

## IHRP Final Internship Report

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Outside the Urban LandMark office in Pretoria, a woman has established a longstanding and popular business of selling various food items to office workers in the area. She operates out of a trailer that occupies a seemingly permanent position on part of the sidewalk. Her enterprise demonstrates the everyday interface between the formal and informal elements of the urban landscape in South Africa. She is located directly outside the office of the International Labour Organisation; police stop to have lunch at her stand; in digging trenches for a water pipeline, the city dug around her, and then the workers started to buy lunch from her. However, she has no formal recognition of her right to occupy that area and no way to transfer her business to a successor or to capture the value of the goodwill that she has built up over the years. Her situation underlines Urban LandMark's area of concern: how can her right to space be articulated and secured?

There are many forms of informal occupation in South Africa. The prevalence of informal settlements in urban areas has increased dramatically since the end of apartheid and the removal of laws that prohibited rural-urban migration. The rental of backyard shacks is a popular phenomenon in the townships and an important source of income in a country where the official unemployment rates hover close to 40%. Abandoned buildings in inner city areas have been appropriated by squatters, or rented out in crowded conditions by exploitative landlords. In addition, informal commercial activities dot the city landscape, from food stands to barber shops in old shipyard containers, to 'spaza' (general tuck) shops in the townships. The incidence of informality in South African cities demonstrates that the informal market serves a critical function in providing a measure of adaptability and accessibility that the formal market denies. The challenge is to capture the benefits of these informal transactions while understanding the implications of glossing local practice with formal recognition and the reverberations that extend into municipal planning agendas and market dynamics.

Urban LandMark approaches land and housing issues from several different angles. Following an imperative to "make urban land markets work for the poor," policy research and advocacy focuses on three principal areas: understanding the urban land market, establishing functional land governance structures, and the progressive realization of rights to land and housing. Within this framework, my research focused on both the content given to the 'right to adequate housing' in the constitutional context and on how legal instruments might be deployed to provide security of tenure to those living and working in informal circumstances.

The structure of property rights in South Africa played an integral role in supporting the architecture of the apartheid system. Black South Africans were disenfranchised of any right to own land in urban areas and were accorded tenuous and discretionary tenure status based on a system of permits. The vast majority of the land in the country was

allocated to a small minority of white South Africans and the weak position of non-ownership rights of occupation made it easier to effect the evictions and removals required to establish the separation of land holdings along racial lines.

The constitution of South Africa contains two provisions that come into direct conflict with one another. Section 25 protects property rights while section 26 provides a right to land and to adequate housing. The court has approached this entanglement of rights by circumscribing landowner's rights to the degree required in order to shelter illegal occupiers from arbitrary eviction. The court requires government to take 'reasonable steps' to ensure the progressive realization of the right to adequate housing and in certain cases, judicial activism has generated a body of requirements that militates against eviction of illegal occupiers.

The constitutional jurisprudence strengthens the negative aspect of the right to land and housing - it provides protection against eviction in certain circumstances. However, the question remains as to what substantive content can be provided to realize the positive nature of a right to adequate shelter. In this context, the diverse ways in which people informally acquire sparse land and shelter in urban areas, and the fact that 80% of the population cannot afford to access the formal property market, point to the need for reform in the land rights apparatus. Legal instruments need to be reconciled with the facts on the ground through the recognition of alternate forms of tenure and the fragmentation of property rights. There are tools within existing pieces of legislation in South Africa that could potentially be harnessed to carve out new channels of supply to land and housing. The Development Facilitation Act, inaugurated to streamline and accelerate the convoluted development process, also contains mechanisms to provide people in informal settlements with 'initial ownership', a secure form of tenure, and to submit applications for informal settlement upgrading.

In producing a report on the legal dimensions of the informal land market, I realized the fundamental importance and overwhelming complexity of rolling out the groundwork for a system of rights that extends security of tenure to those who live and work in spaces characterised by legal uncertainty. The formal parameters of the law exacerbate the economic barriers that form the "access frontier" of the urban land market, beyond which most South Africans live in marginalized areas with insecure rights.

During my last week in South Africa, Urban LandMark held a conference showcasing their recent work and charting new territory that remains to be covered. Presenters discussed case studies where people have appropriated space in the city and engaged creatively with market dynamics. In one example, the city of Durban provided street vendors with official recognition and a synergistic relationship developed between the vendors on the sidewalk and storeowners, who relied on them for crime prevention. In 'Cosmo City,' a recent development project close to Johannesburg, developers adopted an inclusive housing strategy and, in concert with the municipality, allocated space for subsidized housing next to areas designated for privately sold houses. Urban LandMark intends to build on the foundations of its research into the intersection between the formal and informal elements of South African cities by implementing programs to facilitate

informal settlement upgrading and to advocate for the recognition of tenure rights. Cities are produced in different ways through the distribution of property rights, as evidenced by the apartheid city in South Africa. In order to provide meaningful content to the right to adequate housing, municipalities have to renew their commitment to inclusion and to finding spaces within markets, property concepts and municipal borders for alternate configurations of land access and livelihood development.