

Maputo and informal land tenure arrangements

This case study draws on research that investigated the extensive informal land market in Maputo, Mozambique; specifically, how urban land is transacted and the mechanisms by which it is secured. The case study is based on a research study managed by Caroline Wanjiku Kihato and Lauren Royston of Urban LandMark and undertaken by José Alberto Raimundo (Universidade Pedagógica, Maputo) and Inês Macamo Raimundo (Universidade Eduardo Modlane, Maputo). The work received technical and financial support from Urban LandMark. See Sheet 5 for reference details.

An introduction to the case study is given below. See page 2 (back of this sheet) for reflection and learning activities. You can do these activities on your own or in groups, as appropriate for your learning session. Look at the activities before you begin so you know what to look out for during your reading.

Sheets 2-4 of this case study present an outline of land markets in Maputo. It outlines various barriers to participation in the formal land market and describes the informal system that has emerged in spite of the fact that the sale of land is technically illegal in Mozambique. A summary of the key findings of the study and some of the recommendations arising from it are given on Sheet 5.

Learning outcomes:

By the end of this session participants will be able to:

- Describe some of the official policy governing land ownership and land markets in Maputo
- Explain why there is an extensive 'parallel' land market, particularly in Maputo
- Critique the notion of 'informal' land markets
- Articulate strategies that will enhance urban land use planning in ways that more effectively meet the needs of poor people
- Suggest ways of improving security of tenure in addition to the formal state granted land rights.

Background to this case study

This case study is based on findings from a research study that investigated how the poor access, hold and trade land in two peri-urban settlements in Maputo – Luis Cabral and Hulene B. The study uses both qualitative and quantitative data sources. Quantitative data consists of survey material collected from 568 randomly selected households, 311 in Hulene B and 257 in Luis Cabral. The sample size in both sites is 27%.

The findings suggest that a land market that is technically outside of the legal system exists. Notwithstanding its illegality, the land practices operating there are organised and relatively sophisticated local land management and regulatory systems. The low incidence of land conflicts in the study sites shows that these practices are relatively functional. Local practices are characterised by a well organised system of social role-players, including family members, neighbours, local leadership structures and state officials, all of whom lend credibility and legitimacy to local land management arrangements and a local land market. This situation shows that informal urban economies in Maputo are co-produced by state and non-state regulatory systems. Such hybrid economies have implications for how we understand governance, markets and the role of the state in our cities.

The research provides the foundations for an alternative conceptual framework of land management in Maputo. It also puts forward an alternative way of thinking about the formal / informal land market dichotomy. In doing so it advocates for the strengthening of land security across a continuum of land rights in the land market.

Part of a series of case studies developed by Urban LandMark as a teaching and learning resource for studies in urban land markets. Urban LandMark gratefully acknowledges funding by UKaid from the Department for International Development (DFID). Email: info@urbanlandmark.org.za • www.urbanlandmark.org.za

Learning activities

Before you start

Before you read the case study, spend a couple of minutes making a note of your answers to this question:

What are your views about unauthorised or unregulated slum development and how city authorities like those in Maputo should respond?

After reading the case study

Do the following activity on your own, or in groups. Write down your answers to the questions. Be prepared to share your findings with the larger group.

Officially, land ownership in Mozambique is illegal and legal land tenure is achieved by means of a “*direito de uso e aproveitamento da terra*” (DUAT), which is a state-granted land right. In practice, what happens in the poorer areas of Maputo is quite different and is considered ‘extra-legal’ by the state. This contradiction between the law and reality is a major challenge for effective and equitable urban land management in Maputo.

Your task is to read through this case study up to page 8 and develop guidelines for the Mozambican government that will assist in resolving the above contradiction, and in particular, to assist poorer people to access land and gain greater tenure security and rights than they currently have.

Photo: Caroline Wanjiku Kihato



A street vendor in Hulene B

Reflection

- Do you have any core beliefs that were challenged in this case study? What are they? Share this with the other participants using this learning material.
- What are the key insights that you have gained from this case study?

The legal framework for land ownership in Maputo

On Mozambique's independence, the state nationalised land, authorising town councils to assign land concessions in urban areas. Shortly after independence, a 17-year civil war ensued that had the effect of pushing rural populations to Maputo, creating huge unplanned settlements on the city's periphery. One of the government's key urban issues after the end of the war and the signing of a peace agreement in 1992 was how to address the growing land pressure in cities.

The 17-year civil war pushed rural populations to Maputo, creating huge unplanned settlements on the city's periphery.

What was needed urgently was a legal framework that prevented land conflicts between a diverse array of stakeholders. The 1996 Constitution continued to vest all land with the state, forbidding the sale or disposal of land by individuals or corporations. However, it gave individuals and investors the right to benefit from land. Article 110 of the Constitution states that "the right to use and benefit from land shall be granted to individual or corporate persons, taking into account social or economic purpose".

The Mozambique Land Act of 1997 sought to ensure a balance between promoting national and foreign investment, while at the same time protecting the rights of those who had accessed land through customary law or occupied it in good faith for more than 10 years. This meant that many internally displaced persons (IDPs) and households living in unplanned settlements without formal title had security of tenure for as long as they used the land productively. The law also created incentives for private investment by granting land-use concessions for renewable periods of 50 years.

Although the ownership of land by individuals and corporations is illegal, as we saw earlier, there are provisions in the law for the long-term use and occupation of land through a state-granted land right, known as a DUAT. The document is transferable, and is provided on condition that the holder develops the land within five years (for Mozambican nationals and residents) and two years for non-nationals. The DUAT can be withdrawn if the holder fails to adhere to these provisions. Once a DUAT holder has developed the land, the individual can apply for a *titulo* that provides them ownership of the structures and any developments on the land for a period between 49 and 99 years.

What actually happens

In spite of the legal options available, accessing land through formal channels of supply is limited to a small elite. Approximately 800 000 out of a population of 1.1 million people in Maputo do not possess a DUAT. Acquiring a DUAT is a long bureaucratic process, requiring the applicant to go to different government departments and follow 64 steps in the process before the land can be registered.

At each stage, the applicant encounters different problems: delays in the processing of registrations, a lack of capacity in government departments and a lack of information. These aspects, coupled with the cost of travel to municipal offices, payments to notaries and the general application fees necessary for registration, mean that the DUAT is out of reach for the majority of urban households. Yet this is the official instrument by which residents of Maputo can gain secure tenure over land.

There are other problems not related to cost that make the DUAT difficult to obtain. In order for a DUAT to be issued, the parcel of land has to be in the municipal cadastre where the location and number of the parcel are registered. It also has to be included in the city's development plan. With the exception of the central area of Maputo few sites are registered in the cadastre or are part of Maputo's development plan.

An interim stage (and a prerequisite) in the DUAT application process is a *declaração*. This is an affidavit issued by the *secretario de bairro* that offers an official means for recognising a land occupant. For households without a DUAT the *declaração* is a means of gaining a degree of tenure security. However, this security does not equal title, and legally a household with a *declaração* could be evicted.

Acquiring a DUAT is a long bureaucratic process, requiring the applicant to go to different government departments and follow 64 steps in the process before the land can be registered.

Findings of the research

To find out how people cope with Mozambique's complex and inaccessible land rights system, research was undertaken in two research sites in Maputo – Luis Cabral and Hulene B. Although the sites are both located in the suburbs of Maputo, Luis Cabral was established as a settlement for workers from the Maputo harbour and has a longer history of urban settlement than Hulene B. Hulene B is a more recently established community, housing IDPs from the civil war. It experiences flooding most rainy seasons. Many households live on a rubbish dumpsite in potentially hazardous conditions. Most of the plots in Luis Cabral have been surveyed, have wider roads and are generally better planned, while Hulene B is largely unplanned.

The research revealed some very significant issues:

- Very few households hold a DUAT
- Most land tenure is socially mediated through local leaders
- Even without a DUAT, people have a strong sense of land security
- This sense of security is somewhat misplaced; powerful interests are able to override the legally tenuous hold people have on that land.

Photo: Caroline Wanjiku Kihato



Toilets in the unplanned and unserviced Hulene B

Local land management structures

For many households in peri-urban areas, the *declaração* is the only document that links their name to a particular space in the city. Although it is not a title deed, it is recognised by banks, the municipality and employers as a valid form of proof of residence, which verifies that an individual is *bona fide*. To issue a *declaração*, the *secretario de bairro* works with a local leadership structure. Typically a *bairro* (neighbourhood or suburb) is divided into areas comprising 50 households that are registered and managed by the *chefe de quarteirão*. The *chefe de quarteirão* is responsible for managing the households in his/her area, ensuring that they are accurately registered, and for providing the *secretario de bairro* with information on land occupancy.

Below the *chefe de quarteirão* is the *chefe de bloco* who is responsible for 25 households. These are further subdivided into areas of 10 households known as *dez casas* (literally '10 houses'), managed by the *chefe de dez casas*. At each of these levels, local data on household occupancy, plot and house numbers are collected and verified. These are reported to the *chefe de quarteirão* who captures them manually in a register. All the data collected by the *chefes de quarteirão* is consolidated in another register held by the *secretario de bairro*. The *secretario de bairro* is a local leader officially appointed by the municipality. Although a person is appointed and not elected to the position, the appointment is often political and linked to the governing party. In fact, in Luis Cabral, the *secretario's* office and party headquarters are one and the same place.

For many households in peri-urban areas, the declaração is the only document that links their name to a particular space in the city.

Photo: Caroline Wanjiku Kihato



Office of the *secretario de bairro* in Luis Cabral

It is clear that local leaders are the primary authority figures around holding land and dispute resolution. In the research that this case study is based on, when asked whom they would ask for help if someone should disagree about whether a place was theirs, nearly 60% of households cited local leaders, with 27.6% saying the *chefe de dez casas* and 30% saying the *secretario de bairro*.

Local leaders are the primary authority figures around holding land and dispute resolution.

Importantly, the *chefe de dez casas*, the most micro-level figure in the neighbourhood organisation structure, features prominently in the conflict mediation aspect of local land management arrangements. It seems that most disputes are handled at a very local level, and taken to the *bairro* level only if the *chefe de dez casas* is unable to resolve them. Only a minority of households responded that they would involve the police (3%) or use the courts (2%), again indicating the importance of local management systems as opposed to state institutions. About 3% of those

surveyed stated that they would consult with their neighbours and families to resolve conflict. However, only 8% of respondents reported that they had had any personal experience of conflict around land. This is testimony to the significance of the local informal system that is in place, and of people's trust in that system.

People's sense of land security is socially mediated

People who participated in the survey expressed a high sense of security in terms of their rights to the places where they live. When asked whether they felt their rights to their property were safeguarded, a surprisingly high number of households (68%) responded that they felt their rights were "very strong" or "strong". Despite the fact that an insignificant number of those households held a DUAT and almost a fifth of the population had only verbal agreements in place, they subjectively felt that their rights were nevertheless strong, pointing to the social legitimacy of the local land management arrangements.

A surprisingly high number of households (68%) responded that they felt their rights were "very strong" or "strong".

Some 19% of those surveyed reported that they felt their rights were strong because the neighbours could prove the place was theirs, 13% said their rights were strong because they had a document that proved the fact and 9% said their rights were strong because they had a number from the municipality on the house. Evidence – both verbal (in the form of oral testimony) and documented – demonstrates the significance of social relations and the *declaração* in perceived tenure security. It is interesting to note that although close to 30% of respondents were in possession of a *declaração*, only 13% invoked documentary evidence as a potential form of recourse in the instance of disputes, while 19% said they would use social networks to mediate disputes.

If household investments in improvements to property can be taken as evidence of a sense of land security, then households included in the research survey seem to feel very secure: 72% had made housing improvements since they had moved in. Most of the funding for their improvements (45%) was obtained from *xitiques*, which are informal rotating credit groups. Banks play an insignificant role in this market, with only 0.9% of households saying they had obtained a mortgage from a bank. This can be taken as evidence of the gap that exists between the informal systems that are in play and the more formal systems, even though *declarações* are accepted by banks as adequate documentation for securing loans.

It is surprising that a significant number of households bought their properties through the (informal) market, given that land sales are illegal. When asked whether or not they had bought their properties, 50% had and 44% had not. Of those who had not purchased their properties, 19.8% had inherited them. Buying a property is clearly the most significant means of finding a place to live once people have heard about an area that is suitable to settle in.

This finding is particularly significant in Mozambique where the sale of land is prohibited by law. In all the interviews conducted for the research, government officials and local leaders stressed that the sale of land was illegal in Mozambique. Nevertheless, towards the end of the interviews many of them acknowledged that the legislation held in theory; in practice, the sale of land occurred often. An official in the Ministry of Agriculture said, "...the sale of land is happening and it's a problem. Families and investors sell land. People are also confusing land and infrastructure. In some areas people are selling infrastructure, but people think they are selling land." One of the municipal officials confessed: "I know that there is a black market selling land, but it is not authorised."

"I know that there is a black market selling land, but it is not authorised."

Threats to land security

Despite the fact that the majority of households in the survey felt secure in their land rights, the truth is that they are not. State law may not be the only source of rule-making in society (as we have seen, a vibrant informal system exists), but it can easily be invoked in the interests of powerful political and economic elites to undermine existing local practices. It follows, therefore, that there is a need to investigate ways of progressively securing the land rights of poorer people.

An example of the weakness of relying on local land management arrangements for land security comes from an area known as Zimpeto on the outskirts of Maputo. Fifty smallholder farmers were evicted despite having farmed their land for over 10 years. The farmers' rights would likely have been stronger if they had formal title (but given the power relations in place, probably not guaranteed).

Thus, despite subjective perceptions of security, people's land rights remain under threat, particularly in the face of increasing pressure on land, for various reasons. So while having oral agreements or a *declaração* in place may ensure a certain level of security, legal recognition through securing full title is likely to become more important for tenure security in the future. This will remain the case unless legal recognition of instruments such as the *declaração* are introduced. At present, this seems unlikely. Thus, while a hybrid land economy has emerged in Maputo and, for the most part, has operated fairly well, its nature is changing and it is the poorer people who are likely to bear the brunt of these changes.

Despite subjective perceptions of security, people's land rights remain under threat, particularly in the face of increasing pressure on land.

The changing nature of the hybrid land economy

The dynamic nature of authority is evident in the adaptive authority of the *secretario de bairro*, which appears to have changed over time. During the civil war, the role was primarily political mobilisation and intelligence gathering. The *secretario de bairro* was a party figurehead in communities, and remains so, after the war. Evidence in this research, however, reveals a shift in the role towards that of a civil society land manager.

Photo: Caroline Wanjiku Kihato



An old house with basic services in Luis Cabral. How certain can the owners of houses like this be of their land security?

It seems that the adaptive nature of the *secretario's* role is linked to the blurring of party and state in contemporary Mozambique. As the political context changes, and as democracy intensifies in Mozambique, it may be expected that a greater separation between party and state will emerge. At community level, this would affect the role of the *secretario de bairro*. Although the result cannot be predicted, it can be anticipated that what constitutes social legitimacy now might be challenged and shift, and that processes of exclusion and lines of division might become more prominent. If this happens there will almost certainly be an impact on poorer people's security of tenure, even though they seem to take this security mostly for granted at present.

Strengths, weaknesses and opportunities of a hybrid land economy

While social values and institutions feature significantly in claiming land rights, mediating land conflicts and setting regulations and rules around behaviour in the land economy, the state remains an important role-player. As such, one cannot speak of a socially mediated economy that is completely outside of the state. State agents sometimes witness land transactions, issue permissions to occupy and have the power to threaten people's land rights. This makes them an important element in this hybridised economy.

The strength of this hybrid land economy is that it provides land access to a majority of urban dwellers who would otherwise be landless. Although it does not guarantee legal tenure, it provides, at least in the short to medium term, land for urban households who would otherwise be excluded. There is something for all in the hybrid land economy as it offers, in fact, a continuum of land arrangements.

However, the weaknesses of this land economy, particularly for the poor, are becoming apparent. Perceptions of land security are increasingly at odds with reality. Increasing pressure on land for development in the future may create tenure insecurity if existing local land arrangements are not recognised and given greater legal status by the state. In the end, the configuration of the political economy of land in the city cannot be ignored, as elite and economic interests will influence any real-world interventions that are made with regard to land rights and tenure.

What are the opportunities inherent in this situation? The task set on page 2 requires readers to explore these opportunities and propose guidelines for the Mozambican government that assist in resolving the above contradiction as a way of gaining greater land security for poorer people. The opportunities, according to the researchers, do not lie primarily in making the DUAT more accessible (although this, too, would be good), but in exploring greater land security within the hybrid land economy and the *existing* land practices.

There will almost certainly be an impact on poorer people's security of tenure, even though they seem to take this security mostly for granted at present.

Summary sheet

Improving poor people's land security

It is clear that despite the legislation that governs land, people have their own land system in urban areas, which involves multiple role-players.

The state law is not the primary rule-maker in these local land management arrangements. This finding is backed up by the negligible occurrence of the DUAT in the two neighbourhoods surveyed. Indeed, even with Mozambique's nationalisation policy and post-war context, much urban land supply is predominantly informal and bogged down by vested economic and elite interests.

Local land management arrangements

Local land management arrangements are not always the 'chaotic mess' they are perceived to be. This research reveals a set of widely used rules and practices regarding land access, holding and trading in the two peri-urban sites in Maputo, where households do not have registered title to land. Besides being widely accepted, these practices are relatively effective, as shown by the low levels of conflict. The *secretario de bairro* is a key figure in local land management arrangements, so much so that we might characterise the *secretario* as the primary local land manager.

The *declaração* is the dominant form of documented evidence across the different aspects of land management. It is also the primary instrument of land management at the disposal of the *secretario de bairro*. Taken in combination, these two findings – concerning the importance of both the *secretario de bairro* and the *declaração* – have significant implications for how we conceptualise land governance.

The hybrid nature of land governance

Rather than being purely the domain of the state and the law, land governance is co-constructed by state and non-state role-players with varying levels of legitimacy. Because the state is not the dominant authority that administers, manages and regulates land transactions, certainly in the outlying areas of Maputo, conceptions of governance have to take into account the relative power of alternative regimes of authority. Any interventions to strengthen governance should, therefore be aware of the array of rule-makers and the dynamic nature of authority in urban spaces.

Proposals for achieving greater land security

If one is to take cognisance of the rules that apply to land transactions in the *bairros* and work with them as a way of achieving greater land security, then one has to reject the position that the *only* route to land security is to provide full title. Indeed, while full title is important, it is necessary to recognise a range of land rights even where urban dwellers do not possess a DUAT.

What then is the preferred approach? It is:

... to provide a greater range of rights at all points along the continuum of land 'ownership' – the end result is eventually that everyone should have a DUAT, but to recognise the in-between phases and provide accompanying rights along the way. In other words, to give recognition to the entire range of land tenure arrangements along the continuum and to increase the security of tenure of each.

The research report puts forward a number of suggestions in this regard:

Open up more routes into the formal system

The logic behind the continuum of tenure security options is that there are very few routes into the formal system for poor people, in particular, those who are constrained by affordability to access property via the formally regulated channels.

Give greater recognition to existing extra-legal mechanisms

Greater official recognition needs to be given to informal settlements and the land management arrangements that are in use there. The emphasis needs to be on working with what currently exists and on finding ways of making it more functional.

Avoid unhelpful 'dichotomy' terminology

Debates regarding definitions of 'formal' and 'informal' are not helpful in establishing a conceptual framework that allows us to achieve an effective land management system that works as well for the poor as it does for the elite. A 'dichotomous' framework fails to recognise the rights of those 'in between'.

Consider a continuum of land tenure security arrangements

The notion of a continuum offers a graphic representation of this alternative conceptualisation of the property market. Rather than advancing the idea of a discrete dichotomous system (formal/informal, legal/extra-legal), a continuum depicts a more accurate description of access where formal practices meld with informal ones. The notion of a continuum also begins to offer an alternative point of departure for intervention.

Land access and rights do not occur instantaneously – empirical evidence shows that it takes time to access, secure and consolidate rights. When these 'in-between' phases are unrecognised in legal mechanisms, a large proportion of city dwellers remain excluded from the system.

Stepping stones – learning from rural land reform

A valuable lesson can be taken from a rural land reform project in South Africa. The need for services in a particular community began to introduce some urban development concerns into an essentially rural context. The challenge was that a functional security existed for people but that the introduction of urban services required a kind of formality that people did not need. In particular, overlapping and flexible territorial boundaries did not lend themselves easily to the demands of urban planning, and to plot demarcation especially. People were not expressing a need for title, and their tenure was functional (but far from formal). However, increased development brought with it the titling debate. As a way of resolving this debate the idea of 'stepping stones' was put forward as an alternative to thrusting people into a system that would not work for them.

This case study suggests that existing local practices in Maputo are sufficiently well developed, widespread and functional to merit a similar 'stepping stone' approach that works with them from the bottom up to secure rights progressively over time.

On this basis the research proposes that the continuum could offer an alternative intervention logic to the large scale rollout of titling, as the latter will likely be time-consuming, complex and perhaps even unattainable for current generations. Greater official recognition of existing practices could confer this tenure security. A concluding question then becomes how greater official recognition could occur. The continuum model could provide a useful conceptual device to aid in this regard.

Reading

The primary source documents for this case study were:

Kihato CW, Royston L, Raimundo JA and Raimundo IM (2013) *Multiple land regimes: Rethinking land governance in Maputo's peri-urban spaces* *Urban Forum* 24(1) DOI 10.1007/s12132-012-9163-z.

Kihato CW, Royston L, Raimundo JA and Raimundo IM (2012) *One step at a time: Using survey data to inform an incremental tenure approach to land security in Maputo's peri-urban areas*. Paper presented at the World Bank Conference on Land and Poverty, 25 April, 2012, Washington D.C.

Raimundo JA and Raimundo IM (2012) *Operation of the market study: Land access in urban areas – the case of Maputo*. Urban LandMark, Pretoria, February 2012.

Urban LandMark and UN-Habitat (2010), *Africa's urban land markets: Piecing together an economic puzzle*, Urban LandMark and UN-Habitat, Pretoria.