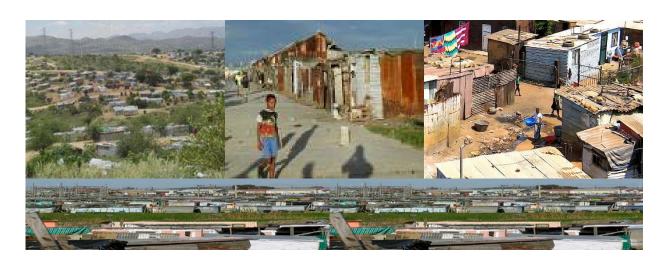# DEVELOPMENT OF AN APPROACH FOR THE RECOGNITION OF INFORMAL SETTLEMENTS AND TENURE SECURITY IN SOUTH AFRICA:-

WITH THE POTENTIAL FOR REGIONAL APPLICABILITY

LOCAL LAND OFFICES

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1. INTRODUCTION

This paper focuses on the notion of local land offices and their relation to promoting tenure security and incremental tenure processes. It is part of a collection of products arising from work commissioned by ULM with a view to developing an approach to the recognition of informal settlements and the promotion of tenure security in South Africa. It is the second product in a series that also includes: a detailed technical proposal on options in respect of how to recognize informal settlements and improve tenure security in South Africa; a strategy advice document for internal use by ULM; and materials for dissemination that are targeted at the National Department of Human Settlement's National Upgrading Support Programme (NUSP). All of these products are available on the ULM website : www.urbanlandmark.org.za. The one exception is the strategy advice paper which is meant to be a discussion paper for ULM staff and decision makers. As a consequence it is considered an internal working paper and is not available for public consumption.

The concept of the local management of territorial social relations is not new. Internationally, it has preceded the emergence of the nation state and more centralised forms of managing land and access to it. In Africa, traditional forms of management of dynamics around land use and land occupation have existed for centuries and remain a strong feature of the development environment. Moreover the idea of a local land office (in the context of a centralised land registration and management system) where records of occupation/ownership are kept is not new one in South Africa. It has been used historically to record land transactions on church land. Similar forms of historical record keeping were managed in magistrate's offices where specific forms of tenure such as Permission to Occupy Certificates (PTO's) were registered. These local offices existed as adjuncts to and assisted the function of a more centralised main stream administrative system. In some instances they predated or co-existed with the formal registration and titling system.

The focus on local land offices in this report is however not on the relative merits of centralised systems of tenure management versus more decentralised forms. The assumption made at the outset is that both forms exist de facto in South Africa. The issue in South Africa, in our view, is about the better interfacing of these forms to achieve developmental gains. More specifically, it is our view that such interfacing ought to involve an incremental approach to tenure. This report is part of a wider project on tenure security and the case for incremental tenure is made in several documents produced in the course of this project and will not be repeated here. What this report does focus on however, is the concept of the local land office as it relates to a Technical Proposal that has been developed as a key output of this Urban LandMark assignment. This Technical Proposal outlines an incremental

approach to enhancing tenure security in urban informal settlements in South Africa (and potentially for the Broader Southern African Region).

An important part of the Technical Proposal is a call for active management/governance of territorial social relations (as well as active management of other issues such as economic development and service delivery) in informal settlements prior to (and often as a prelude to) more formal township establishment and the delivery of formal title registered in a deeds registry. Such active management, it is argued makes the land market work better for the poor in the sense that it: makes transaction processes more transparent; at least partially confronts pernicious or exploitative territorial social relations; provides better market information; potentially increases the number of entry points into the market; and improves tenure security. Thus, the report both draws on the draft Technical Proposal and is an input into it. It explicitly considers the idea of whether and how the concept of "local land offices" contributes to the implementation of an incremental approach to tenure outlined in the Technical Proposal.

The report is organized as follows: it begins with a brief history of local land registration/local land office initiatives in Southern Africa and tries to draw some lessons from past experience. Distinctions are drawn between different kinds of local land office initiatives and the rationales underpinning them. This historical section also raises a number of conceptual questions that need to be addressed in thinking about local land offices. The section that follows from this addresses some of these questions from the point of view of the implications of the Technical Proposal for the nature and form of local land offices. In a final section a preferred option and an alternative in respect of local land offices are outlined.

2. BRIEF HISTORICAL BACKGROUND

Land treaties, e.g. the Rudd Concession in the former Rhodesia (Zimbabwe), are some the first types of land records from colonial times in Southern Africa. They are commonly found as part of the basis of formal record keeping or land registers in Anglophile Africa. These claims to land were based on the principle of terra nullius (meaning that the land was clean and could be claimed in the name of the European power the settlers represented.) The claims of indigenous communities were not recognized. In South Africa, land law and tenure sytems were derived from Dutch law in the early colonial period. This legal system was subsequently superseded by English law which was brought into the Cape after 1795. Both systems of land

administration provided for state or public land, freehold ownership and other forms of tenure such as quit rent1 and leasehold agreements.

In 1813, the governor at the Cape issued a proclamation requiring all holders of loans farm tenure 2 (a Dutch form of tenure) to have their land surveyed and a diagram drawn up so that their tenure could be converted to perpetual quitrent3. All new grants of land were to be made on the basis of quitrent which was an extension of the quitrent system and required an annual rental dependant on the extent of the land and payable to the authorities. It is significant that after 1820, a form of tenure termed 'request tenure' emerged to address the situation where land had been occupied after a local government official had granted authority for its settlement unlawfully. Delays in the granting of quitrent applications led to a form of extra legal squatting on the land, with local authority knowledge.4

Initially each province had its own land titling and records office (e.g. Natal commenced formal surveying in 1846) but after union in 1910 the system became centralized with regional offices in each of the provinces. It is significant that the central Deeds Registry Office is located in Pretoria whilst the central office of the Surveyor General is located in Cape Town. The two components of the land registration system are spilt between the two administrative and political capital cities of the country. A number of independent registration systems also co-existed with the main titling system prior to 1991 e.g. when the Department of Development Aid had its own registry for South African Development Trust Land.

Regulations in terms of the Bantu Trust and Land Act of 1936 were promulgated in 1962 to control townships in "Bantu Areas" (Trust towns and towns in scheduled and released areas). Also during the period of balkanisation into homelands and self-governing territories, this legislation was adopted by these entities. Likewise, Proclamation R188 (proclaimed in terms of the Bantu Administration Act of 1927 along with the Bantu Trust and Land Act mentioned above) was enacted in 1969. These laws introduced permits to occupy land and required that the Bantu Affairs Commissioners or township manager keep a register of occupiers.

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[1] Quitrent (erfpacht) was introduced under the Dutch East India Company in 1732 and allowed for a fifteen year occupation of a property in return for an annual rental calculated on the quality of the land.

[2] Loan farms (leeningsplaats) applied to land of approximately 3 000 morgen (6 350 acres or750 hectares) loaned by the state to the holder. An annual recognition payment or rental of 24 rix dollars and a tithe were required to be paid.

[3] Perpetual quitrent was an extension of the quitrent system introduced under British rule with a yearly rental based on the quality of the land.

[4] Davenport TRH and Hunt K S: The Right to the Land; Documents on Southern African History, David Philip, 1974.

In the case of Proc R293, occupants had to apply for a certificate for a letting unit and pay a monthly rental. The township manager had to keep a register of occupiers. In this register the name and full particulars of each person with a certificate was recorded. This register provided prima facie proof of occupation (right to be in the township). It had to be kept updated and persons whose certificates had lapsed were removed from the register. The obligation rested with the occupant to report any change in the status of the persons authorized by the certificate and any change in matrimonial status. The certificate holder could not sub-let or transfer the site without the permission of the township manager.

In terms of Regulation 188 of 1969, the Bantu Commissioner had to keep a register of all persons who obtained permits (for allotments). Permit holders had to pay an annual rental. The permit could not be 'sold' to anyone else without the Bantu Commissioner's permission.

Essentially, these laws put in place a legal framework that governed tenure forms for Africans as well as a full administration system to issue, manage and cancel permits through land registers. Registers were managed locally through the township managers but linked to lesser forms of registry offices in the homeland areas (i.e. not in terms of the Deeds Registry Act that governed tenure in 'white' South Africa)

From 1991 and the with the closure of DDA, the amalgamation of the former national department and regional systems commenced. KwaZulu also attempted the creation of an independent Deeds Office in Ulundi but political events overtook its implementation. Provincial Deed Registry Offices existed in all four provinces until 1994 after which new offices were established in the newly configured provinces. In the post 1994 period, a number of key changes occurred under the democratic government. Firstly, the responsibility for land was centralised and placed under the national Department of Land Affairs. Secondly, all formerly independent and Self Governing States were reincorporated back into South Africa which meant that all their land holdings were transferred back into the mainstream of the land administration system. Thirdly, in a last minute political deal the register of KwaZulu land assets was transferred to the regional Pietermaritzburg Office and simultaneously a new register was opened to accommodate the land holdings of the newly created Ingonyama Trust. This created a unique situation in KwaZulu-Natal which has perpetuated the historical duality in land administration systems.

In the 1980's the idea of local land offices did emerge on the development scene but not in a way related to tenure specifically. Instead the focus was more on the promotion of "consolidation" processes in informal settlements and the active agents in promoting them were the organised private sector or NGO's. The Urban Foundation for example set up a local development office in the informal settlements in Phillippi in the Western Cape. The aim of the office was to provide support to shack dwellers in improving their housing stock. Building materials were stored and

sold from the office and advice on housing improvements was offered (e.g. basic and generic designs were available for home construction and improvement). "Show houses" were also built here showing examples of what could be built using new technologies. The idea was also that the office would eventually pay for itself via the sale of building materials--- although it never reached this stage of self-sustainability. Similarly, the Urban Foundation also set up a community-driven building materials manufacturing facility at the St. Wendolin's informal settlement in Durban. Sustainability was to be achieved via the sale of materials to community members. Whilst the initiative was interesting it also failed to achieve sustainability. The Urban Foundation also had local offices in informal settlements in Bester's Camp in Durban and in Freedom Square in Bloemfontein but these were largely operational hubs linked to the in situ upgrading initiatives being tested there.

In addition to local land offices in informal settlements, the Urban Foundation also introduced a number of "community centre" projects in townships throughout the country (e.g. in Soweto). These centres however, are not really comparable to the kind of local land offices that are being explored here. However, in the early 1990's the Independent Development Trust (IDT) introduced a scheme which had substantial resonance with the idea of local land offices. As with the Urban Foundation initiatives, the IDT focused on promoting consolidation of housing stock in communities. And as with the Urban Foundation initiatives, the emphasis was on mobilising community initiative rather than seeing government as the primary driver. A subsidy instrument was developed to apply to 100 000 sites in informal settlements that the IDT was also providing capital subsidies for in order to provide basic services. This subsidy paid for the salary of a full-time "consolidation" officer (usually drawn from the community) for a period of 18 months where after alternate means of financing would have to be found.

In order to qualify for the subsidy a "consolidation vehicle" had to be established for the informal settlement applying. Such a consolidation vehicle needed to be a legal entity such as a Trust or a Section 21 not-for-profit company. The subsidy also made provision for the hiring or building of accommodation for the consolidation vehicle "on site". Training for consolidation officers was provided. In essence, the role of the consolidation officers was to act as a secretariat and executive for a grouping of office bearers on the vehicle (e.g. trustees drawn from the private, government and civil society sectors) which in turn would promote interventions which would promote consolidation. Notably, "tenure" delivery was seen as very important in the John Turner/de Soto sense of being a major contributor to the propensity of individuals to invest in their properties.

The IDT scheme had mixed success. The key determinants of success were two human agency variables. On the one hand the quality of the consolidation officer hired was crucial. On the other hand the strength of the office bearers on the legal vehicle was also very important. Some of the consolidation vehicle's (e.g. the

Bester's Camp Trust) are still active today but most disappeared once the subsidy money was exhausted. Sustainability without ongoing subsidy support was clearly a problem.   But the IDT scheme certainly provided an interesting example of an attempt to set up a civil society driven network of local development offices at scale.

Another form of local land office that developed in the 1980's was that associated with the civic movement and more particularly with SANCO. Through the 1980's civic organizations across the country set up advice offices usually funded by donors. The primary purpose of the advice offices was to support community struggles around rents and transport and other civic issues (which were themselves seen as a platform for political mobilization in the highly restrictive environment under apartheid).   Many advice offices were located in downtown areas (e.g. the Community Research Unit (CRU) based in Durban which supported the Durban Housing Action Committee and the Joint Rent Action Committee) and dealt with a range of issues. Some were located in townships and closer to constituents on the ground. Between 1987 and 1982 the Kagiso Trust served as a conduit for funds from largely European donors and channelled R14 million into SANCO advice offices. However after the first democratic elections in 1994, external funding dried up in part because of SANCO's notorious lack of financial accountability but more importantly because of changed political circumstances. Civics then turned in the direction of looking for support from the private sector domestically.   Developers interested in being involved in low-income housing investment became a target for funding, but this has proved to be a controversial and insecure form of income. Thus most SANCO advice centres are no longer operational. But some do continue.

Civic advice offices in the 1980's also built close working relationships with organizations affiliated to the Urban Sector Network. Organizations such as Planact, BESG, DAG and others where established by progressive built environment professionals in the 1980's and provided support primarily to the civics. Many of these organizations have become much weaker since 1994, but are still in existence and provide a potential base for local land office initiatives in the future.

In the period immediately after the first democratic elections in 1994 some interesting developments occurred in respect of local land offices.   These were state-driven under the banner of Special Integrated State Presidential Projects (the SIPPs). Generally speaking they were meant to champion a new "integrated" approach to delivery via demonstration in high profile locales (e.g. Katorus in Gauteng, the ISLP in Cape Town, and Cato Manor in Durban). Substantial and dedicated state and donor budgets were made available for each of the projects and local development offices were set up in most of the projects. For the most part, these were offices set up by Provincial administrations who were administering the SIPPs rather than local municipalities.   In some instances (e.g. Cato Manor) Section 21 non-profit companies were set up to act as the local development vehicle and with some success. These area-based initiatives were however comprehensive development

initiatives which included tenure management and local land use management (but rather peripherally). Overall the SIPPs were very successful and highlighted what could be achieved via area-based management. However, they were also the cause of substantial jealousy as other "areas" demanded equal levels of attention. Replicability at scale of the SIPPs model was its Achilles' heel. Also tensions between municipalities and provinces were heightened.

In the late 1990's the SIPPs were replaced by a new initiative involving local development offices—the state presidential urban renewal nodes. The Alexandra Renewal Project (ARP) is perhaps the most successful of the nodes. The major difference between the SIPPs and the urban renewal nodes was the fact that dedicated budgets were not provided and had to be leveraged from line functions as part of normal business. This was supposed to promote replicability, but in general the nodes have been much less successful than the SIPPs. In part this is due to lack of dedicated budgets which have made the local development offices structurally weak by comparison to line functions in municipal and provincial government. Moreover, tensions between municipalities and Provinces have made implementation difficult. But on the other hand, in areas such as Alexandra, the advantages of focused area based initiatives run from local development offices were evident.

The concept of locally based land offices was mooted in the White Paper on (largely rural) Land Reform 1997 where it was proposed that there should a decentralised approach to land administration as the following quotation from the White Paper indicates:-

> "An important element of this vision of a decentralised delivery capacity is the notion of a land office staffed by land officers that would be located within local government. The land offices and their staff would be responsible for elements of the land reform programme, as well as for on-going land administration functions such as:
> - the allocation of user rights (in the case of communal and public land),
> - imposition of restrictions on the use of land,
> - authorization of change of use and land subdivision;
> - settlement of land disputes, and
> - assistance with the preparation of land development objectives consistent with the Development Facilitation Act."

Similarly, a set of community based records has been made part of the tools proposed in the Communal Land Rights Act (Act No.4 of 2000). It was in connection with the implementation of this Act that a Technical Committee appointed by the then DLA now the Department of Rural Development and Land Reform spent considerable time developing the details of a model for locally-based record keeping. Unfortunately most of the provisions in relation to local land offices have never been

implemented, in part because of poor follow through by the DLA and partly because of budgetary considerations.

In the 2000's there has been the growth of a multiplicity of decentralized development offices, usually on a sectoral basis and generally not linked to tenure or land use management. A good example is the growth of decentralized business support agencies (e.g. DED's business support centres in Johannesburg). In part, this might signal the end of "multi-functional"area-based agencies as line functions put their own decentralized agencies in place. Of course, this does raise the question of overlaps and inefficiencies arising from poor co-ordination between line functions and spheres of government.

 It should also be noted that the last decade has seen the emergence of a limited number of Estate Agents' branches in the townships. These are a form of local land office in the sense that they facilitate transactions in the land market by undertaking activities aimed at matching buyers and sellers as well as providing information to market participants. Of course, the activities of estate agents are partial in the sense that they deal only with the portfolio of properties that they have some sort of mandate (from sellers) for. But they do raise the possibility of thinking about private estate agencies in a broader transaction facilitation role in the land markets of the urban poor. We will return to this possibility in a later section.

It has been common practice for at least three decades (and continues to be) for line function departments of all three spheres of government to set up local registers for informal settlements, partly to control further growth, partly as a waiting list and partly as a measure of demand . Co-ordination between line functions and spheres of government in this regard has been extremely poor. The existence of a local land office which is acknowledged by all players as the legitimate "holder" of the register, it seems, should be a development welcomed by all.

Two major metropolitan municipalities in South Africa are currently considering or have already implemented some form of local land office function/capacity linked to the active management of informal settlements. Cape Town has perhaps made the most progress in this regard. As part of a broader process of improving governance and support in informal settlements, Cape Town have already operationalised a system of local land offices. This has been achieved without major budgetary impacts by finding accommodation in existing municipally owned buildings across the city and by redeploying existing personnel. Positive impacts have already been recorded in for example better community "management" and "protection" of facilities provided by the municipality such as community toilets, water points and so on (Adlard, pers.com. 2009). Johannesburg is also giving thought to the idea of local land offices but the approach is still under construction.

There have been some interesting "experiments" in respect of local tenure management in the Southern African Region (outside of South Africa). Particularly

significant is the experience in Namibia. Here there has been an attempt to link locally administered registers to the main deeds registry. The process has been piloted in Oshakati and Rundu where implementation has occurred in terms of the thinking contained in the Flexible Urban Land Tenure Bill. The registration of households in Oshakati was linked in to an ongoing Human Settlements Improvement Project (OHSIP) which included services and tenure and an extension of the cadastral base of the country.

In effect, the pilot projects were framed in terms of legal provisions that have not yet been promulgated (approved by the State) and can be considered an institutional experiment to test the validity of the concept. The system has legitimacy but not legality. One of the problems experienced in Namibia has been where the main repository for the household registers should be since in most instances a Non Government Organization undertook the work and the central state had made no provision for the recording or reference to the data outside the municipalities they were located in. There has also been reluctance for the central Deeds Registry to engage with the process in Namibia which points the need to engage and gain cooperation with such agencies if they are to be part of the process.

It should be apparent from this brief review that the idea of local land/development offices has emerged in various forms and for different purposes at different times in our history. It has also been apparent that success of local land/development offices has been mixed. However, there has been sufficient success with the initiatives to suggest that decentralised area based management processes (and associated local offices) can add substantial value. It has also been apparent that the sustainability of any local land/development office depends crucially on ongoing and routinised state support. Attempts to make local development office initiatives self-sustaining (usually via the resources of the communities themselves) have generally failed. Moreover, many local development offices have been set up as part of a state initiative (often from national level) and have simply "unwound" when the programme comes to an end (e.g. the IDT consolidation vehicles, the SIPPs etc).

It should be noted also that most of the local development/land office initiatives in South Africa have generally not been about tenure per se and its management. Nor have they been about local land use management. They have generally focused on housing consolidation or more generalised integrated development. Tenure (and to a lesser extent local land use management) have often been incorporated into such initiatives but without necessarily receiving much emphasis (except perhaps in the IDT scheme of the early 1990's). There have however been significant examples of initiatives in which tenure has been central (e.g. early "request tenure" arrangements, PTO's and township managers, and the processes envisaged but not implemented via CLARA) but almost none which emphasize local land use management. The Namibian case is of course an important and tenure specific initiative that should be watched.

The review raises a number of key issues which should be addressed in the development of a proposal around local land offices:

a) What is meant by the notion of a local land office? In some discourses (particularly in respect to tenure) a local land office means a decentralised information recording repository (e.g. a magistrate's office in the case of "request tenure", or a municipality in the case of the Namibian example). Usually such decentralised arrangements are conceptualised in terms of some sort of relationship to a centralised deeds registry. In other discourses the idea of local land office implies an office which is located in or near an informal settlement and which is engaged in active management of local territorial social relations (tenure and local land use management) with a view to promoting tenure security. Here, the issue of a relationship with a centralised deeds registry is often not assumed. The meaning of the term local land office is more akin to that of "local development" office than it is to that of a local repository of information. This of course raises the question of what the relationship is between the idea of a local land office and formal township establishment processes and the deeds registry.

b) What is the relationship of a local land office to broader development initiatives and to "local development" offices? This raises a whole range of questions in respect of the "specificity" of any local land office initiative. Should it be part of a broader development thrust for informal settlements or should be driven as a territorial social relations management exercise? If it is the former, then how is the integrity of a tenure emphasis to be maintained? This also raises the questions of what the functions of local land offices should be.

c) Where should local land offices be embedded institutionally both within government and in relation to civil society? Should they be linked to housing functions in municipalities which generally do keep registers for informal settlements. Or should the early phases of the incremental tenure process be delinked institutionally from the housing function? Or should local land offices be run by institutions of civil society in some form of partnership with municipalities?

d) How is the issue of the sustainability of the local land offices to be ensured?

e) How are communities to be involved in local land office functions?

f) Just how decentralised does a local land office have to be?

3. WHAT THE TECHNICAL PROPOSAL IMPLIES FOR LOCAL LAND OFFICES

As noted at the outset the primary point of reference for developing a proposal on local land offices is the draft Technical Proposal referred to in the introductory section. It is also informed by the review undertaken in Section 2 and the research underpinning it.   Thus in this section an attempt is made to begin building a conception of a local land office from the perspective of "implementing" the Technical Proposal.   This will be done by attempting to answer the questions raised in the previous section again from the perspective of the Technical Proposal.

3.1 What is meant by the concept of a local land office?

The Technical Proposal does not envisage the need for any direct link with the deeds registry except when the incremental process enters the formal township establishment and freehold titling process. It does not introduce any "lesser" forms of tenure that require a linkage to the deeds registry and relies instead on the tweaking of existing administrative mechanisms or the creative use of existing tenure forms that do not require a link to a registry. The possible exception in this regard is a servitude of use which could be registered on the mother deed of the property which would be lodged in the deeds office, if protection against the claims of third parties is required. In general, however, the relationship of the Technical Proposal to the deeds registry is one where the incremental tenure process (advocated by the Technical Proposal) paves the way for the ultimate implementation (in the fourth phase of the generic model proposed in the Technical proposal) of the normal processes that would lead to a property being registered and formal freehold title being delivered. As such, any local land office would not be considered as primarily a decentralized office of the deeds registry nor as a lesser external repository of property related information on behalf of the deeds registry (like the role played in the past by the magistrate's courts or township manager's office).

The Technical Proposal does however imply an information repository and active management role but not in relation to the deeds registry. This role is in respect of the drawing up and active management of a local register. This register, especially if actively managed and linked to a layout plan, should provide the information basis for later formal township establishment and title delivery.   Its primary purpose, however, is to enhance tenure security in the period prior to fully-fledged township establishment and to facilitate the workings of the urban land market in informal settlements. The Technical Proposal also envisages a close working relationship with communities in setting up and managing the local registers and this does imply some kind of capacity that is sufficiently locally based to perform this function effectively. In short, it implies a local land office with a developmental orientation

and form, more in line with the "local development offices" described in the second section above.

The Technical Proposal also envisages an active land use management role as part of the provisions for managing territorial social relations in informal settlements. This too, implies a local land office sufficiently local to be in touch with rapidly changing community land use dynamics.

Working with the City of Johannesburg (CoJ) in developing their "regularisation" or "incremental tenure" approach has proved very enlightening and has also raised some important questions about the nature and role of a local register and by implication the nature and role of local land offices. CoJ have focused on developing a registration process which allows for the delivery of an "address" to residents in informal settlements and which allows the delivery of a bill to this address (for purposes of proving residency rather than billing per se— in essence meeting FICA requirements). In doing so, they have stressed the integration of the registration process into the city's formal data and billing systems. One thought in this regard is that the City's data base effectively becomes the "register". This in turn would imply that there is no particular need for a local land office except perhaps for land use management. Active management of the "register" would be achieved via some kind of "trigger" – which is still being sought - which would lead individuals to ensure that changes in occupancy would be recorded (for example, the refunding of a deposit of some kind, on departure). We will return to the issues raised here in Section 4.

3.2 What is the relationship of the Technical Proposal to broader development initiatives and what does this imply for local land offices?

As previously noted the notion of local land offices strategically located "on site", is more generally associated with broader multi-sectoral development initiatives than with tenure and local land use management. The one exception has been the ideas contained in CLARA, although the local land offices have not been implemented (and were generally considered too costly to set up). It is apparent that "on site" local land offices are much more likely to be feasible if they are part of a bigger initiative - in short, the costs of creating on-site centres can be spread across many players. On the other, hand multi-sectoral initiatives often involve substantial co-ordination and introduce implementation contingencies. Thus, implementation of any project can become contingent on the performance of many partners/co-investors. This in turn makes the project more risky.

In the process of putting together CoJ's regularization programme, discussions have been held in many stakeholder forums. What has come through very strongly is that a regularization programme is unlikely to sell politically if deals with incremental tenure and land use management only. The view expressed by many, and one

which we agree with, is that the territorial social relations/ regularization programme needs to be sold as part of a multi-sectoral focus on "including" informal settlements ahead of a fully-fledged upgrading programme when funds become available. The argument is that the fiscal crisis and capacity problems in housing implementation, create conditions that are ripe for the launching of a new multi-sectoral informal settlements initiative which is not necessarily national housing subsidy-driven.

Should the territorial social relations/regularization programme become part of a much wider programme, it follows that the idea of an "on site" local development/land office becomes a real possibility. The "contingency" issue is in our view, a very important consideration. To be more specific we are of the view that from a tactical perspective it would unwise to make the implementation of the regularization programme contingent on the co-operation of others. The regularization programme could take the lead in mobilizing others in, but it is our view that it is possible to do so without taking on contingencies.

3.3 How should local land offices be embedded institutionally?

The draft Technical Proposal is relatively silent on the arrangements for implementation and one purpose of this report on local land offices is to fill the gap. The Technical Proposal does however, strongly imply that the primary implementing agency would be municipalities and that an important instrument for implementation will be some form of local land office. In many respects, regularization is about governance and inclusion at a local level. So it follows that local government has a key role in implementation. There are of course, other options especially when it comes to the local land office component of an implementation framework.   The IDT programme, for example, focused on setting up and supporting civil society institutions to play a local land office function. As previously noted, the IDT had mixed success in this regard and sustainability proved a problem. There might also be a possibility of getting the private property/real estate sector to take on the task of running local land offices (almost like estate agencies) either on their own or in partnership with the public sector, although this is a long shot.

The Technical Proposal does suggest that if the regularization initiative should be located within municipalities, it should be made the responsibility of an urban management or planning function and not a housing function (wherever possible). This because housing departments usually bring with them expectations and demands for the immediate delivery of formal houses. Tactically, there appears to be a case for a separation of regularization and housing functions although the former sets up the latter. Many of the metropolitan areas (e.g. Johannesburg, Tshwane) have regionalized their administration and have set up regional offices. These regional offices primarily have an urban management function and it may be

appropriate to locate the regularization function with them. This also raises the question of whether these regional administrations themselves constitute local land offices or not. This is an issue that we will return to in the next section.

Of course, in many medium-sized and smaller local authorities there are no clear lines between housing, engineering and urban management functions. However, in such municipalities housing delivery is increasingly being undertaken by provinces. This implies a natural division of labour. The municipality deals with regularization and the province with housing.

3.4 How is the sustainability of local land offices to be ensured?

The review of local land offices highlighted problems of sustainability in relation to many of the initiatives undertaken to date. Attempts to make local land offices self-sustaining by getting them to generate an income of their own have for the most part failed. It follows therefore that any local land office initiative must either be located within municipalities or supported by government funds (in a manner similar to the way the IDT programme operated). As far as location within municipalities is concerned it should be stressed that many municipalities are experiencing severe financial and human resource capacity stresses. If a local land office approach implies taking on additional staff and building decentralised offices, questions will be raised about where the funds are to come from. This in turn raises the question of whether or not some sort of national programme needs to be put in place to support regularization. One possibility is to amend Chapter 3 of the National Housing Code which outlines a subsidy programme specifically for informal settlement upgrading.

The Chapter is flexible enough as it is to accommodate a regularization programme. However this very lack of specificity is an obstacle because provincial and national officials are often nervous about the programme being used because of "accountability" issues. Moreover, it is difficult to determine precisely how much subsidy money might be available for regularization and what it would have to be traded off against (e.g. would service levels have to be compromised to accommodate regularization). In any event, whilst we would support getting amendments made to Chapter 3, we would caution against the development of subsidy dependence in respect of regularization.

It is worth noting, in closing this section on sustainability, that the Head of Cities Alliance, Mr. Billy Cobbett, attributes major upgrading success in San Paulo in Brazil to local authorities mobilizing human resources in numbers commensurate with the scale of the favela challenge and the needs of their regularization. The distribution of municipal staff in South African municipalities is hugely skewed towards formal sector needs. In our view, a regularization programme needs to begin to address this.

3.5 How are Communities to be involved?

The Technical Proposal envisages substantial community involvement in regularization processes. Participation is necessary in regularization inter alia to help understand complex community social relations, to help draw up a tenure plan, to help map a "legitimate" local register, to witness transactions, to assist in actively managing registers, and to help manage local land use change.

This level of community involvement implies regular interaction between officials and the community and supports the notion of a decentralised local land office. It should be noted that the CoJ's use of the billing system with a trigger to promote active management does not require much community participation. Whilst this may be quite practical, and whilst it adds value in terms of tenure security, it falls short of what is envisaged in the Technical proposal.

3.6 How decentralised do Local Land Offices have to be?

As already noted above, the Technical Proposal envisages a linkage between community participation and local land offices which implies a degree of decentralization commensurate with regular and meaningful interaction. This does not necessarily imply a permanent physical presence in the community (although this is not discounted either). The Technical Proposal also makes reference to the idea of a mobile service provided by the municipality. Thus, in a number of metropolitan municipalities the local land office function might be located with regional administrations that provide a mobile service to local communities. Alternately, the local land office function in each region might be comprised of a few permanent (and possibly multi-functional offices) in locations where there are significant informal settlement agglomerations (e.g. Inanda in Durban) as well as a mobile service for dispersed settlements.

As far as administrative and functional decentralisation are concerned, much depends on how the register is functionally integrated into the broader systems of the municipality. In CoJ and many metropolitan municipalities, cadastral information needs to be located in one place (as it has strong legal implications because the rates and billing system builds off the cadastre). The same applies for billing systems. So, if the cadastre is central to the Land Information system, it follows that it needs to be centralised. But that does not stop local feeding of the system through a computer-linked terminal or by filling in forms that then get updated at central office (or even regional offices).

4. THE PREFERRED OPTION AND VIABLE CIVIL SOCIETY DRIVEN OPTIONS

There are obviously many ways of thinking about local land offices. Moreover, circumstances vary quite substantially from one municipality to another and thought will have to be given to what is appropriate from one context to the next. For example, the analysis is likely to vary quite substantially between large and small local authorities. And even within size categories, substantial variation can be expected. For example, in the Gauteng metropolitan municipalities (with the possible exception of Tshwane) informal settlements are rather dispersed in locational terms, making the idea of a local land office as a physical centre less viable (although not out of the question). In Durban and Cape Town on the other hand, large spatial concentrations of informal settlements exist.

In any event the preferred option articulated in sub-section 4.1 below, is developed as a generic model in relation to Major metropolitan areas and secondary cities. The preferred option it should be noted follows logically from Technical Proposal.

In sub-section 4.2 below, civil-society-driven options are presented and considered. These options have much to commend them and highlight the need for working with communities, whatever option is chosen.

4.1 Local land Offices in Metropolitan Municipalities and secondary cities.

It is proposed that metropolitan municipalities should establish an Informal settlements management capacity as part of its formal staffing structures. One possibility is the setting up of a stand alone department/service unit focusing solely on informal settlements. Setting up such a department would send out a signal of the seriousness with which informal settlements issues are being addressed. Much more likely however, would be the establishment of a unit within an existing line function department. In our view this department should be a planning and/or urban management department rather than a housing department, although different metro municipalities have set up the relations between planning, urban management and housing differently. In any event, we don't believe that housing should lead this process primarily because the mere presence of a housing department brings expectations of the delivery of RDP houses, fully fledged tenure and full services.

The primary purpose of a special informal settlements unit should be to support the Head of Planning/Urban Management in leading a new multi-sectoral and multi-sphere programme on regularizing informal settlements. In short, such a programme should be aimed at achieving the "inclusion" of informal settlements within the governance and servicing processes of the city as well as positively building the

"identity" of the informal settlements as positive contributors to the city as a whole. In short, the aim of the multi-sectoral programme would be to challenge all line functions and spheres to work out how they can contribute to "inclusion" ahead of, during and after a fully fledged housing subsidy-driven upgrading process.

The special informal settlements unit, located within an urban planning/ urban management line department, should however have a particular function of its own apart from supporting the leadership of the regularization programme as a whole. This specific role should in our view include two functions:

- The first is the promotion of secure tenure through a variety of means including the setting up of a local interface with communities

- The introduction of land use management processes within informal settlements usually on a decentralized basis.

In performing its promotion of secure tenure role, the informal settlements unit would need to establish a close working relationship with the central data servicing department and its systems. The need for this has become apparent in the ULM work with the City of Johannesburg. One of the key objectives of the regularisation programme here is to give people living in informal settlements an address. Such acknowledgement on its own helps contribute to tenure security. But it also allows people to enter into contractual relationships—like higher purchase arrangements or contracts to purchase a mobile telephone. In order to achieve the objective of giving people an address, it became apparent that linking them into the city's data systems and particularly its billing systems was the key. Of course this raises the possibility that the City's data system becomes the "register" for informal settlements (which is what CoJ are considering) which in turn raises a potential contradiction in relation to the Technical proposal. The contradiction is that the "technical" solution to one aspect of the tenure security issue (giving people an address) implies centralized record keeping which in turn contradicts another important dimension of the tenure security equation – the need for community involvement in the active management of the register.

As previously noted the Technical Proposal emphasizes the need for substantial community engagement both in establishing the register and in its active management.   CoJ are looking to address the need for active management by looking for a "trigger" mechanism which will incentivize individuals to update/record changes to their tenure status on the central data system. We are of the view that such "trigger mechanisms" are potentially very valuable but do not replace the need for active and hands on local management - and the involvement of some kind of local land office.   It should be noted too that it may be difficult to find and operationalize an automatic "trigger".   Simply giving people an address is a significant advance but it does not allow for the recording of transactions and or negotiation/purchase of rights in informal settlements with negative implications for

the operational effectiveness of urban land markets.   Nor does it confront unacceptable and exploitative social relations in the land and property market which will simply continue in un-transparent ways.

In order to address the contradiction, we propose the following approach.   This approach involves both the active management of a local register by a local land office function and the recording of key elements of this register on a central data system (to allow for addresses to be established).   The processes through which data gets transferred from the local to the central systems need to be mediated through community processes so that they are accurate and more importantly enjoy community legitimacy.   Moreover a local land office would play a role in actively updating information on the centralized system.

It should be stressed that there is still only one register.   A more detailed version is maintained at local level. Some elements of the local register are recorded in central data systems.   Moreover local processes are important in checking the veracity of central data bases and in actively updating them.   The local register should be regarded as a social process.   And it is a social process that contributes data to central data keeping and billing processes.   Centralized data keeping processes can never substitute for the social process.

In terms of this approach the functions of local land office in respect of tenure would be:

- To develop an understanding of the power relations underpinning the tenure arrangements in place in particular informal settlements;
- To develop, in participation with the community, a system for recording and updating a local record of occupation, rights and transactions;
- To actively mange changes to the record;
- To ensure that certain data components of the local register are fed into central city-wide data recording processes;
- To actively update and manage the feeding of information on changes into the central data system;
- To work with the community to develop a legitimate "Tenure Plan" which will simultaneously accommodate and confront (in an appropriate way) existing power and social relations.   The tenure plan should pave the way for successful in situ upgrading and delivery of formal tenure.
- To oversee the debates around tenure as formal upgrading proceeds;
- To continue to serve as a link between local processes and centralized data systems even after formal tenure has been delivered (there is evidence that even in areas where title has been delivered, property transactions continue without any reference to it).

As far as land use management is concerned, the relationship between centralized and local processes would be similar in form and content to the approach to managing a local register. In short, there will be an interactive relationship between centralized planning and land use management processes and local decision-making processes. Local land offices together with the local community would make land use decisions within the parameters of a mandate agreed centrally.

Returning to our proposals regarding institutional embedding of a local land office function, we have already noted that a special informal settlements management function should be set up and probably located within planning/urban management or in a separate service unit (line function) of its own. It has also been proposed that this management function would involve the leadership of a broader informal settlements initiative and the performance of a specific function (tenure and local land use management) in relation to the broader initiative. We believe that a local land office function would be important to the performance of both the leadership role and the specific role. As far the broader role is concerned it is possible to envisage substantial multi-purpose/multi-sectoral local development offices being established. Whilst such centres are a possibility we would caution against the informal settlements unit making its own specific functions and activities contingent on getting agreements and co-ordinated action from others. We propose instead that they should set up their own specific local land office operational arrangements in a way which has the potential to entice others in but in no way makes them dependent on others.

To be more specific, we propose that the informal settlements management function should decentralize a number of its activities to their Regional Offices although the centre should maintain policy oversight The Regional Offices in turn should establish and run a local land office function which incorporates both fixed and mobile elements. As far as the fixed elements are concerned it is proposed that a few strategically located centres/land offices should be established in strategic locations in each of the regions. The fixed elements should be put together in a way which invites participation from other players and where the ultimate vision should be the creation of a "development" centre in forms similar to the development centres referred to in the review.

China, it is worth noting, has set up a number of "town planning centres" in its cities. Interestingly these centres have become tourism attractions in their own right. Generally these centres feature scale models of the cities and also displays in respect of the history and development of the city. Each city also has a network of decentralised centres. The centres are also used as meeting and participation centres. Thought should be given to the setting up of centres of this kind as the "development centres" referred to above.

In any event, it is proposed that each "fixed" centre provide a mobile service to settlements which are within the region but too far from the fixed decentralised centres. Such mobile services could be available in particular settlements for say 1 day a week.   Implementation and running these mobile centres in practice will provide insight into how often the service ought to be provided.

Municipalities should also attempt to enter into partnerships with other professional groups and activities linked to the land office function. More specifically contacts should be made with estate agents (both individual agencies and representative organizations), planners and land surveyors. Such interactions should focus on how partnerships could be entered into to promote the better functioning of land and property markets in and around informal settlements. It seems unlikely however that estate agents and built environment professionals would become involved if services cannot be paid for. Possibilities should be explored nonetheless.

The advantages and disadvantages of permanent local land offices aside, some sort of presence in an informal settlement in the first stages of engagement is almost always warranted. So, when initially registering everyone, when setting up a joint committee, when trying to work out a site plan and discussing it, what is needed is a small office or somewhere where the map can be pinned on the wall, where the register can be printed out and displayed and where officials can meet with the community reps or anyone from the community for that matter. It need not be a formal office at first. It could even be a room in a community person's home. Or it could also be an open structure with a roof and one wall to pin information onto (Brazilian model). Alternately the mobile option would work, but in terms of a modus oprandi where visits to the settlement are much more frequent in the early stages.

4.2 Civil Society-Driven Options

One of the key themes of the Technical proposal is the need to be aware and respectful of existing community initiatives in respect of the management of territorial social relations. Moreover the Technical Proposal stresses the importance of building on existing arrangements in communities – i.e. building on what exists. One of the key features of initiatives that emerge from within communities is that their potential for sustainability is generally much greater than initiatives which are initiated from outside. Sustainability is not guaranteed but generally such initiatives respond to real needs and as a consequence are likely to be quite robust. In building off what exists a key question that arises concerns the way is which community initiative is to be supported and by whom.

Two broad civil society options are considered here. The first is to advocate for the implementation of a major government programme which would be similar to the IDT

"consolidation" initiative described in an earlier section. Such a programme would provide funds which could be accessed directly by communities to support local land office type initiatives being undertaken by the community (such as community self-enumeration processes and the management of community based registers). Individual initiatives would be run by communities themselves or would be facilitated by organizations (NGO's) already in a de facto support relationship. The programme could be fairly flexible in the sense that different kinds of support initiatives could be entertained, but national guidelines and an accountability framework would be necessary.

The experience in South Africa to date has been that the accountability requirements of government (and their operational rules and deadlines) are difficult for grassroots organizations to comply with. The experience of the uTtshani Fund is a good example of the difficulties of interfacing the bureaucratic requirements of government and community organizations. More importantly the IDT experience has also shown that as soon as funds are withdrawn there is a tendency for the local structures established to collapse. It needs to be noted however that in the case of the IDT "legal vehicles" had to be established which in many ways were "external" to community processes. If however the financial support went directly to supporting existing community initiatives/processes and was designed in a way which did not make the community dependent on it, then a government "IDT- like" approach might have some merit. Accountability issues would still be an issue particularly in the light of the PFMA.

The second possibility would be for non-governmental donor-linked organizations (such as Urban Landmark) to provide local land office type support to local initiatives outside of government (except of course to the extent that there would be an agreement with government that such a programme should exist). The advantage of an arrangement of this type is that very substantial flexibility in implementation is likely to be possible. On the other hand this approach is unlikely to offer the possibility of impact at scale in the way that a government programme would. However ULM (or some other NGO/donor) could successfully demonstrate to government how LLO's could contribute.

ULM could for example mimic the municipal local land office proposal described in the sub-section above. Thus ULM could (with support from a municipality) set up a strategically located "regional land market support office" and run a mobile support service to relatively nearby informal settlements. Such a centre would in all likelihood take on more of a "property clinic" function than is likely if the same initiative were to be run by the municipality. Because many informal settlements are located in and around existing townships the centre could house property related activities such as estate agents, conveyencors etc which would mainly be active in around township land markets but may also be able to contribute in informal settlements. Moreover

the ideas presented above in respect of the creation of "town planning centres" in the Chinese mode are a distinct possibility (and could mobilize professional planning organizations into the process).   But the main functions of the centre would be to support land market related activities in the informal settlements (support local enumeration and registration processes, help with community-driven layout processes, assist in local land use decision-making and so on).

  The major problem with a model of this sort concerns long run sustainability. In an earlier section we noted that many of the Urban Foundation's local land office initiatives (set up around housing consolidation) failed to achieve ongoing sustainability once donor funding was discontinued. This was probably because the centre's were set up in ways which made them dependent on ongoing funding support. If however it was possible to get an agreement with the municipality that the regional centre/land office would be taken over by the municipality at the end the grant period, sustainability would be less of a problem.

An alternative approach would be for ULM to support initiatives where NGO's (such as the Community Organizations Resource Centre (CORC) which supports the SDI affiliated Federation for the Urban Poor (FEDUP)) work closely with informal settlement communities in managing local territorial social relations. In such a model local land offices would be lower profile and could take a number of forms depending on local specifics. Typically though they are likely to take a very localised and modest form – an office set up in an existing shack for example which becomes the hub of local territorial social relations management and mediation.   Such a centre/office would become deeply embedded in local community processes and would not depend on external support. This would assure sustainability. It should be noted that the Federation for the Urban Poor no longer mobilize primarily around savings. Instead they see self enumeration and the management of local territorial social relations as the core of their activities. In our view this presents a major opportunity for partnership

The major disadvantage of civil-society local land office initiatives is that whilst they contribute to tenure security, they are unable to secure benefits such as the provision of a formal and acknowledged address or the provision of formal services. However because they are rooted in civil society they are likely to have a legitimacy and a sustainability that government-driven initiatives can never achieve.

5. CONCLUDING REMARKS

This report has made some very specific proposals regarding the setting up of local land offices in support of incremental tenure and local land use management processes. Whilst a preferred option has been articulated, it is very likely that local circumstances across South Africa's varied municipalities will demand approaches that respond to local specificities. It is important therefore not to see the preferred option as a "prescription" but rather as a concrete set of ideas which can be adapted partly (or wholly reinvented) to suit local circumstances. Likewize the articulation of civil society-driven options highlights our view that a "one size fits all" approach is unlikely to work. Moreover it is unlikely to be able to respond to specific opportunities and constraints as they might present themselves in different contexts. Whilst the point about local specificity needs emphasis, we are also of the view that the preferred option outlined here is presented in sufficient detail to provide actors who are seeking to implement some form of local land office initiative with substantial food for thought.