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Chapter 3

In the meantime ... Moving towards secure tenure by recognising local practice

Lauren Royston

Colourful plastic buckets line up along the wall built around the standpipe, waiting for the pressure to increase. When it does, the water will finally flow and their owners will arrive to claim their buckets and a place that they hold in the queue. People here are patient.

We are walking past a water kiosk in a section of Mtandire, a peri-urban settlement in one of southern Africa’s capital cities, Lilongwe, Malawi. G, a local leader, tells us that people settled here when the chief gave them land in 1974. ‘No,’ we are told, ‘people did not pay for the land from the chief.’

Although people call this place a village, densities are high, residents are no longer members of the same clan and little land
is left over for cultivation. On the very edge of the capital city, this is a very urban place to live. ‘Village’ seems to refer to the ways things are done here, rather than the geography of the settlement.

‘Yes,’ we are told, ‘people can sell land when they leave, because they have built on it.’ Arriving at a price is a negotiated process in which personal circumstances feature as much as the characteristics of the property.

Later we are told, ‘Yes, the chief does receive money from people’. But we thought people here haven’t paid for the land? ‘No, this is not a payment for land. It is a token of appreciation to the chief.’

The logic of how things work is clear to the people who describe it, but can challenge outsiders’ understanding of both ownership and payment. A tribute is not quite the same as a land price. Nor is a chief’s land allocation quite the same as a land sale, although it leads to what is locally regarded as ownership.

What we see in places like this, and others like it, is that the problem of urban land access is not so much a ‘gap’ between formal and informal, as a ‘mismatch’ between different systems which co-exist.

The choice of descriptor matters as a way of thinking about the direction of change. The focus of Urban LandMark’s work in the tenure security/land markets nexus has been exactly about this question: Is it feasible to bridge the divide in urban land markets between formal/official/legal on the one hand, and informal/local/practice on the other? Is it possible to fit together pieces of this puzzle that don’t quite match, and adjust and adapt practice to produce more tenure security?

Urban land access is not a neutral issue in southern Africa, whether you are a poor Mozambican woman in a peri-urban Maputo slum, a rich Angolan investor, a Chinese property developer, or a recent title-holder in South Africa. Property is an emotive issue because both historical and contemporary experiences configure who has access to land, and on what terms. While history varies in the countries that make up the southern African region, experiences of colonisation, post-colonial conflict and current unequal economic relations are more or less shared. Land features across these histories, sometimes in conflict-ridden and violent ways.
History configured land access, and more particularly access to the benefits of land, in terms that were largely racially and economically determined. Culture was important, too, because of the clash between imported European law and African indigenous and customary systems of land holding and governance. The meaning of land, and the legitimacy of who governs it, is very often socially determined. To make matters more complex, none of these systems have remained static. Alive to the demands of rapid urbanisation, systems have adapted over time and continue to do so today. Such systems co-exist as they adapt, often resulting in hybrids that are neither exclusively Western or African, neither legal nor illegal, neither formal nor informal, neither private nor customary, neither local nor official. Outsider observation is complicated in these circumstances, and it can be difficult to develop pro-poor interventions.

Post-colonial law-making has moved many countries in the region out of colonial legal regimes; what remains constant across time and space, however, is that urban property in southern Africa is exclusive. It is exclusive because of the unequal terms on which southern Africans engage with it. Because the urban land market is the most significant institution that mediates the access of the region’s people to urban land, it cannot be ignored.

Work over seven years of evidence-building by Urban LandMark revealed that poor southern African women and men engage actively in the urban land market institution (Marx 2007a, Raimundo & Raimundo 2012, Development Workshop 2011, Progressus Research and Development 2013a, Progressus Research and Development 2013b). Although the research sites varied considerably, there is evidence of transactions occurring even in countries where the land is nationalised or land cannot be sold legally. The evidence also shows that far from being disorganised, locally managed processes are in place for accessing, holding and trading land.

When this research started seven years ago, very little was understood about the presence of these markets, how they function, whether (or to what extent) they work for poorer urban residents, and what could be done to improve them. This chapter is based on the findings that land markets are operating in parts of southern
The presence of urban land markets

The process of building the empirical base of enquiry started in southern Africa with a study in Cape Town, Ekurhuleni and eThekwini (Marx 2007a). The survey instrument was adapted for use in a study in Luanda (Development Workshop 2011) which built on a study that had been conducted seven years prior, and subsequently in Huambo, Angola. A further adaptation of the survey was then administered in two settlements in Maputo (Raimundo & Raimundo 2012) and in 2012 the survey, with adaptations, was run in Lilongwe, Malawi and Tete, Mozambique (Progressus Research and Development 2013a and 2013b).

The six ‘operation of the market’ studies researched how poor people access, hold and trade land in selected settlements. The early conceptual framework for this work (developed by Marx 2007a) relied on two key ideas: firstly, that transactions provide evidence of a market; secondly, that a transaction is a process with a series of sequential steps, which are not necessarily linear, rather than a single moment such as a contractual agreement. Steps include finding people or organisations with whom to contract, establishing the legitimacy of others with whom to transact, calculating or valuing the land or the rights to land, contracting or coming to an agreement, holding land and the rights that accrue to the holder and, finally, termination. These steps framed the questions in the original survey instrument, which was adapted over time. As a result this sequence is evident in findings across the studies. In this
chapter, the steps in the transaction process underpin the market characteristics section below.

A key question for the programme was whether or not markets exist in parts of cities where poorer people live. In the South African context the research focused on specific settlement typologies which included: informal settlements (Nkanini in Cape Town, Somalia in Ekurhuleni, and Blackburn Village in Durban); RDP or state subsidy housing areas (Delft in Cape Town, Kingsway in Ekurhuleni, and Old Dunbar in Durban); settlements with a high incidence of ‘backyard’ or small-scale, informal rental arrangements (Watville in Ekurhuleni); peri-urban areas that could be classified as ‘neo-customary’ (Sobonakona Makanya in Durban); and council flats or public rental estates (Manenburg in Cape Town).

The well-developed settlement typology for Luanda gave geographic focus to the work there. The typology contains ten categories based on a set of settlement characteristics, which include the level of development (and by whom), infrastructure and services, housing quality, and population density. The study selected four of these types, which apply to 74 per cent of the total population of Luanda.

In Mozambique the site selection focused on a number of informal settlement areas: Luis Cabral and Hulene B in Maputo, and Sansão Muthemba and Matundo in Tete. In Lilongwe two peri-urban settlements (Mtandire & Chinsapo) were identified where land administration is of a (neo)-customary nature since the settlements are located on the urban edge, outside of the municipal boundary.

Early research findings demonstrated that, contrary to conventional wisdom, land markets do indeed operate in poorer parts of the three metropolitan areas (Marx & Royston 2007). One of the study’s main conclusions was that informal settlements occupy an important place in the urban land market and play a critical role in urban land access. This finding contributes to growing opposition to the policy dictum of ‘informal settlement eradication’. The markets perspective adds a new dimension to the debate: it proposes that without considering alternative land supply mechanisms, eradicating informal settlements would undermine the way in which the urban land markets function in poor communities.
The characteristics of land markets

The overarching finding that land markets are pervasive in informal settlements is based on evidence that the features of transactions in these communities are generally similar, including finding people to transact with, establishing the trustworthiness or validity of the transaction, entering into agreements and producing evidence to defend claims, the purchase of property and the role of price, and the presence of arrangements to manage conflict over market transactions. The research explored how these processes manifest themselves, the presence of the state, and implications for security of tenure. The findings are discussed below.

Social relationships

The original three-city South African study (Marx 2007a) characterised the markets as ‘socially dominated’, because the social networks of which people are members bring together those that ‘seek land and those who have land’. In a socially dominated market money may be exchanged, but price is not the overriding factor that frames the transaction. Since the first study, social relations have emerged as significant across the cases, although with important nuances. Social relationships are evident especially in two steps in the transaction process identified earlier: finding others to transact with, and checking trustworthiness or establishing confidence about the validity of the transaction.

Family and friendship networks feature across the studies most strongly when people are finding others to transact with, (over 80 per cent in the Malawi study and over 60 per cent in the South Africa studies). In the Maputo study 45 per cent relied on family and friendship networks when finding a place to stay, while in the Tete study most respondents heard about the settlement from a family member (43 per cent) or friends (29 per cent). In South Africa, ‘people living around’ was also a significant category of response at 16 per cent, indicating that people are using social networks to find a place to stay.

The surveys enquired how people establish trustworthiness or
check the validity of their transactions, and the findings once again identify the importance of social networks. In Malawi rental and ownership markets exist in the two study settlements and both can be identified as being socially determined. In the rental market confidence that the agreement would be valid was obtained through the respondents having been introduced to the contracting party by family or a friend. In the ownership market this confidence was obtained through the chief as well as through family and friends.

In other words, the Malawi study shows that people do buy property from strangers, but this transaction is mediated by both family network and the chief. So, for example, in Mtandire just under half (43 per cent) of respondents bought from a stranger introduced by a family member or friend, and a quarter of respondents (23 per cent) bought from a stranger introduced by the chief. In Chinsapo, a third of respondents bought from a stranger introduced by the chief, another third introduced by a family member or friend, and a further third introduced by someone known by the family or a friend.

Reliance on social relations featured strongly in the Luanda study, with a significant portion of respondents indicating that their neighbours can provide testimony that the place belongs to them. In the South African informal settlement sites, a significant proportion of respondents felt that they took a chance because the land was empty, indicating a high degree of risk taking. Thirty per cent of respondents said the committee system – the locally agreed way of doing things – is the means to check trustworthiness, while a further 20 per cent relied on family and friends. For 11 per cent reliance on documented evidence, in the form of a receipt, was significant. In the Tete study sites responses confirm the importance of social relations, as for 19 per cent friends and family would verify the trustworthiness of the transaction, and for 13 per cent family had given them permission to stay. For a further 13 per cent the confirmation granted by the head of the block was the basis for knowing the agreement would be valid.

The study findings contradicted the view that there is only one type of urban land market – that which is normally associated with price and regulated areas of cities (Marx 2007a). This assumption tends to dismiss other ways of transacting around land as dysfunc-
tional, thin or defective, or quite simply absent ... and (i)t fails to recogn-
ise other forms of economic rationality' (Marx & Royston 2007:13).

At the same time the current framework, which is socially domi-
nated, ‘offers very few opportunities for the poor to themselves trans-
form ... (the) discriminatory patterns that are set by the state
and the market’ and in South Africa these patterns are ‘invariably
geographically pre-determined by the imprint of apartheid and
post-apartheid spatial planning’ (ibid.:170).

Local land management rules

Entering into agreements is another step in the transaction process
identified earlier, and a variety of local rules are present in the case
study settlements. Far from being informal, in the sense of lacking
organisation, most people engaging in these markets enter into
agreements when they transact land, and have some kind of evidence
to back up their claim, whether oral or documented.

In Maputo nearly half of respondents had some kind of agree-
ment; a declaração for 29 per cent and a verbal agreement for
19 per cent. A declaração is a written document, an affidavit, which
is issued by the ward secretary and carries his/her official stamp.
It is also recorded in the settlement register. Only 6 per cent
responded that they had no agreement, indicating that having
an agreement, whether it is verbal or documented, is an important
aspect of accessing land. More people in the Tete study indicated
that a declaração secured their agreement, at 57 per cent. A verbal
agreement was also important, at 20 per cent. In Luanda about
86 per cent of the total number of respondents had some kind of
documentation that demonstrates that they had a right to occupy the
property. In South Africa most households in informal settlements
relied on written agreements (‘given a receipt’). In Malawi most
respondents who owned property obtained rights to the property
through an agreement witnessed by the chief or a document given
to them by the chief (98 per cent in Mtandire and 90 per cent in
Chinsapo). In the rental market in the Malawi study, rights to the
property were secured through being given a document from the
owner (49 per cent in Mtandire and 58 per cent in Chinsapo).
These results confirm the existence of some form of evidence to defend claims, for many, and in some cases for most residents. It is important, however, to take into account those for whom such evidence does not exist in upgrading processes, and to understand the reasons for an absence of local evidence. It may point to particular vulnerabilities and/or exclusions and provides important clues for building more appropriate policy responses. For example, many respondents perceive themselves to be secure, but might well be under threat when more powerful property interests come into play. As a consequence, giving some kind of official recognition to evidence that enables property owners to defend their claims is an important place to start.

These markets are organised locally but they derive their authority in varied ways. Across the case study sites the agreements mostly take place between people known to each other locally as neighbours or as friends. The South African study concluded that most poor people only know other poor people; poor communities are characterised by lack of access to knowledge about land, urban development and land-based opportunities. When poor people are operating in highly localised markets, they ‘find it difficult to trade up or out of the socially determined range of land options’ (Marx 2007a:171).

In Malawi local institutions have the backing of custom. In South Africa the documentation is local and the sources of authority are local. Mozambique and Angola are different because, although the land management institutions are local, they derive their authority politically and historically. And in Mozambique the main form of evidence used locally – the declaração – is also inscribed in law as being a requirement in the onerous titling procedure, which gives it more authority locally, authority which is derived externally.

Local land management practices and tenure arrangements are thus shown to be more credible than policy and law.

**Legitimacy of land management practices**

The legitimacy of local land management practices derives from a variety of sources of authority (social, political, customary and
historical) and emerges as a significant feature of transactions throughout the settlements in which the studies were conducted. In the case of disputes, however, it was found that recourse is mainly sought from local or provincial officials, or politicians.

For example, an overwhelming majority of respondents in the Luanda study (86 per cent) are in possession of unofficial property documents to demonstrate their occupancy rights, with half holding a purchase/sales declaration and others citing a contract of sale as evidence. In Angola official forms of evidence were held by a mere 8 per cent of respondents in the study sample. In Maputo the declaração is the primary form of documented evidence as 29 per cent of households responded that they had received one from the Secretario de Bairro. Others had a verbal agreement or an agreement witnessed by others (16 and 5 per cent respectively). Fewer than 3 per cent of respondents were in possession of a DUAT, the official form of registered right. In Tete the majority of people were in possession of a declaração (57 per cent), which is an even more widespread form of evidence than in the Maputo study. In both Luanda and Maputo the important role of local level authority features significantly. In the Luanda study the residents’ committees emerge as being important, while in Maputo it is the ward secretaries and the lower level neighbourhood structures like the chef de quarterão and the chef de cazas. If a neighbour is to bear witness to claimed rights of occupation, then the committees are likely to be the location of this testimony. The authority vested in these local institutions is historical in origin. The residents’ committees were historically established as party political institutions and nowadays people perceive them to be official, or part of the state, and in Angola they are not.

Community-based organisations were active in the South African informal settlement sites and seem to be widely recognised as legitimate authorities (Smit 2008). The committees control access to and use of land in the settlements. They have rules which committee members are required to follow, such as rules for the access and use of land, for conflict resolution, monitoring visitors, keeping the area clean, and attending community meetings.

The incidence of conflict is one indicator of how functional
the local land management arrangements are and for the legitimacy of the market transactions. Who do people turn to in the event of conflict? What processes and procedures do they use? Insight into these and other questions helps understand the legitimacy of local institutions.

In Malawi conflict was experienced only in respect of those who own property. In Mtandire 10 per cent and in Chinsapo 12 per cent of respondents experienced problems after the agreement was made and these concerned disputes over the boundaries of the property. Overwhelmingly, people approach the chief in the event of a dispute. Although social networks (family and neighbours) also feature in Mtandire, the chief is the significant authority.

The incidence of conflict in the Luanda study is very low, at only 2 per cent. Most instances had been resolved by the time the research was completed. Only one dispute was reported with family members, while the remainder were boundary disputes over property demarcation. In Maputo and Tete conflict was experienced in 7 and 6 per cent of cases respectively. Conflict arose due to disagreements with neighbours, the same site being allocated twice, someone trying to take a portion of the land, plot boundaries, and eviction.

In the event of conflict, few people in the Luanda study would turn to former owners, showing that there is faith in the validity of the transfer documents. The evidence throws light on the perceived role of the state: people turn to the residents’ committees (28 per cent), the local administration (18 per cent) or provincial government (14 per cent). In 32 per cent of responses, local and provincial government are combined. As the residents’ committees are seen to be part of the municipal administration, the perceived role of the state is even more significant at 60 per cent. Interestingly, the first Development Workshop study (2011) tracks the dynamics of conflict resolution preferences and shows how people put more faith in social networks than in the state (actual or perceived): 60 per cent of respondents preferred to rely on family and neighbours. The residents’ committee featured as the third option, at 20 per cent. Seven years later the research found a shift toward government officials as the authority, which seems to indicate that people came
to prefer an externalised source of authority in the event of dispute.

For the majority in the Maputo study arbiters of disputes are cited as being the local authority figures, the ward secretaries and the head of the housing block, at 58 per cent together. In Tete the head of ten houses features most prominently as a potential arbiter at 58 per cent with the ward secretary at 15 per cent. Notwithstanding these variations, the local leaders are significant in both studies. In South Africa responses indicate reliance on social networks in informal settlements as neighbours and previous owners are the most important people to turn to in the event of dispute. In RDP settlements the responses were different, with the municipal councillor or municipality being identified as the two most important sites of recourse. Neighbours were also selected by a large number of people, although they featured as a first choice for only 15 per cent. These findings show that the external authority of the state is seen as more important in the official than in the informal settlements. The state is not present in informal settlements in a conflict resolution capacity, but as discussed later, neither is the state absent from informal settlements.

The findings across the studies thus vary, with legitimacy deriving from social, political, customary and even historical sources of authority, and in some cases a combination of some or all of these factors. Importantly, there are cases in which recourse in the event of conflict is identified as an external source of authority, notably the local or provincial administrations or politicians.

**Financial factors**

Across the studies evidence emerged that, although price is a factor in property transactions in poorer communities, the markets are influenced by both financial and social considerations.

In Luanda the purchase of vacant land was most frequently cited as the means by which people access property, with house purchase being the next most significant. The significance of this finding is that most people are not occupying, or squatting on, land or in houses that they did not pay for. In the Maputo cases nearly half the respondents bought their properties, most of whom said they were
paying for the land. Purchase is also the most significant means of access for those who own their properties in the Malawi study, for over 90 per cent and 70 per cent in Mtandire and Chinsapo respectively. Although the tribute is paid to the chief more by those who own than rent, there was evidence that renters who knew about and paid a tribute, did so on a more recurrent basis than those who own, where it is a single payment. A tribute seems to be inconsistently applied, as about one-third of people who own in both settlements are not aware of the need to pay a tribute, whereas over two thirds of renters are unaware.

In Tete purchase features together with municipal allocation as the most significant way by which people access land, at 28 per cent for both types. Issues like the condition of the house, size of the plot, and comparison with neighbours are used in Tete to determine price.

In the South Africa study an average of 26 per cent of households in shack settlements exchanged houses every five years. In RDP housing, where there is a limitation on the resale of houses for eight years in South Africa, some 11 per cent of households were transacting and of these 6 per cent were sales (the remainder were non-monet-ary transfers). The study found that people consider it appropriate to transact on the basis of price when, for example, households have improved their dwellings.

One of the main conclusions was that, where purchase is a significant channel of land supply, financial logic exists alongside the social networks. In the South Africa study, rather than seeing urban land markets as being polarised into either financially dominated or socially dominated markets, an alternative view emerged: that financially-dominated and socially-dominated markets co-exist with each other. In Malawi a neo-customary land management approach co-exists with a financial approach, where the majority of people purchase their properties and the chiefs are responsible for aspects of land administration.

State presence

The state is not absent from most of these processes. In the South African informal settlement sites some government body was
generally involved in attempting to prevent the growth of the settlement (Smit 2008): a councillor, municipal official, a development forum. And registration processes are an important point of interaction between state and people, where the municipality numbers shacks and registers people (in this case, to apply for housing subsidies).

The context is different in the Malawi study, where the sites are outside the municipal boundary on traditional authority land. Here the city council does not appear to be involved in land management (although it has provided water services), but would be in theory were the municipal boundaries to be extended and the two settlements to then fall within the municipality’s jurisdiction. On the other hand, the chief plays an important role in land management, a role which co-exists with social networks. For example, he is an important intermediary, not dissimilar from an estate agent, in land transactions between strangers, as are family and friendship networks. He is not very active in the rental markets which are more socially determined. The chief is also a state player because of the hierarchy of upward and outward accountability that exists: a village headman reports to a group village headman who in turn reports to a traditional authority (referred to as the ‘TA’) who in is accountable to the district commissioner. A seemingly definitional point about whether the settlements are villages or informal settlements appears to be a governance issue about who is responsible: district council and chief, or city council without chief.

In Angola and Mozambique it is more difficult for observers to clarify the presence of the state. The state and local institutions overlap considerably because of the dynamic role of local committees in Angola and local authority figures in Mozambique since the end of the civil wars in both countries. During the wars these local institutions were originally party political structures and appointees who then assumed a land management function, which is perceived as an official function because of the blurred boundaries between FRELIMO (Mozambique Liberation Front), MPLA (People’s Movement for the Liberation of Angola), and both states. In Mozambique, the role of the ward secretaries has in fact become more official in recent decentralisation reforms, but their role in
property sales remains unofficial as land cannot be sold legally. In Tete there is more clarity on the role of the municipality, as 40 per cent of respondents in Matundo and 31 per cent in Sansão Muthemba indicated that the ward secretary sent them to the municipality with a ‘letter of the land’ (declaração). In Angola the local committees are not arms of the state, although many residents perceive them as such. In practice the authorities of state, party and social networks are co-existing.

**Security of tenure?**

Official forms of registered tenure by and large are not a significant form of evidence in the case studies. In the South African case study cities only 36.8 per cent of the respondents in the RDP housing projects refer to title deeds as their means of securing tenure. Of this figure, 25.4 per cent of respondents were given a title deed and 11.4 per cent indicated that a title deed was coming. For many people, therefore, the title deed was not perceived as being important for making agreements. In Maputo only 2.6 per cent of the surveyed households had a DUAT, and in Luanda official forms of evidence were barely used: only 8 per cent of the total respondents indicated that they possess any official form of evidence. In Malawi almost no one had a title deed. Yet people perceive their rights to be secure.

The Luanda study shows that paying for property is one of the main reasons that people perceive that their land rights are secure. It is significant that 14 per cent had no document to prove their right of occupation. This figure marks a shift downwards over time, as 24 per cent of respondents in the earlier study indicated that they had no proof. By far the majority of people, however, believe that their rights are protected because they have documents to prove it, or because their neighbours can bear witness. At present this perception is not matched in law, as the law protects people’s claims in limited ways only.

In Malawi almost no respondents had ever had a title deed. Most respondents feel that their rights are strong or getting stronger, although less so for renters in Chinsapo. This is probably explained by the recent occurrence of evictions there. Once again, social
networks are an important reason why people feel their rights are secure: most respondents indicate that their neighbours can prove that the property belongs to them and some identify ‘becoming part of the community’ to explain their perceptions of being secure. Documented evidence – in this case having a letter from the chief – is the second most significant reason why people feel secure.

In Tete most people (63 per cent) feel that their rights are strong. This sense of tenure security is stronger for those who accessed land through the neighbourhood leaders and the municipality, than for those who accessed their land privately. Documented evidence and social relations feature as the reasons for why people feel secure; having a document or a name on a neighbourhood leader’s list (64 per cent) and neighbours supporting a claim (15 per cent).

In Maputo most people (68 per cent) believe that their rights are strong or very strong. Explanations for this belief are spread between both social relations and documented evidence. Nearly 20 per cent of respondents said that their neighbours could prove that the property belongs to them, while having a document that proves it (13 per cent), and having their names on a list held either by the head of the quarterão or the head of the housing block, together constitute a total of 21 per cent. Having a house number, allocated either by the ward secretary or by the municipality, constitutes a further 15 per cent of responses explaining why people felt their rights are strong. Numbers constitute another kind of evidence, so having a record of some sort or another can be seen as the main reason why people feel secure, at a combined 36 per cent. This result attests to the importance of the local land management arrangements.

Are lives improving?

The surveys ask whether or not people’s lives have improved since they moved into the settlement being researched. In Malawi most respondents feel that their situation had improved, but this was more prevalent among people who own property than those who rent. The main reasons for this response relate to the cost of living being
cheaper in the settlements, with better access to services, particularly water. The community feedback process in Malawi shows some of the reasons why renters feel less satisfied than owners. These include unpredictable rental increases, problems with having visitors, a lack of standard rentals, poor maintenance, and eviction without notice.

In the South African informal settlement cases, results paint a different picture. Fewer than 50 per cent of respondents indicated that their situation had improved, while 30 per cent feel that their circumstances had remained the same. Perceptions of improvement are probably related to what people value about the place, namely proximity to employment and transport connections. For 20 per cent the situation had in fact worsened. The results for the South African RDP settlements are very similar: most RDP respondents had moved from informal settlements, but only about half indicated that their situation had improved since moving. This is surprising, because of the significant state investment in RDP settlements when compared to informal settlements. Despite being serviced settlements with subsidy houses, RDP settlements must present relative disadvantages to explain this finding, most probably related to poor location in the city.

Neither municipal ownership of land nor legal municipal status are pre-conditions for access to services, especially water, in Malawi, while in the South African urban context municipalities and utilities are unlikely to invest in settlements without any legal status. In fact, this issue is what drove the City of Johannesburg to legally declare a category of informal settlements through an amendment to the zoning scheme. In Lilongwe it seems that the municipality acts quite flexibly and adaptively by extending water services infrastructure although it is clear that the legal (public or customary) and jurisdictional (city council or district council) status of peri-urban settlements needs to be clarified for upgrading to proceed at scale. This type of administrative recognition will be addressed later in the chapter.

The results in Maputo, where 55 per cent of respondents felt their situation had improved, are not very different from South Africa. The reasons in Maputo are varied but largely relate to a reduction
in the cost of living and the family staying together. The reverse is true for people who felt their situation had deteriorated, showing that affordability and the family network are significant factors. Improved access to services is a reason cited in some cases, but was not significant. Just under half the respondents in the Tete study felt that their situation has improved (48 per cent), but a similar proportion (45 per cent) responded that their situation had stayed the same. For most people in both settlements the reasons that life has improved relate to a reduction in living costs, improvements to the house, and access to services (water in Matundo and electricity in Sansão Muthemba).

From these findings it is evident that the factors that make for improvements in people’s lives are social and economic in nature. We cannot read too much into the comparative data as the settlements vary considerably, but it is possible to conclude that having an affordable place to stay, access to services and a good location with access to employment opportunities and transport networks, are important pre-conditions for improved circumstances and for markets to function in pro-poor ways. In Maputo being able to stay with one’s family is also significant.

Vulnerability of access and location

In the case of urban land markets, exclusion is not an absence. Poor urban residents are active in accessing land in slums or informal settlements, which play a critical role in urban land access. These markets work for poor people in the short term, because they are quick, cheap and easy to access, but the problem is that in the longer term they ‘lock people in’ (Marx 2007a). Location is of critical importance to more equal participation in the land market, because it raises the value of the property asset and thereby increases its realisable potential. Poorer urban residents are less likely to access well-located land, and even if they did so historically, they are under increasing pressure of relocation as more powerful urban actors, like property developers and investors, move in to purchase land.
This is particularly evident in post-conflict societies where areas that were previously unattractive to investors have become more appealing now that conflict is over. In these situations, perceived security of tenure is unlikely to protect the interests of people living on valuable land from displacement, and the need for legally defensible rights is being identified as critical. Even with rights that can be defended in law, the accessibility of legal aid is a pre-requisite for people to defend their rights.

Settlements in poor locations might be under less pressure from more powerful political and economic interests, but they do not provide people with the opportunity to realise value. In these cases markets function well in promoting access, but are more limited when it comes to wealth generation through transactions. Smit (2008: 98) proposes that pro-poor functioning markets would be ‘where households are able to access a variety of different options with adequate shelter and adequate services in suitable locations at an affordable cost and with a reasonable de facto security of tenure, and where more households are able to have legally-recognised tenure so that they have greater long-term security and that owners of property are able to sell their properties at reasonable prices when they wish to’. His conclusion is that, while markets enable access by the poor, they are not very functional because they seldom perform on a combination of all these indicators.

Inequality is the central problem. In the markets lexicon, it is a problem of distribution or allocation. There is no silver bullet, no miracle waiting to happen which will bring these benefits to the lives of southern Africa’s slum dwellers. Growing the size of the property pie will never be enough. More equal distribution of the benefits through better allocation is dependent on well-informed, pro-poor law making and policy development. But this is only a part of it, and because of the complex project of appropriate and feasible law and policy design, most likely the least immediate. Equally significant, if not more so, is the official recognition of existing land management practices and rights to land. What might this mean in practice?
Implications for practice

Informal settlements, or slums, play an important, and most likely long-term, role in the urban land market. Political and policy recognition of informal settlements is required to replace the persistent resistance to their existence, which often plays out in evictions and demolitions. Becoming more accepting of informal settlements means taking a step toward entrenching more secure rights. This involves replacing resistance with what UN-Habitat (2012) refers to as ‘passive’ tenure security, which means that settlements are no longer under threat of eviction or are no longer being evicted.

More ‘active’ tenure security would be a progression toward being able to access increasingly more of the benefits that secure land access has the potential to facilitate. Generally such benefits require more than removing an eviction threat, and this is where the markets lens can be useful as it encourages an emphasis on the preconditions for investment. Access to more official recognition is required if investment is to flow, and in the slums context this generally means public and small-scale household investment.

In practice the large-scale titling route is generally the way to achieve official recognition. However, there are few options and they take a very long time to arrive. The case studies show that different kinds of official intervention share similar characteristics: township establishment, demarcation and parcelisation, registered tenure whether title, leasehold, DUAT or registro predial, or a housing subsidy. For urban poor residents the ways in are limited and official intervention tends to come in a single shape or form in each city. Can rights be secured progressively in advance of official intervention so that informal settlement residents can themselves improve their lives without the risk of eviction? The studies show that a body of practices that have developed in settlements, over many years, have not yet received official recognition in any shape or form. In other words, returning to the opening premise of this chapter, a mismatch exists between co-existing systems – one official based on the law and policy, and the other local, constituting actual practices. Is there space for something in between?

Having more channels of supply that are officially recognised
will open up access to more of the benefits that improved status – whether of a legal or administrative nature – can provide. Rather than developing new programmes, policy interventions and market mechanisms that multiply supply channels, an alternative approach is to recognise the local practices in land accessing, holding and trading that already exist; practices that this chapter has sought to illuminate. These constitute alternative modes of land access or supply, and with less resistance and more recognition, increase the options for supporting urban residents in their own efforts to gradually improve and consolidate their urban access.

Officially-recognised mechanisms that can be used to secure de facto rights to productive and residential land can be distinguished as either being administrative or legal in nature (Smit & Abrahams 2010). Administrative recognition requires policies or administrative practices to give residents more tenure security by authorities demonstrating commitment through, for example, council resolutions, extending infrastructure, occupation letters, occupancy registers, shack enumerations, block layouts, utility bills, and so forth. Legal recognition entails using a recognised legal procedure to confer legal status on an area. It usually results in declaring the area in terms of the law – for example as a settlement area, an area zoned for informal housing, etc.

Framing administrative or legal mechanisms may require the innovative application, and perhaps enhancement or adaptation, of existing laws and practices. Planning law and local land management arrangements are generally useful starting points.

The operation of the market study is one method that helps to identify the nature of these local arrangements, the authority that underpins them, and their strengths and weaknesses. With more insight into how things currently work in local practice, it becomes possible to look at how these arrangements can be officially recognised.

For example, local registration practices – where community organisations maintain registers (books, files, or lists) of occupants – have the potential to become more official forms of evidence of occupation rights if municipal consent is negotiated between community organisations and the city or town council. With this
type of administrative recognition of occupation rights, tenure security has improved and the exclusionary aspects of access rules and the very local nature of the land market can also be mediated. Over time the administrative mechanism can progress with the addition of a geo-spatial component to the register, a shack number, a stand number, an address on a settlement map, a GIS (geographic information system) point, and so forth.

Planning law is another place to look for mechanisms that can officially recognise existing land rights, which are currently secured locally. In this case the recognition is of a legal nature. For example, zoning instruments can be used to legally declare a settlement. The right kinds of regulations can produce basic land use management functions and procedures such as occupation certificates or agreed application processes for non-residential uses. To increase tenure security these regulations should build on and adapt local forms of evidence (affidavits, declarations, letters from the chief or other locally-based authority, as well as the lists or registers at block or settlement scale) and local processes of decision making. Adaptation should work towards increasing accountability and openness in such practices. This expands the practice of what constitutes secure tenure and multiplies the avenues into official recognition, thereby increasing the options for improving livelihoods and increasing investment.

Is individual title the desired goal?

While there is a case for a continuum in identifying progression towards greater security of tenure in city-specific contexts, the larger debates are about whether individual title constitutes the most secure form of tenure. Is individual title the end point of progression, the desired outcome in the southern African context? The answer resounds in the affirmative, both from the policy and legal perspective. The answer from practice is different.

The debates regarding tenure security have been dominated by two schools of thought: does titling advance secure land tenure and development in developing countries? Or is it ineffectual or
detrimental to socially more relevant systems (Cousins et al. 2005)? This is not a neutral debate. It is generally loaded with political values that are based on assumptions about society and economic imperatives, which are often rooted in particular historical and national contexts. In addition to the pro- and anti-titling lobbies, a third position on titling has emerged, which represents a compromise between group and individual titling. The arguments underpinning these positions are not static, and discernible shifts are evident over time. Particularly complex are the anti-titling arguments, which are diverse in both focus and the conceptualisation of tenure.

The policies of many southern African countries continue to support titling approaches to securing tenure. Hernando de Soto’s (2000) claim in The Mystery of Capital that capitalism can work for the poor if only the dead capital in property were to come to life through title, invigorated this debate. However, for poor people, title seems fairly neutral in respect of both credit and investment, as poverty is the overriding factor which limits people’s access to credit, their appetite for indebtedness and their ability to invest in improvements. An incremental approach to tenure security aims to facilitate public investment through official recognition, without title being a necessity. For those households that can afford it, evidence of tenure security – such as a utility bill or a street address – has the potential to facilitate small-scale borrowing, again without title being necessary.

The titling debate is enormously important as it shapes large-scale donor- and publically-funded investment. And yet the titling debate is often one not worth having in the context of informal settlement upgrading in some countries in southern Africa, largely because the debate tends to become mired in politics, patronage and, very often, vested interests. For example, in the contemporary period in both South Africa and Angola, national ministries promised citizens the delivery of millions of houses, with registered tenure, within a set period of time. In both countries this undertaking is politically inspired, with not inconsiderable potential for corruption, and it has the impact of turning local practices of the kind described in this chapter, into illegal actions, poorly received, if not resisted, by the state.
Furthermore, the histories of colonialism, apartheid and civil war are alive in living memory. History favoured the few and land access and ownership are no exception in this regard. Exclusion is not merely a historical legacy: post-war and post-apartheid local elites constitute the new few and broad-based ownership of the economy, including ownership of property, has current and contemporary urgency.

In these contexts, it might be more pragmatic to sidestep the titling debate altogether and examine what may be possible within a different approach to land management and tenure security – one which realistically achieves progression toward more security over time, whether or not it results in title or some other legal form of tenure. While specific contexts will define what may be possible, a continuum can assist to identify – or develop, if they don’t exist – incremental stages of tenure security, or options for tenure security. These include blanket legal declaration of a settlement, street addressing, co-management of local occupation registers, giving spatial expression to existing rights through mapping processes, and paying much closer attention to land management functions, especially dispute resolution, in informal settlements.

So while the titling debate is important, it is generally far removed from the informal settlement upgrading practitioners, be they community-based or official. It makes pragmatic sense to work with what currently exists – both in law and in local practice – in order to achieve more immediate upgrading and tenure security results: identifying the laws that can be used innovatively to serve adapted ends, confirming the status of local practices and adding municipal or administrative weight to them, and ensuring that there is external recourse to protect the interests of more vulnerable community members against the local characteristics of land markets and the exclusionary social networks which may configure them.

Of course innovation limited to a settlement or even a city would be very restraining indeed, if the work did not have a more strategic intent. And that strategic intent is adaptation – adapted practice and adapted law. Where opportunities for policy influence exist, as is the case in Malawi at the time of writing, they should be taken. The
body of local practice, and the local practitioners – the land managers, the community authorities, their advisors and representatives – should actively negotiate to positively influence processes of reform, to adapt policy and law to fit better with local practices. But, as shown in Chapter 4, law reform is a long-term process. Behind the idea of side-stepping the titling debate lies a concern to lift the everyday experiences (who you talk with to get a place, how you establish trustworthiness, if and when you make a profit, where to go with a dispute, and so forth) up and out of apparent complexity, settlement specificity and rich diversity, into something resembling an alternative way of doing things, a significant body of practice. And then to work towards appropriate adaptations of local practices that will necessarily come with official recognition, such as recourse to external authorities for dispute resolution, co-management of local registers, wider access to information concerning property transfers and sales, deepening the democratic aspects of local institutions, and ensuring that they do not discriminate against women and children.

Returning to one of the opening metaphors, this is not a bridge building project – between two polarities – that carries people from one side to another. Our research found evidence of co-existence: in sources of authority, in the different logics of land markets, in practices that are neither completely official nor completely unofficial. This is more like a mismatch than a gap that can be bridged, and a mismatch requires adaptation, rather than integration, formalisation or regularisation. Like a puzzle, the pieces need to be manoeuvred and fitted, then refitted, before the picture is complete.

Practical mechanisms to improve tenure in the here and now hold clues for longer term adaptation of both local practice and the law. Official recognition will itself adapt local practice. While adapted practice must influence the long-term project of law reform, it should also increase access to the benefits associated with improved tenure security in the meantime, as the meantime can be a lifetime.
Endnotes

1. The collaboration occurred between Urban LandMark, a South African agency that operated between 2006 and 2013, funded by the UK’s Department for International Development, and Development Workshop.

2. Developed by Development Workshop.

3. In partnership with the Centre for Community Organisation and Development (CCODE).

4. More qualitative methods, such as key person and household interviews or community feedback sessions, are also important to qualify and nuance the quantitative results.