

# Regularising “informality”: turning the legitimate into legal? Land reform and emerging urban land markets in post-Socialist Mozambique.

**Paul Jenkins**

Director

Centre for Environment & Human Settlements

Edinburgh School of Planning & Housing

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## Abstract

Land has been nationalised in Mozambique since Independence in 1975, despite the new 1990 Constitution which specified a market economy. Recent national land reform in 1997 maintained state custodianship of land, with usufruct titles, however land is becoming increasingly commodified – especially in the capital city, Maputo. This paper draws on research undertaken by the author in 1998/99 which identified the emerging urban land markets, and more recent research in late 2000, which has investigated the nature of “informal” land access and the impact of the emerging residential land markets on the urban poor<sup>1</sup>.

The weak nature of the state and the market in Mozambique and resulting unregulated speculative market activity in urban land is tending to lead to exclusive benefit of the political, administrative and economic elites and undermine any benefit of public land ownership for the urban poor majority. In this situation informal land management has more legitimacy than the formal system, as is reflected in central government’s promotion of urban land reform in Mozambique, where the stated objective is to “turn the legitimate into legal”.

This approach assumes simplistic concepts of legality, which are based on the binary and negative concepts of “informal” as opposed to “formal”, and not on cultural attitudes to land. In addition, given the weakness of the state and the limited interests of the formal market, this approach runs the risk of further exacerbating the situation of the poor unless it draws on the resources of civil society. This paper reviews the conceptual and practical bases for alternative urban land management in Mozambique, with broader relevance for urban land access for the poor in the developing world.

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## **Introduction**

### *Different approaches to the informal*

The growing realisation that the "informal" is here to stay has strengthened the position of those who have argued that the informal is often as legitimate as the formal in urban development. This has led to a growing interest and associated literature on the regularisation of informal settlements, integration of formal and informal systems and "coping" with informality and illegality (e.g. Baross 1983; Durand-Lasserve 1990, 1994, 1997, 1999; Fekade 2000; Fourie 1997; Kironde 2000; Kombe 2000; Kombe J & Kreibach 2000; Mattingly 1993; Payne 1989, 1997, 1999; Sinha 1997). There are essentially two positions inherent in approaches to informal settlements in urban areas. One is "managerial" which, accepting that under present conditions fully formalising informal settlement is impossible, seeks ways to regularise or cope with informality, integrating formal and informal systems where possible. The other is more "conceptual" as it accepts that the definition of informality is based on certain precepts that are often not legitimate in the social constructs of value, and seeks to find ways in which these values and social constructs can be expressed and interact with other – generally politically dominant – concepts. The objective here is to create a new perception which in turn will shape the form of urban development.

This paper seeks to explore the difference between these two positions as evidenced in emerging land markets in post-Socialist Mozambique, based on recent research into the nature of these markets and the attitudes to them in the capital Maputo. To encapsulate the core area of existing perceptions in this area, the Minister of Public Works and Housing in Mozambique recently indicated his government's objective, concerning the emerging land market, is "...to turn the legitimate into the legal..." through regularising informal practices.<sup>2</sup> This statement both accepts that practices exist that are illegal but legitimate, and aims in principle to align the legitimate, but informal, to conform with the legal position. Parallel research showed that in the majority of cases, poor peri-urban residents predominantly accessed land informally (mostly allocated through social mechanisms), and felt secure in the fact that local (informal) administrative structures sanctioned their land occupation – or that this was a social norm. These residents had extremely limited conception of the role of the state in land management and indeed had an extremely limited perception of any form of local governance structure of relevance to them.<sup>3</sup>

To further unpack the nature of the above two approaches as evidenced in the Mozambican context, the current debate vis-à-vis urban land reform in Mozambique has two opposing positions: that characterised as being of the "legal" viewpoint and that characterised as the "technical" viewpoint. This has come about as the new Land Law (1997) accepted customary land occupation rights as legal for the first time. This was however due primarily to the peasant lobby concerning rural land for agricultural use, and until the law had been passed no-one had seriously considered the implications of this for the informal residential settlement areas in urban areas, which are by far the main form of urban land occupation. Nevertheless, not long after the law became operational an investigation within government was initiated to study this position. This took place over the period 1998 – 2000 and evolved into the above debate. The "technical" viewpoint, espoused by the above Minister, requires the intervention of formal survey and planning before new legal rights of customary occupation can be acknowledged. The "legal" viewpoint stresses that the state has to implement the law as it stands, finding mechanisms and means to recognise customary occupation rights through systematic adjudication.<sup>4</sup>

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<sup>2</sup> Personal conversation while undertaking research for Jenkins 2001a.

<sup>3</sup> Jenkins 2001a.

<sup>4</sup> Systematic adjudication was recommended by a World bank funded pilot project in cadastre in Maputo (see Jenkins 2000a), with the aim of systematically identifying and allocating land rights to occupants under the new law, whether the areas occupied had been planned or not.

In terms of the approaches identified above, however, both assume that the formal definition of rights is the norm, thus falling within the category of "coping with informality and illegality". As argued in the above mentioned research, the fact that the technical and financial means, administrative and institutional capacity, as well as political will, is not likely to adequately back either position in the short, or arguably medium, term renders the debate in Mozambique somewhat hypothetical for the majority of urban dwellers. In addition neither of the two current approaches in Mozambique has dealt with the question of what happens after regularisation (whether through systematic legal adjudication or systematic survey and planning). In the current market situation with marked differentials between the informal and formal prices of land, underpinned by extreme socio-economic distortions, this regularisation may well have an extremely adverse social impact on the urban poor.

On the other hand, as pointed out in previous studies<sup>5</sup>, socially based systems of land occupation have existed in the urban areas of Mozambique since the early period of colonial occupation, and any formal land management has been relatively recent and of limited nature – geographically, technically and socially. The failure of the formal state and market systems to provide land formally for the urban majority, who are poor, in both fascist colonial and independent socialist regimes, continues in the fragile new market-oriented multi-party democracy. In the light of this, as external political, social and economic conditions have changed, the socio-cultural values underpinning attitudes to land have evolved, but have maintained their social basis. This is still evident even in the emerging land markets, albeit with a growing tendency to social differentiation and exploitation. It is argued that basing a land management system on these socially and culturally adapted structures would provide the only realistic means to manage land in a pragmatic and socio-culturally appropriate way. The answer is thus not to find ways to regularise the informal, as this runs the risk of just providing new systems for recognition of land rights which are limited and corrupt, and exacerbate social exclusion, but to base the systems on the cultural values and social mechanisms that actually operate – i.e. adapting the formal system to the informal reality.

### *The analytical basis for an alternative approach*

This approach to the "informal" lies in the critique of the underlying mental models which have led to the creation and utilisation of the term. As argued by Jenkins & Wilkinson (forthcoming), the increasingly dominant definition of the formal institutional order of 'late capitalist modernity' is underpinned by the discourse of liberal democracy, based on the following ideals:<sup>6</sup>

- individualism as the *basis of social relations*, partially (and possibly decreasingly) mediated by the idea of the nuclear family as the elementary unit of social reproduction;
- citizenship in a representative democracy administered by a constitutional state as the *basis of political relations*; and
- utilitarian rationality in a system of generalised commodity production and market exchange as *the basis of economic relations*.

This particularly "Western" form of idealised formal institutional order, however, does not exist in isolation from other orders based on quite different norms and practices, which are generally thus considered informal. This concept of informal is thus usually defined negatively, and simplistically, as a binary opposite in relation to the formal.<sup>7</sup> Rather than the formal and the informal being separate and distinct spheres or sectors of reality in any actual social formation, however, these actually co-exist. While this is perhaps more obvious in terms of social and economic customs and cultural values, it also underpins mental constructs and political structures.

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<sup>5</sup> Jenkins 1999a and 1999b, summarised vis-à-vis land access in Jenkins 2001 forthcoming.

<sup>6</sup> There are other forms of formal institutional ordering such as evidenced in Islamic societies and polities, however, with the demise of the state capitalist model of the soviet bloc, the capitalist model predominates the formal discourse, albeit with various nuances.

<sup>7</sup> Typical definitions of informal are: illegal, unauthorised, un-planned, and un-regulated (Jenkins 2000c develops this theme).

The notion of what constitutes formality and informality are both socially constructed, with social actors moving freely between the arenas or zones of the formal and the informal in the course of their everyday lives - with or without conscious awareness of such divisions. In fact in many places, and this is especially true in Mozambique, the formal order itself is riddled with informality – whether in the socio-political networks that underpin power, or whether in the informal nature of occupation of formal urban areas<sup>8</sup>. In contrast to the ideals of market-based socio-economic forms of interchange, informality in the cities of the developing world often draws on norms and institutions derived from indigenous or pre-colonial socio-cultural orders, in which the now dominant Western rationalities have played a limited role. In this form of societal ordering:

- the *basis for social relations* may be based more on kinship and community than the individual or nuclear family;
- the *basis for political relations* may be based more on accepted authoritarianism or negotiated patronage than elected representation; and
- the *basis for economic relations* may be based more on principles of social redistribution or reciprocity than on utilitarian exchange.

The fact that informal institutions based on these forms of social ordering exist in developing countries is well-known, and increasingly accepted as legitimate. What is not acknowledged is that for many this is the basis of their mental models, customs and institutions, which to a greater or lesser extent are already adapted to the real cultural, social, economic, and political conditions, as well as increasingly adapting to cope with the dominant Western formal "rule of law".

Referring to sub-Saharan Africa, historical urban analyst Coquery-Vidrovitch has identified that through time and space prevalent modes of production and exchange can be distinguished, supported by distinct structures of power and ideology, and that each of these is reflected in differing processes of urbanisation, with specific city models. Coquery-Vidrovitch's historical perspective leads her to assert that poverty, and related techniques of survival of the urban poor, predated capitalism and she argues that the phenomenon now termed the informal sector is rooted in history. Linked to the idea of anteriority of the informal sector she points out that *"As long as we lack a theoretical and historical account of the forces that underpin global differentiations, we remain unable to account for processes that lie at the heart of African urban underdevelopment: the integration of the household into new networks of capitalist production; the invention of a new web of concepts and practice on land and land laws, on housing and rental; new patterns of foodstuff consumption; new regulations governing social and political life; all of these processes involving new relationships to the broader political economy which is definitely neither Western nor native behaviour"* (Coquery-Vidrovitch 1991).

In other words, it could thus be said that the tendency in early urban research to focus on African adaptation to urban life and wage employment is now leading to an approach focusing on how African urban dwellers continuously adapt the city, and wider social and economic forces that they come into contact in the urban areas, to something more suitable to their needs, means and aspirations. Thus the theme here is how do the majority of urban dwellers in the developing world cope with the formal.

This theme is raised in research into rural land rights in Sub-Saharan Africa where several land tenure systems co-exist – normally described as "customary" and state, or "modern", systems. Customary land rights are based on a complex web of social interaction often based on kinship and/or clientelism and are thus an integral part of the social structure. These are generally forms of use rights for which there is no modern legal codification. Rather they are governed by socio-political custom/procedure, usually based on prior occupancy and conquest and often closely allied to local religious forms. Use rights vary according to function and

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<sup>8</sup> For example, the World Bank funded cadastre pilot project mentioned earlier found that in a high proportion of cases in the most up-market housing area in Maputo there were irregularities between the land register, the property register and actual house occupancy.

often overlap. There are rights to ownership, right to claim ownership, right to use and dispose of land, and the right to use and enjoy the fruits of the land (usufruct), the right to occupy, right of development, right of transfer, as well as possible right of lease or rental. In addition cultivation rights, administration rights, secondary and derived rights can all simultaneously exist in any one parcel of land. Rights can be transmitted within the family and even transferred temporarily. These land rights are also termed "socially-determined" land rights as opposed to "customary" as they are often no longer "traditional" but are flexible and have evolved over time in relation to social change (Delville 1999). Such rights are generally more legitimate than the (relatively newly imposed) market transferable rights such as freehold. No one holder of such rights can legitimately claim "ownership" in any freehold system. In fact, coincidental and competing claims do not disappear with a shift to private property.

Modern tenure legislation was introduced by colonial political systems and is based on the model of private ownership and forms of transferable public registration. In different colonial traditions attitudes to "customary law" differed, with in most Franco-phone situations customary land rights being seen as illegal or "extra-legal", and in Anglo-phone situations these were compartmentalised in certain geographic areas, where they were accepted in a subordinate form to the "modern" legal system. However in practice both forms of rights co-exist and the customary rights are often in fact more widespread and more socially legitimate. "Despite a century of purposeful penetration by non-customary tenure ideology and legal provision, unregistered, customary tenure not only persists but is still by far the majority form of tenure in the region. None of the strategies adopted to ignore or diminish it have been successful" (Walden 2000). This creates a form of legal pluralism with conflicts and uncertainties (not to mention the complexity of the law) often exploited by elites who can manipulate the legal systems in their favour, picking and choosing as needed between these, creating hybrid legal situations.

There is an increasing consensus that private ownership of land cannot be imposed from the "top-down" – the appropriateness of privatisation, as the response to widespread questioning of state management of land, is hotly disputed by most observers in rural Africa (Delville 1999). In addition assumptions concerning ownership title and productivity have been re-assessed, demonstrating that customary systems do not in themselves hinder intensification of use. Even if ownership is an eventual goal it needs to evolve from existing rights. The concept of "less alienating" paths to property reform has also been advocated by Howard Stein (1995). Stein points out that the central aim of neo-liberalist policies, as implemented in structural adjustment programmes, to remove "impediments" caused by state interference in market operation implicitly or explicitly includes a recognition of the role of state institutions as guarantors of the rights of private property and contract. Stein criticises the danger of emphasising the legalization of property rights without the equally important social institutionalization of these - i.e. property rights must not only become established, but legitimate. He suggests that to expand market-based exchange of property and encourage investment and accumulation on this basis needs stability in the accepted "mental models" which these are based on.

The objective is thus not to substitute modern systems for "traditional, ineffective" systems, but to avoid unregulated co-existence. The stress is thus now on appropriate social forms of land administration which are practical, legitimate and equitable (social goals) - rather than economic arguments for efficiency (economic goals). Delville 1999 argues that the complex and hybrid reality of socially-determined land rights has to be the starting point for research, and not normative and simplistic assumptions about modernisation. This represents a fundamentally different position from that of assuming that economic progress was paramount and that this would be best served by following Western economic and political models. This stress on the socio-cultural meaning of land avoids the tendency of the neo-liberal approach to focus on the utility-maximising capacity of land for the individual, and also the top-down tendency of the political economy approach on the structural importance of land in the accumulation process. This approach to land rights is based on how the meaning

of land is socially constructed and reconstructed, and draws on the discourses on land proffered by various actors and analyses the interaction between these – i.e. the construction and negotiated reconstruction of meanings and perceptions.<sup>9</sup> This paper argues that this is an essential element of a re-evaluation of the concepts of formal and informal as applied in urban land issues.

## **Research into emerging urban residential land markets and their impact on the urban poor**

### *Background*

Mozambique emerged from relatively weak but repressive colonialism in the mid 1970's, to follow proto-socialist national development strategies. This included nationalisation of all land under state custodianship on behalf of the population. In practice, however, land administration by the state was limited due to constrained politico-administrative capacities – particularly in urban areas. Nevertheless some improvements in land access for the wider population were achieved in state sponsored programmes. However, by the late 1980's, structural adjustment, compounded by civil war, had significant effects on state activities in land allocation in urban areas, with widespread upsurge of informal mechanisms (Jenkins 2001 forthcoming). Proposals to de-nationalise land in the new Constitution in 1990 were however rejected strongly – mainly by the rural peasant sector. Despite continued nationalisation, the growing inability of the state to administer urban land led eventually to emerging market activity in the general context of privatisation of the economy and other social services.

Recent research in Maputo, the capital, has indicated that dual land markets are developing – an informal market catering to broad social needs and a private sector market catering to an urban elite, often for speculative purposes (Jenkins 1999b). While the latter may entail informal elements of land access, it is generally formalised, whereas the former has little opportunity for formalisation. There exists continued pressure to privatise land in Mozambique – especially urban land. This is mainly from the economic elite, but also reflects the perceived lack of alternatives for the urban poor majority. Most studies on land rights in Mozambique have focussed on the rural areas, or urban agriculture (Boucher et al 1995, Kloeck-Jenson 1998, Myers 1995). As outlined above, however, the 1997 Land Law has stimulated a debate on urban land rights, especially customary, or occupation, rights, as the law legally recognises land occupied in good faith over a ten year period, as well as permitting formal land title to be allocated based on this customary right – which can be registered collectively.

Mozambique has been classified as one of the poorest countries in the world for some time. As elsewhere in sub-Saharan Africa, urbanisation is increasing fast, with 40% of the population classified as urban, expected to rise to 57% in 2025 – a rise of some 12 million urban dwellers as opposed to 3 million rural dwellers<sup>10</sup>. Poverty is as much an urban phenomenon as rural – overall rural poverty levels have been assessed at 70%, with urban population in general as 60% in absolute poverty<sup>11</sup>. Despite a growing poverty alleviation

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<sup>9</sup> An example of this in relation to land is the juxtaposition of discourses based on the definition of land rights (e.g. ownership) and those based on moral obligations vis-à-vis basic needs (e.g. housing rights) - as in urban social movements in Brazil (Assies 1994). In this situation potentially diverse conceptions of meaning of land are merged in a common discourse for strategic reasons, although this does not signify that the different meanings disappear but are voluntarily subordinated (as opposed to involuntary subjection). Thus while use values may be stressed to secure the rights to land, in fact there continues to be an awareness of the exchange value, although it is accepted that this is (at least initially) subordinated.

<sup>10</sup> Over a total population of some 19 million this means an 85% increase, or 2.5%/year, UNCHS (1996). The approximately 1 million residents are expected to rise to some 1.6 million by 2010 – more than an additional 100,000 households. Source: Metropolitan Maputo Structure Plan 1999.

<sup>11</sup> Source: Official Mozambique web page <http://www.mozambique.mz>. Absolute poverty is defined as per capita expenditure of less than 0.5\$/day.

focus within government policy, urban development and housing continue to have a very low national priority, although the elections of the first autonomous local municipalities in 1998 has raised urban issues at strategic levels. Maputo, the capital, is generally considered to have lower overall poverty levels than other urban areas, yet studies indicate that in 2000 some 50% of the approximately 180,000 households are in absolute poverty (60% of these destitute). This situation is deteriorating due to macro-economic changes with widespread formal sector job loss, but (as yet) not alternative new employment prospects for the under-skilled (Jenkins 2000a).

Mozambique has also inherited a severe legacy of under-development from the (relatively recent) colonial period, which is all too apparent in the physical structure and fabric of urban areas. This under-development is also marked in the skills level with the state – a factor exacerbated by structural adjustment. On the other hand market forces are only relatively recently operating openly and private sector capacities are very limited and constrained by the high levels of poverty. Resolving urban land access and management in the face of such acute and structural poverty is an enormous challenge, compounded by the difficulties of transition from a socialist oriented to a free market economy, the aftermath of an extremely debilitating civil war and a continuing recurrence of natural disasters. In this context it is argued that the state and the market – separately or together – cannot resolve the problems, but the resources in civil society are an essential element of any urban development strategy. This position was a starting point for the research reported on here.

### *The research*

The research was undertaken as an action-research project by the author in collaboration with Mozambican researchers during November and December 2000. The main theme of the research was to assess how changes in urban land access (market and state-related) are likely to effect the majority of the urban residents that are poor, as well as overall trends on urban development. The theoretical basis of the research was in Third Sector development strategies, and more specifically drawing on institutional analysis. The methodological basis was in the political economy tradition of land market research, with also a focus on the meaning of land to lower income groups, and the research utilised Rapid Urban Appraisal methods. Given the focus on the impact on the urban poor, the investigation also drew on recent approaches to urban poverty analysis, using household assets as a structure to qualitatively measure poverty. Overall the study was designed to be implemented within an analytical context of general development orientations and urban land issues in Mozambique and the specific context of urban residential development and poverty in Maputo. It specifically built on other recent research, including that by the principal researcher, which identified emerging urban residential land markets, yet did not investigate these in detail.

Specific research questions included:

1. **Effect of emerging land markets on the urban poor**  
How do the urban poor get access to land for housing, and more specifically what is the extent of commodification and market behaviour? How are emerging land markets likely to affect the urban poor, more specifically, what is the importance of residential land to urban household strategies within the poor?
2. **Attitudes to land access for the poor in the context of wider land access issues**  
What are the attitudes of the poor, organisations within civil society, the state and private sector to the emerging land markets and the policies and practices that underpin this? How is this affecting the broader policy and legal environment?
3. **Alternative land access and development mechanisms**  
What are alternatives for more closely associating the formal state land allocation system with actual practices which improves access for the wide group of stakeholders, especially the poor majority?
4. **Recommendations**

What specific recommendations can be made to the various stakeholders in urban land concerning this, stressing the wider impact of residential land access on urban development in general as well as an integral component of poverty alleviation through a livelihoods approach.

Two methodologies were developed: one was oriented to investigating institutional attitudes to the emerging land markets and urban development trends in general. The second was oriented to understanding the attitudes and actual processes for accessing land by poor families in peri-urban areas, and to what extent residential land acts as an essential household resource in livelihood strategies.

To implement the first **institutional** method a series of semi-structured interviews with key actors in various types of institutions involved in urban land issues were undertaken. The target, given the time and research resources available, was 4 interviews in each of the following categories:

- Central government
- Local government
- Private Sector
- Non-Governmental Organisations
- Land Specialists

The total target of some 20 interviews was exceeded with an additional 5 non-structured discussions allowing general exchange of ideas with influential members of the various sectors, including the two government ministers most involved in urban land administration. The semi-structured interviews were designed to permit both collection of information on the interviewee/institutional involvement in urban land issues, and to investigate attitudes to urban land management reform.<sup>12</sup>

Concerning investigation of **informal land access mechanisms** and **attitudes of the urban poor** to land access and tenure, the second method was based on field investigation in a number of peri-urban areas of Maputo city. As resources did not permit a statistically representative sample, this method was designed to expand and refine the initial research into emerging land markets previously undertaken by the principal researcher in 1998/99<sup>13</sup>. An additional focus in this second method was to identify to what extent land access and security are perceived issues of importance for the urban poor, and what their understanding of the current situation vis-à-vis land rights is, as well as what their aspirations concerning land access, security and possible commodification of land would be. The instrument designed for this method was a structured qualitative questionnaire, which comprised some 20 potential questions, depending on the nature of the land access.<sup>14</sup>

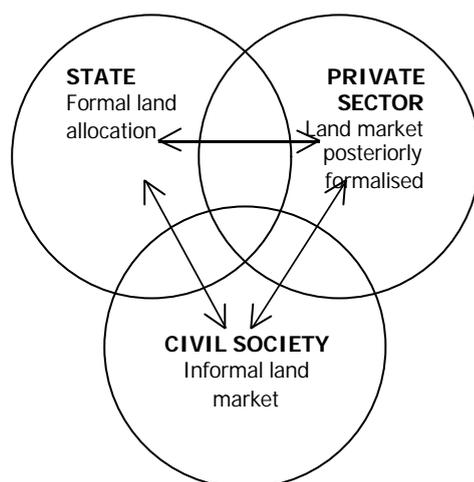
Given time and research resources available it was necessary to define focus areas for this research, as it was impossible to cover the whole city in any fully representative way. As such the research was based in three areas where the three main mechanisms of land access are most obviously in contact, as illustrated in the following diagram:

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<sup>12</sup> The interview instrument was based on six main areas relating to urban land use tendencies (existing and probable future); land use efficiency and equity of access; the resource base for urban development; and perceptions of relevant roles between institutional actors. The responses were noted, but considered confidential and only the synthesis of these is part of the report. This was important to ensure interviewees were free to state their opinions and positions. See more detail in Jenkins 2001a.

<sup>13</sup> This prior research had a statistically significant sample and identified not only the distinctive operation of "informal" and "illegal" land markets, but also a number of mechanisms operating within the informal land market. However it did not investigate the manner of operation of these mechanisms due to the more quantitative nature of the survey instrument Jenkins 1999b.

<sup>14</sup> One group of questions was designed to allow a qualitative assessment of the nature of poverty and household strategy, including general physical aspects (e.g. infrastructure, social amenities and environmental issues in the area) and specific physical aspects (e.g. plot development and house type), as well as other household resources (human, economic, socio-cultural and political-legal). Another group of questions investigated the actual land access mechanism used and a third group investigated the nature of plot development over time. The fourth group of questions investigated the attitudes to land security and future aspirations vis-à-vis land and housing, specifically any engagement in market mechanisms.



The target, given the time and research resources available, was 15 field surveys in each of the three focus zones, with the total target being thus 45 surveys. The criteria for selection of households to be surveyed included:

- The actual locations in the focus zone, with at least 3 surveys in each sub-zone;
- The nature of plot development as an initial indicator of poverty, selecting only potentially poor urban households;
- The period of residence, with one survey with a long time resident, one survey with a recent resident and one other survey.

The focus zones represent a "slice" of Maputo city peri-urban areas from the relatively old informally settled areas near the central "cement city" to the new expansion zones at the city limits (see map). A high degree of response was achieved, and the data qualitatively analysed to provide an overview (see Jenkins 2001a for details).

### *Findings*

The **institutional** investigation found that, while there were different viewpoints expressed between the main institutional actors, there was a considerable level of agreement on basic issues. These included a growing realisation of the need for specific urban land use regulations to be based on the 1997 Land Law, with an additional need for physical planning legislation to complement these. There is, however, as yet no clarity on the responsibilities within central government for the drafting and finalisation of this legislation and regulations, especially how central government involves new autonomous local governments in this process. As noted above, currently there are two conflicting views concerning the application of the Land Law in urban areas, especially vis-à-vis occupancy rights of a customary nature. In addition there is very limited urban land management capacity at central and local government levels, with no specific trained personnel to implement the current alternative proposals. As a result there is likely to be considerable delay in clarifying the position of informal urban land occupation, and the current ad-hoc planning and land management arrangements will continue, despite growing conflict over urban land. This will continue even after resolution of the legal situation, due to limited institutional capacity and political will.

The demand for legislative clarity on urban land issues is reinforced by the private sector for who access to land title and land transfer has become a significant blockage. However the private sector only sees its role as catering to a minority in urban residential land development and considers that it is the state's responsibility to deal with the urban poor majority. On the other hand, while local government capacity to develop new land and/or improve existing land occupation is severely limited by technical capacity, it is also constrained by political interest and the current urban economic basis. The tendency of local government is to expect central government to subsidise urban land development, but there is no indication that this will happen. In addition any subsidised supply based would inevitably be proportionally small in relation to demand. In practice local government activities in urban land supply in recent years have increasingly either been directed to the better off or absorbed by emergency relocations.

Non-governmental organisations on the other hand have not been involved in urban development issues to any degree as yet in Mozambique, but have become involved recently through emergency issues. They increasingly see a role in assisting the urban poor in poverty alleviation, but are, however, dependent on foreign assistance to date, as the state does not facilitate their operations. The key issue of land rights based on occupancy is an issue that NGOs are becoming interested in assisting with at local level, however structures in civil society are very weak in the urban areas of Mozambique and this undermines wider pressure for improved land management for the majority. In addition new land rights are not understood in any significant form at grassroots level, where the majority of land occupiers feel relatively secure based on their current informal occupancy rights.

The field surveys reinforced this latter finding. This part of the study qualitatively assessed poverty with reference to livelihood assets (human, economic, physical, socio-cultural and legal-political) and noted some broad differences between the areas surveyed, which to a great extent was predicated on the period of occupation of the land. However, despite some state land allocation in all areas, informal mechanisms for land management and onward transfer dominate although commodification of land is still limited, albeit increasing. Despite this, land market activity is still modified socially in many cases and use values dominate exchange values.

The majority of occupations across the 45 surveys were accessed informally – 78%. While the sub-mechanisms varied, the majority were purchased or allocated by local administrative structures. However overall, allocations (i.e. non-purchases) represented 71% of all land access mechanisms (62% of informal mechanisms). Thus, as indicated in previous analyses, the informal land market is still embryonic, albeit growing in incidence.

	Polana Caniço	Laulane/Mahotas	Magoanine/Zimpeto	sub-total
Formal DCU			7	7
Formal? relocation			3	3
Informal DCU		1		1
Informal local admin.	6	1	3	10
Informal Purchase	6	4	3	13
Informal Ceded			5	5
Informal rented		1		1
Informal Pre-Independence	3	1	1	5
<b>sub-total</b>	<b>15</b>	<b>15</b>	<b>15</b>	<b>45</b>

The sample in this survey was too small to provide any overall idea of land values, but the values declared often indicated a high degree of social modification – e.g. "price for a friend" – and this can be seen in the variation in land prices in similar years and areas. House sale with land has existed for a long time, although increasing in incidence, and land is now also being sold without houses. However, the market in land is very embryonic as most occupants demonstrate no interest in the exchange value, stressing the use value and inheritance factor for future disposal, and most purchases are only possible through a network – there is little open buying and selling. This seems to be changing however, spurred on by the commodification of the (highly subsidised) emergency relocation houses.

Overall the surveys have concurred with the findings of the previous study, providing a statistically sound basis for their interpretation, but have allowed a deeper understanding of the mechanisms involved. Despite limited perception of formal land rights the study demonstrates a tendency to consolidate the value of land in informal markets, especially in the peripheral expansion areas, where land conflicts are greater and where this is accompanied by a higher preoccupation with land rights. Overall the study shows the tendency for better-located urban poor to be re-located – either officially or through market mechanisms – in more peripheral or environmentally unsuitable locations (including densification), with an adverse effect on urban livelihoods as location is a key element of physical assets.

## **Conclusions**

The above research presented a series of recommendations concerning the actual situation in Maputo, of relevance to central and local government, as well as for the university. These included:

- defining the basis for commencing a land market assessment, which would permit the state to more adequately tax land, assist stabilise the formal private sector activity, and give a basis for a coherent approach to the informal sector;
- developing pilot projects in a number of different peri-urban areas to more fully assess the practical implications of various alternative strategies vis-à-vis urban land management, including: a) registration of the current occupants and assessment of land rights as well as development of pragmatic mechanisms through which these can be recognised/formalised; and b) creation of innovative land partnerships between central government, local government and the private sector in urban development; and
- creating relevant specialist courses in urban land management, to assist overcome the very weak state capacity vis-à-vis urban land administration.

However, perhaps more importantly, the research flagged up the implications of instituting mechanisms for regularising the informal without due regard to the broader political and economic context. The research stressed that where political will was weak (especially a local government level), and where the nature of the market is embryonic and highly distorted in favour of the economically powerful, the consequence of regularising the informal is likely to be the opposite of what some land reformers lobby for – i.e. greater equity as well as urban efficiency. In practice neither equity nor efficiency is likely to be promoted in urban development in Mozambique, especially Maputo, which is at the crossroads of global and regional economic pressures as well as national and local political pressures – not to mention being the location of the (as yet, but growing) power base for a nascent indigenous middle class<sup>15</sup>. In the current political economy the tendencies under both prior regularisation before recognition of rights, as well as prior recognition of rights before titling, will be more peripheralisation of the urban poor, creating greater structural poverty, and yet with no guarantee of greater urban efficiency.

Elsewhere it has been argued that the principal issue is one of urban governance (Jenkins 2000b). Where governance structures were as fragile within newly adopted democratic processes as in Mozambique and Maputo, where only 10-15% voted in the first ever full franchise local government elections in 1998 (Braathen & Jørgensen 1998), and where the national political stage is itself still fragile and local forms of civil society embryonic, the tendency for a form of governance to benefit the urban poor majority is unlikely. This is exacerbated by the nature of the economic (and political) forces of increased integration in the regional and global context. As some interviewees opined – what the urban poor perceive as being important in land rights has little or no chance of recognition politically when even the relatively influential nascent middle class has limited impact, with the “real big decisions” on land being taken in board rooms of regional or trans-national corporations and facilitated by the local political and economic elite. In this context “turning the legitimate legal” really means legitimising the legal process, which is dominated by this elite.

What therefore is the alternative? This paper argues that defining technical or “managerial” alternatives, such as those suggested above, are in themselves not enough. The real issue is how to develop a political space and capacity for negotiation for the interests of the urban majority. In this the construction and negotiated reconstruction of meanings plays a very important role. As noted in the Brazilian example cited earlier (Assies 1994), in this situation perceptions of land rights need to be used as the basis for developing a common discourse for strategic as well as pragmatic reasons. However, given the weakness of civil society and supporting organisations (e.g. churches, trade unions and NGOs) in the urban context in Mozambique, this can not follow the form of urban social movements based on grass-roots

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<sup>15</sup> See Jenkins & Wilkinson, forthcoming.

organisations as in Brazil – at least in the foreseeable future. However, the legacy of the “People’s Power” (“Poder Popular”) organisations, much celebrated in post-Independence socialist writing on Mozambique, although marginalised in the current politico-administrative structure, still retains a considerable, if variable, social status.<sup>16</sup> Their role in land management is in fact dominant for the majority to date and underpins the sense of security in land occupation, as well as the socially modified land access mechanisms. While this role is perhaps now more open to corruption as markets consolidate, it still represents the strategic and pragmatic best option to consolidate forms of land management accessible to the majority in both managerial and conceptual terms. This is particularly for the informal settlement areas which have existed for some time and where the risk of peripheralisation of poverty through differential market activity is highest.

There is no one answer to equitable and effective urban residential land management in Maputo or Mozambique – a number of different alternatives are needed. In some areas there is the possibility for improved land management through the formal state system, in others through new forms of state-private sector partnerships (such as land pooling and readjustment) – these, however are more likely to be relevant in areas of high land value or where the state has demarcated land. In the other informal settlement areas alternatives that are either based on community initiatives (where these exist and/or supported by civil society organisations), or through a new “semi-formal” role for the Bairro Secretaries, with some form of local accountability is the most pragmatic and culturally relevant. Overall, however, unless there is a re-conceptualisation of the liberal democratic discourse which underpins the formal order the tendencies will favour those who have constructed this discourse locally, and who continue to define the formal through this. In practice in Maputo and Mozambique this may well mean that the “informal” will continue to be the predominant social form of ordering *de facto*, if not *de jure*, and social exclusion through land access based on differential land markets will be exacerbated. In this the indigenous adaptation of the formal social order to real values and needs will continue to be subordinated and under-valued at the expense of greater equity and general urban efficiency.

Paul Jenkins  
Edinburgh  
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<sup>16</sup> At the time of Independence the incoming FRELIMO Party set up “Grupos Dinamizadores” (GDs) – Dynamizing Groups within neighbourhoods as a basic level of mobilization for a number of issues. These became low level administrative units in time, although were later marginalized and not included in formal institutional structures. They still exist in many neighbourhoods, however, representing the only form of collective organisation, as Bairro Secretaries. These organisations have no formal status, although the new Minister for State Administration is considering the need for this. For more detail see Jenkins 2001b.

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