Informal Land Registration in Urban Areas

A Case Study

This case study draws on research that investigated informal urban land registration practices in South Africa. The research study was undertaken by Margot Rubin and Lauren Royston, commissioned by the Urban LandMark (see Sheet 5 for reference details).

An introduction to the case study is given below. On the back of this sheet some learning and reflection activities based on the case study are provided. You can do these activities on your own or in groups, as appropriate for your learning session. Look carefully at these activities before you begin so you know what to look for while you are reading.

The next part of the document (Sheets 2, 3 and 4) presents examples of informal land registration practices drawn from three areas in South Africa. The final component of this document (Sheet 5) includes a summary of the key issues that were covered in the case study and recommendations arising from it.

Learning outcomes:

By the end of this session participants will be able to:

- Explain why informal land registration happens

- Present policy options for addressing informal land registration practices.

Introduction to the case study

This case study examines specific examples of localised and informal land registration practices. Such informal land registration often arises where people do not have access to the formal state system of land registration. But as the desire and need exist to gain access to urban land, to secure rights in relation to that land and also to trade land, a localised registration system that meets these needs tends to emerge. This informal land registration system may exist independently of government's efforts, or in some relationship with it, often leading to a hybridised system.

Photo: Urban LandMark

Who really owns this house?

Most of these examples come from localities where land rights and land use are contested or have changed in the last 20 or 30 years due to removals, relocations or land invasions, or where there are competing claims to land, for example historical rights might have been displaced or replaced with colonial or apartheid rights, which might have been overtaken by land invasions. Rights of land invaders and other informal settlers are seldom recognised by the formal land registration system, but by locally developed ones that are usually socially rather than legally mediated. The challenges that such situations present and the ways that are emerging for resolving them (and mistakes made along the way) are very useful learning and are the main focus of this case study.

The research report used to develop this case study presents five specific examples. Three of these were selected here in order to achieve a geographical spread and to illustrate a range of local land registration practices. The three examples are:

1. Folweni (Amanzimtoti, Durban)
2. Mandela Informal Settlement (Delmas)
3. Hangberg (Hout Bay, Cape Town)

Learning Activities

Before you start

Before you read the case study, spend a couple of minutes noting what you think are the main reasons why informal systems of land registration might arise, as well as the problems AND potential benefits these systems present.

After reading the examples

In your group jot down recommendations for local authorities in South Africa that will guide them in developing a policy for addressing and resolving in an equitable and sustainable way the issues around informal land registration.

Be prepared to report these back to the main group if called upon to do so.

Reflection

1. Talk about your experience of reading the three examples described in this case study.

2. Write down three words that best describe how you felt while you were working through the case study. Why these specific feelings and not others?

3. Reflect on what you have learned so far in this case study and through your group learning activity.

Photo: Development Action Group

Flats built by the City of Cape Town have become overcrowded

1. Folweni

Background

Folweni is a settlement of 40 000 people located in Amanzimtoti south of Durban.

The origin of the settlement lies in the forced removals of households from Umlazi in 1981 by the KwaZulu Government. Forced removals are normally associated with removals of black people from white areas. In this case the removed people were not given official permission to stay in Umlazi, and were moved to an alternate site.

Folweni has a complex history of land holdings, including original possession by the Amanzimtoti Mission Reserve with ownership later being transferred to the local chieftain, Chief Sobonakona Makhanya (which meant that Folweni was never formally established as a former homeland town under the Black Communities Development Act, Proclamation R293 of 1962). Tribute was paid to the Chief by the residents of Folweni, and he allocated Permission to Occupy certificates (PTOs) and controlled access to land, but the local authority administered the register. (PTOs were official documents that allowed people to occupy houses without actually owning them. PTOs have been described as 'low-grade title deeds'.)

Folweni started in 1981 as a resettlement township to accommodate people who had been moved from Umlazi because they were not allocated to live there.

The restrictions on transfer of 'Permissions to Occupy' (PTOs) meant that people devised local rules for transactions, using the councillors as important agents in the land market operation.

How land was accessed and held

In the 1980s plots were allocated to households that were forcibly removed from Umlazi and they were provided with PTOs. In the 1990s private sector companies employed developers to build houses for their employees, who were expected to pay off their loans from the company over a period of time.

Photo: Ernest Nhlanhla Shelembe

The entrance to Folweni in 2001

The scheme did not work out as planned. Residents were granted PTOs, not title deeds, and the high cost of loans forced many to sell their units informally. After 1994, local government councillors became the de facto housing authority. They showed prospective residents properties and gave them permission to occupy. There are reports of incoming households taking over PTOs of previous tenants in informal land trades.

Later, only those in possession of first generation PTOs were eligible and those with informal documentation were not recognised, leading to confusion and conflict over ownership.

This land market activity was facilitated mainly by word of mouth and councillors. Councillors seemed to act as "modern Indunas", controlling access to land and giving permission for people to settle.

Generally, when property was sold, PTOs, although they could not officially be transferred, were simply taken over by incoming households. Alternatively, new occupiers received letters from councillors, receipts of sale or sales agreements as evidence of their tenure, all of which were considered by locals to be as good as PTOs as being adequate evidence for defending claims.

In the post-1990 period, councillors were seen to have taken over the role of the Induna and the State and their witnessing and oversight was deemed by residents to be sufficient for secure tenure.

Although PTOS were officially non-transferable and the holder was not permitted to sub-let, informal land sales and rental arrangements occurred regardless

How land was transacted

The most common way of initiating a sale was through word of mouth, but it appears that councillors also facilitated sales and were often approached by people wanting to buy or sell housing, acting as a type of estate agent. Since houses could neither be sold nor bequeathed officially, witness by the councillor and some form of documentation was considered sufficient for transfer of ownership to be recognised by the local community.

Informal registration of a house

Land managers

Initially the Tribal Authority and the state acted as the official land managers who controlled and managed access to the area. However in the post-1990 period, the councillors took over the management function and began to facilitate transactions and decide on access. All the while the community acted as witnesses and unofficial registrars and their testimony could be used to back up claims and defend rights.

Informal ownership is socially recognised

Evidence provided and recognition of rights

Between the 1980s and 1990s the local community recognised all of the various forms of evidence provided by both state and the councillors and made no distinction within the informal economy between the various documents. This evidence included official documents in the form of PTOs from the state and allocated by the Induna, and later, unofficial papers such as letters from the Councillors, receipts or sales agreements. All of these documents had social legitimacy at local level. However, at a later stage when legislation allowing government to upgrade PTOs to title deeds (Legislation: Upgrading of Land Tenure Rights Act of 1991 (ULTRA)) was applied, the Act could not recognise the letters from the councillors, receipts of sale or sales agreements as they held no official authority, so the state only recognised and upgraded official PTOs. This became problematic for residents without them because they were excluded from gaining immediate ownership and having their tenure upgraded to full ownership with a formal title deed. As a result there has been a long drawn-out process to get the provincial and municipal authorities to recognise the claims of residents without PTOs, or with some other evidence of 'informal ownership'.

2. Mandela Informal Settlement

Background

The Mandela informal settlement was first established in 1990 on the municipal land that was set aside as a buffer strip between the Botleng township and the town of Delmas in Mpumalanga.

The area was originally settled by two groups with different but complementary agendas. The first group was constituted of ANC activists who invaded the land as a form of protest against the local municipality. The second group was made up of young families and single people who had been renting shacks and backyards in the township and who were either frustrated with their landlord-tenant relationships or felt that they needed larger plots or homes to accommodate their requirements. Oral evidence plays an important role in tenure security in the settlement.

A local leader, who is referred to as a "cultural authority" or Induna witnesses transactions for a fee. He is not considered to have any real authority, beyond the role of witnessing. The process of witnessing is used mainly as a way of defending rights and claims to the land that households have transacted on the informal market, should disputes arise.

Currently there are between 2000-2500 individuals or 480 households living on the municipally owned buffer strip, which was a typical apartheid era land use for segregating the White town and the Black township. The municipality has decided that the settlement needs to be relocated and has plans for two sites within the municipality. In preparation for the relocation, the municipality has developed its own register which is used to identify households that need to be relocated and provided with RDP units.

How is land accessed and held

Land is accessed in three different ways. The vast majority of households identify an open space and occupy it by initially demarcating the boundaries of their property and then constructing a shack on the site. The second method of accessing land is to receive "a gift" from a friend or family member, who is already living in the settlement. Households who occupy land or receive a gift do not require permission from anyone to set up their homes, and simply go ahead with occupation. The last and least common method is to buy a shack from an existing household and then to move into the unit when the original tenant has moved out, but it is expected that this transaction is witnessed by the local authority figure in order to legitimate the sale.

The settlement is now almost 20 years old and is fairly stable. Households recognise each other and their rights to stay. There is no formal development committee or any kind of representation, which means the community is dependent on each other in order to help support claims to land and property.

Photo: Kevin James

Shacks erected on invaded land

The settlement was established informally by means of an invasion, first by activists against poor service delivery, followed by young families and single people who saw the opportunity.

Land transactions take place through a local leader or "cultural chief".

Witnessed receipts of sale, backed up by the local cultural authority, confer a degree of social legitimacy, and are examples of evidence that could be used to defend claims.

The settlement is set for relocation by the local authority and an official land register has been created so that people can receive RDP houses.

How is land transacted

Mandela informal settlement does have an informal property market, but this market is considered to be in shacks, not in the land itself. There is a clear understanding that the land is not owned but the shack is. Prices for shacks in the settlement averaged about R500 in 2001. The sale of a shack is advertised through word of mouth and is an unmediated process, where the shack owner and the prospective buyer negotiate a price between them. The transaction is written on a piece of paper and the sale is then taken to the Induna. He witnesses the sale and signs his name on the piece of paper and charges a percentage for his services. Once the transaction has been witnessed, the transaction is considered to be legitimate by the rest of the community.

Land managers

There is very little land management and the closest thing to a land manager is the "cultural authority" (Induna) but in reality there is no organised body or individual with any control over land and to a large extent it seems as if residents simply do as they please. The municipality had plans for the land but it has now been proclaimed as dolomitic and as such the people there will be relocated.

Evidence provided

Households that buy property obtain a document or a receipt witnessed by the Induna or very occasionally an affidavit from the police, which is used as proof of purchase and right to remain. The witnessed document is also supported by community recognition of ownership and the legitimacy of the "cultural authority". In parallel a municipal register identifies which households have been registered for relocation and are on the municipal housing database. It is accompanied by shack numbering. Numbers spray-painted onto shacks are seen as proof that the shack and the household have been registered.

There are potential conflicts between those who are now on the official register and previous or even future owners of the same properties who might have counter-claims backed up by the local, socially legitimised register.

Recognition of Rights

The state does not recognise the shack sales at all although the shack numbering exercise and registration process appear to confer some level of recognition of existing households' claims to a relocation site. The residents recognise shack sales, and feel that they have some claim to stay in the area but do not recognise any transactions involving the land itself. The Induna's witnessing role is unconnected to the municipal registration process.

Photo: Ernest Nhlanhla Shelembe

The painted number indicates formal registration

General Comments

The community does not appear to be particularly well organised, and little resistance to relocation was identified in the primary research on which this case is based. Local land management practices, for example the existence of a local property rights register and mechanisms for recognising and legitimising property transactions are thin on the ground, although people are in line for RDP houses. The only management role is performed by the cultural Induna, who acts as a witness and has a very generalised, unorganised oversight or testimonial function. However, witnessed receipts of sale, backed up by the cultural authority of the Induna, confer a degree of social legitimacy, and are examples of evidence that could be used to defend claims, although overall these methods do not appear to be particularly strong. There are potential conflicts between those who are now on the official register and previous or even future owners of the same properties who might have counter-claims backed up by the local, socially legitimised register.

3. Hangberg

Background

The Hangberg example focuses on a low-cost informal settlement located at the foot of the Sentinel Mountain.

Each community in Hangberg has its own history. The hostels, on the slopes of the mountain, were built in the 1970s to accommodate households who were employed by the local fishing industry. In the 1980s the Council built 25 rental flats.

Neither the hostels nor the flats were sufficient and the units became overcrowded. In response, households began to build informal dwellings behind the hostels and at the foot of the Sentinel Mountain. These units were developed with the consent of the local authority which provided each household with a letter of permission to live there. Most of the households understood the letter as proof of secure tenure.

Photo: City of Cape Town Corporate GIS

Locality plan of Hangberg

In 2007 the City of Cape Town (CoCT) in conjunction with the Hangberg in situ Development Association (HiDA) established a moratorium on the development of new houses in the settlement, in order to curb further densification. Between the CoCT and HiDA, it was agreed that 302 households would be included in the in situ upgrade and any other units would either be dealt with at a later stage or, if newly erected, would be demolished.

At about this time HiDA and the Development Action Group (DAG) developed a community register, to establish the details of the agreed 302 units, as well as the status quo of the rest of the settlement. The register provides data on who owns what, as well as the size and precise location of each unit and was seen as the first step in the upgrading process and as a means of securing tenure. It has also been used to keep track of changes of informal ownership or inheritance within the settlement.

Currently an agreement and business plan are in place to upgrade the settlement.

A complicating factor is that the settlement is on land owned by a variety of bodies, some municipal and provincial, with claims by a private land owner to part of the settlement. Fortunately, most of the area is zoned as general residential, which is useful for future housing development.

Photo: Dylan Geldenhuys

Shacks in Hangberg

How is land accessed and held

In the period before the register was established, households accessed land in one of two ways. Either permission was gained from the local council representative, or households occupied vacant sites and built their homes. In the early days the community simply knew who lived where and who owned what property. Extended families have historically provided space for friends or family members to set up their own houses but there are instances of households setting up homes on available land without having a relationship with their neighbours.

The early informal dwellings were recognised by the local authority and residents were given PTOs, which were recognised socially as security of tenure.

Property sales currently take place in an 'informal' system that enjoys a high level of recognition, both social and municipal. However, HiDA now requires that the changes of ownership or occupation are recorded on the community register, but not everyone obliges. Land occupation is no longer possible as any new houses are immediately demolished by the CoCT. If a house is bought and sold through the community register this provides current and future rights. If, however, a house is sold without using the current system then there is a great deal of uncertainty as to what the new owner thinks he/she has actually bought.

All of the households on the register are considered to be legitimate residents, have an expectant right and are considered part of the in situ upgrade programme. Households and units who do not appear on the register are considered unauthorised and illegal and their rights are unclear.

Although municipal registration initiatives do not begin as rights registration processes, they quickly become so.

How is land transacted

Previously there were no rules regarding land transactions and households bought and sold as they pleased but now sale forms and police affidavits are requested by HiDA and are kept by the committee – they are filed and used as proof of ownership and access to rights. It is also important to note that what is actually being sold is not the land per se but rather the number on the register, which provides access to future housing and development rights and potentially formal ownership in the future.

Land Managers:

Currently HiDA and CoCT with the support of DAG are managing the land and the registration process. HiDA attempts to control land use, land transactions and illegal house growth. The City is responsible for the demolition of new units and maintaining the size of the settlement and DAG is supporting the tenure programme and the land register.

Evidence provided

The register is used as evidence of rights and informal ownership and each household has a registration number attached to their profiles. The police affidavits and HiDA forms are also considered to be evidence of ownership and provide proof of transactions.

General comments

Hangberg is located on some prime real-estate. It is half-way up the Sentinel Peak, overlooking Houtbay harbour and just off the main road through the area. Considering the scarcity of land, particularly well-located land with commercial potential within the City of Cape Town, the project has land and market dimensions that are not always apparent in other settlements. The original community of 302 is tightly knit and there is a great deal of reluctance by HiDA and various members of the community to sell property to people who are not from Hangberg. Social prescription is high but not enforceable. Tensions exist between the sense of community and the temptation to sell property and land at inflated prices. The register is both community-developed and -managed. It is fairly technically sophisticated and held by the community. A municipally-led review of the register was being planned at the time of writing which envisaged community participation as a key guiding principle. The review is intended to include the design of procedures and criteria to review, amend and update the community register now and in the future; facilitate the establishment of a dispute resolution committee; provide a synopsis report on the current social relationships between tenants/second families and caretakers in the settlement and coordinate the public review of the register with the Hangberg informal settlement community.

Summary sheet
Land registration happens
(even when you weren't planning for it)

The central lesson learned from the example in this case study is that there are many people who are unable to access and afford the formal systems for acquiring and holding fixed property. In these situations, local and informal systems for land registration sometimes emerge that satisfy the need for people to acquire land, to gain some level of security of tenure over that land and to be able to dispose of it.

In many cases, the system that emerges for registering land ownership is an informal one, with socially mediated validity rather than having formal status. Often, the mere witnessing of an acquisition or a sale of land by a significant figure in a community is sufficient evidence in such a socially dominant land market. Such informal evidence is an important element of informal land sales and acquisitions.

There is evidence of the registration of local land rights and claims that exist over, or on top of, the official system of title deed registration applicable to the underlying land. These registration practices are developed and managed at a local level, by the state, community organisations or, most often, in ways that can best be characterised as dynamic and hybridised versions in which both state and community have a role to play. Informal settlement upgrading interventions need to take these existing, de facto rights, and the processes and practices attendant on managing them, into account.

Photo: Development Action Group

Informal house registration in Hangberg

Some informal land registers are held by community organisations, such as the community register in Hangberg. Others are held by the municipality, like the Nelson Mandela housing register and, initially, the Folweni register. There are also instances of registers, or lists, being drawn up collaboratively by municipality and community organisation, or of parallel systems, where the municipality has constructed a register of households eligible for housing and spray painted numbers on shacks.

Although municipal registration initiatives do not begin as rights registration processes, they quickly become so and municipalities should be alert to this. A municipal register indicates that the settlement has been recognised by the municipality, sending a signal that tenure is substantially more secure, in the sense that the threat of eviction has been removed in the immediate term.

Tenure security increases when people have evidence to defend their claims. Oral evidence occurs mainly in the form of local figures in authority bearing witness or giving testimony, such as the councillors in Folweni or the local leader in Nelson Mandela. Community memory also plays a role. People also possess documented evidence to defend their claims, ranging from official documents like the letters giving permission to occupy in Hangberg, the PTO certificates in Folweni, and lease agreements, affidavits, receipts of sale and letters from councillors in many of the areas. Shack numbering is another form of evidence

In several settlements the state's upgrade intervention is contested terrain, especially where the intention is relocation, rather than in situ upgrade. Population stabilisation requires cooperation from the community and the community representative body, which, in turn, depends on the nature of the relationship with the state, particularly the extent to which consensus exists, on the future plans for the area.

Common purpose, or a sufficiently shared vision of the future, appears to be a pre-condition for successful state/community collaboration on settlement stabilisation and curtailing growth. Meaningful engagement with community organisations, in structured processes of participation, is essential to achieve this common purpose. Trust and goodwill on both sides are additional critical ingredients, rather than broken promises and unmet commitments on both sides.

A static register, borne of an intention to avoid rapid settlement growth once an area has been earmarked for development, is unlikely to serve the needs of dynamic informal settlement communities. Neither is it likely to remain accurate. Upgrading interventions need to attend to how registers will be managed over time.

A more flexible and adaptive approach is required which accommodates both the need to plan for a known quantity and to accommodate reasonable changes, such as those arising from transferring rights and claims under agreed conditions. Successive re-registration has the tendency to multiply different forms of evidence and create confusion. It can also undermine community organisation and community/state relationships and exacerbate vulnerability to abuse, especially in a fairly widespread context of long delays in development.

Selected recommendations

Photo: Dylan Geldenhuys

Shack dwellings in Hangberg

- Recognition of what exists in informal settlement upgrading is particularly important - work with what already exists, and where possible build on it in ways that gradually secure people's tenure rights.

- Adopt an incremental approach to upgrading which works gradually with what currently exists. Early steps might be the blanket recognition of settlements, in order to give residents security of tenure, through proclamation or announcement, or more formally, through incorporation into land use management schemes through zoning or re-zoning.

- The de facto rights and claims of households should be identified in upgrading interventions, and accommodated, where possible. These tenure arrangements go beyond what ownership and rental are conventionally considered to be. This is best achieved in consultation with communities and community organisations which are, in many cases, the existing land managers.

- The land management arrangements that arise from these community/state interactions and interfaces are best characterised as hybridised forms. They have created sets of claims and rights with varying degrees of social legitimacy with which any informal settlement upgrading initiative must engage.

- The location of the register, and who controls it, and the extent to which people have recourse to an external authority, or a recognised community structure rather than an individual, are additional aspects of what needs to be considered in upgrading interventions that work with what currently exists.

- The existence and status of local forms of evidence, and the claims that underpin them, need to be identified when upgrading commences, and either verified or adapted, taking likely consequences for tenure security into account. Potential for conflict and destabilisation exists, especially when the stakes are raised with the prospect of development.

Reading list

The primary source document for this case study is:

Rubin M and Royston L (2008), *Local Land Registration Practices in South Africa*. Urban LandMark, Pretoria, November 2008.