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The death and rebirth of legal pluralism: Street-trade and regulatory reform in sub- Saharan Africa

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Introduction

Street-trade and the state

The rapid growth of street-trade in sub-Saharan Africa (SSA) is deeply rooted in wider economic and policy trends. Characteristic of African cities for many years (Potts 2007), the numbers of informal workers and the economic and social significance of the informal economy have grown rapidly since the early 1990s (Skinner 2008a) - associated with stagnant agriculture (Bryceson 2004), the decline in formal jobs which accompanied structural adjustment, rapidly falling foreign investment levels, stagnant domestic investment and declining manufacturing (Jenkins et al 2007). At the same time, the formal economy has increasingly focused on trade in imported manufactured goods (Kaplinsky et al 2002) and this has been reflected in the informal sector, with most actors now in petty commerce rather than petty manufacturing.

Street-trade has become nationally economically significant, a critical component of local economies and a crucial livelihood strategy for the poor and very poor urban majorities (Chen et al 2004), and a significant source of urban-to-rural and international remittances (Lyons and msoka 2008) - a means of survival but also of upward mobility (de Mel et al 2008). Capital requirements for entry into street-trade have fallen as cheap imports have flooded markets in SSA, (Lyons and Brown 2009), lessening young entrants' dependence on specific social capital links (Lyons et al 2008).

The necessary conditions for success in street-trade are well understood. As most businesses depend on a large number of small transactions (Fafchamps and Minten 2001, 2002), access to large numbers of casual customers is important (Dewar and Watson 1990). Because

available start-up capital is generally small, access to secure trading space and to credit is essential for start-up and growth (Kumar and Matsusaka 2004). It is important for traders to grow assets, whether fixed, such as stalls or kiosks, or liquid, such as savings (Lyons and Snoxell 2005b). Freedom from evictions and extortion are crucial: evictions disturb the development of links with customers (Brown 2006:187), reduce the accumulation of fixed-asset value, and discourage investment (ILD 2005a), while extortion diminishes profit margins (Lyons and msoka 2008). Both significantly exacerbate poverty.

Street-trade has been illegal and thus excluded from formal services in multiple - and mutually dependent - ways for many years. First, business and finance legislation in most of SSA has long required universal tax registration and business licensing for all enterprises. De Soto has demonstrated the barriers to formal activity in national legislation and national administrative practice (1989), in particular the prohibitive costs and lengthy procedures for registration and licensing – well beyond the reach of most SSA businesses. While informal businesses in SSA account for some 42% of GDP (Schneider 2004), street-traders find the barriers more formidable than most (ILD 2005a). In terms of spatial legality, first, the lack of property rights means that, as business registration requires a legal address, registration is impossible. Second, lack of formal property rights diminishes the possibility of realizing the value of assets held in the informal economy, restricting access to finance and the possibility of selling a business. Third, food sellers also frequently infringe public health byelaws. Fourth, street-trade generally infringes land-use restrictions, enforceable through town planning laws. Thus reforms in several bodies of law, even if street-trade is not their proposed target, are likely to affect this sector.

Despite the complexity of national and local legislation affecting street-trade, it has been regarded as a largely *municipal versus grassroots* issue in SSA politics. Scholarly work on street-trade reflects this conceptualization, seeing street-traders as a largely self-regulating

semi-autonomous society, identifying the importance to individuals of social capital networks in establishing and developing a life in trade (Lyons and Snoxell 2005b); the importance of social capital networks for the efficient functioning of distribution networks and supply chains (Fafchamps and Minten 2001); their role in creating and managing inequalities (Fafchamps 2006); and the importance of formal associations and informal networks in governing competition among traders in both formal and informal markets (Lorenco-Lindell 2002). Research has also shown that street-traders pay formal municipal rents and tolls, and informal fees to officials and gatekeepers (Lyons and Snoxell 2005a). Indeed, formal and semiformal tolls and rents from markets and street-trade are generally among the top three sources of locally raised income for provincial municipalities (Lyons and msoka 2008) and municipalities have tolerated traders between sporadic but repeated evictions and enforcements. Yet where local governments are hostile, traders or their associations rarely make significant gains (Middleton 2003, Devas 2004), particularly in accessing public space (Brown 2006); while any policy gains may be reversed (Skinner 2008b).

Recent events however demonstrate a growing engagement of *national* governments in the control of street-trade, as in Senegal (Brown et al 2009), where the City of Dakar has been directed by presidential decree to negotiate with street-traders, and in Tanzania, where central government coordinated a national urban evictions campaign (Msoka 2007). The legal and political ‘space’ for street-trade and its operation in public space now need to be understood in a national context, often influenced by international agendas. Explored below in more detail, these include, for example the Doing Business reforms espoused by the World Bank (WB) and the donor community, which set the terms for business registration; the legalization agenda endorsed by the Commission on Legal Empowerment of the Poor (MLW4E) which aims to develop new legal instruments for recognition of informal assets and access to public space; and reforms to land and planning laws which govern access to

urban public space.

We argue that multiple strands of national-level debate and legislation at the heart of disparate current reform agendas have a powerful impact on street-traders, a dynamic, significant, large – and growing – section of SSA urban working poor; and conceptualize the process as legal pluralism.

Legal pluralism

An understanding of legal pluralism as the coexistence of multiple legal systems in a bounded physical or social space (Merry 1988) is widely accepted. Yet “since there are many competing versions of what is meant by ‘law’, the assertion that law exists in plurality leaves us with a plurality of legal pluralisms” (Tamanaha 2000:297). With increasing globalization and decentralization, compound systems have come to be viewed by lawyers and social scientists as examples of legal pluralism. In other words, legally plural systems may comprise various combinations of private rules and norms, state policies, religious codes, national and international law (Tamanaha 2007). However, this paper follows those scholars who focus on the analysis of pluralism in state law, rather than the pluralism of state and informal law (Merry 1988), arguing that a fundamental difference exists depending on whether rules are recognized by legal actors (Tamanaha in Dupret 2005). Despite Dupret’s argument (2005) that any code accepted by ordinary people as law should count as law, in an increasing climate of formalization, it is contradictions within the legal statute and process itself that we seek to explore. In essence, we argue, the formal legal system in SSA, developing through multiple reforms, should be understood as an instance of legal pluralism, a dynamic and complex agenda of legislative processes which reflects the complexity and contradictions of SSA societies’ own attitudes to informality.

Importantly, pluralism is a method of power sharing, as McAuslan comments in a discussion of SSA land reform: ‘the issue of pluralism v. monism ... is and always has been an issue of

power; ... a question of ... who has political power, and over whom is that political power exercised?' (2005:1). Thus, legal pluralism may express tolerance and inclusion, as when religious minorities are granted rights over marriage laws (Yilmaz 2002); or domination, as when parallel legislation allows one group to maintain power over another. In some cases it has been incorporated in a decentralization strategy, and been used to formalize the sharing of economic gains from natural resources between the rural poor and national governments or external investors (Benjamin 2008). Over the longer term, where power sharing is between internal and external actors, legal pluralism has been effected through co-option, and the selective adoption of legislation serves and reflects internal power struggles (Kidder 1979).

In Africa, the second half of the 20th Century saw successive waves of political unrest, and foreign influence. Thus the dichotomy between written and unwritten, formal and informal, modernist and traditional law, cannot capture the complexity of pluralism. In many late and post-colonial states, 'modernist' law is dynamic, has come from multiple sources at different times (Tamanaha 2007), and has multiple local, as well as external power bases.

Moreover, the reframing of spatial boundaries inevitably leads to legal pluralism because of multiple, pre-existing – and often divergent or unrelated – codes (Tamanaha 2007). Thus reframing the scale at which the relationship between street-trading and the state is analyzed from municipal to national, brings into sharp relief the fact that reforms designed for the governing of cities and reforms designed for the governing of economies may combine to create contradictory or perverse outcomes for a given social group.

Informality is defined by the laws it ignores and is seen to contravene. To conceptualize impacts of complex legislation on particular groups, Moore (1978) suggests the idea of a semi-autonomous social field, which can generate rules, customs, symbols and compliance internally, but... is simultaneously vulnerable to invasion by the larger social matrix in which it is set and which aims to control and affect it.

In contrast, de Sousa Santos sees the role of state not as imposer of modernist norms, but as manager of heterogeneity: ‘In the field of economics, the segmentation created by structural adjustment between the transnationalized sector of the economy and the so-called informal sector is immense. It is a matter of two legal and institutional worlds whose actions are very often unfathomable. It is up to the state to keep them apart by managing this heterogeneity’ (de Sousa Santos 1997, 2006:52). In effect, two models of state intervention are posited here: Kidder’s analysis implies an invasive state which seeks to control a semi-autonomous informal sector by ‘modernizing’ law; de Sousa Santos’ analysis suggests a benevolent state which allows benign neglect of the informal sector.

The case study of Tanzania below explores competing reform agendas, the power dynamics they embody, and their impacts on street-traders. The findings are then conceptualized as changing forms of legal pluralism.

Case Study

Micro-entrepreneurship and poverty in Tanzania

Tanzania is a particularly useful case for study of the relationship between the informal sector and the reform agenda, because of its large informal sector and street economy, on the one hand, and its active reform process, on the others.

Tanzania is a poor country. The disastrous economic policies of the 1970s, and imposition of liberalization and economic reconstruction through an Economic Recovery Programme from 1986-1991, led to a decline in formal sector employment, rapid urban growth and increase in micro-enterprise (Brown 2006:72), with the estimated proportion of people employed formally falling from 84% in 1978 to 36% in 1991 (Tripp, 1997:187).

Implementation of the Poverty Reduction Strategy Policy (PRSP) in 2000 (URT 2000) saw

an increase in overall GDP growth rates. In 2004 for example, real GDP grew by 6.7 percent compared to 5.7 percent in 2003. Household Budget Survey (HBS) results indicated that the proportion of people living in basic needs poverty had declined (from 38.6% in 1991/92 to 35.7% in 2000/01 and to 33.3% in 2006/7).

However, analysis by sectors suggests that the increase in GDP has not been associated with job growth, and that persistent poverty affects specific groups, driving further urbanization and informalization. For example, a review of the PRSP suggests that poverty has declined faster in urban than rural areas, largely in Dar es Salaam, thus sharpening the rural-urban divide and the dependence of the poor on urban livelihood sources. The figures also show an overall increase in women-headed households, women without education and widows – all attributes that manifest poverty. Finally, the HBS results comparing those two periods revealed growing income inequality as measured by the rise in the Gini-coefficient from 0.34 in 2003 to 0.37 in 2004. The comparison of growth and poverty reveals that much of the growth in that period did not translate into poverty reduction (MKUKUTA 2006, URT 2004b).

Recent estimates are that the informal sector as a whole contributes 35% of GDP (Schneider 2004), accounts for 80% of the country's jobs and provides up to 70% of the services consumed by the poor (ILD 2005a). The proliferation of small retail businesses in general and street vending in particular in Tanzania's urban centers must be understood in the broader economic context, and lack of employment opportunities in agriculture, manufacturing and the public sector, and the need for those in employment to supplement salaries (Tripp 1997). Over the past ten years the number of low-turnover, own-account businesses (henceforth 'micro-entrepreneurs') has increased throughout Tanzania especially in major cities like Dar es Salaam.

As in most African countries, rapid growth of imports in absolute terms and, importantly, in

relation to growth in GDP, reflect a structural shift in the economy to services and commerce. This shift has been reflected in the informal economy too, with most new informal-sector jobs in commerce (notably street-trading), rather than petty manufacturing (Lyons and Msoka 2008). In 2005 the ILD estimated that 55% of Dar es Salaam's small businesses were in commerce, with 30% in services and only 15% in manufacturing, with a very similar breakdown in other Mainland urban areas (ILDa 2005:103/4), while the city's street-vendor population has recently been estimated at close to 700,000 street-traders (Lyons and Msoka 2008).

Street-trade is defined here as all non-criminal commercial activity dependent on access to public space including market trade, trade from fixed locations and hawking (mobile vending), while public space is framed by the social relations that determine its use.

The three main areas of reform identified above were explored through a desk study, and their impacts analyzed through key-informant interviews with donors, NGOs and all levels of government and local government; through trader interviews (622), and through analysis of newspaper articles over a six month period. The research was carried out in the country's seven largest municipalities (Temeke, Ilala, Kinondoni, Morogoro, Arusha, Mbeya and Mwanza).

Doing Business Reforms

The 'Doing Business' reforms promoted by the World Bank (e.g. WB 2003, 2004, 2005) and the donor community (OECD 2007a,b,c) are influential modernization reforms (Potts 2007), which attempt to broaden the reach of the formal economy. These essentially neoliberal reforms (Altenburg and von Drachenfels 2006) draw *inter alia* on the work of de Soto (for example, 1989, 1996) and aim to facilitate trade, remove legislative burdens to business and address institutional weaknesses, for example through financial sector deepening or through the creation of property and business registers. The WB (2008:64) expects the reforms to

benefit Small and Medium Enterprises (SMEs) more than larger businesses. However, critics suggest that, for example, the proposed reforms in company registration systems (Arrunāda 2007) and governance (Bendaña 2004) will disproportionately *disadvantage* small businesses, while others have argued that residential land-titling has not resulted in capitalization and market participation by the poor (Durand-Lasserve and Selot 2007).

Micro-entrepreneurs such as street-traders are seen as unlikely to survive formalization (WB 2008) and are not targeted by the reforms. In effect, the WB conceives the reforms as irrelevant to this group, and expects that micro-entrepreneurs will disappear, having been absorbed into jobs created by the growth of larger businesses. However the critique of reforms with regard to SMEs is also relevant to micro-entrepreneurs, and for street-traders additional adverse effects are likely. For example, as access to finance becomes more widely available in the formalizing economy many street-traders would be disqualified from borrowing because of asset illegality, limiting opportunities for growth.

Tanzania has passed a raft of revisions to its business and trade laws since embarking on the reforms (for example URT 2002, 2003, 2004a, 2007). In consequence, the WB ranked the country second after Ghana among Africa's top ten reformers (WB 2009), for its reforms in starting a business, registering property, protecting investors, and trading across borders (though still lagging on employment, contracts, access to credit, and closing a business). In addition to changes to the regulation of business activities, two formalization programmes involved are being developed under the umbrella of the Business Environment Strengthening programme for Tanzania (BEST), directed by the Better Regulation Unit (BRU) and managed in the Ministry of Planning and Lands (although notionally housed in the President's Office).

The first, acts to survey and register informally held *residential* and *farming* land. The legislative background to this is discussed below, under land law reforms. Here we focus on

reform implementation and its implications for street-traders. In urban areas, land informally developed for housing is being surveyed and registered. In order to simplify the process of survey, dispute resolution and registration, which had been considered dauntingly cumbersome and expensive, land offices are being established in local authority to improve access (e.g. ILD 2005a, b). Residents who successfully complete the registration process are issued with a Residential License. Informal businesses such as shops and workshops within survey areas receive a License to Occupy. A business owner's License to Occupy can be used to support an application to license the business .

An argument for land titling – with clear roots in de Soto's thinking – is that homes and business premises, once legalized, can be used as security for loans in the formal sector, allowing owners to invest in their property and borrow on better terms. Formally registered properties will become liable for property tax, and Tanzania's implementation of its poverty reduction strategy had been criticized for failing to raise local tax revenues sufficiently (MKUKUTA 2006).

The programme is widely regarded as experimental, and implementation initiatives are being developed by BEST, while MKURABITA tests local implementation and provides commentary on the impact on the poor. Enabling legislation has also been passed or amended. For example, the recently introduced Urban Planning Act, 2007, and Land Planning Act, 2007 (URT 2007a, b) simplify the processes of residential land titling, and planning of informal residential land in urban and peri-urban areas.

BEST's second undertaking is to simplify business registration. Following registration with the national tax authority, applicant businesses will now find that the many months and numerous payments on which licensing is contingent have been significantly reduced, and registration offices are also being set up in every municipal authority.

However, since 2003 legislation has progressively marginalized traders. Municipal '*nguvu*

kazi' licenses for itinerant traders had been established in the late 1980s, on the basis of the 1983 Human Resources Deployment Act which required every able-bodied person to work and obliged local authorities to support income generation (Tripp 1996 in Nnkya 2006: 83). However, the Business Licensing Act, 2003, simplified license categories, and abolished the peddling license, cancelling the *nguvu kazi* license and effectively making street-trade illegal. The Finance Act 2004 reaffirmed compulsory businesses registration. Although small businesses retained exemption from the fee, the costs remained prohibitive (ILD 2005a). The recently passed Business Registration Act 2007 (URT, 2007) further simplified registration of small businesses but, for most micro-entrepreneurs, registration remains out of reach (Waite 2007).

BRU is led from the President's Office Planning Commission, in consultation with the Ministry of Finance and Economic Affairs, Ministry Agriculture Food Security and Cooperatives, Ministry of Industry Trade and Marketing, the Tanzania Revenue Authority and the Prime-Minister's Office. Donors and donor clusters work mainly with these ministries in reform implementation. These are powerful forces in Tanzanian polity, embodying and ensuring the centrality of these reforms to the national agenda.

At the same time, while for medium-sized businesses licensing has been simplified and credit availability has increased sharply, for micro-enterprises the reforms have been exclusionary. By and large, street-trade does not take place in either rural or residential areas, but in the heart of urban business districts and in public space. Thus the land formalization programme, which addresses itself to residential or agricultural land and to businesses in *unsurveyed residential areas only*, cannot legitimate the vast majority street-trade, or legalize its locations.

The business registration scheme too is inaccessible for most micro-enterprises. To be registered the business must have a fixed and legal address (URT 2007a), and for vendors

trading in urban public space, trading space cannot be legalized unless the municipal authority alters the town plan, a process governed by the Urban Planning Act (URT 2007) and closely supervised by the Ministry of Planning and the Ministry of Lands.

The minority of traders who are allocated legal spaces in new markets are also unlikely to find the scheme relevant. To be registered, they must declare a particular trading address. Yet the designation of most new markets is temporary and can be revoked within 24 hours, rendering traders' right to trade conditional and impermanent. Many are allocated no space at all, simply the right to trade within a given area, such as a temporarily designated empty lot; and some spaces are designated for only one day a week, so that traders move to a different market every day. Any of these conditions makes nonsense of another condition, that the license be permanently displayed on a wall of the business premises (URT 2007a).

Whatever their impact on formal businesses, the improvements in the business environment have bypassed street-traders. The abolition of *nguvu kazi* licenses has codified their activities as illegal; while the concentration of asset formalization programmes on residential and farming land have meant that their assets are no more secure – and therefore no more useful as collateral – than they were before.

The legalization agenda

A second strand of reform, termed here 'Making the Law Work for Everyone' (MLW4E) after the recently published report of the Commission for the Legal Empowerment of the Poor (UNDP 2008) is also influenced by de Soto's work but adopts a rather different perspective of seeking to legalize 'extra-legal' agreements and assets. Its expected impact on all branches of the informal sector would be to raise the value of informal business assets through integration in the broader economy. Street-trade is seen as an engine of pro-poor growth, a means of participation by the poor in an increasingly commercial economy. Street-traders, whether ambulant or stationary, would derive additional benefits from legitimization of

their trading space given the significant cost of enforcement (Lyons and Msoka 2008). Access to space for business is seen as a right.

MKURABITA, the "*Mpango wa Kurasimisha Rasilimali na Biashara za Wanyonge Tanzania*" (Programme to Formalize the Property and Business of the Poor in Tanzania) was initiated by former President Mkapa as a vehicle for implementing this approach in Tanzania (indeed the experience informed the MLW4E report (CLEP 2006)).

The four-stage process included Diagnosis, reform Design, Implementation and Capital Formation, and Governance. The first two stages were led by a team from the Institute of Liberty and Democracy, led by de Soto. The Diagnosis, carried out in January-October 2005 identified the scale of informality in the country, its economic and social importance, and the barriers to formality faced by the bulk of Tanzanians (ILD 2005a, b). The Proposals drafted by MKURABITA in 2006 and modified in March 2007 have never been formally adopted by the government. Instead, the reform design process is now nested within the BEST-led business environment improvement programs being led by the President's Office Planning Commission (see above). A MKURABITA team designs pilots for BEST's formalization program. In effect the last two stages of the legalization agenda were never implemented.

While the focus of Diagnosis was on the necessity for urban informal businesses to be recognized and the creation of conditions for formal recognition, the emphasis of the resulting reforms is on titling for housing land within urban areas and of agricultural land in rural areas. Given the long history of debates over the legitimacy and legalization of slum housing in developing-country cities in comparison with the continuing demonization of street-trade (Brown et al 2009), MKURABITA's attention could be said to have shifted to politically and culturally safer, more mainstream, more acceptable ground.

Several substantial obstacles to the implementation of the legalization agenda emerge from published and public debate. At the heart of the MKURABITA analysis is the argument that

land in business use has value even if that business is not formally registered - it is the legitimization of business use on that land which would allow it to be used as collateral, as the land has a market value regardless of whether a particular borrower defaults on a loan.

In effect, the policy agenda has simply not incorporated the elements of the legalization agenda which would have created legal frameworks for street-traders. The capitulation of the proponents of this agenda to other powers is illustrated in the proceedings of the Consultation of the Commission of the Legal Empowerment of the Poor (CLEP) in Dar es Salaam in 2006, which dismiss hawking and street vending in a sentence, attributing urban poverty to poor housing. Thus:

‘Investment in infrastructure, including housing has failed to keep pace with the growth in population in most cities. This adversely affects the living conditions resulting in widespread poverty...Many...plod the streets with their wares... [and] have no property rights..’ (CLEP 2006:71)

The location of this reform agenda in the President’s Office has lent it gravitas but, unlike the Doing Business reforms, it has not been able to develop a strong base in the main the executive. In order to survive the election of a new president, the reform programme was changed and, in effect, aborted (Waite 2007). Thus, the weaker political status of the legalization reforms has also left street-traders outside the national reform agenda.

Finally, BEST’s focus on larger businesses, and the weakness of legalization protecting street-traders, has resulted in the further marginalization of micro-businesses. The (theoretical) ability to borrow creates a tendency among municipal and senior civil servants to view small businesses without access to capital or borrowing as insignificant. Similarly, the fact that a majority of businesses with established premises will now be licensable puts street-traders further outside the consensus.

‘These are not entrepreneurs’ (city economist on street vendors selling clothes on the street or

in formal markets);

‘They should go back to the rural areas where they came from, or who will grow our food in this country?’ (senior civil servant).

This widely held perception is important in explaining the vulnerability of traders to prosecution under the planning system, discussed below.

The town planning agenda

Land law and local government law both have significant implications for the management of municipal-level management of street-trade and provide the third strand of this analysis. For more than 130 years, land rights in Tanzania have been controlled by the state, with customary and formal land rights operating in parallel. Under colonial rule, land was decreed as crown land, with recognition of customary rights, and in the socialist post-independence era, government control was reaffirmed and freehold title was abolished. The 1990s was a period of major reform to the conceptualization of land (Mallya 2005), and land remained vested in the president as trustee for citizens (Olenasha 2004). Customary rights continue in some rural areas.

The Land Bills of 1996 and 1998 led to the enactment of two lengthy pieces of legislation, the 500-page Land Act (No 4) 1999, and the 280-page Village Land Act (No 5) 1999, both commencing in 2001 (Olenasha 2004) (URT 1999a, b). Nationalization of land ownership remains a central plank of land policy in Tanzania. Under the Land Act 1999 any land may be subject to a ‘scheme of regularization’ in order to facilitate recording and registration of urban land (s.57-1), but there is no recognition of land requirements for the informal economy. The Land Act 2004 introduced further amendments in line with the Doing Business reforms and promoted by the business community, to create and facilitate a market in undeveloped land, previously thought to have no market value. However, critics argued

that the commoditization of property would result in the formalization of dispossession with concomitant destitution and marginalization (Olenasha 2004).

Following the MKURABITA recommendations discussed above two new town planning acts were finally initiated, the Urban Planning Act 2007 (URT 2007a), and the Land Use Planning Act 2007 (URT 2007b), which commenced in April 2008. In the spirit of the National Land Policy 1995 and the Human Settlements Development Policy 2000, both Acts aim to enable the provision of serviced land for *housing* shelter particularly for disadvantaged people, improve infrastructure and services, facilitate employment and the eradication of poverty and promote environmental protection and sustainable development (URT 2007a:Sec.3), through ensuring the orderly and sustainable management of land, and security and equity in access to land resources (Sec.4).

Tanzania has a long history of functioning local government, which also marries customary and formal traditions. Today's local government structure was founded in 1980, when the ruling party (CCM) ordered the reinstatement of local government, elections for rural and urban authorities took place in 1983, the new authorities were set up in 1984, with some capacity to raise local revenue (URT 2009). To overcome continuing poor service delivery by LGAs, the Local Government Reform Programme 1996 (LGRP) led to the *Local Government Reform Policy Paper* in 1998 (URT 2009). The reforms aimed to contribute to poverty reduction through improved service delivery by autonomous local authorities, with elections for urban and district councilors, and in urban wards (*Mtaa*), with strengthened revenue-raising, participation and accountability for local government (URT 2009). However, through the Prime-Minister's Office for Regional and Local Government (PMO-RALG), central government retains overriding powers over local government, local government technical officers are line-managed – and appointed – by their ministries., and, despite the intention of reforms, most services and infrastructure are provided by central government or its agencies,

with funding from central government or donors. The local framework for effective management of urban economies is therefore weak.

Local town planning ethos closely reflects the collaboration over such issues between PMO-RALG and the Ministry of Planning, including BEST and the BRU, and closely inform local decisions on town planning and its policing. Reforms to town planning legislation lagged considerably behind reforms in land and local government. Until recently the legislative framework, drafted pre-independence, was ill-equipped to deal with the urban growth and the increase of informal housing and employment during the last three decades. The basic instrument was the Town and Country Planning Ordinance (cap 378) 1956 (amended 1961), which set out a two-tier system of planning, with the Minister of Lands responsible for designating Planning Areas, appointing planning authorities, making planning regulations and preparing or approving Planning Schemes (ILD 2005c: 34). The ordinance was supplemented by the Land Surveying Ordinance (cap 390), 1957, the Land Registration Ordinance (cap 344) 1954, Town and Country Planning (Use Classes) Regulations, 1960 amended in 1993, and the Land Acquisition Act, 1967. The underlying assumption has been that urban land use can be controlled.

Under this legislation, land in Planning Areas could not be developed without planning consent. Planning Schemes were to make provision for roads, public services, land-use and amenities and, once approved, were surveyed prior to registration and titling (ILD 2005c: 34). However, the system was inadequate to deal with either rapid urbanization or customary processes of land development, and by 2005, although most of Tanzania's main urban were declared Planning Areas, few had approved Planning Schemes and about 70% of urban areas were unplanned (ILD 2005c: 35)

During the 1990s a fascinating experiment took place with a radical and novel approach to strategic planning. In 1990 Dar es Salaam City Council sought assistance from the United

Nations Development Programme (UNDP) and UN-HABITAT to renew the 1979 Dar es Salaam Master Plan. Instead, UN-HABITAT persuaded the city council to pilot a new participatory approach to planning, and the Sustainable Dar es Salaam Project (SDP) became a pilot for the global Sustainable Cities Programme (Brown 2006: 71, Nnkya 2006). A City Environmental Profile was completed as the basis for a major city consultation in 1992, which identified nine key environmental management concerns, one of which was petty trading.

In the following three years, the working group on *Managing Informal Micro-Trade* made realistic recommendations, many of which were implemented, including the strengthening of formal traders' associations as a channel for dialogue with the authorities, the design of metal stands to economise on the use of space, and improvement of existing markets (Nnkya 2006). By 1997 about 240 self-help groups represented 16,000 traders (DCC, 1999) and two umbrella groups were established - VIBINDO (Association of Small Businesses), and KIWAKU (an association of clothes sellers). VIBINDO achieved considerable status, representing about 300 associations with a combined membership of 40,000 people (Msoka 2007), and its three broad objectives included advocacy, acquisition of plots, and providing business information. *Guidelines for Petty Traders* were published in 1997 (Nnkya 2006). The SDP was replicated in nine cities throughout the country.

The Urban Planning Act 2007 defines all City, Municipal, Town, District and Township Authorities as planning authorities for their relevant jurisdiction (7-1). Central government issues guidelines for the declaration of Planning Area and preparation of Planning Schemes, while planning authorities prepare General and Detailed Planning Schemes which should incorporate gender perspectives and the needs of vulnerable groups (7-1), limit the extent of physical development and regulate the height, design and appearance of buildings. They are also responsible for granting planning consent, and the preparation of self-sustainable

neighbourhoods. General Planning Schemes are intended to promote sustainable development, and to secure provision for transport, public purposes, services and the residential, commercial, industrial and recreational use of land (s.9), and are approved by central government. The Act does allow for the provision of zones and sites for formal and informal housing, formal employment and informal sector development.

The Land Use Planning Act 2007 is the parallel act dealing with the management of land and its conversion for development outside urban areas. Planning authorities are designated as Village Councils, District Councils and the National Land Use Commission (s.18). The Commission is required to prepare a national land use framework plan and detailed zonal land use plans where relevant, and examine all other urban land use plans (19-1). District Councils are required to prepare District Land Use Framework Plans, and coordinate the detailed Village Land Use Plans. Land Use Framework Plans should include consideration of population growth, employment, incomes and the potential of the informal sector, and human settlements and urbanization. Village Land Use Plans can include proposals for multiple land use systems to accommodate different land use practices.

In theory the new legislation is an interesting blend of traditional codified approaches to the management of land, and newer sustainable development and participatory agendas. In practice the move from a context where nearly three quarters of urban development is estimated to take place outside formal systems to a fully formalized system overnight is likely to be unworkable. The SDP, with its process-led approach to planning, has been marginalized in Dar es Salaam – and in all smaller towns - in favour of statutory planning. While the Doing Business reforms have marginalized street-traders, and the MLW4E reforms have failed to address the sector, the new land and town-planning legislation has largely ignored the very real gains in problem-oriented planning achieved through the sustainable cities programme, and has instead been applied selectively and punitively, as with the recent

land Act, to formalize dispossession. Street traders and other micro-enterprises have become more than ever dependent on a diminishing municipal tolerance.

The evictions

The 2007 evictions of street-traders are a vivid illustration of the intolerance of the new framework towards informality and its impatience with a MLW4E agenda. As has been argued above, both the Doing Business reforms, focused on improving the business environment, and the legalization agenda based on de Soto's thinking and taken some way forward by MKURABITA, have shaped reform processes which exclude street-traders, leave them illegal in several domains and dependent on the tolerance of urban authorities. What has been the outcome for street-traders of these gaps in the multiple reform agenda?

In March 2006 the Prime Minister's Office issued a letter to major municipalities ordering the eviction of informal traders from streets. VIBINDO, the largest umbrella association of petty traders, sought an injunction preventing evictions, and the Prime Minister suspended the process pending the allocation of alternatives sites, but on 30 September 2006 the evictions were approved. They were mainly carried out in the first six months of 2007 by municipalities, generally using *ad hoc* or private police units. Hundreds of thousands of traders were affected (prosecutions alone were estimated at over 200,000 during February to July 2007).

The scale and impact of the evictions have been described in detail elsewhere (Lyons and msoka 2008) and can only be alluded to here. Suffice it to say that evictions and their policing have a profoundly adverse effect on traders' lives. They have involved loss of physical capital such as kiosks, loss of operating capital through fines and stock confiscations, loss of customers/goodwill through relocations (generally to less favorable areas), loss of supply lines through increased distance to suppliers, loss of trading time through jail sentences, time taken outside the business to rebuild starting capital. The policies

have decimated businesses, curtailed the opportunities for growth, destroyed traders' sense of self-worth, increased their vulnerability, and dramatically reduced the life chances of their dependents. It is telling that, in response to the open question: "What has been your most memorable experience as a trader?", approximately half of the traders who had *never been evicted* were sufficiently affected by events to count eviction as their most memorable experience. Among people who had been evicted – some of them years before – over 80% named evictions as their most memorable experience.

It is important to emphasize here that these measures had a direct impact on the legalization agenda. When ILD carried out its analysis of the Tanzanian informal economy in 2005, it estimated that the market value of businesses and assets held by small informal businesses amounted to some US\$28bn. The development of legal instruments and processes to formally or semi-formally recognize these assets would have unlocked access to potentially large borrowing and the security of tenure that such recognition brought was expected to trigger further investment in these businesses. The razing of kiosks and confiscation and destruction of other property destroyed much of the capital assets which provided the rationale for these reforms, setting back this cause considerably (Lyons and Msoka 2008).

The order from PMO-RALG was addressed to municipal directors. Senior Management Teams in each municipality then coordinated the policy of evictions and prosecutions; the structure for professional officers is directly linked to relevant ministries, the work was efficiently coordinated and there was no dissent recorded in any of the municipalities studied, suggesting effective inter-ministerial coordination by PMO.

There is however evidence to suggest that the President's Office was not fully part of this consensus. Following their eviction from Arusha's town centre, itinerant second-hand clothes merchants pooled resources to erect a market building on a municipal site near just outside the town centre. The municipality threatened to evict the traders from this site as well. An

appeal to the President's Office brought him to visit the town and the market, and to issue instructions to the municipality to make over a lease on the land to the traders (as the President holds the freehold to all land in Tanzania on behalf of the nation and this is therefore within the purview of the office).

Conclusions

Attitudes to street-traders in Tanzania have fluctuated in line with the wider political agendas and struggles for influence. Local bylaws in the 1960s and 1970s made petty trading illegal, but the 1980s economic crisis and introduction of the *nguvu kazi* license gave traders some legitimacy. Meanwhile the SDP had a specific focus on the accommodation and management of street-traders, and this approach received broader support and pressure for reform from the President's Office with the institution of MKURABITA in 2005. Why then has the liberal policy approach of the 1980s and 1990s been almost completely reversed? Previous work on the politics of street-trade in Africa has focused heavily on the local arena (for example, Popke and Ballard 2004, Skinner 2008b), but the foregoing analysis demonstrates that this approach is no longer valid. National-level politics and internationally inspired policies have a profound impact on the local politics of street-trade.

Does this story support the idea that the law is about much more than the state, as Merry argues? The findings suggest that the position of street traders as a 'semi-autonomous' social group lacking legal status has not provided them with sufficient power to resist marginalization. Street-traders have been very poorly served by this multiple – or plural - and not always coherent reform agenda. The only business reforms in Tanzania, the MLW4E reforms supported by MKURABITA, which set out to support the street-traders in an increasingly legalized neoliberal business environment, have failed to progress.

At the same time, the triumph of statutory planning over the inclusive, adaptable planning process attempted in the Sustainable Dar es Salaam programme has coincided with an end to

state and municipal tolerance of street informality, leading to widespread evictions, prosecutions, confiscations and demolitions. These have effectively undermined the viability of MLW4E reforms. In effect, the space for informal rules and norms of semi-autonomous groups has been severely narrowed in the process. While in the mass evictions, both licensed and unlicensed traders were evicted, it is the lack of legally protected space that made the group as a whole vulnerable.

The Tanzania case demonstrates the potential for pluralism within the formal legal system, and competition in the cooption of power-bases for the introduction of reforms. The introduction argued that the need to operate parallel legal systems is primarily about the segmented exercise of power (McAuslan 2005). But the argument was also made, following Kidder (1979) that the award of power involves cooption, reflecting power struggles *within* a society. The three sets of reforms analyzed, seemingly complementary, overlap and intersect in complex ways. This creates sites of competition between the bodies charged with their implementation. In Tanzania, the neo-liberal reform agenda is housed within a small number of powerful ministries led by the Prime-Minister's Office; the line-management structure of local government, means this alliance can also centralize much decision making, creating conditions for nation-wide municipal compliance. The inclusive, ameliorative approaches of the SDP and MKURABITA had their central support in the large municipalities and in the President's Office respectively. Although this has provided sufficient power to mitigate some outcomes of the administration's policy, it has not been able to significantly inform it.

Finally, the interactions between the law and its surrounding culture are crucial and dynamic. Confrontations between traders and the state do not take place in a political vacuum (Tripp 1997), and the political climate in Tanzania respect has been polarized by the reforms. Analysis demonstrated the exclusion of street-traders from the new reforms has further marginalized them in the public eye and in the mind of policy makers and politicians. As was

clear from interviews with municipal officials and senior civil servants versed in the reforms, the perception of street-trade – already marginalized in cultural and political discourse (Potts 2007) - as criminal or trivial has become more deeply entrenched, as reflected in the zeal with which evictions are prosecuted. In turn, this supports Dupret's interpretation (2005) of the recent character of pluralism, suggesting that codes which lack recognition from law makers and power brokers marginalize and weaken the societies that practice them.

In assessing the importance of these findings, it must be emphasized that the Tanzania case is interesting not because Tanzania is unique either in its adoption of the Doing Business reforms or in its widespread evictions of street-traders. Both phenomena are sweeping Africa. The country is also a good example of widespread poverty, rapid urbanization, and rapid increase in the importance of street-trade as a livelihood avenue for large proportions of the urban poor and their dependents (Lyons and Msoka 2009). In other words, issues identified in Tanzania are likely to have a wide application.

The Tanzanian case provides a convincing example of the unintended consequences of the Doing Business reforms and the wider formalization process. In Tanzania at least, legal pluralism exists within the formal system, is a forum for dynamic (re)negotiation of power, and creates contradictions and voids which penalize a mass of the urban poor. In as much as the present formalization process excludes large numbers of entrepreneurs, a significant segment of modern urban society, it clearly requires adjustment. Its failure to address fundamental contradictions between current urban policy on micro-trade and the developmental objectives of broader formalization policies should sound alarm bells in the policy-making arena.

The discussion so far suggests that Kidder might classify a state actor which imposes the Doing Business reforms on street-traders as an invasive agent. Adopting a MLW4E agenda, the state is neither the agent of externally imposed modernity identified by Kidder, nor the

benignly selective agent of change identified by de Santos Sousa, but a benevolent interventionist in the modernization of the informal economy. Finally, the battle over reform of the Town Planning system and use of public space adds a new dimension to the concept of legal pluralism within modernist legal systems, which has not been fully explored. The brief discussion of multiple reforms above suggests the importance of recognizing the state's dynamic heterogeneity, with competing and collaborating actors between levels and among sectors.

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