

INCREMENTALLY SECURING TENURE

Promising practices in informal settlement
upgrading in southern Africa



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Urban LandMark
working towards improving access to land and property rights

CitiesAlliance
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Acknowledgements

Partners and funders

Established in 2006 with funding from the UK's Department for International Development (DFID), **Urban LandMark** works to find remedies to the problems that have made urban land markets dysfunctional and habitable land unaffordable.

Its initiatives aim to shift policies and practice to improve access to well-located urban land by making markets as well as land planning and management systems work better for poorer people, and giving meaning to the right to land.

Urban LandMark plays a catalytic role by using research to inform policy, and by promoting dialogue between key stakeholders – government, the private sector and civil society – to find effective solutions to prevailing obstacles in accessing urban land markets.

Urban LandMark established the **Tenure Security Facility Southern Africa (TSFSA)** project in 2012 to provide specialist technical assistance and advisory services on tenure security within slum upgrading initiatives in Southern Africa and share lessons learnt with others in the region. The work aims to contribute to improved access to land for poorer people, which in turn contributes to improved livelihoods, active citizenship and asset creation.

The TSFSA extends and expands on work Urban LandMark has undertaken over seven years since 2006. This work has made a significant contribution to recognising the need for incremental tenure in the slum upgrading process and thinking about how this should occur.

The TSFSA provided advisory services on tenure security to our partners at six sites in four southern African countries:

- Huambo, Angola: Development Workshop
- Tete and Maputo, Mozambique: Associação Nacional dos Municípios de Moçambique (ANAMM) and the Cities Alliance Country Programme
- Lilongwe, Malawi: Centre for Community Organisation and Development (CCODE)
- Springvalley in eMalahleni, South Africa: Planact
- Monwabisi Park in Khayelitsha, Cape Town, South Africa: Sun Development Services
- City of Johannesburg, South Africa: Urban LandMark.

The Tenure Security Facility Southern Africa project is supported by the Cities Alliance Catalytic Fund, with co-funding from the UK Department for International Development (DFID).



Community planning (Springvalley, eMalahleni, South Africa)



Access to water (Mtandire, Lilongwe, Malawi)



Enumeration (Mtandire,
Lilongwe, Malawi)



Mathundo (Tete, Mozambique)

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Acronyms

ANAMM	<i>Associação Nacional dos Municípios de Moçambique</i> (national association of municipalities, Mozambique)
CCODE	Centre for Community Organisation and Development
DPUM	Development Planning and Urban Management
DUAT	<i>direito de uso e aproveitamento da terra</i> (the right to use and benefit from the land)
GIZ	<i>Deutsche Gesellschaft für Internationale Zusammenarbeit</i>
GLTN	Global Land Tool Network
SDC	Springvalley Development Committee
SRP	Spatial Reconfiguration Plan
TRSA	Transitional Residential Settlement Area
TSFSA	Tenure Security Facility Southern Africa



Administrative recognition
(Huambo, Angola)

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Monwabisi Park (Cape Town, South Africa)

1

Introduction

Known as the 'urbanisation of poverty', about 62 per cent of people today in towns and cities in sub-Saharan Africa live in informal settlements, which tend to be located in peri-urban environments and are characterised by insecurity of tenure and very poor infrastructure (UN-Habitat 2008).

1.1 Why improve security of tenure?

Approximately 50 per cent of the global population now lives in cities and this figure will increase to 70 per cent by the middle of this century (GLTN 2012). Developing countries account for over 95 per cent of global urban population growth. Between 2000 and 2030, their urban populations are expected to double, while the built-up area of these countries is projected to treble (GLTN 2012). In Africa, urbanisation is growing rapidly, driven primarily by rural-urban migration (Chome & McCall 2005). Known as the 'urbanisation of poverty', about 62 per cent of people today in towns and cities in sub-Saharan Africa live in informal settlements, which tend to be located in peri-urban environments and are characterised by insecurity of tenure and very poor infrastructure (UN-Habitat 2008). Of the four regions in Africa, southern Africa is the most urbanised on the continent with its urbanisation rate increasing from 53.8 to 58.7 per cent between 2000 and 2010. By 2025, it is estimated that three quarters of the people in the region will be living in urban areas, mostly in large and medium sized cities (UN-Habitat 2008), and the urban population will be growing almost twice as fast as the general population, increasing by more than half a billion from 1990 levels (World Bank 2001).

Land management in these conditions is under extreme pressure and people with low incomes lack the political power and economic resources to make decisions about how land is managed and in whose favour. Claims over land compete under conditions of unequal power and resources (GLTN 2012).

Tenure security is important because it creates an environment in which there is no longer a fear of eviction or the loss of one's rights. Secure tenure also means being able to perform transactions such as buying, selling or leasing land (GLTN 2012). The Global Land Tool Network (GLTN) argues that the reason why security of tenure is important is that it generates individual, household and community benefits. It does so by encouraging savings and investments in the improvement of land, homes and neighbourhoods. This, in turn, improves livelihoods and living standards. GLTN describes secure land rights as a firm springboard for economic, productive activity (GLTN 2008 & 2012).

In this publication, tenure is understood as including the various legal forms of tenure that exist in country-specific contexts, but also the range of rights that are not captured in a legal form. These include rights that are 'customary' and 'informal' in nature. This publication uses the term 'local arrangements' to refer to tenure and land management practices in the specific settlements that were the subject of study and support. This is

in preference to the terms ‘customary’ and ‘informal’ because the rights are not systematic enough to warrant the term ‘system’ and they are local in character.

Efforts to secure tenure among the urban poor are dominated by the paradigm of individual title implemented through large-scale titling schemes. Despite well-intentioned policies, individual ownership is far removed from the realities of urban slum dwellers. Research has confirmed that poor southern African women and men engage actively in urban land markets (Marx et al. 2007, Raimundo & Raimundo 2012, Development Workshop 2011, Gordon 2008, Progressus Research and Development Consultancy 2013a, Progressus Research and Development Consultancy 2013b) (see Box 1). Far from being disorganised, there is evidence that locally managed processes in informal settlements enable residents to access land, and that such transactions occur even in countries where the land is nationalised or where land cannot be legally sold without the authority of the state.

Do the locally managed processes in informal settlements offer a foundation on which to strengthen community agency and progress towards tenure security? Is it possible for state structures to work with and ultimately recognise local land management practices that are used by residents in informal settlements?

1

Nozipho’s story*

The only way to live here now is to buy from someone who already has a place here and is selling or moving. The owner must introduce you to the committee. You must come with a letter from where you are coming from. That letter would say what kind of a person you are and why are you moving away from where you would be coming from. You give the letter to the committee and show your Identity Book. The committee must give you permission to buy a shack from someone who is selling, or to use a space to build your own shack. I don’t know anyone who rents a shack here (Urban LandMark 2010:3).

**Nozipho moved to the City of Cape Town from the predominantly rural Eastern Cape Province in South Africa.*

Do these practices in informal settlements offer a foundation on which to strengthen community agency and progress towards tenure security? Is it possible for state structures to work with, and ultimately recognise, local land management practices that are used by residents in informal settlements? Is it possible to side-step the debate about individual title and work towards achieving more immediate upgrading and tenure security benefits in poor communities?

From 2011 to 2013, these questions shaped an Urban LandMark project called the Tenure Security Facility Southern Africa (TSFSA), funded by the Cities Alliance Catalytic Fund with co-funding from UKaid. The work grew out of emerging insights into how people access, hold and trade land in informal settlements in southern Africa, which produced a new understanding of local land management practices in the course of Urban LandMark’s Operation of the Market studies in several settlements in the region.

Within the context of the questions being posed, the TSFSA made a modest attempt to explore an alternative approach, which focuses on the progressive, or incremental, achievement of tenure security. The project provided small-scale, targeted advisory services on incrementally securing tenure in informal settlement upgrading in the region, and explored different routes into increased tenure security. The project operated in six sites in Southern Africa with different partners:

This publication is intended to provide guidance to practitioners, officials and communities who are involved in informal settlement upgrading and who see the value of finding more routes into tenure security than the dominance of an ownership paradigm currently allows.

- Angola: Development Workshop, an NGO based in Luanda
- Mozambique: *Associação Nacional dos Municípios de Moçambique* (ANAMM) (the national association of municipalities) and the Cities Alliance Country Programme
- eMalahleni, South Africa: Planact, an NGO working with the Springvalley community
- Cape Town, South Africa: Sun Development Services, an NGO that has been providing development support in Monwabisi Park
- Johannesburg, South Africa: Urban LandMark has provided support over several years to the city's Regularisation programme
- Malawi: CCODE, an NGO based in Lilongwe that works to improve the quality of life of the poor.

This publication reflects on promising practices that have emerged through the work of the TSFSA and which signal new approaches to securing tenure in informal settlements. It is intended to provide guidance to practitioners, officials and communities who are involved in informal settlement upgrading and who see the value of finding more routes into tenure security than the dominance of an ownership paradigm currently allows.

2

Defining tenure security

Land tenure: the way land is held or owned by individuals and groups, or the set of relationships legally or customarily defined amongst people with respect to land. In other words, tenure reflects relationships between people and land directly, and between individuals and groups of people in their dealings in land.

Land tenure systems: the sets of formal or informal rules and institutions which determine access to, and control over, land and natural resources.

Land tenure security:

- the degree of confidence that land users will not be arbitrarily deprived of the rights they enjoy over land and the economic benefits that flow from it
- the certainty that an individual's rights to land will be recognised and protected by others
- the right of all individuals and groups to effective government protection against forced evictions.

Other important aspects of tenure security include the freedom to bequeath land to heirs, and to lease, lend or grant land to others on a temporary or long-term basis with reasonable guarantees of being able to recover the land.

Source: Global Land Tool Network (2008)

1.2 Is individual title the desired goal?¹

In practice, the large-scale titling route is generally the way to achieve official recognition. However, people in informal settlements have few opportunities for achieving individual title and these tend to take a very long time to arrive. While there is a case

¹ This section was extracted (and shortened) from Royston, L 'In the Meantime ... Moving towards secure tenure by recognising local practice'. In: Napier M et al. (2013) *Trading Places: Accessing land in African Cities*. Somerset West: African Minds.

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 in rapidly urbanising cities. Is individual title the end point of progression? Is it the only desired outcome in the southern African context? The answer resounds in the affirmative, both from the policy and legal perspective. However, the answer from practice is different.

The debates on tenure security have been dominated by three schools of thought: titling advances secure land tenure and development; titling is irrelevant or even detrimental to socially more relevant systems; and, more recently, group and individual titling provides a compromise between the two (Cousins et al. 2005). This is not a neutral debate because, unlike other commodities, land is often valued for social, cultural and historical reasons that have little to do with its monetary value. The debate is thus shaped by political values and assumptions about society and economic imperatives that are often rooted in particular historical and national contexts. Hernando de Soto's influence² can be seen throughout southern Africa where many countries support titling as a means of securing tenure. However, poverty limits people's access to credit, their appetite for indebtedness, and their ability to invest in improvements.

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. This is largely because it tends to become mired in politics, patronage and, very often, vested interests. As a result, 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 produces progression toward more security over time, whether or not it results in title or some other legal form of tenure.

1.3 An approach to securing tenure incrementally in informal settlement upgrading

Seven years ago, little was understood about the operation of land markets in poorer urban areas – how urban residents seek and find shelter, a place to work and trade, and raise their families. Even less was known about how to address tenure insecurity among the people living on urban land without administrative or legal recognition.

Research undertaken by Urban LandMark between 2007 and 2012 sought to understand how the poor access, hold and trade land in informal settlements in Lilongwe in Malawi, Maputo and Tete in Mozambique, Luanda in Angola,³ and in Durban, Cape Town and Ekurhuleni in South Africa.⁴ Through the research in southern Africa, an alternative approach emerges, which is to recognise the local practices in land management that already exist.

The Tenure Security Facility Southern Africa focused on examining practical alternatives to large-scale titling schemes by exploring context-specific approaches to land

Through the research in southern Africa, an alternative approach emerges, which is to recognise the local practices in land management that already exist.

2 De Soto (2000) claimed 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.

3 In Angola, Urban LandMark provided advisory support and the survey methodology to Development Workshop's study Development Workshop (2011) *The Case of Angola: Strengthening citizenship through upgrading informal settlements, cross country initiative* (TF0901110) *Technical Assistance in Urban Land Policies*. Washington DC: World Bank.

4 Reports on the research are available at www.urbanlandmark.org.za.

management and tenure security. The intention is to achieve realistic progression toward more security over time, whether or not the end result is title or some other legal form of tenure. As a result of the research, Urban LandMark advocated the concept of **incrementally securing tenure**, which can be described as a continuum (see Diagram 1).

The continuum is a visual tool based on two principles: **incremental progression** towards more security and official **recognition** of existing land management practices. The goal is to build appropriate responses that enhance community agency in informal settlements. At one end of the continuum is less security of tenure characterised by less official recognition. On the other is more security, with more official recognition.

Diagram 1 The tenure security continuum



The research found that residents in the informal settlements secure verbal or written evidence of land acquisition. It thus explored how these local practices can advance secure tenure over time by gaining state recognition. Many of these actions, especially in the earlier phases of the continuum, aim to attain greater **administrative recognition**, which may be followed by **legal recognition** from state authorities (see Box 3).

The continuum is a visual tool based on two principles: **incremental progression towards more security and official recognition of existing land management practices.**

Mechanisms to achieve recognition

Administrative recognition uses policy instruments or administrative practices to give residents tenure security. They may not have a firm legal basis, but produce security through commitment by authorities in the form of council resolutions or administrative systems. Examples include issuing an occupation certificate in recognition of residents' permission to remain in the settlement, undertaking shack enumeration and linking it to a list or record, or agreeing on a block layout with a community and introducing basic services.

Legal recognition uses a legal procedure in terms of some recognised law to grant legal status to an area. It usually results in declaring the area in terms of this law which then permits certain other actions to take place legally. One example is the City of Johannesburg's Regularisation scheme (see Section 2.3).

Source: Urban LandMark (2010)

In contrast to the widespread focus on large-scale titling schemes, the practice sites produced seven routes towards greater tenure security: resisting evictions, recognising local practices in land management, stakeholder dialogues on tenure security, locating tenure security within slum upgrading, adapting and strengthening existing land management practices, administrative recognition mechanisms, and legal recognition mechanisms. These routes are illustrated in Diagram 2.

Diagram 2 The seven routes to greater tenure security



This publication describes the way in which efforts to achieve greater tenure security across the six sites demonstrate one or more of the seven routes. Section 2 introduces the contexts of the practice sites. Section 3 describes how each route was addressed in the practice sites, and then focuses the discussion on one site in particular. Section 4 concludes the publication and looks at the implications for future practice.

2

The practice sites in context

Is it possible to open up more routes into tenure security than the current focus on large-scale titling schemes allows?

The routes to tenure security that were explored (see Diagram 2) are conceptually diverse, but they emerged from fieldwork focused on a central question: Is it possible to open up more routes into tenure security than the current focus on large-scale titling schemes allows? Varied responses were explored in the different practice sites. This section explains the context in which technical assistance and advisory support was provided to each of the sites.

2.1 Springvalley in eMalahleni, South Africa

The community of Springvalley is located in eMalahleni, a secondary city in the Mpumalanga Province. The area has recently experienced considerable growth on the back of coal mining and power generation, and this has attracted people from all over South Africa and beyond its borders.



Water provision (Springvalley, eMalahleni, South Africa)

Housed in one of the many informal settlements across the municipality, the Springvalley community occupies a mix of public and private land. The Emahlahleni municipality and private land owners have threatened the Springvalley community with eviction. The municipality's intention was to relocate residents to Klarinet, approximately 15km away from the current settlement. The community resisted eviction on the grounds that there was insufficient community participation in the process of planning for and developing the new settlement. The community has also argued that the new location is far from places of employment and that the process has not been transparent. The municipality has failed to provide the community with the information they requested to find out what the Springvalley land would be used for.

The community would prefer *in situ* development on the land it occupies. Municipal documents show that there have been previous *in situ* developments in other informal settlements in the area, such as Emsagweni, Hlalanikahle, Empumelelweni and Vezi.

Together with its partner Planact (an NGO which has an ongoing role supporting community participation in informal settlement upgrading), the Springvalley community has taken numerous actions that have helped to resist this threat. These actions have contributed to its ability to lobby for administrative recognition by the municipality, which would help improve tenure security for its residents. The actions taken by the community are described in more detail in Section 3.1 below and in the Practice Note on Springvalley available at www.urbanlandmark.org.za/downloads/tsfsap_pn_03.pdf.

2.2 Monwabisi Park in Cape Town, South Africa

Monwabisi Park is an informal settlement situated on the southern periphery of Khayelitsha, Cape Town. According to residents, it was established late in 1996 after a call by President Nelson Mandela that people should move out of backyards and become part of formal urban planning processes. People decided to occupy the open space, and migration to the area was fuelled by the frustration experienced by backyard dwellers across Khayelitsha, owing to the lack of housing and the aggression produced by overcrowding.



Community consultation (Monwabisi Park, Cape Town, South Africa)

The conventional route for informal settlement upgrading is the formal process of township establishment, driven by the housing subsidy programme. This process is slow and fraught with difficulties such as land acquisition, relocation of settlements, protests from communities, and limited budgets. Few, if any, projects are true *in situ* upgrading projects.

Two proposals were tabled by the City of Cape Town municipality to forcefully remove households to Durbanville or Kraaifontein, and some houses were demolished. In response, the community formed the SANCO Jabavu (Local) branch in 1997 to defend their rights and resist removal. In 1998, under the presidency of Thabo Mbeki, people were promised basic infrastructure like water, toilets and electricity.

Today Monwabisi Park is home to an estimated 24 000 residents and comprises 6 472 structures on approximately 64 hectares of land. The area extends over four large erven – three owned by the City of Cape Town and one by the Western Cape Province.

More information on this site can be found in sections 3.4, 3.6 and 3.7, and in a Practice Note on Monwabisi Park available at www.urbanlandmark.org.za/downloads/tsfsap_pn_05.pdf.

2.3 The City of Johannesburg, South Africa

Informal settlement upgrading is the responsibility of the City of Johannesburg's Department of Housing, often in partnership with the Provincial Department of Housing. The conventional route for informal settlement upgrading is the formal process of township establishment, driven by the housing subsidy programme. This process is slow and fraught with difficulties such as land acquisition, relocation of settlements, protests from communities, and limited budgets. Few, if any, projects are true *in situ* upgrading projects.

In early 2008 the then Mayor of Johannesburg undertook a site visit to an informal settlement and was appalled by the unsanitary living conditions. He requested his departments to come up with a solution for the 183 informal settlements with an estimated 220 000 households. His political mandate was to '[b]ring dignity to the poorest citizens of the City of Johannesburg by providing decent housing and eradicating informal settlements by 2014, in line with MDG goals and the ideal of a "nation free of slums"' (Harrison 2009).



Meriteng (Johannesburg, South Africa)

Approximately 20 000 subsidised units were being delivered per annum at that time, translating into one in every four of the city's citizens falling outside the regulatory system of government (Harrison 2009). In response to the Mayor's call, the Department of Development Planning and Urban Management (DPUM) worked closely with Urban LandMark to develop an approach to recognise tenure called Regularisation. It was based on the Brazilian experience of improving *favelas* through upgrading by declaring informal settlement areas as special zones (ZEISS) where more flexible rules apply. A study tour to Brazil was undertaken in June 2008 to learn first-hand about the approach.

More information on this site can be found in Section 3.7, and in a Practice Note on the City of Johannesburg available at www.urbanlandmark.org.za/downloads/tsfsap_pn_04.pdf.

2.4 Huambo, Angola

Angola has been affected by protracted conflict which emanates from the struggle for independence between 1961 and 1975, as well as civil conflict post-independence from 1975 until 2002. Prior to independence the Portuguese created the colonial land management system to legalise the appropriation of African peasant lands for settler-farmers' use. These practices continued till independence in 1975, when the new Angolan government affirmed the constitutional role of the state as the owner of all land.

During and following the war, informal housing settlements grew rapidly in peri-urban areas, but legal and administrative procedures for managing these areas were not developed. In the Land Law of 1991, the state restored the framework for offering concessions to state-owned land and property, principally in rural areas and a few designated urban areas. A framework was also set up to allow occupants of state-owned rental housing to purchase their houses and flats. The end of the war in 2002 increased the need for housing and a private real estate market emerged. The demand for the limited housing stock in cities like Luanda caused a rise in property prices.



Receiving administrative recognition (Huambo, Angola)

In 2010, the Angolan government estimated the formal housing deficit to be 1.9 million units. The National Statistics Institute estimates that 90.9 per cent of urban people live in inappropriate conditions.

Post-war migration from rural to urban areas and the gentrification of the inner city increased the asset value of buildings and land in an increasingly informalised rental and real estate market.

In the post-2002, period the Angolan government turned its attention to addressing social issues such as housing and the rebuilding of institutions for land management. Since 2004, a growing number of laws and regulations related to land, housing and urban development have been adopted, with a particular focus on Luanda. However, the lack of technical and financial capacity of state administrations, especially at the local level, limits implementation of new legislation.

In 2008, the government announced a plan to build one million houses throughout the country by 2012 in an effort to eliminate most slum settlements known as *musseques*. In 2010, the government estimated the formal housing deficit to be 1.9 million units. The National Statistics Institute estimates that 90.9 per cent of urban people live in inappropriate conditions.

In 2002, Development Workshop was invited by the Huambo Provincial Government to assist them with land and settlement management issues. This involved piloting two demonstration land readjustment (pooling) projects between 2005 and 2008, and assisting the administration of Huambo to construct Angola's first comprehensive municipal cadastre.

More information on this site can be found in Section 3.6 and in a Practice Note on Huambo available at www.urbanlandmark.org.za/downloads/tsfsap_pn_01.pdf.

2.5 Tete and Maputo, Mozambique

In 2010, Mozambique's population was estimated to be 23.4 million inhabitants (UNdata 2013). There are 23 cities and 68 towns in the country, of which 43 are organised into municipalities. Currently about 35 per cent of the population lives in



Unburned brick house (Tete, Mozambique)

urban areas, and the rate of urbanisation is about 4 per cent a year, with over 70 per cent of the urban population living in unplanned informal settlements.

The legal form of tenure potentially available to people in informal settlements is a *DUAT (direito de uso e aproveitamento da terra)* which is the right to use and benefit from the land. Authority to approve a *DUAT* rests with municipal authorities in urban areas and provincial authorities in rural areas. However, the process of approving and issuing a *DUAT* is expensive, and municipalities often lack the money and resources to assign these rights.

Two Operation of the Market studies were conducted in 2010 and 2013 by Urban LandMark to develop an understanding of local land management practices in Mozambique (see Section 3.2). ANAMM, the national association of municipalities, partnered with Urban LandMark in the Tete study.

The research took place in four settlements in Maputo and Tete. In Maputo, the area called **Luis Cabral** has a long history of urban settlement and currently has 33 800 inhabitants. **Hulene B** is located closer to the International Airport of Maputo, and is inhabited by a population of 45 400. The civil war and the floods of 2000 were the push factors for increasing arrivals in the area. In Tete, **Matundo** is a settlement that was established after independence in 1975, and by 2013 it had 25 505 inhabitants. **Sansão Muthemba** was established in 1994, in response to people arriving from areas that had been flooded. In 2005 there were 36 270 inhabitants.

The Tenure Security Facility Southern Africa ran feedback workshops with communities and a stakeholder dialogue in Maputo with a range of stakeholders, including national and municipal officials and NGOs, to share the findings of the research and discuss how these can be used to improve tenure security in Maputo and Tete.

More information on this site can be found in sections 3.3 and 3.5, and in a Practice Note on Maputo and Tete, available at www.urbanlandmark.org.za/downloads/tsfsap_pn_02pdf.

2.6 Lilongwe, Malawi

Malawi is one of the poorest countries in the world, with a GDP per capita of US\$290 in 2009. According to UN Malawi (undated), only 20 per cent of Malawi's population is classified as urban, making it one of the least urbanised countries in Africa. However, it is experiencing one of the highest rates of urbanisation in Africa at 6.3 per cent per annum, three times the global rate and nearly twice the Africa rate of 3.5 per cent. Absolute urban population is expected to almost double by 2020 and will overtake rural growth.

An Operation of the Market study was undertaken in two settlements. **Mtandire** is located on the northwestern side of Malawi's capital, Lilongwe City, in the centre of the country. The informal settlement is within Lilongwe City West Constituency, about six kilometres from the capital's city centre, and has approximately 37 000 residents (National Population and Housing Census 2008). The settlement is under the leadership of Senior Group Village Head Chigoneka, who is under Traditional Authority Njewa. Approximately two thirds of the residents in the settlement are tenants whose landlords are indigenous. The landlords often have several tenants, sometimes up to seven. No one in the settlement has land ownership titles, but the chief knows the ownership of each piece of land and its boundaries.

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Household investment in improvements (Mtandire, Lilongwe, Malawi)

Chinsapo lies six kilometres northwest of Lilongwe's city centre. It is a township bordering Lilongwe City in Area 57, extending to Area 58. With a total population estimated at 64 210 in 2011 (National Statistical Office), it is one of the most well-known informal settlements in the City of Lilongwe. Chinsapo is a freehold area under the Ndunda system.

More information on this site can be found in Section 3.3.



Access to water (Springvalley, eMalahleni, South Africa)

3

Increasing routes to tenure security: Reflections from practice



Resisting eviction (Springvalley, eMalahleni, South Africa)

3.1 Route 1: Resisting eviction

Resisting eviction is a critical first step in the process of incrementally obtaining tenure security. The Springvalley community in eMalahleni, South Africa, has been struggling for very basic tenure security, what UN-Habitat defines as ‘passive security of tenure’ (GLTN 2012), meaning that a community is secure against eviction. The Springvalley experience shows that established community structures have the credibility and legitimacy necessary for unified community action against eviction.

The Springvalley Development Committee and Planact have used a number of approaches in their anti-evictions work to date. Strategic options for strengthening this work in the future include creating ongoing publicity, knowledge exchanges with NGOs and other civil society players, and pursuing litigation. These are in the Springvalley community’s route to advancing tenure security by resisting eviction and are described in Box 4.

4

Three approaches to resisting eviction in Springvalley

Publicise: Planact, the NGO that has been supporting the community in its fight for tenure security, participated in local talk radio shows on the subject of housing rights, highlighting the plight of the community. The Springvalley Development Committee created publicity around the threatened evictions and captured public sympathy in the process.

Network: According to UN-Habitat (2003), when networks of NGOs and grass-roots movements confront the government repeatedly, it can limit evictions. Planact has existing links with various advocacy and socio-economic rights institutions, such as the Social and Economic Rights Institute. Petitioning the National Human Rights Commissions as well as other institutions of good governance has proved useful.

Litigate: When land is under litigation, settlements are known to remain undisturbed as long as the court case is active (UN-Habitat 2003). Planact and the community used legal recourse to resist evictions and have sued the municipality to compel them to provide information on what it plans to do with its portion of the land.

The challenge for the Springvalley community is to work towards administrative recognition from the municipality in order to achieve greater tenure security. This will involve a number of actions, that are discussed in Section 3.5.

3.2 Route 2: Local practices in land management

Urban LandMark's Operation of the Market studies show that over many years informal settlements have developed a body of land management practices that are not officially recognised. The studies contributed to an evidence base with the following findings:

- **Existence of a market:** There is evidence of a market in the settlements studied. The market functions in respect of both ownership and rentals.
- **Organised local processes:** Clear processes are being followed to identify and access land in the settlements. While these are evident to a greater or lesser degree, social relationships and networks are an important feature of accessing land in the informal settlements.
- **Verbal and written evidence of occupation:** In Mozambique, Angola and Malawi there is evidence of written documents that prove residents' claims to occupation. In Mozambique, this evidence is called a *Declaração*, which is an official document provided by neighbourhood leaders. In Malawi, a document is provided by the Chief. In South Africa, verbal agreements are more common than written documentation. In all countries few respondents have registered title and most do not expect to receive it.
- **Local leadership and authority:** Local leadership plays a significant role in allocating land as well as in dispute resolution. In Mozambique, there are neighbourhood leaders known as the Chief of 10 houses, Chief of 100 houses, the Unit Chief and Ward Secretary. In Huambo, the *soba*, a traditional leader, plays a role in declaring the validity of land holding. In Malawi, the neighbourhood leader is a village headman who is referred to as the chief, while in South Africa leadership is most likely provided by a neighbourhood committee. Municipal officials play a stakeholder role, but to a lesser extent. As mentioned above, there is strong evidence of social networks (neighbours, friends and family members) who play a role in identifying and accessing land.
- **Perceptions about tenure security:** The majority of respondents who hold property feel that their rights are secure and will improve over time. This drives increased levels of investment by residents in their homes. The work in Malawi showed that such investment is lower in respect of respondents who rent property.

The majority of respondents who hold property feel that their rights are secure and will improve over time. This drives increased levels of investment by residents in their homes.

5

What is an Operation of the Market study?

Urban LandMark developed a research method to understand how people access, hold and trade land. These studies help identify the nature of local land management 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.

The full reports for all the studies, as well as the survey instrument, can be found at www.urbanlandmark.org.za/research/secure_tenure.php.



Sansão Muthemba
(Tete, Mozambique)

The local land management arrangements introduce some kind of security and legitimacy at the local level that agencies of the state are generally unable to create.

Lessons about the existing land management arrangements

The Operation of the Market studies thus show that the existence of a market in informal settlements enables households to trade and hold land as both owners and tenants. The local land management arrangements introduce some kind of security and legitimacy at the local level that agencies of the state are generally unable to create.

Friends and relatives play an important role in identifying the place to live and in ensuring that contractual arrangements will be valid. Neighbourhood leaders or committees play a role both in allocating houses, confirming tenure and resolving disputes. The extent to which this occurs varies within different countries. Municipal officials tend to play less of a role.

The local land management arrangements seem to work fairly well with the following aspects of this system contributing to effectiveness:

- The procedures for land access are fairly well known in communities.
- The role players involved in local practices are relatively accessible to the community, because they are locally based.
- The evidence to back up local rights is affordable.
- Dispute resolution appears to be available and community members are aware of it.
- The arrangements are fairly participatory and allow for ordinary members of the community to act as witnesses.

Nevertheless, there are weaknesses that need to be addressed (see Box 8) if municipalities are to engage with local practice. These are outlined in Section 3.5. Intermediaries such as NGOs are well positioned to provide support in this regard.

The Operation of the Market studies employ a useful methodology for understanding local land management practices as the basis for recognition. They provide a platform for tenure security engagements or dialogues, they throw light on leadership processes and authority in informal settlements, and they provide information on what local practices people use to secure tenure.

3.3 Route 3: Stakeholder dialogues on tenure security

The Lilongwe Operation of the Market study in Malawi gave rise to the idea of providing tenure security advisory services, and was discussed by the partnership between the Tenure Security Facility Southern Africa and the Centre for Community Organisation and Development (CCODE). At the time, the Malawi parliament was considering a raft of new legislation and an urban policy framework was being developed. CCODE motivated for a process of engagement rather than the provision of technical assistance by outsiders coming to solve problems.

Two different conversations about tenure were held in Malawi (see Box 6). This was an important learning point for the TSFSA. Because of the dominance of the individual title paradigm, there is limited scope for engaging stakeholders and interest groups on alternatives, especially for officials whose capacity is stretched by rolling out large-scale titling schemes. Considering an alternative way of doing things is very often beyond their mandate. See Box 7 for information about a tenure security dialogue in Mozambique in 2013.

6

Two conversations about tenure in Malawi

In 2012 a workshop was held with representatives from the Malawi Homeless People's Federation, a social movement of poor people from urban and rural communities from Lilongwe, Blantyre and Mzuzi.

In 2013 a stakeholder dialogue in Lilongwe took place between a range of interest groups including community leaders, members of movements of poor people, government officials, NGOs and private sector consultants.

By providing an interface between policy makers and communities, the two conversations brought people to the state and the state to people. Government committed itself to the event, which was attended by the Permanent Secretary on Lands, the Deputy Commissioner for Lands, the Commissioner for Lands, key local government officials from housing, planning and the informal settlement upgrading unit in Lilongwe, representatives from both settlements in the study, and a chief from Mtandire. Levels of participation were high, which made for a balanced discussion and constructive debates. State stakeholders saw the value of engaging directly with communities and one official committed to holding roundtables with poor people more frequently.

Tenure dialogues or conversations between stakeholders could chart various routes to incremental tenure security.

7

Talking tenure in Mozambique

Another tenure security dialogue was held by the TSFSA in Maputo in April 2013, in partnership with ANAMM, GIZ and Cities Alliance. The aim of the consultation was to disseminate the findings from surveys that Urban LandMark had undertaken in Mozambique, to consult on the implications for tenure security, and to inform the Country Programme in Mozambique. A range of stakeholders participated from government and NGOs.

The survey findings from the two Operation of the Market studies in Mozambique (Hulene B and Luis Cabral in 2011 in Maputo, and Matundo and Sansão Muthemba in 2013 in Tete) gave the consultation a place to begin a conversation about tenure with different interest groups.

At the stakeholder event the issue of incremental tenure security was discussed, based on responses the TSFSA was developing to the findings from the studies. Participants raised the issue of the different sources of land tenure threats, which were seen to include private investors as well as threats from government and community leaders. Another interesting aspect of the conversation was how difficult it is to engage on alternatives to the status quo of large-scale titling, because of the scale of the titling challenge, the limited municipal capacity to reach everyone, and the sense that doing things differently falls outside of officials' mandates. This led the TSFSA to propose action research and demonstration projects to explore the applicability of alternatives like joint DUATs in the urban context, and to find ways to adapt and strengthen local land management practices (see Section 3.5).



Tenure dialogue (Maputo, Mozambique)

Existing local arrangements should not be discarded. Adaptation will be required by strengthening the accountability of local leaders within the community, including their gender sensitivity, while ensuring that the settlements are able to access basic services from the municipal authority.

Approach to the dialogues in Lilongwe

The first step in the conversations focused on process and negotiation, rather than on technical proposals and solutions. This helped build a common understanding about tenure security, a concept that is still very often conflated with title. Out of this process grew the premise that tenure dialogues or conversations between stakeholders could chart various routes to incremental tenure security. The findings of the Operation of the Market study provided a relatively objective basis on which to begin a conversation about tenure with different interest groups.

The study provided in-depth, statistically relevant information about existing land management arrangements in the Mtandire and Chinsapo settlements. It was supplemented with more qualitative reflections from community feedback forums, and provided insights and lessons that can be applied in the urban policy and the slum upgrading programmes being developed in Malawi.

The implications of the study findings generated a great deal of discussion about whether the areas are actually informal settlements or villages. This conversation pointed to the complex issue concerning the role of traditional leaders in urban areas. Currently, local land administration in the settlements draws on so-called customary norms, but upgrading will bring official norms and approaches. The interface between the official and the local adapted customary systems will need to be clarified. This research provides evidence to suggest that the existing local arrangements should not be discarded. Adaptation will be required by strengthening the accountability of local leaders within the community, including their gender sensitivity, while ensuring that the settlements are able to access basic services from the municipal authority.

Another significant feature is the high number of households that are renting. The ability of a landowner to rent out property stimulates economic activity amongst the poor. Even though the data did not show a large presence of disputes, qualitative feedback did indicate discordance in the relationship between tenants and landlords. Accordingly, a slum upgrading programme should ensure that the high numbers of renters are recognised and incorporated in the process.

Talking tenure: What does it mean to local communities?

The findings of the Lilongwe Operation of the Market study was an important entry point into the dialogue about tenure security. The dialogues were structured around a set of indicators for measuring tenure security, developed by Leap (Cousins et al. 2005) as outlined below.

Rights and obligations to property, and benefits flowing from property: Tenure refers both to the substantive and procedural aspects of land holding. Focusing only on **what** rights, obligations and benefits people have runs the risk of neglecting **how** these rights are realised, and **who** is involved in realising them. Unless both these aspects are addressed, tenure will not be secure. **Rights** are like sticks in a bundle: the sticks are different rights, and the bundle holds the rights together. The dialogue participants identified rights as being able to settle, live and occupy, grow trees, build houses, use land for agricultural purposes, sell land, share, inherit or bequeath, and rent.

Responsibilities were identified as living well with one's neighbours, having a hedge for a boundary, getting a letter from the chief in the event of a dispute, and using the land appropriately in terms of dealing with rubbish, latrines, grey water, etc. **Benefits** included a place to live, access to income opportunities, being part of a community and being respected, living freely, and being able to bequeath property.

Social and institutional practices governing rights, duties, benefits, processes and procedures: This refers to the local practices in regard to rights, duties and benefits. How are disputes adjudicated? How do people access land, and what happens to the land when they move elsewhere? How do people use land?

Some writers argue that laws are not the only source of rule-making in society (Moore 1978) and that it is necessary to look locally to see what rules exist and what informs them. Another way of describing this distinction is 'stated practice' and 'actual practice'. Stated practice is what people say about the way things work, and they might be referring to local rules or norms as well as the law. Actual practice is what is observed about how things work and this might be different from stated practice or norms.

Authority in relation to rights, duties and procedures: Authority refers to the power to enforce laws and rules concerning rights, responsibilities and benefits. It is usually invoked through the law and by the municipality, but also through neighbourhood leaders and social norms. In practice, much authority is socially derived, although conventional thinking about tenure tends to privilege the law as a source of authority in a way that does not recognise local practice. Dialogue participants discussed how slum upgrading is driven by outsiders and how they experience this as a threat. The result is that people are reluctant to talk about tenure as they fear eviction.

The dialogue highlighted a key issue for slum upgrading in Africa: With urban expansion, what happens to customary land, and what will be the role of chiefs and customary leaders in the future? The dialogue moved in the direction of a co-management principle with an adapted role for chiefs, but there was by no means consensus on this question.

3.4 Route 4: Locating tenure security within slum upgrading

Tenure is often a difficult concept to discuss with communities and officials, but it is an important element of a wider upgrading approach in informal settlements. It is also one that is usually overlooked by authorities and does not feature explicitly in incremental processes. This is because, in the conventional approach to development, there is one 'model' or one 'supply channel' of tenure, namely individual title that is registered on individual sites at the end of a formal development process. Tenure is thus seldom conceptualised as something that can be incrementally provided. For this reason, it is important to locate tenure within an upgrading project as a 'stream' or element to be specifically addressed.

SUN Development Services⁵ produced a route map for incrementally securing tenure in Monwabisi Park. With advice from the Tenure Security Facility Southern Africa, SUN and the community focused on both the administrative and legal routes to gain official recognition. **Administrative recognition** was achieved through a Community Action Plan that describes the vision for the area and how to achieve it (signed off by the then Mayor in 2010), and by developing an updated community register and numbering structures (between 2011 and 2013). The City provided minimal basic services (standpipes, communal toilets, electrical connection to 60 per cent of residents, solid waste removal, high mast lights) and Services Registration Cards were issued to residents. Six of the ten early childhood development centres were registered. SUN

In practice, much authority is socially derived, although conventional thinking about tenure tends to privilege the law as a source of authority in a way that does not recognise local practice.

Tenure is often a difficult concept to discuss with communities and officials, but it is an important element of a wider upgrading approach in informal settlements. It is also one that is usually overlooked by authorities and does not feature explicitly in incremental processes.

⁵ SUN Development Services is an NGO that has been providing development support in Monwabisi Park since 2010. The development support spans many areas and is based on the Violence Protection through Urban Upgrading (VPUU) approach, which addresses crime prevention through an integrated programme that marries institutional crime prevention approaches with social situational approaches. This methodology has been applied in Monwabisi Park.



Monwabisi Park (Cape Town, South Africa)

A range of community actions and administrative tenure recognition mechanisms are vital in providing 'building blocks' for recognition through the formal legal land development application.

developed a Spatial Reconfiguration Plan, working closely with community leadership and residents, and Eskom used this plan to install electricity to parts of the settlement between 2012 and 2013. Occupation Agreements are in the process of being finalised by the City of Cape Town (2013).

Legal recognition is being facilitated by identifying the land development laws that could be used to subdivide and consolidate the portions of land making up the settlement. Although the current legal framework and municipal procedures do not sit easily with an incremental approach to securing tenure and *in situ* upgrading, the mechanism for moving from administrative to legal recognition is a Land Use Management Application that uses existing planning laws to subdivide, consolidate and rezone the area. The application will be submitted to the City of Cape Town by SUN on behalf of the community.

For subdivision to occur, the area needs to be defined cadastrally, land portions need to be consolidated to create a new outline figure, and internally the area needs to be subdivided into blocks according to the Spatial Reconfiguration Plan (SRP) developed by SUN. Development laws are generally used to develop vacant land. In Monwabisi Park, the development will occur on land that is already settled, partly serviced and with a substantial social and economic community infrastructure. The development laws thus need to be applied in this *in situ* context, which requires adaptation and flexibility.

The approach being proposed by SUN is to subdivide Monwabisi Park into neighbourhood blocks, rather than into individual plots as an incremental measure. The Occupation Agreement gives people evidence to secure their rights. The land will be zoned Single Residential Zone 2 (SR2): Incremental Housing, which is designed to apply in an informal settlement and to blocks within settlements.

The experience of Monwabisi Park shows that a range of community actions and administrative tenure recognition mechanisms are vital in providing 'building blocks' for recognition through the formal legal land development application. The municipal department of housing is the institutional home for the legal recognition of Monwabisi Park in terms of the incremental approach to securing tenure, and the tenure route map identifies the process to achieve it.

3.5 Route 5: Adapting and strengthening existing land management practices

The evidence from the informal settlements surveyed shows that local land management processes and procedures exist and operate at settlement level. For example in Mozambique:

- Friends and relatives play an important role in identifying the place to live and in ensuring that contractual arrangements will be valid.
- The neighbourhood leaders (the Chief of 10 houses, Chief of 100 houses, the Unit Chief and Ward Secretary) play a key role both in allocating houses, confirming tenure and resolving disputes. This role derives from Decree 15/2000.
- Disputes do occur and there are instances where the same property is allocated to more than one person.
- Local evidence of tenure is secured through a *Declaração* or verbal agreement, which offers some security of tenure. However, a general administrative

recognition of the *Declaração* does not exist. Municipal officials recognise this mechanism in the course of conferring title, not outside the official process of assigning *DUATs* in a settlement.

- Registered title through a *DUAT* is not evident and appears to be difficult to access owing to the complexity and cost of the process.

Although they do not legally guarantee security of tenure, these arrangements are instrumental in land governance and in securing tenure locally. They can help communities take steps towards administrative and legal recognition. Although these arrangements are functional (see Section 3.2) there are also weaknesses which need to be addressed (see Box 8).

Recommendations for strengthening the existing land management arrangements were a focus of support in both the Springvalley practice site and in the Mozambique engagement. For tenure to be secure it is important to obtain clarity on **rights** (who holds rights, where, when, how and on what basis); have **processes** that are known and used for application, transfer, adjudication, evidence and land use regulation; have clarity on where **authority** resides; have accessible and known places to go for **recourse** that people use; and ensure that there are no major contradictions between **law and practice** (Cousins et al. 2005).

For tenure to be secure it is important to obtain clarity on rights (who holds rights, where, when, how and on what basis); have processes that are known and used for application, transfer, adjudication, evidence and land use regulation; have clarity on where authority resides; have accessible and known places to go for recourse that people use; and ensure that there are no major contradictions between law and practice (Cousins et al. 2005).

8

Weaknesses in local land management practices

- Tenure security is managed locally and not guaranteed legally.
- There are people without local evidence to defend their rights.
- Some residents do not feel secure: 33 per cent in the Maputo study, 37 per cent in the Tete study, between 11 and 29 per cent in Malawi, and between 16 and 66 per cent in South Africa.
- The local community structures and leaders may exclude more vulnerable members in the community.
- Strong community structures, such as those in Mozambique, may obstruct the emergence of other civil society formations.
- It remains to be tested whether the evidence provided through practice could be recognised in law.
- Registered title is not evident in any of the settlements studies and there are questions about how achievable it is.

Adapting and strengthening local land management arrangements in Springvalley

In Springvalley the following actions would contribute to strengthening the local land management arrangements:

- **Strengthen community structures** such as the Springvalley Development Committee (SDC) and the Community Policing Forum, both of which seem generally accepted as credible and legitimate structures.
- **Update the enumeration** conducted in conjunction with the SDC and Planact in 2011 to ensure that it is conclusive, documents community assets and includes



Enumeration (Springvalley, eMalaheni, South Africa)

all vulnerable groups in the community (see Box 9). Develop an **enumeration data management system** updated by the community as land rights evolve and changes occur.

- Undertake a **community mapping process** to understand the community spatially, in order to begin the process of administrative recognition for any future process of slum upgrading and development. This could include a community-led street addressing process, mapping existing enumeration data, and developing a geospatial component of enumeration data.
- **Document local land management practices** involved in acquiring rights to land, the practices and procedures used by the community to hold and manage the land, and procedures necessary to transfer rights to land.

9

Community-led enumeration

Community-led enumerations often provide the most useful data on informal settlement dwellers. The enumeration process generates a house number, correlating with a register with details of the dweller, as well as a spatial component. This information is often adopted and used by local governments, providing administrative recognition and conferring greater security. Self-enumeration by communities also enables them to generate and control their own information and strengthens their ability to negotiate with government and outside agencies.

Adapting and strengthening local land management arrangements in urban and peri-urban Mozambique

In Mozambique, the neighbourhood leaders play an important role in land management. Although these arrangements offer a clear and widely understood system of authority, the neighbourhood leaders are intricately linked to party politics. While the studies in Mozambique did not identify instances of inequitable practices, these were mentioned in the qualitative interviews and engagements.

Mozambique land law offers significant opportunities for tenure security for people living in informal settlements. The most significant opportunities offered through the law relevant for informal settlements are:

- Individual people or communities who have occupied land in good faith can secure title to the land after a period of ten years.
- Title can be provided on an individual or joint basis.
- In the case of joint title the individual can secure title on an individual basis.
- The land law allows for verbal testimony and other technical means to prove the right to land and to establish its borders.

Knowledge of the extent to which the law in Mozambique protects people's rights to land is an important factor in respect of tenure security. It is thus important that people are informed about their right to land and how they can be protected. A 'Know your Rights' campaign and access to legal aid are accordingly important.

In the Mozambique engagement with the Cities Alliance Country Programme, the TSFSA made the following recommendations for an action research project to adapt and strengthen the local land management practices:

- Engage with the accountability of neighbourhood leaders and clarify the ambiguity in practice surrounding their authority as political or municipal appointees.
- Explore the possibility of opening up space for other civil society organisations.
- Support neighbourhood leaders to provide the *Declaração* in all instances, in order to increase access to the local evidence being used to back up land claims.
- Explore possible external avenues for recourse in cases of dispute where residents in a settlement feel that they are not being treated fairly.
- Prepare for formal planning requirements by undertaking community-based planning processes with a particular emphasis on reserving space for roads and public spaces.

3.6 Route 6: Administrative recognition

Administrative recognition uses policy instruments or administrative practices to increase residents' tenure security. They may not have a firm legal basis, but can take the form of council resolutions or administrative systems.

In Huambo, there is a growing market in land and urban plots of land and the scale of this appears to be increasing, but many of the transactions in informal housing areas go unrecorded. Although these transactions are perceived as secure by an overwhelming majority of residents, few transfers can be backed up by legally defensible documents. Even where the state has been involved in land and house distribution, it is arguable whether the documentation is complete and legally defensible. Many middle class and elite residents do not have legal title either.

In responding to these developments, the municipal administration in Huambo demonstrated a willingness to innovate in its land management practice. This is evident from the creation of a temporary upgradeable occupation licence (*Licença de arrematação*), which is a flexible administrative mechanism to fill the gaps left in the Angolan Land Law.

The Huambo municipality engaged Development Workshop, an NGO working in Angola, to produce the first comprehensive land register which aims to map and record all land occupation and tenure claims made by the residents. Development Workshop is training local administrators in Huambo and neighbouring provinces to use an open title, open-source tool for land tenure mapping and recording. The current initiatives will make an important contribution to the process of incrementally improving land management practice and securing tenure rights for the significant majority of residents in Huambo.

Between 2012 and 2013 Development Workshop provided further advisory support to the Huambo municipality, with the support of the TSFSA, by conducting a legal study and a household land acquisition survey to investigate current land management practices, the progress of institution building and the barriers to the development of viable land management institutions. The household survey found that although residents possess limited legal proof of access, they feel relatively secure in terms of the documents or assurances they currently possess. The study demonstrated that in spite

Administrative recognition uses policy instruments or administrative practices to increase residents' tenure security. They may not have a firm legal basis, but can take the form of council resolutions or administrative systems.



Enumeration (Monwabisi Park, Cape Town, South Africa)

The TSFSA's advisory services show that legal recognition of informal settlements can be advanced by looking for mechanisms within existing legislation and municipal regulations.

of weak, unclear and unenforceable national legislation on land tenure, local solutions have been developed in response to the urgent settlement issues that occurred in Huambo at the end of the war. These administrative procedures gained widespread legitimacy and have increasingly been employed by the municipal administrations in Huambo Province.

10

An alternative approach to achieving administrative recognition: Monwabisi Park, South Africa

Monwabisi Park in South Africa and Huambo in Angola took different approaches to achieving different types of administrative recognition.

Between 2010 and 2013 SUN Development Services developed a community action plan with Monwabisi Park residents. The plan provided a vision and a series of community actions designed to strengthen administrative recognition by the City of Cape Town. An enumeration process was undertaken and provided a number to each house, recorded the households living in each house, mapped household information, and provided a spatial representation of the location of the house.

The mapping made it possible for services to be installed as there was some certainty of where roads will be formalised, where walkways are, etc. Eskom used the maps to do a next phase of electrification in the settlement, even though Monwabisi Park had no legal status as such. The accurate mapping also provided leverage to negotiate less stringent service standards with officials and provide arguments for alternative forms of servicing.

The community register and the renumbering will form the basis of issuing Occupation Agreements by the City. The extensive information produced by the community and its strong community-based structures provides some reassurance to the City in issuing these occupation agreements. The occupation agreements provide the basis for the City to embark on a formal development process. The City will need to put systems in place to maintain the registers, similar to the management systems used for their rental flats.

3.7 Route 7: Legal recognition

The TSFSA's advisory services show that legal recognition of informal settlements can be advanced by looking for mechanisms within existing legislation and municipal regulations. Experience gained in the City of Johannesburg and the City of Cape Town shows that there are two approaches to achieving legal recognition, both of which provide planning solutions outside the housing subsidy and both of which apply special zoning to informal settlements:

- **Legal declaration through rezoning informal settlements as Transitional Residential Settlement Areas (TRSAs):** This approach is termed 'Regularisation' by the City of Johannesburg and is an interim measure to recognise settlements, deliver services, provide addresses, improve the quality of life, and extend citizenship to informal settlements while waiting for formalisation to be implemented.
- **Subdivision and rezoning to a special residential use:** A Land Use Management Application for subdivision and rezoning of an informal settlement in the City of

Cape Town creates the conditions for the transition from ‘unproclaimed land’ to ‘proclaimed land’ with a ‘limited use’ land use right. This secures increased permissions and unlocks higher levels of service provision for residents of the area.

Regularisation in the City of Johannesburg was a response to a call from the then Mayor requesting that his departments come up with a solution for the 183 informal settlements with an estimated 220 000 households. The department of planning and urban management used a town planning instrument to declare certain portions of land in informal settlements as TRSAs by amending the Town Planning Scheme to include a definition of a TRSA. A TRSA is a special zone in the scheme. This provides the settlement with blanket tenure security by legalising the land use and introducing, *inter alia*, an ‘occupant permit for a residential unit’ into the clauses of the amendment scheme.

A schedule (Annexure 9999) was included, which sets out the rules applicable in the TRSAs. The rules relate to land use, spatial (layout) planning, building management, land tenure and consultative approaches. The schedule thus goes beyond the conventional contents of a town planning scheme and is more than a land use management instrument.

The City of Cape Town is using a Land Use Management Application that draws on existing planning laws to subdivide, consolidate and rezone an informal settlement called Monwabisi Park. Following engagement through a series of workshops, officials agreed that the Cape Provincial Land Use Planning Ordinance 15 of 1985 (LUPO) would be used for subdividing and consolidating the land, and the new Cape Town Zoning Scheme Regulations, approved in March 2013, would be used for the rezoning of the land.

Block rules will be developed, making it possible to link the settlement to precinct and site plans so as to determine internal boundaries when the need arises for individual plot demarcation. Block rules will include reference to the Occupation Agreement, thereby elevating them from an administrative recognition instrument to a formally recognised legal instrument. The land will be zoned Single Residential Zone 2 (SR2): Incremental Housing, which is designed for application in informal settlements and to blocks within settlements. These strategies produce two outcomes:

- In the City of Johannesburg, Annexure 9999 provides a mechanism for the settlement to become integrated into the administration of the city, thereby offering a way to ‘lock in’ the tenure mechanism. By allowing for a basic layout plan, a survey of households and the spatial referencing of structures, as well as a register and the monitoring of land use and building changes, the City is required to ‘insert’ these requirements into their GIS, land administration and eventually also the billing systems. This begins to embed these settlements into the city systems even though they are not formally proclaimed as townships.
- In Cape Town, the delivery of services was improved on the basis of a Spatial Reconfiguration Plan developed by the Monwabisi Park community using enumeration and survey data to update the community register. A new numbering system was developed and all structures, pathways and roads were geo-located using GPS points. The City of Cape Town provided minimal basic services, Services Registration Cards were issued to residents, and Eskom installed electricity to parts of the settlement in 2012 to 2013.

Block rules will include reference to the Occupation Agreement, thereby elevating them from an administrative recognition instrument to a formally recognised legal instrument.



Happy Valley (Johannesburg, South Africa)

The biggest issue facing the City of Johannesburg is that the programme is more limited than intended by its designers. Residents have more tenure security in their regularised settlements, legal status (at least on paper), and improved basic services. However, the future of the programme is uncertain at the time of writing. It is not clear whether it would have an institutional home: owing to restructuring in the municipality, it is now at arm's length from its original champions and from the institutional structures that drove the approach to implementation. It is also at risk because the small number of settlements affected by the programme does not warrant the capacity it requires to drive its implementation, particularly given the City's limited human and financial capacity. New champions are required to fulfil the promise it holds.



Community consultation (Springvalley, eMalaheni, South Africa)

4

Conclusion

These practices hold the promise of an alternative approach to securing tenure, which is incremental in nature and has the potential for widespread reach. The practices that have been outlined offer officials and community organisations involved in slum or informal settlement upgrading more options than the dominance of the titling paradigm allows.

The work of the TSFSA shows that it is possible to work on opening up alternative or additional routes into tenure security, as represented in Diagram 2 on page 06. This booklet provides examples of different routes that can be followed to improve tenure security in informal settlements. These practices hold the promise of an alternative approach to securing tenure, which is incremental in nature and has the potential for widespread reach. The practices that have been outlined offer officials and community organisations involved in slum or informal settlement upgrading more options than the dominance of the titling paradigm allows.

Practical mechanisms to improve tenure in the here and now can be identified and applied in slum or informal settlement upgrading programmes and projects. Contextual factors that will shape the prospects of incremental tenure security include legal and policy frameworks, the state's capacity and willingness to innovate, especially at municipal level, and the strength of civil society organisations that are active in supporting communities under threat.

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. The experiences of the cities of Johannesburg and Cape Town in South Africa show that one way of doing this is by identifying the laws that can be used innovatively to serve adapted ends. Another is to consider confirming the status of local practices and adding municipal or administrative weight to them, as the case study in Huambo, Angola demonstrates.

The TSFSA found evidence of co-existing official and local systems of land management and governance. Co-existence is evident in different sources of authority, in the different ways land markets operate in poor communities, and in practices that are neither completely official nor completely unofficial. However, for co-existing systems to function effectively they each need to be adapted rather than being integrated, formalised or regularised. Like a puzzle, the pieces need to be manoeuvred and fitted, then refitted, to create a workable system for urban land management in informal settlements.

Local practitioners – land managers, community authorities, advisors and representatives – should actively negotiate processes of reform to adapt policy and law, and achieve a better fit with the body of local practices in informal settlements. Ordinary

residents need to be supported in their efforts to make land management practices more open and inclusive.

In order to chart alternative routes to tenure security, official practitioners in municipalities and local political representatives need to support innovation and actively engage with and adapt local practice. With official recognition, adapted practice will increase access to the benefits associated with improved tenure security.

More work is required to identify and implement strategies for official recognition and to build up a significant body of alternative practice that could form the basis of widespread advocacy. This work should find, develop and apply mechanisms that range from recognising and strengthening community agency to securing tenure through administrative and legal means. While imperfect in many ways, land management practices in informal settlements are the only governance game in town, given limited municipal capacity to provide a great deal more. Local practices and the leaders who govern them should never be romanticised, but neither should they be overlooked or replaced as a matter of course. The risk is that, on their own, official interventions may fail to stick, foment conflict, or leave a void where local governance used to work and municipal governance has not yet materialised. This work should:

- start by understanding existing local practices for securing tenure and managing land;
- build from existing local land management practices, especially the local evidence being used;
- adapt and strengthen the local practices, especially the figures of authority and the access they give more vulnerable groups that are likely to include women and children;
- recognise the agency of residents and local structures in managing land;
- promote the roles of NGOs in supporting organisations of the poor to resist evictions and adapt and strengthen local practices in land management;
- promote the roles of NGOs in building alliances with municipalities to find and demonstrate context-specific means for administrative and legal innovation to secure tenure through different forms of official recognition;
- support municipalities to apply existing laws in innovative ways to serve tenure security objectives; and
- advocate more widely for increasing routes to tenure security.

The outcomes of the TSFSA project beg a few important questions about next steps. What will it take to direct more of the protection, support and investment that goes to title, towards the legal and administrative mechanisms for tenure security? Is access to small-scale loan finance possible on the basis of secure tenure? Are the mechanisms explored in the TSFSA a sufficient basis for infrastructure investment? Might administrative and legal recognition and service provision produce prospects for municipal revenue generation? These are the questions that infuse debates about tenure security and particularly the benefits that security is meant to ensure. And these are some of the questions that can help shape a subsequent phase of work.

In order to chart alternative routes to tenure security, official practitioners in municipalities and local political representatives need to support innovation and actively engage with and adapt local practice. With official recognition, adapted practice will increase access to the benefits associated with improved tenure security.

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