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

Paul Jenkins
Director, Centre for Environment & Human Settlements, School of the Built Environment, Heriot-Watt University, Scotland, UK

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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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This document drew extensively on the experience of a central government pilot upgrading project of an informal settlement in Maputo in terms of its recommendations for a new approach to urban development. The project had been initiated in 1976 by the National Housing Directorate with United Nations assistance, with implementation running from 1977 to 1979, when the project was handed over to the newly formed Maputo City Executive Council. The lack of planning capacity within local government, however, led to a collapse of the project. Nevertheless the National Housing Directorate drew on this experience in the 1982 urban planning conference, emphasising the need for urban land use planning, yet explicitly recognising the lack of local government (and limited central government) capacity in this regard. The result was a decision by the Directorate to directly develop structure plans for major urban areas, initiate training of planning technicians, and develop guidelines and planning standards for urban development within these areas for application by the City Councils.

These urban planning guidelines had even less effect than the “Urbanism” resolutions. Although they influenced urban development practice at local government level where there was a minimum of technical capacity and a relatively strong local political base, generally the weak legal, institutional and financial base of the relevant central, provincial and local government agencies resulted in a continuing laissez faire attitude towards urban development. At a macro-level the only other initiative in terms of urban development policy was the Classification of Urban Areas in the late 1980s, which was undertaken as a spin-off of the Classification of Districts (related to the Priority District planning process mentioned above). As such, despite the national “Resolutions on Urbanism”, (1980), draft “Urban Planning Guidelines” (1986) and “Classification of Urban Areas” (1986), no explicit urban development policy was ever drafted.

2.3. The Legal Basis for Urban Land Use

Arguably the above-mentioned resolutions and guidelines did not constitute policy as such as they did not have any legal or institutional obligations associated with them. What legislation was promulgated of relevance has generally focused on housing and land. In the immediate post-Independence period (1975-80) this was characterised by establishment of state control of the sector, nationalising all land and rental and abandoned housing, and setting up state rental agencies. In the following period of state consolidation (1980-87) it was characterised by institutional and territorial changes, including definition of urban areas and local government, as well as minor amendments to the land law. The subsequent period (1987-88) was characterised by alterations to existing laws to take into account macro-economic restructuring (e.g. state rental increases in line with devaluation), although the Land Law regulations were finally approved (see below). The major changes in political and macro-economic direction then led to a period (1989-92) of more explicit policy definition, including enactment of legislation in response to the National Housing Policy (1990), particularly concerning the divestiture of State Housing Stock, and the opening up for private sector initiative. This was then followed (1992-1999) by a period characterised by legislation shaping further central government reorganisation as well as, more recently, legislation dealing with local government reform (1997-9).

The legal situation concerning urban land development has remained embryonic, and what legal positions are implicit in the Land Law and National Housing Policy at times
conflict. The Land Law came into effect in 1979, based on the Constitution which had nationalised all land under direct State control in 1975. One of the major objectives of this law was to eliminate real estate speculation, which had been prevalent in the urban areas especially in the later part of the 1960s and early 1970s. Hence the new Land Law specifically indicated that land for residential and family agricultural use was free from any payment. The title allocated was defined as essentially a usufruct title and was inheritable.

The responsibility for land use control was defined in the Law as being the City and District Executive Councils’ which at the time were still in the process of creation. The Law itself was couched in general terms, and focused principally on rural and agricultural land use—not surprising as this was the government’s main development focus. Only in 1987 were the interpretative Regulations published, being more or less exclusively produced by the Ministry of Agriculture, and hence again concentrating on agricultural land use and rural areas—regulations concerning residential and urban land use being markedly absent. As a result no legal process for physical planning was established and no specific institutions were given the responsibility (or were minimally equipped) for this area of activity at either a national or local government level. Thus, despite the draft Urban Planning Guidelines prepared by the National Institute for Physical Planning, existing institutions became involved in ad hoc, and sometimes conflicting, interventions.

Procedures for land allocation for virtually any use consequently became labyrinthine and open to abuse. The only entities capable of resolving individual cases were those with considerable socio-political or economic influence, whether government, private or individual, and the vast majority of land occupations were made informally, whether for residential or other purposes. Although in principal only residential and family sector agriculture land use is exempt from land taxation, in practice the institutions involved had no capacity to update their outdated cadaster systems (which in pre-Independence period only covered the core urban areas and their immediate surroundings), and little administrative capacity to control actual land use or collect taxes. These factors led to increasingly chaotic situations, such as land banking by powerful institutions in the more developed urban areas and unofficial speculation in land—principally in agricultural areas, but now growing in the urban centres also.

Discussions on the new Constitution in 1990 included the possibility of private land ownership—the Draft Constitution stated “All property in land shall originally vest in the state, and may be transferred to individual persons or collective entities, taking into account its social purpose.” (Article 12, 1st paragraph). This possibility, however, was rejected by the wider population in many public debates, mainly influenced by the previous history of state, and latterly private sector, evictions of the family sector from agricultural land. As a result in the final Constitution land remained nationalised, continuing the state’s exclusive right to grant usufruct title (Articles 46, 47 and 48). However, the legal and administrative situation remained without clear definition.

The National Directorate for Geography and Cadaster held a seminar in 1996 which focused on some of the above problems. However, as before, these concentrated on rural and agricultural land use, as this was the area of primary responsibility of this institution subordinated to the Ministry of Agriculture. As such the legal and
administrative basis for urban land use planning, allocation and registry and control remained vested officially in the City Councils, although these had totally inadequate capacity and no policy orientation, to carry out these tasks. This was legislated in the new Land Law (1997), which had the distinction of recognising customary rights to land which had been occupied in good faith for ten years or more and also provided for forms of communal titling. While directed to rural land use (as were the accompanying Land Law Regulations of 1998) these sections of the law have relevance also for urban areas (see below).

Despite some government attention in the early 2000s, at the time of writing (mid-2002) there are still no clear legal responsibilities for overall co-ordination of urban land development—construction of infrastructures and services, and zoning of construction—and this remains to a great extent dominated by ad hoc interventions of the various parastatal institutions, and increasingly private agencies, responsible for the services provided. This has further exacerbated the increasingly ad hoc nature of land occupation and more marginal land is constantly being occupied—areas prone to flooding and erosion, with high water tables and even rubbish dumps. The government is aware of the deteriorating situation, but as yet has been unable to define clear institutional responsibilities for its resolution, assuming that it is the task of the City Councils, which continue weak, although some have been awarded increased powers in recent years (see below).

2.4. Urban planning

As noted above, there is no clear legal basis for urban planning, let alone clear responsibilities and mechanisms. This situation originated in the colonial period, when urban planning was also weak. After Independence, despite general consideration that plans from the colonial era were unsuitable, there was no technical capacity to implement new planning procedures until the early 1980s since most of the trained technical staff in the city councils, or other related entities involved in physical planning, had been Portuguese and had left around Independence. Hence in the cities the remaining lower-level staff continued as best it could to implement the existing plans, which was virtually impossible due to the lack of state priority and private sector capacity for urban development. Only after the creation of Urbanisation and Construction Directorates in local government from 1980 did this situation begin to change at local level. However, as noted above, the institutional capacity of these remained extremely weak.

The responsibility to develop national physical planning was attributed to the National Housing Directorate, which, after the 1st National Meeting on Urban Planning, became the National Physical Planning Institute (INPF). This central government entity dedicated itself to the preparation of structure plans for the principal urban areas to guide the new city council Urbanisation and Construction Directorates in developing detailed urban planning and development programmes. The types of plans prepared by both the City Councils and the INPF varied in name and focus. Despite the lack of legal and technical guidelines for urban planning—for instance, the types of plans, methods of preparation, mechanisms of approval, powers of implementation and instruments for plan review—most of these were approved.
However, in general they were not implemented due to the lack of management capacity for implementation, the chronic shortage of personnel and finance in the City Councils and the lack of a clear legal obligation. The plans generally did not contain mechanisms for implementing the proposals and controlling development and have mostly been overtaken by continued rapid spontaneous settlement, peaking in the latter part of the 1980s due to in-migration by displaced persons as a result of the war and the breakdown in the rural economy. In addition, the fact that most of the above plans were prepared by central government, often without full participation of the local authorities, has meant that these have been reluctant to assume political responsibility for their implementation. This has often been compounded by the interests of the local elite, who have insisted on large minimum plot sizes and relatively high standards of infrastructure, which are not sustainable on a wider basis (see below on Maputo).

During the 1990s the vacuum as far as urban plans were concerned remained in force, and urban interventions in terms of state land demarcations slowed to a halt. However, the city municipalities (or rather members of their staff) began to develop series of small-scale land layouts for demarcation of residential land in prime locations, which was then allocated after significant corruption. This form of unplanned urban expansion has increasingly occupied ecologically marginal land and threatened existing informal land occupation. Towards the end of the 1990s private sector pressure on the local state to provide land for economic activities and from the local elite for more prime residential land led also to new lower-income demarcations (including forced removals) at the periphery.

From the beginning of the 1990s the government began a local government decentralisation process, with support from various external agencies. This was held up politically at national level for some time, but began to be implemented in the late 1990s. Part of the World Bank’s support for this was the preparation of new structure plans for five cities, including the greater Maputo metropolitan area (Maputo and Matola had been administratively separated again in 1987), as well as a series of pilot projects. This project, while not expressly acknowledged as such, was based on the approach of the World Bank and other international agencies in the global Urban Management Programme. The results of the planning process in Maputo are discussed below.

### 2.5. Urban Land Management

From before Independence city councils continue to use cadastral and tax mechanisms which are only relevant to formal urbanised areas and are not practical for “semi-urbanised zones” (*loteamentos* or sites and services areas) or informally settled areas. City Councils therefore do not possess adequate instruments for land registry and land use control in any area, in fact, as they do not have the institutional capacity to even administer the inherited formal land register. Further City Council personnel are not trained to assure the maintenance of an efficient management system for land. Without an up-to-date cadaster, the financial base of the City Councils cannot be increased through any form of property tax—for example in the formal urban central areas, where there might be a capacity of payment—and there are no legal instruments for tax collection in semi-urbanised areas.
In the latter part of the 1980s, as noted above, the National Physical Planning Institute did develop urban land use management guidelines. These dealt with such issues as the urban planning process; the allocation of land rights; land use registry and cadaster; land use control; compensation; construction control; organisational aspects; and legal aspects of the above. Despite being developed over a considerable period in some detail (from 1983 to 1991), these proposals were never formally published and remain working documents. Attempts by the INPF to introduce these as new land management systems in the City Councils were not successful and the poor definition of roles in land management noted above continued. The result is that the majority of the peri-urban population does not have a legal document which guarantees security of tenure on the land they occupy, even that which has been allocated by the City Council. In practice, peri-urban land use is often authorised by local level politico-administrative entities (Grupos Dinamizadores or Bairro Secretaries) without reference to any urban plan. Participation of local representatives of the City Councils in these informal processes also takes place and the land allocation process itself is open to abuse.

As part of the World Bank-financed local government reform programme, a pilot project in urban land cadaster and registry was implemented in Maputo between 1997 and 1999. This undertook a series of surveys of actual land occupation, registry and cadaster and found, unsurprisingly, that there was widespread informal and illegal land occupation, even in the central urban areas that had a formal cadaster and register. This project proposed a comprehensive upgrading of the whole land allocation, registry and cadaster system, with technical, organisational and physical proposals for implementation. However, it did not fully identify the financial, institutional and political aspects of the context and as yet no recommendation has been implemented. The project also, however, played a significant role in highlighting the legal lacunae and developing draft new urban land use regulations, discussed below.

3. The Case of Maputo City

3.1. Pre-Independence Development

While earliest records of human settlements near the city that today is Maputo date back to the first century AC, there is no evidence of permanent settlement in the area before Portuguese navigators discovered the bay at the end of the fifteenth century. Initial temporary settlements were subsequently created in the middle of the seventeenth century by the Portuguese, Dutch, English, French and even Austrians as they vied for dominance in local trade. The first permanent settlement was created by the Portuguese in the late eighteenth century and slowly grew in the first half of the nineteenth century, during which time significant changes in the local indigenous socio-political structures took place, with the formation of larger hierarchically organised socio-political institutions which dominated most of the existing clan groups without absorbing or exterminating them.

The settlement remained mainly a small trading post (the most lucrative trade being ivory, but also hides), and the Portuguese crown gradually annexed land in and around the settlement through agreement with the local chiefs, leasing this to settlers from 1858. The discovery of gold in the new states established by the trekking “boers” on the inland plateau in 1870 led, however, to rapid development of the small settlement, then
called Lourenço Marques, as a port and base for transport, initially by ox-wagon. The construction of a railway to the Transvaal region by 1895 gave greater impetus to this and led to the increase in state regulation of trade and local labour supply. The economic boom towards the end of the nineteenth century linked to new railway and port facilities also saw the first attempt at land use planning to incorporate the British dominated private sector urban expansion outside the Foral area, with various plans developed. This was associated with an attempt by the state to consolidate the Foral land register in 1886, but disputes on private property rights continued through to 1896. This was after the finalisation of the first formal urban plan in 1895, developed by the metropolitan public works department, and key public works were concurrently initiated including land fill of the swamp around the initial settlement. The state, however, sold or leased large areas in and outside of this planned area at low costs—often to foreign speculators, which later led to significant obstacles in urban development.

It was no coincidence that this period was that of the colonial “scramble for Africa”, associated in Mozambique with Portugal attempting to claim territories it never had dominated through military conquest as well as negotiation with the neighbouring colonial states. The economic growth of the Transvaal led to the transfer of the capital of the new nation-state to Lourenço Marques, which achieved official city status. The population grew rapidly from this period on, although physical occupation of the planned area was slow. The state in fact had to buy back extensive, mostly foreign, land holdings in the northeast of the settlement from private owners to allow development in this area, which was best located in climate terms. Nevertheless the largest growth of population was from influx of the indigenous population, who made up some 75% by 1950, although from 1890 the African population had been limited in its legal acquisition of land outside of “reservas indigenas”. These had been established from 1918 (revoked 1961) and “chiefs” allocated land with use rights. Although limited “modern” land rights for Africans were made possible in the mid 1950s these were generally only used for special cases until the late 1960s. As the majority of urban newcomers were not permitted to buy land in the planned area, their only option was to settle in the areas immediately outside of this, particularly to the north-west in the low-lying and less favoured area. Here land was also privately owned, but by a myriad of small landowners, mostly colonial settlers, who rented land and shack housing. Hence the majority were forced into “informality” from an early stage.

Changes in legislation in the 1920s concerning “indigenous” status led to the creation of an “assimilated” class and the only state intervention in urban terms in favour of the local population was the building of a housing area for this group in the 1940s. The rents were relatively high, however, and many “assimilados” preferred to rent (and occasionally buy) land or housing in the burgeoning “informal” areas. The state turned a blind eye to these, although assuming that they were temporary and could be demolished at any time. The result was sprawling un-planned and un-serviced areas of growing density in temporary building materials, and inherently exploitative as well as a serious health risk. The advent of limited industrial development in the 1940s consolidated this trend as many of these new industries were located near the port, which was close to the growing “informal” neighbourhoods.

In the early 1950s the state drew up its second urban plan, this time as a master plan for the existing city and its expansion—mainly to the north, avoiding the existing informal
areas that were labelled “reserves”. In the spirit of the times (see below vis-à-vis Portugal’s development), this proposed a massive reconstruction of the central city area with grand public buildings and a new urban centre in the northern expansion area. The plan had no realistic economic basis, representing an unrealisable vision, and quickly fell foul to land speculators who either bought up plots around the new proposed centre (which was still not legally part of the urban land registry), or refused to sell and/or sub-divide their extensive land holdings in the expansion area. The Foral area was finally extended in 1965, when it was estimated that 72% of the 770 hectares was in freehold and 16% leased, with the rest being in state hands. Of the first two categories, 570 hectares (85%) were in the hands of only 11 large-scale landowners, with the remaining 100 hectares in the hands of some 300 small-scale landowners. In this situation of a weak state and relatively strong private sector, the opposite of the plan took place—land in the planned area was either illegally developed or blocked from development for years, while a whole new satellite urban area began to develop to the west of the city limits, across the intervening small river valley, in Matola.

This new urban expansion in Matola was driven primarily by private sector interests as it was closely tied to industrial expansion, with a series of new factories being established in the area where land was cheap and control minimal. This tendency was accelerated with the lifting of investment restrictions in economic relaxation policies in Portugal. Foreign investment poured in and a whole new set of industries were established, including an oil refinery, cement factory, textiles factories and a new mineral port, with associated new housing areas being laid out. Here the new local government participated in providing sites and services plots for lower-income workers and extensive low-density style layouts were the norm. In Lourenço Marques the opposite was taking place, where the majority of investment was in higher rise development in this period, as the surrounding informal city impeded expansion.

As the 1960s developed, however, the growing resistance of the liberation war led to changes in state attitudes to the majority of the local inhabitants. The government began to provide minimal services in the informal city for the first time and ambitious plans for mixed re-development and new development around the informal and formal cities were drawn up. These were planned through a new Master Plan for the city, started in 1969 and approved in 1972. This incorporated the ongoing development plans and added to these with identification of medium-term expansion. It also, for the first time, introduced a form of zoning of land use and control of densities, open space and setbacks, which were regulated through a series of local by-laws. Again, however, this plan was primarily a physical analysis and proposal, albeit with an environmental focus. It thus did not take into account the economic basis for urban development, or the socio-economic needs of the majority of the lower-income, local population. It also largely ignored the “informal” city. Again the state tried, weakly, to implement the plan. This included setting up a metropolitan urban planning and development agency and a low-income housing support agency (following similar initiatives in Portugal at the time). However large discrepancies between the state’s interests and activities and those of the private and informal sectors continued.

3.2. Post-Independence Development

In the post-Independence period the new government not only nationalised all land but
also drew all powers to central government level. Local governments under the colonial regime had limited powers, but these were abolished in the local government re-organisation of 1979. This also merged the two cities of Lourenço Marques and Matola, in one new city administration as Maputo, with considerably extended physical boundaries. Hence the state assumed massive powers at central level while at the local level there was a severe reduction in capacity (fiscal as well as human resources), yet an enormous increase in responsibilities. The above mentioned anti-urban bias in national development policies exacerbated this situation, as did increases in urban influx. Despite the large-scale emigration of foreign and colonial residents, greater Maputo expanded rapidly both demographically and physically, without virtually any capacity of the state to intervene and with the private sector inoperative. The informal sector filled the gap.

During this period there were a number of state interventions, such as the central government/United Nations sponsored pilot upgrading project, and the local government initiative “Basic Urbanisation Programme”, but while these had some successes they could not keep up with the growth of the informal sector. Realisation of this led to a focus on the state developing strategic plans and low-cost state land management interventions, based on the initial experiences, as noted above. This led in the case of Maputo to the development of a structure plan for the greater urban area, developed by the National Physical Planning Institute (with inputs from the city planning office) which was presented for approval to the Executive City Council in 1985.

The objective of this plan was to guide broad physical development of the city, which at the time of drafting was fast expanding. The plan was designed to replace the planning vacuum left by the lack of relevance of the 1972 Master Plan in the new socio-political realities. It also adopted a more modern attitude to planning as it envisaged the need for District level master plans to provide zoning and physical development details, while it was focussed on broader issues, including the relation of the urban area to regional development proposals during the 10 year horizon chosen.

The plan proposed three main alternatives for guided development:

1. an “uncontrolled development” option, which represented the continuation of the current situation with minimal state intervention, highlighting the problems this would exacerbate;
2. a “planned concentric development” option which relied on high levels of investment in new economic and social infrastructure to open new areas of growth related to large scale projects currently proposed for the Southern Africa Development Co-ordinating Committee (SADCC) which would be based in Maputo/Matola (major new transport nodes); and
3. a “planned linear expansion” which recognised the potential investment limitations and realities of the weak capacity for state involvement in urban development, concentrating efforts in corridors of development along existing infrastructure routes and linking residential areas to areas suitable for urban agriculture (which was seen as an essential survival mechanisms for the poor).
The plan recommended the reality of the third option and outlined priority areas for action and investment, including boosting the City Council’s existing programme of developing new basic residential areas with support to self-help construction (“Basic Urbanisation Programme”). A series of proposed norms and standards for urban development were outlined and attached as an appendix to the plan, as was a proposed mechanism for the plan’s appreciation and approval, as this was not stipulated in any law or regulation.

The plan met considerable resistance within local government, which balked at the norms and standards as well as the realism of the proposals. Additionally the lack of any clearly defined legal process for appreciation and approval meant it fell between local and national government responsibilities. Finally the nature of its broad outline proposals, as opposed to the detailed master plan proposals for 1972, was not understood. In summary the plan lacked the political and legal basis to be approved. It also lacked the institutional and economic basis for its implementation. It is still not agreed whether the plan was ever approved, but the plan was certainly never implemented.

This led to even more confusion over land use planning and management at a local level, with local authority staff opting in each situation of land allocation whether to follow the proposals for the 1985 Structure Plan or the 1972 Master Plan, with obvious opportunities for corruption in this process. This situation of land use planning stasis continued throughout the latter part of the 1980s and early 1990s despite attempts by the United Nations through two technical teams (one supporting development of the National Housing Policy and a subsequent one supporting development of a National Housing & Urban Development Programme) to raise the importance of the underlying issues. The contradictions in the status quo were heightened by a relatively large urban investment funded by the World Bank, but this did not even attempt to address the broader issues.

The tensions created in the “discrepancies” between the state land use planning and allocation system with other sectors were heightened with economic deregulation and the opening of the housing market to private sector activity in the National Housing Policy of 1990, and more generally with the initially slow, but accelerating, turn around of parts of the economy after structural adjustment. Formal private sector land demand continued to be limited initially as slack in the existing economic infrastructure was taken up and as the local demand by higher income groups was absorbed initially in divested nationalised housing stock. However, inward investors required access to land for economic and residential uses and this soon stimulated a strong demand, although limited in scope. This was responded to largely through corruption of the state system of land allocation within local government, with the consequent development of an illegal land market, albeit with formalised aspects. As far as the “informal” city was concerned, structural adjustment also led to greater commodification, although socially controlled systems still tended to dominate land supply for residential use. This seems to have been less so for productive land use such as urban agricultural areas where land disputes and land grabbing were reported from the early 1990s.

As noted above, the World Bank sponsored preparation of a new structure plan for the greater Maputo metropolitan area. This was prepared by international consultants in
1998/99. Once again the result was far from that intended, as the lacunae in the broader context of urban policy and urban planning norms etc. led to a final proposal which was again not approved—and if it had been, would still have no legal basis for implementation. Over and above this the institutional capacity to implement such a plan is still not in place, although there is more technical capacity at local government level than previously, albeit new and inexperienced. More importantly, the plan did not effectively address the underlying economic issues of how urban development would be financed, despite some technical appendices on land taxation and use of government housing assistance to support demand for residential land by lower income groups.

Since the preparation of the structure plan, some initiative has been undertaken concerning the legal basis for planning and urban land use regulation. A draft of these latter was prepared by a pilot project within the World Bank project and has been subject to scrutiny by a variety of institutions at local and government level. These are based on the new Land Law which was approved on 1997 and which recognises de facto occupation of land in urban areas in good faith over a 10 year period as being the basis for title, as along as this is supported by appropriate urban plans. The initial draft regulations thus concentrated on defending the rights of occupiers of informally settled areas, and forms of titling, etc., with the objective of facilitating basic urban development and filling in gaps in the absence of planning legislation.

This issue of “formalising” the informal settlement has been very polemic for various reasons. One is that the capacity to actually plan and title is limited and the economic basis for this non-existent. The implementation of the law and regulations as they stand may well thus actually lead to greater social exclusion as only certain people who could afford a relatively expensive process of individual titling could do so. A second and more politically loaded issue is that the private sector would like to move in to informal settlement areas which surround the formal city core, and the formalisation of rights is seen as holding up this process. It is not clear how these issues will be resolved.

4. Social Legitimacy and Sustainable Urban Development

The case study of Maputo city and the prior contextual overview of urban development in Mozambique demonstrate clearly the discrepancies that can exist between state interests and capacities, and those of the private sector and civil society. Marked discrepancies existed before Independence with a weak state attempting to control growing market forces unsuccessfully, and with relatively long term legacies of ignoring urban development interests of the majority of urban dwellers, who resolved their situation through “informal” solutions, with links to the private sector, albeit exploitative. The major change after Independence was the declared interest of the state in relation to the majority and the severe restrictions on the private sector. However, state capacity to implement the declared interests—and arguably the lack of real interest in this issue at least with respect to urban areas—led to increasing “informal” activity. In time, with political change and macro-economic deregulation, and the re-emergence of the private sector, the broader discrepancies have opened up again, paralleled by a further weakening of the state’s capacity.

These discrepancies concerning urban land development can be currently characterised by:
• **State - market discrepancies**

The state’s expressed interest to guide more efficient urban development and social provision often conflicts with its interest to stimulate much needed economic development, yet its weak capacity (but still all-important role) vis-à-vis land allocation lead it to be seen as a severe blockage for both private sector and individual investment, leading to corrupt practices and distortion in an “illegal” land market, with no effective tapping of urban land as a basis for urban development. The state more recently has realised this and parts of the state structure want to “legalise the legitimate” access to land for private development;

• **State – civil society discrepancies**

The state’s official interest is to provide for the majority of its citizens, but in fact the lack of capacity and legal/institutional infrastructure lead it to provide very little for the majority, as it often ends up dealing with strong ad hoc economic and political pressures. As a result, civil society continues to play a major role in the “informal” land market, which has existed for a long time and which grew significantly in the 1975-90 period.

• **Market – civil society discrepancies**

In the absence of any regulation or support, the “illegal” and “informal” land markets are entering into increasing interaction with growing commodification of land, although this generally remains essentially a low-level market activity, except where the private sector wishes to dislodge lower income groups from well-located land, or where the state (with international support) has prepared land for new urban use on the periphery to re-house inner urban dwellers affected by the floods in early 2000.

In terms of the binary definition of “formal” and “informal”, the case study has attempted to illustrate the actual complexity of the situation. Regarding this, there is no clear hegemony over what can be considered legitimate. While officially the state defines “formality” through laws and regulations, in the case of Mozambique, these generally do not exist for urban land use management, or are very inadequate. The state’s legitimacy has never been effectively endorsed at many levels, and this is particularly true at local government level, when only some 10% of the voters actually voted in Maputo (first local government election). The legal nature of state activity is further undermined by fairly widespread corruption, fuelled mainly by private sector demand, which itself is exacerbated by state action.

All this leads to undermine the concept of state legitimacy even further, as well as the definition of what is legitimate urban development. The state has never clarified its explicit objectives, policy or regulations concerning urban areas in general, and the individual city plans which have been prepared with implicit urban development visions have generally been technically driven, without broad legitimacy at a local level (state, private sector or civil society). This has led to the repeated situation of ambiguous “approval” of plans and their subsequent non-implementation, although the technical approach arguably also never fully investigated the social and economic basis for plan implementation.
On the contrary the widespread nature of socially modified forms of land allocation has reinforced the legitimacy and “normality” of the “informal”, which has roots in older forms of rights concerning land. Rights in land (and “bundles” of such rights) are complex and socio-culturally rooted. This has been extensively investigated concerning rural land and is now increasingly under investigation for urban areas. The tendency to assume simplistic definitions of rights such as freehold tenure undermines this and ultimately challenges the legitimacy of the state and/or the market to impose this. In this complex situation the simplistic definition of “informal”—and association with “illegal”—can lead to more damaging development efforts, especially if these are driven predominantly by the state or private sector, whose interests and/or capacities do not favour the majority.

This leads back to urban sustainability. The definitions of sustainable have evolved from those which have focussed on ecological sustainability, to include social and economic sustainability. These are particularly important when addressing issues of urban development. The fact that urbanisation is continuing fast and is now the dominant trend in human settlements has led to much investigation of the basis for sustainable urban futures. To create sustainable urban areas, however, is not just a matter of balancing ecological and economic needs, but of balancing these with social needs. As such it is essential that concepts of sustainable urban development are based on the interests (and realistic capacities) of all three sectors identified.

To do this requires the formulation of clear roles for the various actors, including rights and responsibilities as well as the laws and regulations which have been the emphasis in the past. It also requires basing mechanisms on what is legitimate, what actually happens, and what can be the shared vision. This requires a new approach to land use planning which does not start from rational assumptions that are essentially technical and which can allow the state and/or market to undermine socially defined objectives for the benefit of an elite. Rather, the true basis for sustainable urban development lies in identifying the wide body of stakeholder interests and building appropriate solutions based on agreed objectives and realistic capacities through mutually accepted processes of negotiation.

In this respect the past tendencies have tended to stress the role either of the state or of the market in urban development, and more recent trends focus on public-private partnerships as a better solution. This paper argues that the only sustainable partnerships are ones where civil society also plays a key role. No one set of actors can have hegemony in defining what is the concept of legitimate urban development in a sustainable urban future. This must be based on participation and negotiation between all the stakeholders. In this, civil society has a much stronger role to play in future de jure as well as its current widespread role de facto. The challenge, however, is not only how this can become established in specific cities or nation-states, but also how it can relate the local to the global in the fast globalising tendencies in urban development of today’s world.

**Glossary**

**Legality:** degree of adherence to law and regulations  
**Legitimacy:** degree of adherence to social and cultural norms
<table>
<thead>
<tr>
<th>Term</th>
<th>Definition</th>
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<tbody>
<tr>
<td>Urban development</td>
<td>the physical development of cities</td>
</tr>
<tr>
<td>Developing world</td>
<td>that part of the world considered to be economically less developed by the dominant economic analysis</td>
</tr>
<tr>
<td>Land use planning</td>
<td>the definitions of the rights and responsibilities associated with land use in advance—also known as spatial planning, physical planning and territorial planning in different technical languages—and usually associated with plans (maps), land use zoning or policy definition, and forms of control of land use, especially changes in land use</td>
</tr>
<tr>
<td>State</td>
<td>the government system, including the legislative, executive and judiciary components of this, and its expression at different scales or levels (central, regional and local)</td>
</tr>
<tr>
<td>Market</td>
<td>the capitalist economy and the actors within this, whether trans-national, national, regional or local—also know as the Private sector</td>
</tr>
<tr>
<td>Civil society</td>
<td>the organised expression of social life which is not either the expression of a state or economic system</td>
</tr>
<tr>
<td>Sustainability</td>
<td>the capacity of a political, economic, social, or environmental system to sustain itself for the future</td>
</tr>
<tr>
<td>Institutions</td>
<td>the organisational structures in the state, economy or civil society. This also expresses the mental models by which societies, economies and polities function.</td>
</tr>
<tr>
<td>Regulatory environment</td>
<td>the package of laws, regulations and other public restrictions defined by the state</td>
</tr>
<tr>
<td>Proto-socialism</td>
<td>A form of socialism that reflects socialist goals but does not implement fundamental socialist changes</td>
</tr>
<tr>
<td>Free market capitalism</td>
<td>An ideal form of capitalism with no controls other than those of the market</td>
</tr>
<tr>
<td>Urbanisation</td>
<td>the process of physical, social, economic and cultural change associated with higher density living environments, monetary and anonymous socio-economic exchange and the social and cultural manifestations of these</td>
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<tr>
<td>Human settlements</td>
<td>all forms of how humankind provide shelter or housing, including the grouping of this</td>
</tr>
<tr>
<td>Peri-urban</td>
<td>urban areas which are not fully developed physically with building and infrastructure, yet are also not rural in character</td>
</tr>
<tr>
<td>Informal settlements</td>
<td>Areas of human settlement which are not considered formal—i.e. authorised, planned, serviced, registered, regulated and with legal status (potentially all or any of these attributes)</td>
</tr>
<tr>
<td>Unauthorised settlements</td>
<td>Areas where occupation or some other major characteristic has not been authorised by the authorities which are considered responsible for this</td>
</tr>
<tr>
<td>Non-planned settlements</td>
<td>Areas with no planned land occupation</td>
</tr>
<tr>
<td>Un-serviced settlements</td>
<td>Areas with no services provision such as roads and drainage, water and energy supply, solid and other waste collection/disposal</td>
</tr>
<tr>
<td>Illegal settlements</td>
<td>Areas where land is occupied in a way that contravenes laws</td>
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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).