets out two theoretical challenges that must be overcome in order to start seeing informal land markets in their own terms. The two challenges provide the structure for the remainder of the article as I successively engage with each. The second section identifies how the theoretical challenges play out in two dominant approaches to informal land markets by outlining key differences and a similarity in their focus of analyses.

## **1.1 The double burden of informal land markets**

Current conceptualisations of informal land markets are doubly burdened in a theoretical sense. The first ‘burden’ that must be challenged is related to a familiar feature of broader informality studies. Reflective accounts of informality consistently draw attention to the strength of binary logics in structuring conceptual frameworks (Rakowski, 1994a; Roy and AlSayyad, 2004). Thus, researchers continually seek to evade and eviscerate a clumsy inheritance of binary logic yet only succeed in creating new binary distinctions (Benton, 1994). Acknowledging the difficulties of using binary categories to analyse the complexities of everyday life, I want to focus on how binary logics also distribute power between opposite terms. Attending to these power relations is crucial in creating the possibilities for new conceptualisations to emerge. Borrowing from gender studies (Connell, 2000), there is a need to understand how ‘Formality’ continues to act as a master subject making it difficult to see the ‘other’ (of informality) in any way but as expressions of itself. The challenge is to look for ways to analyse informal land markets in terms other than that of their relationship to formal land markets.

The second ‘burden’ requiring challenging is that ‘foundational concepts’ such as markets and transactions have remained relatively untouched by critical theories that have subjected concepts such as gender, class, and race, for example, to thorough analyses (Mitchell, 2002; Zein-Elabdin and Charusheela, 2004). As a result, in analyses of informal land markets, concepts such as ‘markets’ and ‘transactions’ tend to be taken for granted. In this view, all transactions and markets are intrinsically the same and are adopted preformed in different contexts. Consequently, the challenge is

to think of ways in which transactions and markets are changed by the contexts in which they are adopted and by the nature of the objects or property rights being exchanged. In this way, attempts to allow new understandings of the potential of informal land markets to emerge face a *double burden* of the effects of a master subject of Formality and the uncritical usage of concepts such as ‘markets’ and ‘transactions’.

## **1.2 Two approaches to informal urban land markets**

Scholarly approaches to informal land markets have offered many significant insights. The analysis initially focuses on the distinctive contributions of two categories of approaches. I point to the need to combine insights from both approaches in order to move to a more composite view of informal land markets. The initial focus on differences gives way to a key similarity and provides the basis upon which to argue that a further analytical step is required if informal land markets are to be understood in their own terms.

Informal land markets are complex economic and political concepts and practices and there is always the danger that an attempt to categorise conceptual approaches will result in caricatures rather than greater insight. Cognisant of this danger, I adopt Rakowski’s (1994b) broader distinction between ‘legalist’ and ‘structuralist’ approaches to informality, to categorise two important approaches to informal land markets. ‘Legalist’ approaches are based on the view that divisions in society between formal and informal practices are legal and bureaucratic rather than the structural outcome of economic and political forces in society. ‘Structuralist’ approaches are more concerned with highlighting the political economy of

informality, focusing on the social and political dynamics that structure economies in specific and exploitative ways. Both approaches have informed work on informal urban development, informal settlements and informal markets, albeit with different emphases (Jones and Ward, 1994).

### **1.2.1 Legalist and structuralist approaches: key differences**

Working within legalist approaches, scholars of (formal and informal) urban land markets have drawn attention to the role of property rights in transactions and markets in processes of development and investment. Examples within the approach include Deininger and Feder's (1998) insights into the differences between land rental and sales markets and Besley's, (1995) examination of the relationships between property rights and investment incentives.

In contrast, scholars working within structuralist approaches have been concerned with the way that political and economic forces condition the form and distribution of urban settlements. From these approaches, the access of poor people to urban land is primarily a function of their economic exploitation and marginalisation. Examples include Ward et al's (2004) analysis of developers of land markets in irregular settlements and Gilbert et al's (1996) investigation of the role of informal rental arrangements in South African cities. A particular strength of these approaches has been their understanding of how the state is involved in informal land markets that characterise the seemingly unregulated development of cities. For example, Doebele (1994, 47) observes how informal land markets are 'interlaced with, municipal, provincial and national bureaucracies.'

However, despite the considerable insights on markets that legalist approaches offer, there is one aspect that, from the perspective of structuralist approaches, is problematic. This is that legalist approaches tend to have a very partial view of the involvement of the state in informal land markets and tend to neglect the way in which the state itself is an arena of contestation between political forces (Gilbert and Ward, 1985). As I will show below, when legalist approaches adopt a definition of informal land markets as characterised by the absence of the formality of state law, the state tends to disappear from the analysis as well. At best, legalist approaches will ‘embed’ transactions and markets in particular (formal) institutional milieus (Mooya and Cloete, 2007). Presented in such terms, it appears that an improvement in redefining the relationship between informal land markets and poverty reduction would be to combine insights from legalist and structuralist approaches so that a fuller account of the state’s involvement in informal land markets is developed. However, although this is a necessary first step it is not sufficient. To justify further analysis, I examine a key similarity between legalist and structuralist approaches whereby both approaches tend to take definitions of markets for granted.

### **1.2.2 Legalist and structuralist approaches: a similarity**

There are a number of initiatives to push the long tradition of legalist approaches in new directions (for a useful overview see Banik, 2008). Nevertheless, the focus remains on the importance of clearer property rights in order to increase the volumes of transactions and leverage assets to reduced poverty (Mooya and Cloete, 2007). De Soto’s work has emblematically attracted substantial criticism of the longer tradition (Gilbert, 2002; Bromley, 2004; Home and Lim, 2004; Royston, 2006; Mitchell, 2007). Although these criticisms have been profound and, in my view accurate, they

have tended to neglect analysis of markets, as concepts. Such neglect is common to broader endeavour in the social sciences (Gibson-Graham, 1996; Mitchell, 2002) and is not unique to studies of informal land markets. Consequently, what is considered to distinguish an informal land market is its informality rather than anything to do with the intrinsic nature of the market itself. The possibility that the markets might be different is not entertained. Working with such an universal view, the task of using informal land markets to reduce urban poverty is to address the *informality* of informal land markets (Soliman, 2004) rather than think about how they might be constituted by multiple political and economic forces. As a result, I argue that a second analytical step is required. The task is to reconceptualise what an informal land *market* is, in terms other than that of an abstract model of transactions and markets.

## **Part 2 Strategies**

In Part 1, I suggested that the double burden of ‘master subjects’ and a lack of critical analysis of markets are two issues that need to be addressed if informal land markets can be considered in their own terms. Part 2 begins by demonstrating how legalist approaches have a selective view of the involvement of the state in informal land markets. Elaborating on the selectivity of this view is important because it is one of the ways in which Formality continues to operate as a master subject. The view within legalist approaches that formalisation (in broad terms) is the answer to informal land markets, depends on a selective view of the state’s relationship to informal land markets in which the state is represented as largely absent. The view that informal land markets must be understood in terms of Formality is perpetuated by describing

them as a kind of urban vacuum that can only be filled by a greater (state) force. In subsequent sections in Part 2, I use empirical evidence from the South African research and by drawing on insights from structuralist approaches, I undermine the basis for a selective view of the state's relationship to informal land markets. The aim is to ensure that what is labelled 'informal' is not only defined by formality but is shown to be constituted by multiple political and economic processes.

## **2.1 Legalist approaches to informal land markets**

I introduce legalist approaches to informal land markets as a prelude to discussing the how the state is conceptually represented in this perspective. In my view, the legalist approaches have engaged more systematically with informal land markets *as markets* and have tended to stake out the terrain for structuralist approaches considering markets in the processes of urban development. Acknowledging the importance of legalist approaches in this regard, the aim of this section is to outline key points of these approaches to contextualise the selective way in which the state is represented in relation to informal land markets.

From legalist perspectives, informal land markets are simultaneously (explicitly) distinctive and (implicitly) similar to other land markets. The *explicit* distinctiveness of informal land markets derives from their informality. These markets are generally defined as operating almost totally outside the 'realm of public authorities' (Kironde, 2000, 153) or 'formal economy' (Antwi, 2002). That is, they are marked by an absence of state laws and registration systems which is filled creatively and ingeniously by locally-based, 'self-organised systems' (de Soto, 2006).

Notwithstanding their vitality, the local systems or institutions create property rights that quickly reach the limits of their utility and value. The property rights created in informal land markets are considered defective in the sense that they cannot be widely traded or secured. Such deficiencies impede the exchange process that is necessary to create wealth (Mooya and Cloete, 2007). Therefore, despite the property rights created and exchanged in informal land markets representing the dominant form of land holding in African cities (de Soto, 2001), the absence of the formalities associated with the state means that these rights are essentially underutilised. For Mooya and Cloete (2007), high formal land market transaction costs and an inappropriate configuration of formal property rights mean that poor people are 'forced' to resort to informal transactions and cannot realise any capital gains from exchanging property rights. In conceptual terms, the state is present in causing informal land markets to arise through inappropriate forms of formality. Yet, the state remains an exogenous factor to the way informal land markets function.

Despite the constraints inherent in informal property rights, legalist approaches identify ways in which informal land markets can reduce poverty. For example, drawing on insights from New Institutional Economics, Mooya and Cloete (2007, 155) outline the necessary attributes of informal land markets that could reduce poverty as including: 'well defined, secure and enforced property rights; liquidity; low levels of uncertainty; low levels of transaction specific investment; and facilitative regulatory frameworks'. In general, the consequence of this view is that greater levels of formalisation are required to ensure that informal land markets can become more efficient and reduce poverty. The tendency in this approach is to define poverty in asset terms. Adopting a useful distinction between the short and long-term, poverty

reduction occurs through the short-term acquisition of a secure asset and the longer-term ability to leverage this asset and/or trade up. Building on the asset vulnerability frameworks that consider property rights an important asset for poor people, Mooya and Cloete (2007) suggest that it is the tradability of these property rights that hold the key to significant poverty alleviation.

Legalist approaches also work with an *implicit* view of informal land markets as similar to formal land markets. For example, this perspective usually distinguishes between different types of settlement and property rights such as ‘ownership’ (both formal/informal), renting, and squatting in a range of locations within cities and peri-urban locations. Despite this diversity of focus, informal land markets reflect a key similarity to other land markets in that they ‘obey the fundamental economic laws of demand and supply’ (Antwi, 2002). In such a way, informal land markets operate as other markets as a way of bringing buyers and sellers together to clear the market (Kironde, 2000). I share the political intent of resisting the view that informal land markets are somehow ‘traditional’ or unsuited to the modernity of cities. Nevertheless, the suggestion that informal land markets function just like other markets raises key questions about their potential to reduce poverty is conceptualised. In the next paragraph I suggest how legalist approaches have a selective view of the state’s relationship to informal land markets.

## **2.2 A selective view of the state in legalist approaches to informal land markets**

At first glance, suggesting that legalist approaches have a selective view of the state’s involvement in informal land markets might be considered strange. The criticism that

the state tends to be underspecified will also be contested. In defence, ‘legalists’ could point to the work completed by the Peruvian *Instituto Libertad y Democracia* to understand the processes of formalising businesses or claims to land. This work is based on in-depth quantification of the bureaucratic workings of different apparatuses of the state (de Soto, 1989; Schaefer, 2004). Perhaps even more compellingly, ‘legalist’ advocates could argue that the formality of the state is precisely at the centre of their analysis. For example, policy agendas focused on the ‘legal empowerment of the poor’ have fundamentally been driven by concerns of governance (Banik, 2009). Despite such examples, there are overlapping reasons why I believe that legalist approaches selectively view the state and thus perpetuate the need to think of informal land markets from the perspective of the master subject of Formality.

First, the standard legalist definition of informal land markets as representing an absence of state law suggests that, in important ways, the state is considered absent. That is, state laws are recognised as not just existing as text on remote pieces of paper. They must be embodied, practiced, interpreted in the form of surveyors, planners, officials, departments, equipment, diagrams, policies, certificates, measurement, and classifications as complex efforts to create appropriate forms of land administration for informal settlements attest (Barry, 2006). By removing state laws-as-text from the conceptual picture, the practical day-to-day activities that make up formality tend to fade away as well.

Second, while inappropriate forms and levels of formality *cause* informality they are not considered to have any consequence for people’s informal responses (de Soto, 1989; Bromley, 1994). The state remains exogenous to informal land markets. The

exogeniety is reflected in the attention paid to how informal practices fill the space left by an absence of state laws or the ways in which informality arises from processes of circumventing or finding ways around state laws.

Third, the consistent call of those working from legalist perspectives is for greater degrees of formalisation or the introduction of state laws that are more responsive (Soliman, 2004; Kironde, 2006). The state is called upon to intervene so that state laws (that support the operation of the market) can be brought to bear. If the state were already involved in informal land markets, this would not be necessary.

Finally, there is a curious silence on *who* should be using informal land markets to reduce urban poverty. No doubt, this is related to the view that markets are an economic mechanism that function best when left alone in a conducive regulatory environment (Antwi, 2002). Nonetheless, the idea that informal land markets can be instrumentalised in ways to reduce poverty, implies that some social agent should have the power to wield this instrument. In my view, it would be much more difficult to argue that the state could harness informal land markets into a poverty reduction agenda if there was an acknowledgement that the state was involved in sustaining their operation.

In sum, the legalist approaches selectively represent the formalities associated with the state and state laws in relation to informal land markets. In the following section, I draw on evidence from research on informal land markets in South Africa and insights from structuralist approaches to argue that such a selective view of the state

serves to perpetuate the need to see informal land markets as expressions of Formality rather than reflect actual practices.

### **2.3 Evidence from South African urban informal land markets**

The aim now is to disrupt the way in which the state is selectively viewed within legalist approaches so that it becomes possible to talk about informal land markets without having to do this only through the lens of Formality. I weave together examples from the South African research and insights from structuralist approaches. I show that the state is more directly involved than legalist approaches suggest.

The South African research sought to understand how informal land markets operated for poor people in three metropolitan areas in South Africa (Isandla Institute and SBC, 2007). Like many developing countries, South Africa has experienced high rates of urbanisation and the state has been unable to keep up with the provision of serviced and regularised urban land despite an impressive housing programme (Huchzermeyer and Karam, 2006). Consequently, large numbers of people have settled informally in different urban environments from informal settlements to backyard shacks in established townships.

I draw specifically on the subset of markets that were recorded in one informal settlement in each of the three cities. The informal settlements originally involved the unregistered acquisition of private land in Durban and Ekurhuleni, and public land in Cape Town. The land in each settlement was used overwhelmingly for residential purposes and settlers constructed shacks, principally from wood, plastic and corrugated iron sheeting. The selected settlements ranged in size from 862 household

lots in Durban, to 3129 in Ekurhuleni, and 4565 in Cape Town. Quantitative analysis of the three settlements suggested vibrant informal land markets. In the five years prior to the research, an average of 24% of households had informally purchased a property right or were informally renting in the Durban settlements, 38% in the Ekurhuleni settlement, and 15% in the youngest settlement in Cape Town (Isandla Institute and SBC, 2007).

The first example of the state's involvement in informal land markets emerges from the ways in which state actors are involved in clarifying *informal* property rights. State activities are usually associated with converting informal property rights to formal. This has been the intention of decades of site and service schemes and *in-situ* upgrading projects. However, in this case although the state assists in clarifying property rights, the rights remain informal and continue to be exchanged in informal markets.

In the South African examples, the acknowledgement of informal property rights arises in the daily course of the state fulfilling its responsibilities within a pervasive discourse and set of policies relating to 'developmental local government' (Parnell et al., 2000). This typically takes the form of providing access to services such as communal water supplies, basic sanitation and, sometimes, collective refuse removal. The intention behind such interventions/provisions is, at the very least, to mitigate broader public health disasters. Usually, the provision of services is based on some form of enumeration and registration system of both dwellings and population. As one of the respondents in the Durban informal settlement explained: '...the number

system [of shack dwellings] was already being implemented to see how many people lived in this area, so everybody had a number, as a form of identity.’

The research revealed that people in land markets in informal settlements considered their claim to a property right as being most similar to the land claim of ‘temporarily borrowing’ the land (Isandla Institute and SBC, 2007).<sup>1</sup> But, this sense of ‘temporary encroachment’ (Bayat, 2000) on land sits uneasily in an urban context where there are competing demands for land and making it difficult to adjudicate claims based on different ‘logics’. In addition, urban land uses tend to be permanently locked-in by the provision of infrastructure such as water and energy (Gough and Yankson, 2000). Recognising this and appreciating the ineffectualness of claims of ‘temporarily borrowing’, small changes in people’s visibility to the state are important (Varley, 1987). For example, the simple registration of shacks through painting numbers on the walls or doors is perceived as a step towards clarifying property rights, albeit it small and often reversible.

The reason that numbering of shacks is considered a step in the clarification of property rights is that it amounts to the state recognising that person’s claim to some *future* right to development in terms of the state’s housing programmes. Although the state’s promise of development strengthens the claims of residents of informal settlements, the converse can also be true. In the case studies, the longer that people had to wait for development without any apparent change in their claims to property, the weaker they perceived their claim to be.

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<sup>1</sup> ‘The sense of ‘borrowing’ that is being implied here is similar to the ‘temporary pledging’ of unused land which should be returned upon request and that is more common in communal land systems where the property right attaches to the individual rather than a specific piece of land (Deininger and Feder 1998).

The second example relates to transaction costs. Legalist approaches argue that high formal transaction costs create market failures or induce people to transact in other (informal) ways. In the context of formal land markets, high transaction costs impede the exchange that makes it possible to realise the value of the commodity and for poor people to trade their way out of poverty. It is argued that one of the most important ways in which the state can harness informal land markets to poverty alleviation initiatives is to reduce the transaction costs associated with formal land market transactions (Mooya and Cloete, 2007). The research showed that there were clear ways in which state actors were reducing transaction costs by creating assurances between the parties and legitimating exchanges. One example is the involvement in an informal settlement of the local ward councillor providing an assurance of the *bona fides* of the seller's property rights and hence, legitimacy of the sale. A respondent in the research describes this process:

...as she was leaving, she was selling her shack, so we agreed that just as in a rural area, there is supposed to be a king that is ruling the place, so I asked her to negotiate for me to meet the person in charge of the place, something like committees or councillors. We then met with the councillor at the office, I paid the money and then I got the place.

Local officials and councillors act as witnesses to informal transactions in the informal markets studied in Durban, Ekurhuleni and Cape Town. A respondent in Ekurhuleni, states that: '...I have registered my name in the offices with the councillors and they have given me certain papers, that is my guarantee [of

ownership].’ The enrolment and involvement of state officials in informal market transactions is reinforced by the finding that more than 55% of respondents in the informal settlements in Durban stated that the councillor and municipal officials together could make the process of buying and selling informally simpler. In Ekurhuleni the figure was 17% and in Cape Town 70% of the respondents (Isandla Institute and SBC, 2007).

In sum, the analysis of the research provides evidence of state activities in informal land markets in the form of both clarifying informal property rights and facilitating transactions and thereby informal reducing costs. Therefore, I suggest the effect of a selective view of the state’s involvement in informal land markets serves to sustain the view that there is some kind of vacuum that must be filled or transformed by something. Since, informal land markets have very little agency in this view, the vacuum can only be filled by the state and the formality it represents. The possibilities to think about informal land markets in their own terms, is therefore to be gained by challenging selective views of the state’s relationship to informal land markets.

However, legalist approaches could still argue that this evidence shows that the state is merely acting as an external factor in the broader *milieu* in which informal land *markets* are operating. That is, informal land markets are simply embedded in a broader regulatory environment. Indeed, this is what nuanced legalist approaches acknowledge and incorporate in their work (see for example, Mooya and Cloete, 2007). In other words, ‘markets’ remain untroubled by acknowledging that they are simply embedded in a broader formal/informal regulatory *milieu*. To go further than thinking about how markets are merely embedded in a broader regulatory

environment provided by the state is to show that the involvement of the state in informal land markets changes the nature of the transactions and markets themselves.

#### **2.4 A critique of informal land *markets***

Having addressed the first theoretical burden, I focus on the second of opening up markets to critical analysis. This section reveals how the state/state law is involved in other ways in informal land markets and how this involvement changes the nature of the markets themselves. The critique is based on a relationship suggested by Commons (2007 [1924]) that transactions are the building blocks of markets. That is, this section focuses on the transactions that make up informal land markets. I again draw on the South African research to suggest how the involvement of the state goes beyond acting as a factor in a regulatory milieu to change the nature of transactions themselves. I begin by focusing on characteristics of transactions before noting the impact that the involvement of the state has on the transactions. The state-altered transactions transform the nature of the informal land market so that the nature of the property rights being traded and held include differential access to the state. Conceptually, this section is built around one of the key contributions of New Institutional Economics (NIE). Specifically, I focus on how NIE has irreversibly changed the conception of a transaction from a single, abstract moment to a process that incurs various kinds of costs (Williamson, 1996).

Empirically, analysis of the qualitative research findings consistently revealed three elements that interacted to shape the process of transacting (Isandla Institute and SBC, 2007). First, the social identities that people bring to the transaction. In other words, the complex mixture of languages, races, ethnicities, histories and so on that

constitute identities are not discarded when transacting. ‘Buyers’ or ‘sellers’ are defined by more than their willingness or intent to transact (Ward et al., 2004). Their ability to express or be forced to adopt certain identities is contingent on the interaction of places and times.

Second, the social networks that people are part of, and constitute, are integral to the transaction process. Parties to transactions draw on networks of various kinds to find others to exchange the particular land rights, guarantee proof of identities, and/or clarify claims. Similarly, transactions can be seen as a key way of validating, acknowledging and/or distinguishing social networks (Callon, 1998). In this way, respondents in the research were revealing the intricate ways in which social networks and transactions are co-constituted.

Third, the type of claim on property rights people want to acquire/dispose of. That is, the respondents distinguished between the claim they could make and the nature of the property right they held. This makes it possible to claim to ‘own’ a piece of land, even if the land is settled on illegally in terms of state laws.<sup>2</sup> Sometimes claims and tenure, as defined by state law might overlap and sometimes they might be at odds. What is important is that people were transacting around the claim rather than the rights defined by formal state law. This admits a much broader range of claims that might be possible and also multiplies the ways in which the state might be active in informal land markets. The different permutations of these factors both shape people’s opportunity to transact in certain places and certain places seem to determine the identities, networks and claims that can be pursued.

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<sup>2</sup> The types of informal claim on property rights that they were pursuing – choosing between ‘ownership’, ‘renting’, ‘sharing’, or ‘temporarily borrowing’.

However, the key point emerges when the NIE insistence of seeing transactions as a process and the analysis of the three elements are combined. Through this combination it is possible to analyse how people are engaged in different processes as the transaction proceeds. It becomes clear that at different steps in the process of transacting the configurations of the three elements (identities, networks, claims) change. As a result, the nature of the transaction changes.

I specifically draw attention to how the state acts as a key factor in the way that transactions change. The point to note is that the configurations of social identities, social networks and claims change in the process of transacting in response to the activities, laws, and policies of the state. In the South African context, the involvement of the state occurs as the state recognises the settlement of land in some way. This might be in the forms described in the previous section and/or it could also take the form of settlers perceiving that they are not going to be evicted. As before, the claims to property rights of the settlers remain informal but are recognised by the state in some way.

The state's recognition of informal property rights changes the configuration of social networks, social identities, and claims that determine the nature of informal land transactions. Social identities that were previously anchored around that of a migrant work-seeker can now privilege that of a shack-dweller that is well-established in urban development discourses of informal settlement upgrading policies and which activate particular rights attached to squatting. One example, being a progressive piece of post-Apartheid legislation governing landowners' responses to informal

settlement.<sup>3</sup> Social networks now change from privileging friends and family members. The emphasis changes so that the inclusion of a local political figure such as a councillor becomes an important part of any strategy to advance informal claims on property rights. The property rights themselves change from being a claim of ‘temporarily borrowing’ to one of a right to ‘future development’. In other words, the involvement of the state ensures that people are not just informally purchasing or holding land but they are also gaining access to a political identity in relation to the state. Abiding by the rules of registration and enumeration creates an identity that attaches to the land. In this sense, what is being traded in informal land markets in the case study informal settlements is *differential access to the state*. It is impossible to separate out the state and state laws from the transactions that make up informal land markets. Effectively, informal land markets are also markets distributing and allocating access to the state and its resources.

In sum, I have argued that part of the reason that interventions in informal land markets to reduce poverty have such a poor record is because of tendency not to understand informal land markets in their own terms. I have pointed to a double burden that makes it difficult to see informal land markets differently: the effects of master subjects and uncritical use of foundational concepts such as markets. In order to begin to see informal land markets in their own terms I have used two strategies. The first, to begin to address the effect of master subjects in binary distinctions such as in/formality. The second, to start to open up what happens in transactions and markets so that such processes can be understood more critically. In my view, the challenge is to see informal land markets as having some forms of agency that is not

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<sup>3</sup> The Prevention of Illegal ~~Occupation and Eviction Act~~ **Eviction from and Unlawful Occupation of Land Act 19 of 1998.**

determined by their relationship to Formality or the automatic benefits that are assumed to accrue to the operation of free (and formal) markets. The aim in seeing informal land markets in their own terms has been to create the possibility to analyse the power or agency that such markets might have in their own right.

### **Part 3 Informal land markets in their own terms**

If my argument has any merit, it should make a difference to the way in which informal land markets are conceptualised and, in so doing, alter the way in which their potential to reduce urban poverty is analysed. In the final part of the article, I begin to identify two broad differences it makes to think of informal land markets in their own terms.

The first difference is that maintaining a view of informal land markets in their own terms requires constant attention from analysts. The binary logics of western knowledges are continually re-created and assumptions about the power of markets are both powerful and entrenched in approaches to urban development and poverty reduction. Admittedly, the terminology of ‘informal land markets in their own terms’ is cumbersome. However, categorising anew the practices currently identified as informal land markets is unlikely to solve the identified problems. Yet, the dangers are not merely theoretical. As the empirical evidence suggested, (poor) people make considerable psychological, social and financial investments in the type of markets they create and are created by. Trading and holding differential access to the state has material consequences for people’s livelihoods. People with material ‘investments’ in current understandings of informal land markets are just as likely to resist reconceptualisations as theorists (Thirkell, 1996). The fact that the markets are for

*differential* access signifies that informal markets both create and sustain inequalities. An advantage of paying attention to the effects of binaries is that it is possible to think about the ways in which formalities associated with the state are already present in informal land markets and what this means for poverty reduction. Another advantage is that ‘formal land markets’ can be also subjected to critical analysis. There is an opportunity to recuperate the insights of legalist analysis that point to the exclusionary effects of bureaucracy. It becomes possible to think about how the wealth that is generated in ‘formal land markets’ depends on their ability to exclude the types of property rights sustained by ‘informal land markets’.

The second difference is that informal land markets are placed at the centre of an analytical framework. That is, they become the lens or starting point for the analysis of urban processes that sustain or cause impoverishment. My view is that if informal land markets are considered as an analytical starting point, it becomes possible to trace out a range of social, economic, spatial and political forces that relate to informal land markets without predetermining which might be dominant. The aim is to understand how informal land markets have agency in the way that they are constituted and constituting broader social forces. In this way, informal land markets are not only constituted by a relationship to Formality and constitute processes that are not always automatically generative, simply because they are markets. In other words, the greater potential for informal land markets to reduce urban poverty emerges from reconceptualising the social, economic, political processes that they are constituted by and constitute. It is particularly the processes that exacerbate urban poverty that I conclude with.

Wratten (1995, 25) suggests that there are four features of urban poverty that combine uniquely to intensify the effects of impoverishment. These are: environmental and health risks, vulnerability arising from the commoditisation of goods and services, social fragmentation and crime, and negative contact with the state and police. Including the sense that these effects are part of political and economic urban processes, suggests ways that we could think about informal land markets if we were to consider them as having the potential to reduce poverty. Thus, examples include thinking about how informal land markets could block or facilitate political and economic processes that distribute land assets in more favourable locations that are away from environmental and health risks; minimise or maximise land price speculation and exploitation; create systems of property rights that mean households resist or succumb to arbitrary or criminally-based evictions or relocations, and generate greater or lesser sympathy/recognition from the state and police for informal claims to assets such as land. In this view, reduction in urban poverty would mean and an improvement in both the process and access to resources by poor people to achieve a more equal distribution.

In conclusion and ironically, conceptualising informal land markets in their own terms identifies ways that they are integrated into broader social, political and economic processes that make cities. The potential of informal land markets to reduce poverty lies in identifying how they are *both* constituted by, *and* constitute, broader urban social, economic and political processes and then addressing these processes.

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