

INVESTIGATING THE CONCEPTS OF LEGALITY AND LEGITIMACY IN SUSTAINABLE URBAN DEVELOPMENT: A CASE STUDY OF LAND USE PLANNING IN MAPUTO, MOZAMBIQUE

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Summary

This chapter investigates the concepts of legality and legitimacy underpinning urban development with reference to the developing world, illustrating this through a case study of land use planning in Maputo, Mozambique. It argues that, in situations where the interests and action of the state and market differ from those of the majority in civil society, the resulting discrepancies can be significant. These are usually described in terms such as “illegal” and “informal”, but in fact may be the norm rather than the exception and can be seen as more socially legitimate than the “legal” and “formal”. The chapter argues that to create sustainable urban futures there is a need to base urban development on broad social interests and institutions, and not only those of the state and/or market. This represents a challenge at the local, national and, increasingly, global scale.

This paper was initially prepared in 2000 and edited in 2002. The author acknowledges that the situation in Mozambique has been changing in the interim prior to publication, both in general and specifically for urban planning. These changes do not, however, affect the paper’s main argument in any significant way.

1. Introduction

1.1. The Concepts of Legality and Legitimacy

The concept of legality has been extensively used to frame definitions of aspects of development, mainly due to the dominance of the state in this process, as it is the state that usually defines, in policy and practice, what is “development” and “legality”. This has, however, been challenged more recently as being simplistic in its categorisation of

complex social, cultural, economic and political actualities and a more nuanced approach is sought.

A prime example of the state-oriented and fundamentally legal definition of development frames the definition of the concept of “illegal” and “informal” settlements. The very nature of these terms in this context can be contra-developmental, as they confer a status which is often not socially or culturally seen as legitimate, and refer to a legal or formal status which may be unattainable for the majority, thus undervaluing the economic and political importance of such aspects of development. To put this in other words, in the developing or rapidly urbanising world a large proportion of urban residents often live in physical circumstances which exhibit some form of infringement of laws and/or regulations that they have no effective influence on and that may be quite irrelevant. In these circumstances the state, which frames the regulatory environment in one way or another, often also has no effective control over its application. As such, the resulting “informal” or “illegal” urban development undermines the concepts of state legitimacy and the definitions of what is development.

This chapter argues that an institutional analysis based on the three main participants in development can elucidate this situation, permitting a more nuanced analysis of inevitably complex situations. This is illustrated in the figure below.

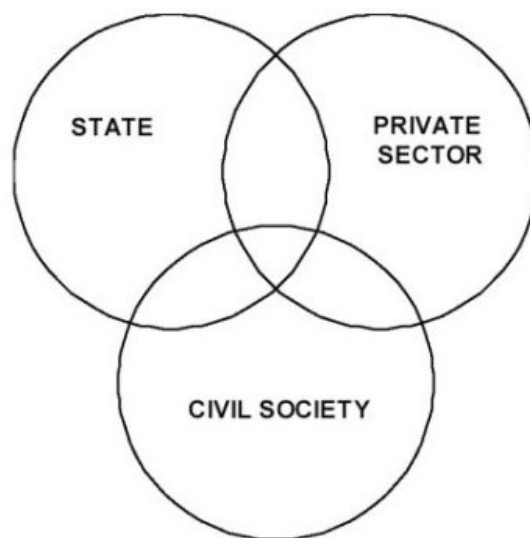


Figure 1. The main participants in development: the state, market & civil society

When the state enjoys a high degree of social legitimacy and economic influence the discrepancies, represented by the weak degree of overlap in the above diagram between the state domain and that of the private sector and/or civil society, are limited in scope as there is limited differentiation of objective. Where the state has either a low degree of social legitimacy or economic power these “interfaces” are more extensive and there is much greater discrepancy in state-private sector and state-civil society relations. This chapter does not have the space to permit a fuller debate on these concepts, but instead focuses on an illustration of these through the experience of land use planning in one of the weakest nation-states world-wide—Mozambique.

1.2. Introduction to the Case Study

Mozambique has been hovering near the bottom of the world economic tables published by the World Bank for most of the last 25 years since it achieved independence from Portugal in 1975. Both before Independence (under Portuguese colonialism) and after (initially under “proto-socialism” and later “free market” capitalism) the state and economy in Mozambique have been closely linked but have had limited local and national impact, with the majority of the population not effectively engaged socially, economically or politically in the state/market systems. In fact the modern nation-state project was never extensively implemented by any of these regimes and this is very obvious in urban areas where informal settlements predominate.

The role of the state and market vis-à-vis civil society in human settlements in Mozambique is complex, but dominated by a tendency to urbanisation linked to, albeit limited and poorly distributed, economic growth which has strongly differentiated regional features. However given the weak nature of the state and economic development, neither the state nor the market has been able or interested to deal with the wider physical and social consequences of urban growth and hence to a greater or lesser extent these have been dominated by “informality”. This is particularly the case in terms of residential land use. This case study looks at the actuality of this in Maputo, the capital city, with an emphasis on the peri-urban areas and through an analysis of physical development and land use planning.

Informal development is usually defined as “non-planned”, “un-serviced”, “illegal”, “extra-legal”, “un-regulated”, “unauthorised” or “un-registered”. However, in Mozambique urban planning is still not legislated, urban land use is still not regulated, local authority is still embryonic and services provision extremely limited. In this situation the “informal” is in fact the “normal” and this clearly challenges state dominance in the definition of what is urban development. Referring to the above model concerning residential land use, there is thus a wide discrepancy between official state land allocation, informal land access mechanisms and a growing (illegal) private sector land market.

Before Independence the colonial regime lost control of land allocation and the pre-Independence period was dominated by weakly regulated private sector activity in the “formal” sector, but a rapidly growing “informal” sector with significantly exploitative relations between these sectors. After Independence, land was nationalised ostensibly to eliminate such exploitation, but the continued (and even increased) state weakness in land use planning and management led to a dominance of “informal” forms of land access, with a weak state allocation system and no formal sector market activity.

In the absence of an effective state role, land access for the majority in urban areas has generally been through modified rural social norms which have regulated and legitimised residential land use. However, with economic deregulation and growing pressure on scarce urban infrastructure, this socially modified land-use system is increasingly affected by growth of virtually un-regulated private sector activity in urban residential development. The state has officially encouraged private residential development in the past decade, while officially maintaining state control over land.

This has led to significant discrepancies also between state land allocation and private sector access to land, with a *de facto* “illegal” land market operating.

Recent research has thus distinguished between this illegal land market and the informal land market, which, although to a great extent based on social norms, also involves monetary transfers. The essential difference is one of legitimacy, as the informal land market operates to the benefit of the majority (in the absence of an effective state capacity to do this) and is to a greater or lesser extent socially regulated, while the illegal land market operates to benefit a small minority of land speculators and developers and their high income clients, and is virtually un-regulated. There is an urgent need for resolution of this situation as it is counter-productive for the majority of urban residents, for whom access to land is becoming more difficult; for the state, which does not tap effectively any resources based on increasing land values, to support urban development; and for many private sector actors, which have difficulty operating in the non-regulated environment.

The principal challenge is how to create a land use planning and management system that is equitable yet efficient with the extremely low level of resources available: financial (with very high levels of urban poverty); human (with extremely low levels of relevant trained personnel); and institutional (with serious institutional and legal lacunae). In this context, the option of simplistic land privatisation would quite likely lead to the displacement of the poor majority from relatively well located areas, while the simplistic legalisation of current occupation could well lead to similar outcomes, due to the difficulties in implementation in the current situation of institutional weakness, not to mention political power distribution.

In other words the solution does not lie exclusively in letting the market regulate urban land allocation with limited state control (as tends to be promoted by some international organisations for the developing world), nor stronger state regulation in itself (as promoted in recent legal initiatives in Mozambique and is the case in many developed countries), as both the state and market are likely to remain weak in this sector for the foreseeable future. Rather, solutions based on social regulation for the benefit of the majority need to be developed, backed necessarily by the state and working with a regulated land market. This form of solution is essentially based on the current situation of legitimacy and leads from this to strengthen the legitimacy of the state, as opposed to the contrary.

While the above introduction to the case study focuses on urban **land management**, this chapter mainly looks at the relationship between the state, the private sector and civil society in **land use planning**. It is introduced by a short description of urban settlement patterns and the evolution of urban land use planning in Mozambique, and a more detailed case study of the results in Maputo, the capital.

2. The Legal and Regulatory Basis for Urban Development in Mozambique

2.1. Historical Development of Urban Settlement Patterns in Mozambique

In general, no “traditional” urban types, as identified elsewhere in Sub-Saharan Africa by Anthony O’Connor, developed in Mozambique. There are two exceptions to this:

some small urban settlements based on trade with the Arabic world on the eastern seaboard, which demonstrate “Islamic” city influences; and some outposts of the sixteenth to nineteenth century Monomotapa Empire based in present-day Zimbabwe, with substantial stone structures, demonstrating “indigenous” city influences, in western inland areas. Indigenous settlement of the Mozambican people was generally small-scale and temporary as it depended on shifting cultivation and was based on non-hierarchical socio-political formations. This continued to be the settlement form even for the larger centralised state formations which began to develop in parts of the country around the time of initial European exploration, such as the Gaza Empire, in the province still of that name.

In general, therefore, permanent urban settlements were a colonial creation in Mozambique and these were initially trading outposts, later developing as service centres for a growing settler population in nearby hinterlands in limited parts of the country. As colonial rule was established and consolidated over what is now Mozambique from the end of the nineteenth century, urbanisation of the indigenous people grew in importance but was increasingly controlled. This was primarily as a means to exploit labour: particularly through forced cropping and plantation labour in the north and centre of the country and partly through migrant labour to neighbouring South Africa in the south.

This settler-based urbanisation process gave rise to a variant of the “colonial” city form prevalent in the Eastern, Central and Southern African region, characterised by administration, trade and transport (especially ports and railways). The distinction between the Portuguese colonial variant of this form in Mozambique and the surrounding British colonial form is mainly in the nature and extent of state control. In Mozambique this was considerably less effective due to weaker state structures, reflecting the situation in Portugal. As a result, despite urbanisation controls, there was a general *laissez faire* attitude from the state to urban influx as long as it was seen as temporary, supplied labour markets, and conferred limited rights. The result was a form of separate development through informal settlements, mainly for the indigenous people, around central formal urban cores, mainly for the colonial elite. These drew mainly on modified rural traditions of building and space use as well as local governance and thus, from an early period, marked dualistic characteristics of land use developed. This was underpinned by weak regulatory powers of the state in relation to private sector interests, as well as the relatively strong social controls.

This situation continued up to Independence, despite some belated attempts by the state to provide alternatives for the majority during the escalating war for Independence (such as sites and services and self-help housing schemes). After Independence it led to a strong reaction in terms of aspirations for state control in all areas—political, economic and social—such as were reflected in nationalisation of all land. However, as argued below, there was an inherent anti-urban bias in post-Independence state-dominated development policies and this effectively undermined the role of the state in urban development. The dualistic nature of cities thus remained, despite some (limited) state intervention, and the informal cities grew rapidly, including the growing erosion of the formal city, with increased rural-urban influx.

Urban areas in Mozambique can be characterised as:

- Cities based on services and industry (all highly dependent on international links and transport);
- Other provincial capitals based on administration and services;
- Towns based on agro-industry and services, mostly related to plantations;
- Market towns for peasant crops (mainly in the north); and
- Small commercial centres in rural areas.

There is a very marked imbalance of the urban hierarchy in both size (the capital Maputo having more than three times the population of the next largest urban area, Beira) and geographic distribution, with the majority located on the coast and a strong concentration in the south (the Maputo-Matola conurbation). In addition the long period of internal war has significantly affected the urban settlement pattern, with many small commercial centres and a significant number of towns seriously damaged. The floods in Southern Mozambique at the beginning of 2000 compounded this situation.

2.2. Urban Development Policy

No explicit urban development policy has ever been formulated in Mozambique, although aspects of urban development policy are inherent in the first National Housing Policy approved in 1990. In practice an anti-urban bias has been evident, particularly in post-Independent government policies. Examples include the predominantly rural, agro-industrial focus of the first post-Independent Ten Year Development Plan (1980-90) and subsequent state investment; and also the “Operação Produção”, which attempted to forcibly relocate the “unproductive” from the urban areas to the rural areas in the mid 1980s with enormous negative social and economic impacts. The priority for rural development continued in later years under structural adjustment with the Priority District Plan, although in recent years urban-based industrial and tourist development has increasingly been promoted. As a result of the anti-urban development focus, most of the post-Independence resources for human settlement development were focused on rural areas associated with key economic development projects—e.g. the IFLOMA project (a major forest development and associated wood products factory which included the construction of a new town in an agricultural area in Manica Province). However, some investment in urban areas was accepted as necessary for industrial production—e.g. the 12 000 Houses Project. In this latter project 12 000 new house units were planned for technical and managerial staff for large industrial projects in rural areas and small towns including coal mining, textile and iron/steel factories, as well as housing in Maputo. It was a joint venture with East German assistance and started construction in 1983. However, less than 300 houses were completed nationwide, mostly in Maputo.

In 1982 there was an attempt by the National Housing Directorate (later, National Physical Planning Institute) to focus on urban issues through the 1st National Meeting on Urban Planning. This complemented the 1st National Meeting on Cities and Communal Neighbourhoods which had been held in 1980, and which redefined local government as exclusively subordinate to central government (through Provincial Government structures), although technical services had a double subordination to the relevant Ministries. One of the outcomes of the 1980 conference was a series of “Resolutions”, including one on “Urbanism”.

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Biographical Sketch

Dr. Paul Jenkins is Director of the Centre for Environment and Human Settlements in the School of the Built Environment, Heriot-Watt University, Edinburgh, Scotland. An architect/planner by training, he has worked during the past 30 years in, and with, a wide range of central and local government, NGO, private sector, international aid and community-based organisations. This has been in urban development, housing, architecture and construction—in policy, practice, training and research. More than 20 years of this has been in Central and Southern Africa, where he has worked in Malawi, Botswana, Mozambique, South Africa and Angola.

His main interests are widening participation and community empowerment, with a focus on low-income groups, through policy advocacy, professional practice development and action research. His main research focus is the changing relationship between the state and civil society in the rapidly urbanising world, which is the main theme of the recently published book: *Urban development and civil society: the role of communities in sustainable cities*, (2001) Carley, Jenkins & Smith (Earthscan). Recent research has included: housing policy formulation and governance (Mozambique and South Africa); urban planning and land access for the poor (Mozambique and Angola); urban management and environments in situations of severe poverty (Mozambique and Angola); and the effect of globalisation on urban areas in Southern Africa (Mozambique, Angola and South Africa).

In the last few years he has also become increasingly involved in promoting participation of civil society in human settlements issues in Europe, with a forthcoming book entitled: *Place identity, participation and planning*, Hague and Jenkins (eds) Routledge (Royal Town Planning Institute Library Series).