URBAN LAND AND PROPERTY MARKETS IN AFRICA: THE CASE OF MAPUTO SA AND LUANDA

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Affordable Urban land and property markets in Africa: The Case of Maputo, South Africa and Luanda, Angola

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BACKGROUND

UN-HABITAT projects that by 2050, 60% of Africa's population will live and work in towns and cities (UN-HABITAT, 2011). The shift from rural to urban life has social, political and economic implications as the city and its people convert rural land resources into urban use. Varying in scale, speed and character from the growth trajectories of cities in the West, the expansion of African cities not only overshadows their western counterparts in pace, but also develops without concomitant growth in the economy. Without the employment or economic opportunities necessary for securing sustainable urban livelihoods, urban poverty is quickly outpacing rural deprivation (Stern, 2006). As a result, there are consequences for how people access land and build their homes. In 2005, it was estimated that one in every three people lived in slum conditions in cities in the developing world (UN-HABITAT, 2008). Of this, the highest number of slum dwellers is in sub-Saharan Africa where 62% of urban populations live in squalid habitats (UN-HABITAT, 2008). At a macro level, low or precarious economic growth and poor urban governance, has resulted in a lack of investment in land development, infrastructure and housing. The poor, who have limited access to urban land for residential and commercial purposes, feel the brunt of this. When they do find a space in the city, often in its sprawling peripheral lands, they have inadequate access to basic services such as potable water, adequate shelter and sanitation. Moreover, few have legal rights and risk evictions from the land they live on. Even where they do have rights, majority of urban households do not have access to legal resources or the justice system to defend them.

Yet despite the legal barriers, urbanizing households are finding new ways to acquire, hold, exchange and regulate land. From Dar-es-Salaam to Cotonou, Luanda to Kinshasa, the conversion from rural land to urban use at the city's peripheries occurs outside, of the legal regime. And this expansion of the city's edge is changing people's relationship to land, the institutions of land governance, and the land economy.

FORMS OF LAND OWNERSHIP IN AFRICAN CITIES

Broadly, land for urban use becomes available through formal legal and informal "extra-legal" supply mechanisms. Legally, most African countries recognize dual systems of land ownership:

Common Law (Anglophone) or Civil Code Law (Francophone): inherited from colonial legal systems. Under these regimes, land ownership is conferred by the state through freehold or leasehold titles.

Customary Law: land is supplied through indigenous tenure systems. A chief or king confers land ownership. Because it is communally owned, land in this system is not alienable. Some African states also recognize **religious law** (for example, Sharia law is recognized in Northern Nigeria, the Sudan and coastal Kenya, which allows for the individual ownership to land).

Informal tenure: The concept "informal" is an umbrella term sometimes referred to as "living law", "neo-customary tenure" or "illegal tenure". It comprises of a hybrid of land transactions, exchanges and transfers that are not recognized by the state as legal, but are often socially accepted as legitimate by a variety of urban actors. While this form of land ownership may not be legally recognized by the state, it may be unofficially tolerated.

In addition to the systems of land o*wnership,* government land policies such as the nationalization (e.g. Tanzania, Ethiopia, Mozambique) influence patterns of ownership and the nature of urban development. Evidence shows that land nationalization depresses investment, which leads to urban decay (Rakodi, 1997). Moreover, because land is not alienable under this system, governments are unable to accrue taxes which could be invested in building new infrastructure and maintaining existing stock.

Key characteristics of the informal land market

While legislative systems play an important role in the supply of urban land on the continent, it is through extra-legal transactions, that majority of the urban poor access land in African cities. Research on the continent's cities in Senegal, Ghana, Benin, Cameroon, Namibia, Tanzania, Uganda, Angola, Mozambique and Lesotho shows that majority of urban households acquire land through the informal land market (Mattingly & Durand-Lasserve, 2004; Rakodi & Leduka, 2004; Cain, forthcoming; Kihato et al, forthcoming).

And although land ownership or use through the informal market is not formally recognized in state legislation it often consists of norms and rules that are shared by communities which members treat "as binding upon them and which they observe in practice" (Gbaguidi et al, 2004: 336). Mattingly and Durand-Lasserve point out that "although these informal transactions are rarely legalized, they are accepted and supported by the social networks within which the beneficiaries live" (2004). The fact that these ways of accessing urban land are not recognized in the statutes does not mean that state involvement is absent. Indeed, there are examples in South Africa and Tanzania, which illustrate that state officials witness land sales and keep a register of land transactions (Kironde, 2004; Marx & Roysten, 2007). These practices are not only changing the city's spatial imprint, they are transforming how we understand urban land and property markets – the ways these create wealth, provide households' security and address poverty.

Why do people resort to informal practices to access urban land in African cities?

Formal public or private land delivery systems provide only a limited supply of plots, which are rarely accessible to poor people (Rakodi, and Leduka 2004).

The bureaucratic delays and complexities of obtaining legal tenure make it difficult for low-income households and investors alike to secure land rights.

The cost of registering property in Sub-Saharan Africa is the highest globally (IFC, 2009). This not only has a negative effect on investment, but also on the majority of households' ability to afford legal tenure.

The lack of access to courts and a general mistrust of the judicial system implies that the poor are unable to defend their rights, and businesses are unwilling to risk their investment in land (World Bank, 2007).

Informal urban land practices are faster, cheaper, less bureaucratic and provide more flexible alternatives to those excluded from the formal systems of land supply (Durand-Lasserve, & Mattingly, 2004). In Angola for example, it takes 334 days and costs 11.6% of the total cost of land to register property legally. Compare that with OECD countries where it takes an average of 34 days to register property at a cost of 4.8% of the property value (IFC, 2009).

In addition, informal urban practices have developed sophisticated methods of instilling confidence in the transactions, and have thus become a trusted way of acquiring land. In many African cities there is a widespread acceptance of the social practices of legitimating informal land transactions. While these are not recognized as valid or enforceable by law, they are more convenient and accessible mechanisms of accessing land than those offered legally.

But despite the advantages, informal land supply mechanisms have their disadvantages. Firstly, land converted or subdivided unofficially does not qualify for infrastructure development, and the peri-urban areas are often underdeveloped in terms of basic service provision. Moreover, because land has not been surveyed and registered in the deeds office, an owner's rights over their land and investments are insecure, as they are technically illegal. The absence of a centralized database also makes it difficult to determine ownership and this opens up the opportunity for illegal transactions and disputes over ownership. This has mid to long-term implications on wealth creation, and land development. Thus, for as long as the law fails to recognize these new modes of ownership, urban actors remain vulnerable to legal action and to the loss of their land and property. This has a negative impact on investment because of the high risk of investing in parcels of land that have ambiguous legal tenure.

Herein lies the paradox of urban land in African cities. While informal urban land practices provide a system for the poor to occupy, or own land, their rights to land and any property they may have invested on it remain fragile and insecure. Although there may be a multitude of local practices that adjudicate rights and protect them, the fact that these practices remain outside of the law mean that they are technically illegal. In addition, the ambiguity in the processes of acquiring land open up opportunities for corruption, which works against the poor who are unable to obtain legal representation.

Case Study findings: Maputo and Luanda

Using survey data collected in Maputo's peri-urban areas of Luis Cabral and Hulene B, and Luanda's *musseques*, Urban LandMark and Development Workshop explored how ordinary urban dwellers access, hold, transact and manage land. Our findings suggest that a thriving informal land market exists, albeit outside state authorized mechanisms. Notwithstanding its illegality, these land practices are organized – possessing sophisticated local land management and regulatory systems. Local practices are characterized by a complex web of social actors, including family members, neighbours, local leadership structures, and sometimes state officials all of whom lend a credibility and legitimacy that allows a local land market to exist. Household investment in informal land markets overturn commonly held assumptions that these are too risky to possess a viable economy. And it is not that households make irrational economic decisions. On the contrary, they make sound judgments based on their levels of trust in local land management institutions, the ability of these to mediate conflict and calculations on the probability of evictions and loss of land. Exploring these socially embedded land markets not only allows us to understand how urban territory is carved up and managed; it also transforms the way we conceptualise urban governance, markets and the role of the state in our cities.

Figure 1 Population Distribution by Bairro, 2007

Key Findings

☐ Only a small proportion of households have legally defensible rights to land. In Maputo, only 2.6% and Luanda 6.8% of surveyed households had formal title to land.

☐ Despite not having formal title, majority of those surveyed in both cities had **a strong sense of security**. In Luanda, 85% of buyers and in Maputo, 66.5% of households surveyed had a strong or very strong sense of security. Because of this, local institutions, actors and rules enjoy a high level of trust and legitimacy.

☐ In Maputo, 72% of households surveyed had made improvements on their property, illustrating their sense of security to place. This is significant because conventional wisdom suggests that without tenure security, households are unwilling to invest in their neighbourhoods or properties because the risk of evictions is high. Our research suggests that this is not true.

☐ An **active informal market in land exists** despite the fact that the sale of land is illegal in both Mozambique and Angola. In Luanda, 61%, and Maputo 60% of respondents claimed that they had bought their land or property through the informal market.

☐ Even though the sale of land is illegal in Mozambique, 33% said they were paying for the land, 12% said they were paying for both land and house, and only 6% said they were paying only for the house.

☐ Land transactions are w**ell recorded.** In Maputo, only 6.3% responded that they had no agreement, indicating that having an agreement whether it is verbal or documented is an important aspect of accessing land. The *declaração* (similar to an affidavit) is the primary form of documented evidence in Maputo, 29% of households responded that they had received a *declaração* from the Secretario de Bairro. In Luanda, 60% of the population surveyed had documented evidence of their claim to land.

☐ Land markets are socially embedded in **networks and relationships** which play a major role in helping people access plots and in witnessing agreements, and resolving disputes. In the Maputo study, for example, 19% had verbal agreements witnessed by family members, neighbours and local leaders.

☐ Informal land markets in these areas are highly organized, with local administrative structures responsible for registering land ownership and occupation, legitimizing agreements, and resolving disputes. In Maputo, the Secretario de Bairro is in charge of a neighbourhood, the Chefe de Quarteirao responsible for 50 households, the Chefe de Block for 25 households, and the Chefe de Dez Casas for 10 households.

Policy Recommendations

Develop more flexible forms of land ownership and use recognition to ensure the rights of those who have acquired land through informal systems.

Recognise a range of tenure options along the illegal, legal continuum.

Build state capacity in urban land management and administration: The state plays an important role in urban land supply, management, planning and the enforcement of land rights. In many of these areas the state is weak and ineffective and unable to effectively administer its functions. Building state capacity is therefore essential in developing a good urban land practice.

Improve urban land information systems. Land information systems capture various types of information on land including: legal registration of title deeds; leaseholds; permissions; certificates and other documents of ownership; cadastre registration including surveying and mapping; and the maintenance of geographic and cartographic information systems.

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