

# Informal Land Delivery Processes in Eldoret, Kenya

## Summary of findings and policy implications

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# Preface

## Informal land delivery processes in African cities

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### *Why research informal land delivery processes?*

The colonial powers in Africa introduced urban land administration systems that were modelled on the systems of their home countries. The extent to which indigenous tenure systems were understood, recognised and incorporated varied from colony to colony, but it was generally believed that only a formal system based on a European model could provide a framework for urban development and protect the rights of urban property owners (who at that time were expatriates). These land administration systems, which were inherited at independence, are governed by formal rules set out in legislation and administrative procedures. However, the legislative provisions and the administrative systems that were established to implement them proved quite unable to cope with the rapid urban growth that occurred after independence.

The state-led approaches to development favoured in the 1960s and 1970s were associated with large-scale public intervention in urban land delivery systems. However, the cost of implementation and compliance has been too high for low-income countries, cities and inhabitants. At their extreme, land and property markets were perceived as ineffective or exploitative. These views were translated into attempts to de-marketise land by nationalisation and/or government control over land market transactions. Whether or not the concepts on which such land policies were based were sound, limited capacity at national and municipal levels ensured their failure. Administered land supply has very rarely met demand and attempts to regulate and register all transactions in land and property have been universally unsuccessful. As a result, most land for urban development has been supplied through alternative channels.

In the early years of rapid rural-urban migration many households, including poor households, were

able to get access to land to manage the construction of their own houses for little or no payment, through ‘squatting’ or similar arrangements. Following research in the 1960s and 1970s, there was a feeling that the processes of ‘squatting’ and the allocation of customary land by legitimate rights holders were fairly well understood. Upgrading projects of the 1970s were designed and implemented on this basis.

Most countries have now reversed some of the most extreme versions of state intervention, but other components remain despite serious implementation failures. There is considerable doubt about whether recent attempts to improve land management will be any more successful than previous approaches. In part, pessimism about the prospects for efficient and equitable urban land management arises from the continued lack of resources and capacity in government, but it also stems from doubts about the appropriateness of the principles and concepts on which recent urban land policies have been based.

Much research on land and property in African towns and cities assumes that the state has both the duty and the capacity to take on a major interventionist role in land management. It concentrates on documenting and explaining the failures (and more rarely successes) of state interventions. Despite their significant role in providing land for urban development, there has been relatively little recent in-depth research on processes of informal land delivery or the institutions (rules and norms of behaviour) that enable them to operate and that govern the relationships between the actors involved. To improve policy and practice, a better understanding is needed of how formal and informal systems operate, interact and are evolving.

### *Aims of the research*

The aim of the project was to improve understanding of informal land delivery processes in six African cities and their relationships with formal land administrative systems. It analysed the

characteristics of informal land markets and delivery systems

- to increase understanding of the institutions that underpin and regulate transactions and disputes in land
- to assess the strengths and weaknesses of alternative land delivery mechanisms, especially with respect to the extent to which they enable the poor and other vulnerable groups (especially women) to access land with secure tenure, and
- to identify and explore implications for policy.

### ***The comparative research project***

Coordinated by Carole Rakodi of the University of Birmingham and Clement Leduka of the National University of Lesotho, studies were undertaken in six medium-sized cities in Anglophone Africa, in all of which informal land delivery systems are important, but which also typify different colonial and post-colonial policies, legal frameworks, governance arrangements and experiences. The cities and the local researchers were:

|                    |   |
|--------------------|---|
| Eldoret, Kenya     | Rose Musyoka, Department of Physical Planning, Government of Kenya  |
| Enugu, Nigeria     | Cosmas Uche Ikejiofor, Federal Ministry of Works and Housing, Gusau, Zamfara State, Nigeria                                 |
| Gaborone, Botswana | Faustin Kalabamu, Department of Architecture and Planning, and Siamsang Morolong, Department of Law, University of Botswana |
| Kampala, Uganda    | Emmanuel Nkurunziza, Department of Surveying, Makerere University   |
| Lusaka, Zambia     | Leonard Chileshe Mulenga, Institute for Social and Economic Research, University of Zambia                                  |
| Maseru, Lesotho    | Clement Leduka, Department of Geography, National University of Lesotho   |

The aims of the project and the methodological approach were jointly developed by the researchers. Findings and policy issues were discussed at workshops in each of the cities, to obtain feedback from relevant stakeholders and make a contribution to current debates about land policy and administration in each of the countries studied. The research teams generally identified some of the policy implications of their findings rather than making detailed recommendations, because the researchers all believe that policy formulation and legislative change should be negotiated processes involving all the stakeholders in land management.

The research was funded by the UK Department for International Development. DFID supports policies, programmes and projects to promote international development. It provided funds for this study as part of that objective but the views and opinions expressed are those of the authors alone.

### ***The project in Eldoret***

Kenya was included in the study as an example of a settler economy, in which direct rule resulted in the downgrading if not elimination of the roles of customary authorities in land management. In addition, private tenure in land became accepted and entrenched relatively early in the country's history compared to some others in Anglophone Africa, not only for Europeans but also for indigenous Kenyans. Eldoret was considered to be of interest because most research to date has concentrated on Nairobi, because of the important role of land buying groups and companies in the process of urban development and because of the apparently flexible attitudes of the Municipal Council to the informal land delivery system.

The research was carried out by Rose Musyoka of the Department of Physical Planning, Government of Kenya. The contribution of the Government of Kenya, and in particular R.K. Mbwagwa, the Director of Physical Planning, is acknowledged with thanks. In particular, the grant of study leave facilitated participation in this research. Dr. Kareithi provided anthropological insights and two research assistants, Hilary Ndambiri and Caroline Toroitich,

carried out much of the data collection. Their contribution is acknowledged with gratitude, as is the willingness of present and former officials of central and local government and local lawyers to provide invaluable information. The patience of residents of Kamukunji, Langas and Munyaka, who provided much of the data on which this report is based, is much appreciated. The work benefited from a background paper by Ken Nyaundi on some legal aspects of land, particularly land disputes and their resolution. Finally, the contribution of participants in a policy workshop held in Eldoret on 12<sup>th</sup> March, 2004 is acknowledged.

Following the workshop, a full report of the study was published: Musyoka, Rose (2004) *Informal Land Delivery Processes and Access to Land for the Poor in Eldoret, Kenya*, Birmingham: University of Birmingham, School of Public Policy, Informal Land Delivery Processes in African Cities Working Paper 4 (ISBN No. 0 7044 2249 2). See also [www.idd.bham.ac.uk/research/researchprojs.htm](http://www.idd.bham.ac.uk/research/researchprojs.htm)

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*Policy workshop in Eldoret*

# Introduction

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The formal land delivery systems in Kenyan cities, based on legal concepts and administrative systems introduced by colonial and post-colonial governments, have proved unable to cope with the demands of rapid urban growth in a context of widespread poverty and limited state capacity. In practice, most land for urban development, especially that occupied by the poor, is supplied and developed outside state regulatory frameworks. Until recently, there has been little in-depth research on these informal urban land development processes, often simplistically labeled ‘squatting’, despite the ineffectiveness of formal systems and mounting evidence of the importance of secure access to land and housing to the livelihood strategies of poor urban households. Arguably, attempts to devise land administration and delivery systems capable of providing a supply of urban land sufficient to satisfy demand and meet the needs of lower income households for secure tenure should build on the success of large scale informal land delivery, as well as addressing its shortcomings. To make this possible, a better understanding is needed of how formal and informal systems operate, interact and are evolving in urban Kenya.

Evidence is emerging that informal systems for delivering, accessing and developing land are neither chaotic nor anarchic, but are structured by institutions that enable transactions and regulate relations between actors. For the purpose of this study, ‘institutions’ are defined as “rules, enforcement characteristics of rules and norms of behaviour that structure repeated human interaction”.<sup>1</sup> Inherited formal land administrative systems and their successors are, in theory, governed by formal rules, while ‘traditional’ tenure systems are regulated by ‘custom’ or informal, generally unwritten, rules. In practice, in urban areas, land transactions and conflicts are structured by hybrid institutions, which are neither strictly formal nor informal. However, the nature of these institutions, their source of legitimacy and the potential implications for urban land policy have rarely been systematically examined and analysed.

## **Aim and objectives of the research**

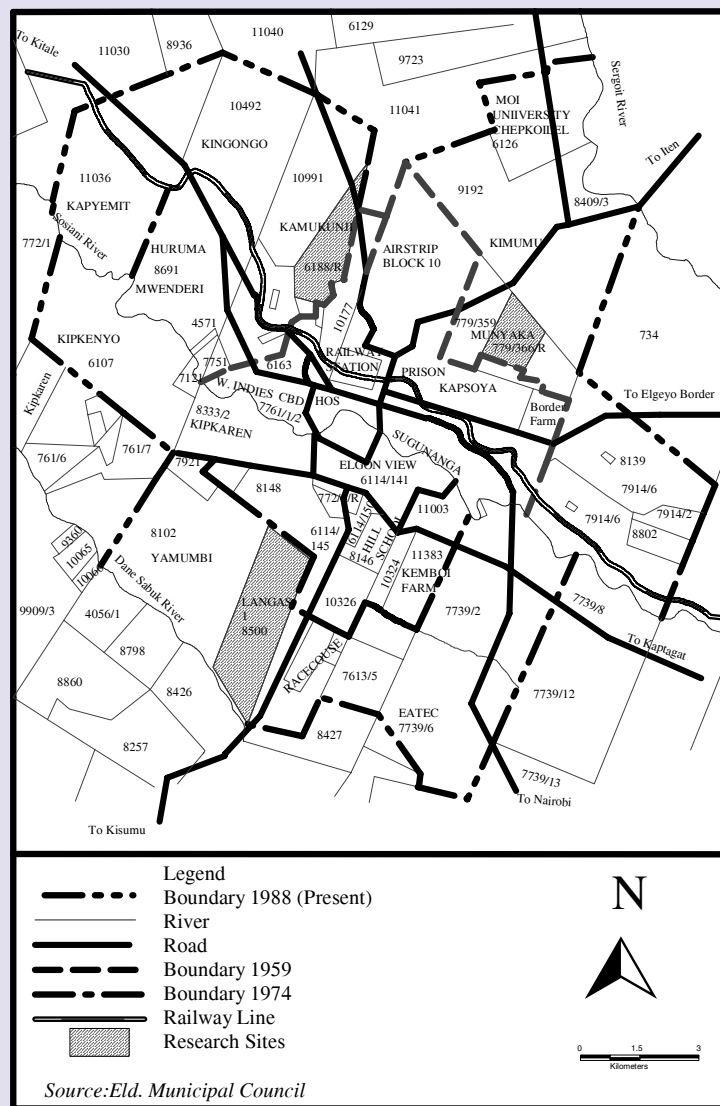
This research aimed to improve understanding of informal urban land development processes in Eldoret, Kenya. The objectives were:

- a) to analyse the magnitude and characteristics of informal land markets and delivery systems
- b) to enhance understanding of the nature and dynamics of the institutions that underpin and regulate urban land markets, especially those operating in informal land delivery systems
- c) to assess the strengths and weaknesses of alternative land delivery mechanisms, especially with respect to the extent to which they enable the poor and other vulnerable groups, especially women, to access land with secure tenure
- d) to identify and explore the implications for policy.

The main hypothesis of the research was that the success of informal land delivery systems in delivering large quantities of land for urban development can be attributed to their social legitimacy, but that the institutions that regulate transactions in and the use of land come under pressure during the process of urban development, resulting in changes, borrowing from formal rules and/or breakdown.

Detailed studies were carried out in three informally developed settlements in Eldoret between November 2002 and November 2003 (Figure 1). Langas and Kamukunji are of the same age, for both were acquired by land buying companies in 1965. However, the development of each neighbourhood has been influenced by different dynamics, shaping them differently. Munyaka was acquired in 1983 and is, therefore, the most recently developed site. All three sites were incorporated into the municipality during the 1988 boundary extension. A combination of research methods was used, including a review of secondary data, sample surveys of plot owners, extensive semi-structured interviews and focus group discussions. Further details are given in the Appendix.

**Figure 1: Eldoret Municipality with research sites**



The purpose of this policy briefing is to summarise the main findings of the study and to set out a number of key policy implications and recommendations. The first part will describe the context in which historical and contemporary land development in Eldoret has occurred. It will analyse the tenure and administration of land in the pre-colonial, colonial and post-independence eras. In the following section the development of Eldoret will be outlined, with a focus on land ownership, tenure arrangements and

alternative channels for the delivery of land for housing. The strengths and weaknesses of the land delivery mechanisms will then be assessed with respect to the provision of adequate suitable land for housing development and the effectiveness of informal institutions and formal rules in regulating transactions and disputes. Finally, the main findings will be summarised and some policy and administrative implications identified (see also p6).

## Policy implications

### *Formal land delivery systems*

- The administration of government land allocation should be simplified and made more transparent.
- The potential for government to play a greater role in supplying land for low-income urban households should be investigated.
- Procedures for subdivision, tenure registration and obtaining development permission should be simplified and speeded up.
- Survey approval, registration of land and the administration of government land allocations should be decentralised to the district and division levels.
- Documents commonly used in connection with land transactions in informal subdivisions should be recognised for administrative purposes by relevant government bodies, including the Municipal Land Control Board, to improve the potential for achieving well-planned urban residential development.

### *Informal land delivery*

- Informal urban land delivery systems should be tolerated and accommodated, but their strengths identified and enhanced and their weaknesses identified and addressed. Recognition and acceptance should, however, be designed so that, wherever possible, the poor are not further disadvantaged.
- The security of land rights holders can be enhanced by accepting documentation innovations developed and used in informal systems.
- Recognition of informal areas can contribute to service provision, through enabling cost recovery and local authority revenue generation. In order to produce these results, there is a need for the municipal council to maintain land registers in all unregistered areas, in order to capture unincorporated properties for the purposes of improving service delivery and tax collection.
- Most subdividers recognise the need for orderly layouts and land for public facilities but extending full development control to all informally developing areas is not at present feasible. In the interim, the layouts in informal settlements can be improved by providing guidance to subdividers, both inside and outside the urban boundary, together with strategic investments in major infrastructure, especially roads and water.
- The views of informal sector actors on planning standards should be obtained as part of the current review of planning standards.
- Incremental improvements to utilities and services should accompany subdivision, development and densification, based on consultation of all relevant actors to secure agreement on the services to be provided and standards to be adopted in return for resident contributions.

### *Access to land for women*

- Law and practice need to change to provide married women with secure rights to marital property, to ensure that all married women are consulted before land held in a husband's name can be sold, and to provide all women with the opportunity to acquire land in their own names should they wish to do so.



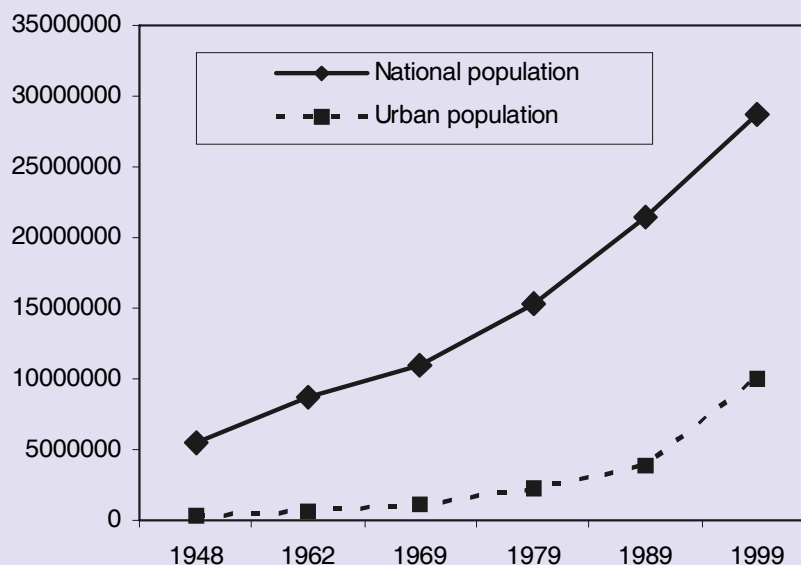
# Context

## The context for land development processes in Kenya

Only 20 percent of Kenya's land area has medium or high potential for agriculture. This area provides livelihoods for about 80 percent of the country's population of 28.7 million<sup>2</sup>. The total population increased from 5.4 million in 1948 to 28.7 million in 1999. In 1948 only five percent lived in urban areas, increasing to ten percent in 1969, 18 percent in 1989

and 35 percent in 1999. Although the national rate of natural increase slowed in the 1990s, urban areas continued to grow rapidly (Figure 2). In the past the numbers of men exceeded those of women in urban areas but today women constitute very nearly half of all urban residents<sup>3</sup>.

**Figure 2: The growth of national and urban population**



Sources: Central Bureau of Statistics, population census reports

Urbanisation means increased demand for urban land. The rate at which land is supplied for urban development through formal channels of land supply is too low to match urban growth and consequently, informal land supply channels have developed to fill the deficit in land supply. Between 40 and 80 percent of Kenya's urban population are now estimated to live in informal settlements, the proportion varying between different cities and towns<sup>4</sup>. According to the National Poverty Eradication Plan 1999-2015, the vast majority of the urban poor live in informal settlements, which are poorly serviced and badly drained, although not all residents of informal settlements are poor<sup>5</sup>. The municipalities and urban areas account for 23 percent of the national total of poor households.

### Tenure and administration of land in the pre-colonial and colonial eras

The conditions under which Kenyans held land in the pre-colonial era differed from those under which it was held in the colonial period and how it is held presently.

#### *Land in the pre-colonial era*

Land tenure systems in pre-colonial Kenya varied from one community to another and were influenced by such factors as climatic conditions, socio-political organisation, and the economic base of the ethnic groups<sup>6</sup>. They were governed by customary law,

or unwritten but commonly understood rules that dictated land use patterns and defined property rights.

Among the pastoralists (Maasai, Turkana, Samburu, etc), land was allocated not to individuals but to a section of the ethnic group (comprising one or more clans). Each section had its own geographic location and formed the basic unit of land ownership and resource utilisation<sup>7</sup>. Within this location, individual male members of the section had use rights to pastures, water and salt licks, among other resources. Women enjoyed use rights through their association with men.

Cultivators (Kikuyu, Kamba, Luhya, etc.), who mostly lived in the areas of high and medium agricultural potential, owned land communally. Land was allocated along clan lines and each clan distributed land to its male members. Although these men enjoyed use rights similar to those of private ownership, they could not alienate the land without the clan's approval<sup>8</sup>. However the precise arrangements varied from one ethnic group to another. For example, among the traditional Kalenjin clans do not have leaders and are dispersed and intermixed between various Kalenjin sub-tribes<sup>9</sup>. Thus traditionally, lineages are not developed and land is held not by descent groups or clans, but by families. Such land reverted to the relevant community if abandoned<sup>10</sup>.

In pre-colonial Kenya, therefore, women generally acquired use rights over land by virtue of marriage. However, in some communities, for example the Akamba and Kikuyu, women who never married or were divorced would be given a place to build and cultivate by their fathers or, if the father was deceased, by their brothers. These use rights were enjoyed as long as a woman maintained her status, but were ceded on marriage.

### ***Land in the colonial era***

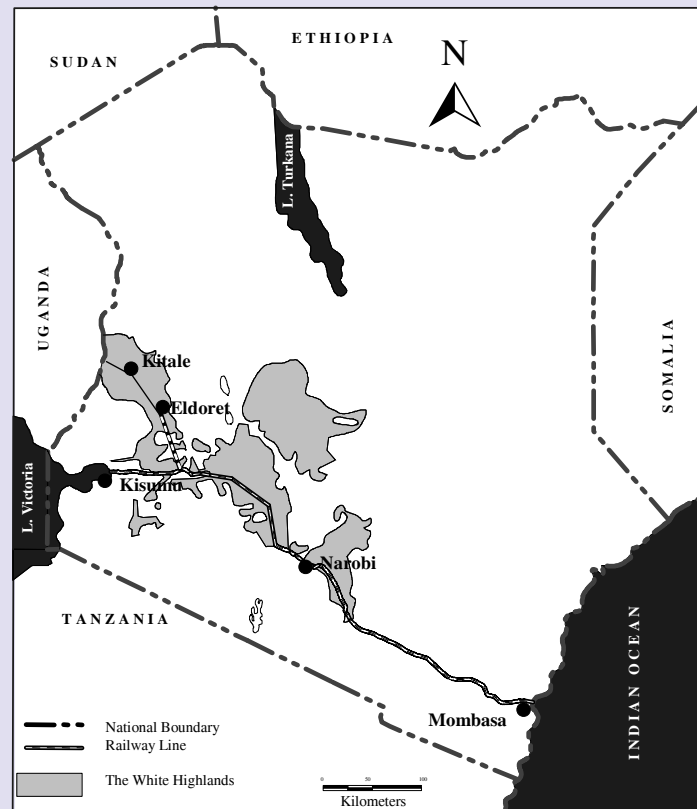
Colonialism in Kenya began in the late second half of the 19<sup>th</sup> century and brought with it various changes with respect to concepts of land ownership, land rights, methods of land acquisition and community control. Europeans brought the ideas of entitlements to land through ownership rather than use, and of individual rather than communal rights<sup>11</sup>. Formal state rules were introduced to govern the ownership and delivery of land from 1891 on, including the concepts of leasehold and freehold.

The process of European settlement and direct rule involved the evolution of a dual system of land tenure and administration. To provide a viable financial basis for colonial rule and justify investment in the railway from Mombasa to Kampala, over a third of the area with good agricultural potential was designated for European settlement: the 'white highlands' (Figure 3). In these areas, an individualised tenure system was introduced, to which was attached a high level of civil rights<sup>12</sup>.

The colonial administration located native reserves in areas deemed unsuitable for European settlement, drew their boundaries along ethnic lines and ensured by law that natives were not allowed to reside in any reserve other than the one allocated to their ethnic group. The establishment of Native Reserves eroded the customary structure of access to land, for in the reserves individual families rather than clan or kinship evolved as an important medium for acquiring land<sup>13</sup>. The boundaries of the reserves restricted people from acquiring land rights elsewhere and this increased pressure on the land, which customary tenure practices had addressed through out-migration whenever there was a shortage of land<sup>14</sup>.

By the 1950s, the native reserves were experiencing low productivity owing to overcrowding and overstocking on small agricultural holdings, eventually triggering a political uprising that was masterminded by the Mau Mau movement.

**Figure 3: The location of the former ‘White Highlands’ and Eldoret**



### *The Swynnerton Plan of 1954*

To address the problems and counter the unrest, the colonial government came up with a solution: land tenure reform in the reserves<sup>15</sup>. This reform was carried out through the Swynnerton Plan. The plan aimed to provide individualised secure tenure in order to consolidate fragmented holdings and stimulate farm investment, agricultural growth and the emergence of a land market<sup>16</sup>. The plan focused on increasing agricultural productivity and environmental and resource conservation. Implementation of which began in Central Province and the then Nyanza Province (the main African Native Reserves) and was later expanded nationwide.

The report saw the issue of access to land essentially in terms of tenure and the technology of production<sup>17</sup>. Security of tenure was to be created by the introduction of individualised title, the

arguments for which were a reaction to the African land tenure system, which was thought to have the following limitations:

- 1) It allowed an individual to own several parcels of land, often situated apart, leading to land fragmentation.
- 2) The communal nature of the tenure system was conducive to disputes and could not guarantee agricultural credit.
- 3) The inheritance procedures encouraged subdivision of holdings, leading to uneconomical units.

Technology was to be used to intensify agricultural production in African areas (trust lands)<sup>18</sup>. According to the plan, if these two strategies were adopted, Africans would be able to make sufficient returns on their small plots of land and would abandon their demand for redistribution of European-held land.

The report observed that, once the recommendations were implemented, former government policy (recognition of a tribal system of tenure) would be reversed and able, energetic or rich Africans would be able to acquire more land and bad or poor farmers would lose their land, creating landed and landless classes. To Swynnerton, this was a normal step in the evolution of a country<sup>19</sup>.

The main objective of Swynnerton Plan was, therefore, to introduce private property rights in land by, first, consolidating individual holdings and then registering them as freeholds. The process of conversion from customary tenure entailed, first, ascertainment (adjudication) of individual rights in land by recording a family head's rights over the several small land portions to which the family had use rights. This was followed by amalgamation (consolidation) of such portions into a single unit on which a title was registered. According to Kanyinga, this has remained the practice today, except that consolidation does not apply to all areas<sup>20</sup>.

As anticipated, implementation of the plan resulted in increased inequity in land distribution. The chiefs, those loyal to the colonial government, and the wealthy acquired more land, while other members of communities lost considerable amounts, particularly those who could not participate in the adjudication process for lack of financial means<sup>21</sup>. Thus many fighters for freedom who were in detention at the time of the reform's implementation lost their rights in the former communal land<sup>22</sup>. The problem of landlessness in post-colonial Kenya is, therefore, partly a colonial creation. The reform generated disputes rather than resolved them and to date, the level of disputes over ownership and boundaries exceeds the pre-reform one<sup>23</sup>.

The reform decreased many people's security in land, especially women, since the process of land registration did not recognise women's rights to land. It excluded women from the adjudication process and conferred title on male heads of household,

declaring them owners of family land. Thus most women do not enjoy absolute ownership of family land but have use rights, which they can exercise as long as the male household head has not disposed of the land.

Although land control boards were set up to check clandestine land sales in rural areas, as well as fragmentation and subdivision of land, there are many documented cases of men selling or mortgaging land against their wives' wishes, or worse still without consulting them<sup>24</sup>. The Land Control Act (Cap 302) of 1963, under which land control boards were established, covers only agricultural land, leaving non-agricultural land open to secret transactions by the title holders. No legal requirements/restrictions were imposed on the sale of land once title has been issued. For example, any leaseholder wishing to transfer the leasehold obtains consent to do so from the government (Commissioner of Lands) as the ultimate owner of the land and the family need not be involved. Even in the case of freehold land, the Land Control Act does not impose any legal requirement for title-holders to seek consent from their spouses/families before selling land. There is only an administrative arrangement that is a product of a more recent executive order issued by President Moi to the effect that title-holders should seek consent from their spouses and/or adult children before selling land.

Today land sellers are required to appear before a Land Control Board accompanied by their spouses and/or adult children. But experience shows that the extent to which this requirement is met remains uneven as land sellers have ways of circumventing it. For instance some title-holders collude with a relative or friend to mislead a Land Control Board that she is the spouse. The result has been insecure tenure for women and households in general, as men selfishly exercise the outright ownership right conferred on them by title documents.

### ***The struggle for independence***

The issue of land alienation, coupled with repressive British colonial rule, led to the rise of a nationalist movement (Mau Mau) for independence from 1952 to 1956. The background to the struggle for independence in Kenya can be summed up in the following words of an ex-senior chief:

*When someone steals your ox, it is killed, roasted and eaten. One can forget. When someone steals your land, especially if nearby, one can never forget. It is always there....*<sup>25</sup>

The struggle bore fruit on the 12.12.1963 when Kenya obtained political independence. However Kenya's first government perpetuated colonial arrangements regarding to access to land and its distribution, with wealthy and influential Africans replacing the former white settlers in enjoying privileged access to land<sup>26</sup>. In post-independence Kenya, it is the interests of public officials, influential politicians and the rich that have determined land policy<sup>27</sup>.

### **Post-independence changes in land policy, legislation and administration**

Although the struggle for independence revolved around issues of land, the first independent government retained and continued to use many colonial policies and land administration systems. The post-independence picture thus illustrates a significant degree of continuity in policy and practice and many unresolved issues related to land today originated in colonial policies. However, there have also been some significant changes.

#### ***Land redistribution: policy and practice***

The first initiative to establish resettlement schemes was by the colonial administration in 1961, in its efforts to protect the then 'white highlands' from

encroachment by indigenous Kenyans. Landless people (those who had been displaced during the land tenure reform in the reserves) and 'squatters' were resettled in various parts of the country. This programme was continued after independence. As provided for by the country's constitution, every landless Kenyan can qualify for land in a settlement scheme, irrespective of gender, tribe or one's origin.

About 40 percent of the former area of European mixed farms was subdivided for resettlement<sup>28</sup> although, in practice less than five percent of the population has benefited from the resettlement schemes, meaning that they did not meet their original goal of providing land to the landless. The remaining 60 percent of European mixed farms (some two million acres) were largely transferred as intact farms through sales, mainly to partnerships and limited liability companies. Although most such companies were set up by the wealthy, some contained a mixture of rich and poor shareholders and a few co-operatives were formed by farmers of more limited means<sup>29</sup>.

As a result of the policies adopted to redistribute European owned land, an elite class has developed which has privileged access to land<sup>30</sup>. Many people have been displaced from their land, sometimes violently, resulting in ethnic antagonism<sup>31</sup>. The land claims of displaced groups are periodically revived, giving rise to ethnic tensions and clashes with very serious social, political and economic consequences. For example, clashes occurred between 1991 and 1995 and again in 1997, especially in the Rift Valley and Coast Provinces. Thus issues of landlessness are far from being resolved<sup>32</sup>.

#### ***Forms of tenure***

Upon independence the government entrenched individual land tenure through the Registered Land Act (Cap 300). Under this Act, land held under customary tenure is transformed to individualised/private tenure. 68 percent of all land is trust land

over which smallholder rights can be registered: by 1995 5 percent had been adjudicated and registered, including most of the land in the high agricultural potential regions. In addition, 20 percent of land in Kenya is public land. Originally taken over by the crown, this land is now vested in the President, who has the power to alienate any interests or rights in it. Some of this power is delegated to the Commissioner of Lands. Trust land can also be alienated by County Councils. Thus, in addition to registration of rights held under customary tenure, the government, County Councils or individual freeholders can alienate land under either freehold or leasehold title. The maximum term of government leases is 999 years for agricultural land and 99 years for urban plots.

Five years after independence in 1968 was amended the Land Adjudication Act (Cap 284) to take care of group rights, especially in the extensive arid and semi-arid pastoral areas where individualisation of tenure was initially problematic. Group rights can be registered under the Land/Group Representatives Act (Cap 287), to maintain the status quo in these areas. While provision for registration of group rights was a positive step, in some of these areas individual titles have been and continue to be issued, with negative results.

A further post-colonial development was the Magistrates Jurisdiction Amendment Act of 1981, which vested in councils of elders the powers to hear cases related to the ownership of land, the determination of plot boundaries, claims to occupy or work land and trespass. This legislation in effect divested the Magistrates' Courts of the jurisdiction to determine certain land disputes, apparently following the realisation by government that the courts were unable to justly handle certain disputes, particularly those arising between registered proprietors and unregistered claimants. These examples illustrate recognition of the continuing relevance of and need for customary law<sup>33</sup>.

### ***Administrative issues***

There has been much interference by the provincial administration and other interested parties, such as politicians, in land matters, making application of the land legislation difficult. The current administrative and institutional arrangements are inappropriate with respect to land allocation. Too much power is concentrated in the executive and the office of the Commissioner of Lands. The result has been inefficiency in land administration and near collapse of land management.

### ***Development planning and regulation***

In the area of urban planning, independent Kenya used the colonial Town Planning Regulations and Land Planning Act until 1998, when they were repealed and replaced by the Physical Planning Act of 1996. The earlier pieces of planning legislation were not explicit with respect to who should carry out planning functions and are partly to blame for some of the urban planning problems that the country has experienced. The Physical Planning Act regulates land use through the policing powers of the state and by making specific provisions for the use and development of land.

### ***The Njonjo Land Commission***

Because of the large number of unresolved land issues, in November 1999 the government appointed a commission of inquiry into the system of land law (the Njonjo Land Commission), with the object of reviewing national land policy. Another commission, the Constitution of Kenya Review Commission (CKRC), was established to collect Kenyans' contributions to the concurrent review of the country's constitution. Like the Land Policy Commission, the CKRC visited every province to collect views from the public and land-related problems dominated many sessions.

The key findings of the Njonjo Land Commission are summarised below<sup>34</sup>:

- There is a lack of coordinated policy for the development, use and administration of either urban or rural land.
- Kenyans have lost confidence in the system of land administration owing to rampant grabbing of publicly owned land, forging of title deeds, concentration of power over land in the hands of the President and Commissioner of Lands, and abuse of that power.
- Customary laws have a great deal of influence on the management of land and indeed, many Kenyans recommended that customary laws be codified and applied in the management of land.
- Systems of land registration are deficient because there are too many registration Acts that are not well understood by those applying them, land survey costs are too high, the Department of Survey lacks capacity and too many charges are incurred when dealing with land, some of which are not official/authorised.

It recommended that:

- Sanctity of title should be tied to the legitimacy of the process of procurement.
- Land should be categorised into three tenure categories: public, commons and private. Trust land would become commons, which could be held under either customary or public tenure.
- A new institutional framework for land administration should be established to hold and manage land on behalf of all Kenyans. A National Land Authority would take over the functions of Ministry of Lands departments: Survey, Physical Planning, Lands, and Adjudication and Settlement. District Land Authorities would enable the devolution of land administration and play an important role in issues of inheritance, dispute resolution and land adjudication. The commission proposed that such authorities should be entrenched in the constitution and their members granted security of tenure to enable them to resist political interference and manipulation.

It is clear from the findings and recommendations that there is a call to revert to customary land law, which the colonial tenure reform unsuccessfully tried to replace.

Following a change of government in December 2002, the Njonjo report was made public (in May 2003) and soon afterwards, another Commission of inquiry chaired by Ndungu was appointed (in July 2003) to inquire into irregular land allocations. The Commission was to help the government to determine the extent to which lands dedicated or reserved for public purposes had been irregularly or unlawfully allocated.

The Commission was then required to recommend measures for the recovery and restoration of this land to its proper title or purpose. It was also expected to suggest measures for the prevention of such illegal or irregular allocations in the future. The Ndungu Commission of Inquiry presented its final report to the head of State on 2 July, 2004 but not immediately made public. While presenting the report, the Commission chairman pointed out that, due to massive grabbing of public land during the previous fifteen years, some 200,000 illegal titles had been registered, which should be revoked<sup>35</sup>.

# Eldoret

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This section introduces the town of Eldoret. It describes the development of Eldoret from its inception during the colonial era to date, discussing the various land delivery channels through which land is supplied for urban development in the town.

## **The location and emergence of Eldoret**

Eldoret is located in the high-agricultural potential highlands of Uasin Gishu district in Rift Valley Province as shown in Figure 3. Located about 312 km north-west of Nairobi on the main Kenya-Uganda highway and railway line, it is the district headquarters for Uasin Gishu District. The origin and subsequent development of Eldoret town has to be seen within the context of Kenya's agrarian economy<sup>36</sup>. It was established in 1908 as an isolated colonial post office serving the European settler farming community in the surrounding area. It developed on a farm demarcated for settler use, which turned out to be unattractive for farming and so was reserved for government use<sup>37</sup>. Other essential services soon followed, including a bank and a few stores<sup>38</sup>.

By 1912, the small settlement was officially gazetted as a township occupying an area of about 11.2 sq. km. At that time, the town had little physical development save for a row of offices and shops constructed of stone or mud walls and timber roofs. Development in the region and the growth of Eldoret town remained slow until 1924, when a section of the Kenya-Uganda railway passing through the town was completed. The railway and permanent settlement in Uasin Gishu District by Boers from South Africa were responsible for the town's growth. In 1928, the township was elevated to a Municipal Board and the municipal boundary extended to cover 25 sq. kms.<sup>39</sup>

## ***Post-colonial Eldoret***

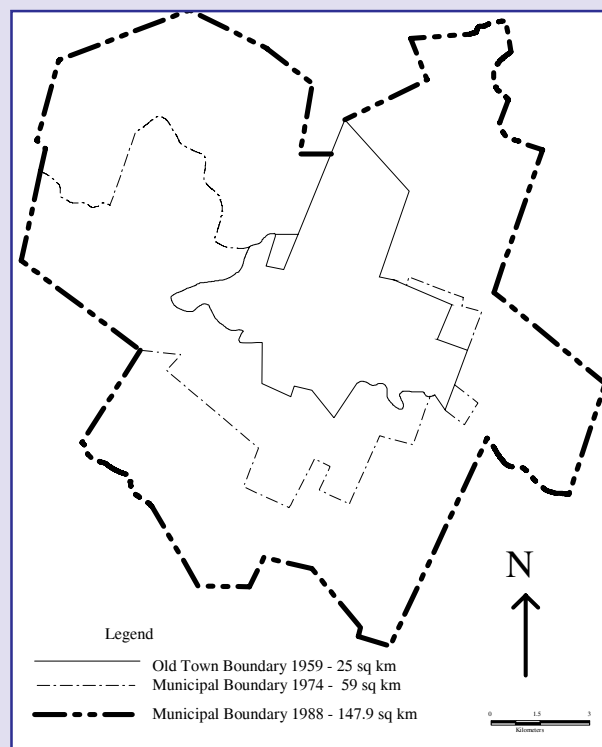
A number of factors have influenced the post-colonial development of Eldoret. Owing to its rich agricultural hinterland and rail transport Eldoret was an important agricultural service and agro-processing centre by the late 1970s: to the early industries processing farm produce (maize, wheat and milk) others had been added (tanning, textiles etc) and an agricultural service industry was well established. In the 1980s Eldoret was selected as a growth centre and thus benefited from infrastructure investment to enable it to perform its intended role as a regional centre for the western Kenya region. In the 1990s, the town benefited from the support it enjoyed from the then political establishment. In addition, Eldoret has had relatively sound management at the council level and this has attracted investment.

Today, Eldoret is the fifth largest town in Kenya after Nairobi, Mombasa, Nakuru, and Kisumu and is a major dynamic regional administrative, commercial, educational and industrial centre. It is an important storage, processing and distribution centre for agricultural produce from its hinterland. It plays a significant role in the wholesale and retail trade in agricultural commodities, sale and servicing of farm tools and machinery, and supply of other agricultural inputs. It offers administrative services, banking services and entertainment. During the period between 1994 and 1999 Eldoret recorded the highest wage employment growth rate in the country (45 percent), which was attributed to increased activities in the manufacturing and construction sectors<sup>40</sup>. In addition, the town has a vibrant informal sector that offers employment to a large majority of its residents. However, since the mid-1990s, some of the town's industries have experienced mixed fortunes. The wattle tanning industry closed down owing to the investor's withdrawal from agro-business concerns. Two textile-processing industries also closed down, although one re-opened recently under new management, and the only dairy processing factory was closed, perhaps due to mismanagement. It also has recently re-opened.



Eldoret has been growing rapidly in the past few decades. This growth is reflected spatially and through the town’s population trends. The town’s boundaries were extended from an area of 25 sq. km. to include 59 sq. km. in 1974, and again in 1988 to include 147.9 sq. km. Figure 4 shows the various Eldoret municipal boundary extensions. The latest boundary extension brought into the municipality large tracts of agricultural land, most of which have been undergoing subdivision, either legally or illegally. The town’s spatial growth seems to follow the main roads radiating from the town centre towards the expanded municipal boundaries. Previously the town’s physical expansion along the Eldoret – Nakuru road to the east of the municipality was hampered by the existence of a large farm, the East African Tanning Extract Company (EATEC). However, when the company withdrew from agrobusiness in 2000, it subdivided and sold the land. This area is within the municipality, and is now being urbanised, resulting in the town’s expansion in that direction.

**Figure 4: Eldoret boundary extensions**



**The population of Eldoret 1948-1999**

| Year | Population | Average inter-censal growth rate<br>Percent per annum |
|------|------------|---|
| 1948 | 8,193      | -   |
| 1962 | 19,605     | 6.2   |
| 1969 | 18,196     | -1.07   |
| 1979 | 50,500     | 10.2  |
| 1989 | 111,882    | 8   |
| 1999 | 197,449    | 4.9   |

Source: CBS, Population Census Reports for 1948; 1962; 1969; 1979; 1989; 1999.

Eldoret’s population increased from 8,000 in 1948 to 197,000 in 1999 (see table). This growth is attributable to many factors. As already mentioned, the town’s boundaries were extended in 1974 from an area of 25 sq. km to 59 sq. km., and again in 1988 from 59 sq. km to cover an area of 147.9 sq.

km. (see Figure 4). The 1988 boundary extension brought into the municipality farms such as Ya Mumbi, Kipkenyo, Maili Nne, Kamukunji, Munyaka, Kimumu, Langas, Kapyemit and part of the formerly EATEC-owned farm. Although some of the people living on these farms may have had

livelihoods linked to the urban economy, they were not considered urban during earlier population censuses, since the areas in which they lived were outside the jurisdiction of the Municipal Council. In addition, there has been in-migration to Eldoret from other parts of the country, other towns and the rural areas in search of economic opportunities. The influx of people into the town has also been occasioned by political instability in the surrounding farming areas, particularly the political and land conflicts that occurred in the 1990s. Finally, Eldoret has experienced natural growth. The population of Eldoret is currently estimated to be growing at 4.9 percent per annum, almost double the national growth rate of 2.9 percent per annum. This is, however, a decrease from the previous growth rate, perhaps due to the closure of a number of factories in the mid-nineties that saw many retrenched employees leave the town.

## Changing patterns of land ownership

Land within the original municipal boundary was government land. But subsequent municipal boundary extensions brought into the municipality privately owned agricultural land. The colonial landownership pattern in the area surrounding the town comprised large tracts of land owned by a few white settlers. Upon independence, farms were acquired by the government, land-buying companies, cooperative societies, self-help groups or individuals. Most of the land within the town and its hinterland is, therefore, privately-owned and each municipal boundary extension brings privately owned land into the municipality. Land ownership within Eldoret can be categorised as follows:

### *Government-owned land*

Land owned by the government includes land already in use or reserved for future use by the government and land for public use. It is

administered by the Commissioner of Lands (the custodian of all government land). It constitutes only a small proportion of the total land in the Municipality (Figure 5). Although most is developed, there is still some undeveloped land, mainly earmarked for industrial development. The government can enhance its stock by acquiring land, if necessary compulsorily, as provided for by the Land Acquisition Act. Land has been acquired on several occasions in Eldoret for specific projects such as sites and services schemes.

### *Council-owned land*

Eldoret Municipal Council owns only a small portion of the total land in the municipality. It includes some undeveloped land earmarked for public utilities, especially health facilities, and for residential development.

### *Leasehold*

This form of land tenure includes land that is privately leased from either the government or the council for a lease term normally of 99 years or less.

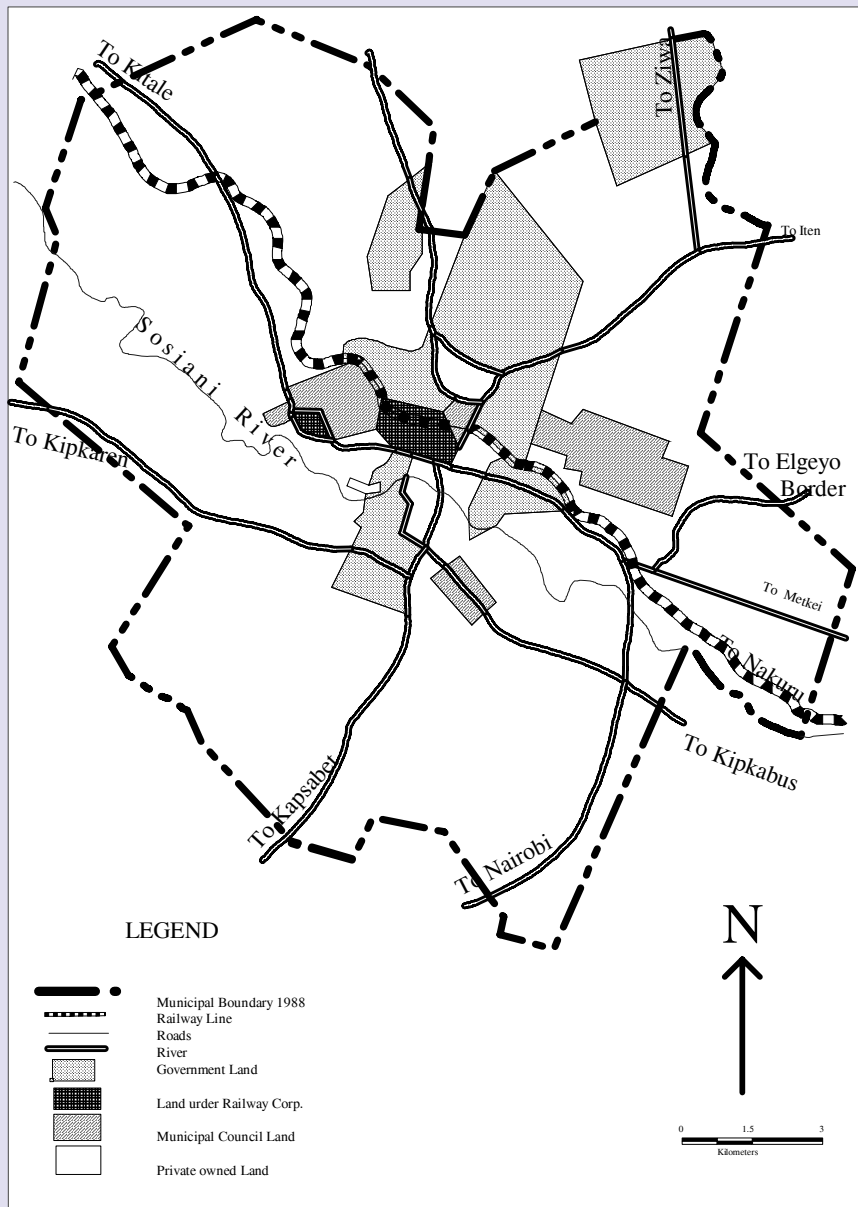
### *Freehold*

The freehold category of ownership covers more than half of the municipality, because the municipal boundary extensions have incorporated privately owned (freehold) agricultural land into the municipality. Some of the privately owned land, especially in the extended area, is still used for agricultural purposes but increasingly it is being converted to residential and commercial uses. The residential development includes, among others, the fast-growing informal/unplanned settlements at Langas, Kamukunji, King'ong'o, Maili Nne, Munyaka, Ya Mumbi and Kipkenyo, all of which have inadequate basic services and community facilities.

### ***Kenya Railways Corporation Land***

Land owned by the Kenya Railways Corporation includes the railway reserve and areas served by railway sidings, including the old industrial area next to the railway station.

**Figure 5: Land ownership patterns within Eldoret municipality**



# Land Supply

## Making land available for urban use in Eldoret

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### Formal land supply

Formal land delivery channels include government land allocation and formal purchase of land.

As noted above, Kenya's Constitution empowers the president to alienate government land and allocate it to individuals, groups, institutions and corporate entities. As the custodian of all government and trust lands, the Commissioner of Lands allocates such land to applicants for various uses, as provided for in physical development plans. The law requires that the Commissioner of Lands advertise all government land available for alienation in the Kenya Gazette and two daily papers. Applications for government land can either be made directly to the Commissioner of Lands or through the Chairman of the District/Provincial Plot Allocation Committee. The flow diagram (Figure 6) illustrates the various steps that an application should follow.

Many factors influence how long the process of land allocation takes. If the applicant is keenly following the application at each stage to ensure that it moves fast, then the process can take about a year. If not, then the whole process can take several years to complete. Plan approval and survey are centralised, encouraging inefficiency and discretion/corruption. Approval of survey may take about a year if undue influence is used, otherwise it can take several years.

In addition, the publicity about available public land and the prepared Part Development Plans is inadequate for three reasons: first, high levels of illiteracy exclude many people from being reached; second, few Kenyans can afford to buy newspapers daily, given high levels of poverty; and third, even those who are literate and buy newspapers may not notice such announcements because they are usually not placed on popular pages. In the absence of advertised plots people may apply to the chairmen of Plot Allocation Committees either at district or provincial level. This method too has shortcomings, for how do the would-be beneficiaries know the

land is available? Or that the government allocates land? This enables those with privileged access to knowledge about land available for allocation and the required process to benefit.

In practice, plots for allocation are often not advertised and this excludes many would-be applicants, as they do not get to know about the availability of such land. In addition, application alone is not enough to access land. As Macoloo and Maina observe, access to land in Kenya is often associated with access to power<sup>41</sup>. Many plot owners in the informal urban settlements of Eldoret do not know that the government allocates land. The few who were aware of this possibility said that they did not apply to the government because they lacked the necessary contacts to facilitate such an allocation. One respondent remarked "*Who knows me? Where do I start? How do I know the plots are there in the first place?*" According to findings of this research, the people gaining access to land allocated by the state have (or are perceived to have) socio-economic and political networks that few Kenyans enjoy, thus locking out the majority from benefiting from such allocations.

Most of the land released onto the formal land market is titled. It is sold at the prevailing market price and so the majority of those who obtain access to land through the formal land market are those with relatively high incomes from formal and reliable sources.

**Figure 6: Government land allocation procedures**



Source: Own construct based on the existing land allocation procedures as in Ministry of Lands and Settlement, 1996; Physical Planning Act of 1996.

## Informal land supply

In this sub-section informal land delivery channels are discussed, with a view to highlighting the characteristics of the land in question and the actors involved. The section traces the origin of some of the major players in informal land delivery in Kenya (land-buying companies) and their role in Eldoret. Informal land delivery channels in Eldoret are characterised by the following:

- i) The land in question is titled but subsequent subdivisions are not.
- ii) The transactions may initially be informal only to be turned formal at a later stage.

### *The origins and activities of land-buying companies in Kenya*

The origin of land-buying groups in Kenya can be traced to the period immediately after independence. When Kenyatta took over the country's leadership from the colonial administration he told Kenyans that, contrary to their expectations, there was no land for free. Thus the first government encouraged African Kenyans to pool their resources and collectively purchase the former white settler farms<sup>42</sup>. The result was the formation of numerous land-buying groups/companies/co-operatives.

The land-buying companies and co-operatives were meant to help poor peasants access land. Some of them were registered - between 1963 and 1983 24,000 land-buying groups were registered under the Co-operative Societies or Company Acts. The minimum number of people required to form a co-operative is ten while for a company it is two. Both are corporate entities and members become shareholders. Registration of companies in Kenya is easy, fast and fairly affordable. It requires 1% of the nominal capital (Ksh 2,010) and a memorandum and articles of association (a legal document usually prepared by a lawyer). Once these conditions are met, it takes two weeks or less. The practice was

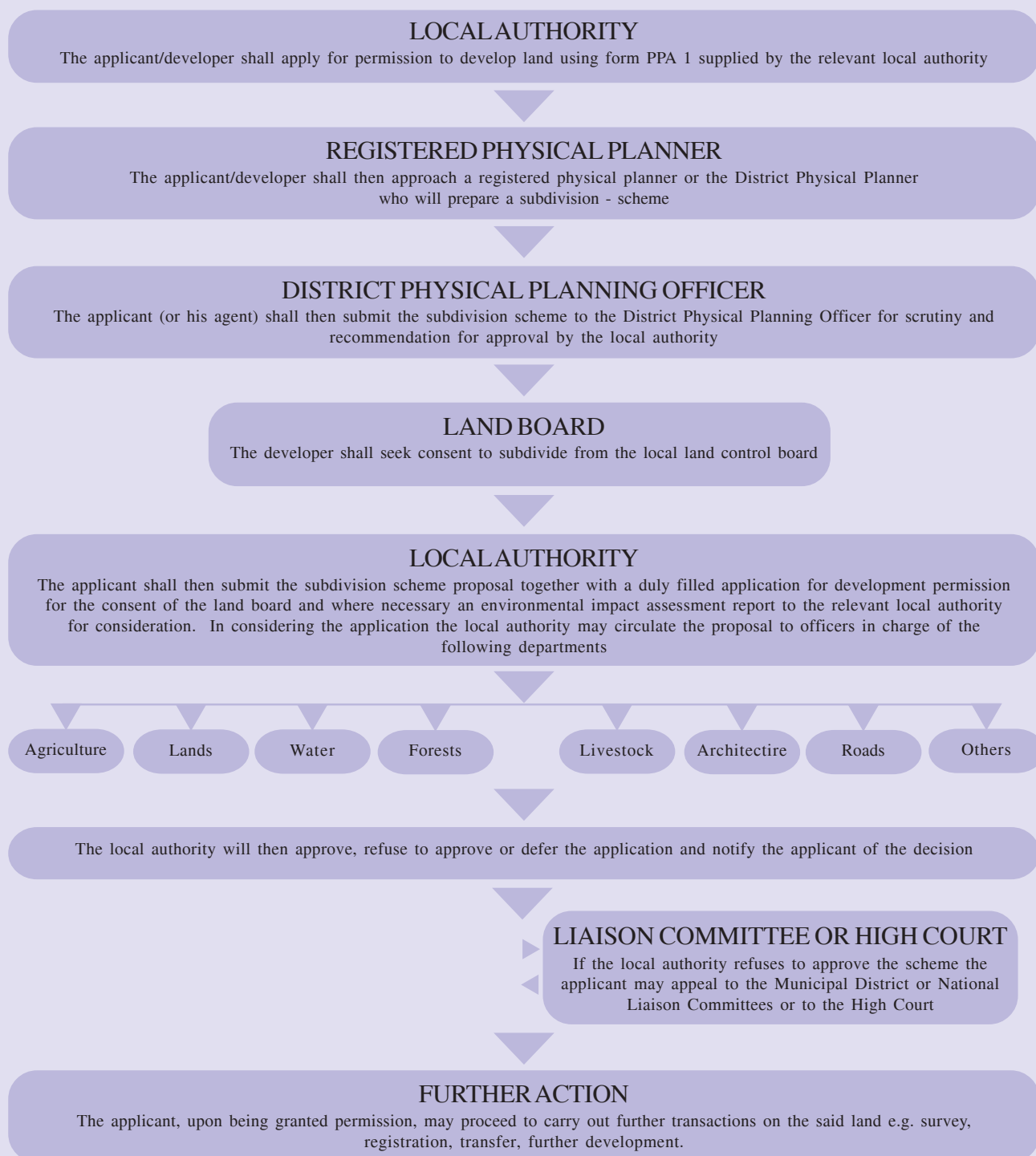
and still is that a land-buying group comprising a membership of any size is formed, in some cases once land has been identified. Each member contributes shares according to his or her financial ability and, upon purchase of the farm, it is subdivided on the basis of a shareholder's contribution. It is this flexibility that allows low-income people to benefit from these groups.

Many land-buying companies in rural areas were responsible for unofficial land fragmentation. Upon acquiring a large farm it was unofficially subdivided among the shareholders of the company. The initial subdivision was into medium sized holdings of 20-100 hectares. Over time these parcels were often further subdivided into smaller plots of 10-20 hectares and again into still smaller units<sup>43</sup>.

### *Land-buying companies and access to urban land in Eldoret.*

All the land bordering the plot (no. 64) on which Eldoret was established belonged to settler farmers. Immediately after independence in 1963, the land market in Eldoret and neighbouring areas became very active because white settlers were disposing of their land before leaving the country. In addition, settlement schemes were established. Initial subdivision took place while the farms were outside the municipal boundary, theoretically under the control of the relevant land board. When the areas were absorbed into the municipality in 1974 and 1988, the regulatory requirements became more complex. Not only were these farms, and thus subject to subdivision control by the land board, but also the local authority had general subdivision and development control powers within its boundary. The process for obtaining subdivision permission is shown in Figure 7 and this has to be followed by survey, registration, transfer and obtaining development permission.

**Figure 7: The formal process of obtaining permission for subdivision of freehold land within a municipality**



Source: Physical Planning Act 1996.

The procedure is long and costly in terms of time and money as, besides the numerous steps reflected in the diagram, the applicant has to pay various fees in a number of offices. In addition, the Municipal Land Board only accepts applications for subdivision on titled land. Where an initial subdivision was informal, land changed hands on the basis of letters of agreement. Although in the 1980s the Municipal Council decided to recognise letters of agreement for the purposes of exercising development control and revenue generation in informally subdivided areas, the Land Board will not accept letters of agreement as proof of ownership.

As a result of these complex procedures and stringent requirements, much of the subdivision of land purchased legitimately by the land-buying groups and most subsequent transfers of subdivided plots have been informal. As demand for residential land continued to mount, smallholdings in areas such as Langas, King'ong'o, Munyaka, Yamumbi, Kimumu, Kamukunji, Kapyemit and Maili Nne were further subdivided into plots of between 0.1 hectare and 1.0 hectares<sup>44</sup>. In some of the areas, for example Langas, the subdivision has been so intense that the resultant sub-plots are an eighth of an acre (506 sq m). Indeed in Munyaka, some plots are smaller, measuring a sixteenth of an acre (255 sq m). There is clearly a demand for small plots, even though the subdivisions do not satisfy formal standards and the areas are not fully serviced, using shallow wells for water and pit latrines for sanitation.

The motives of members of land-buying groups and companies vary: some are seeking land on which to build their own houses, some regard the purchase as a business venture and intend from the outset to subdivide and sell the land rather than settle on it themselves, while others have a mixture of motives. A distinction has been drawn in this research between those who have regularised their ownership of an individual plot (owners) and those who do not have title (rights holders). Some of the companies and

shareholders employ planners and surveyors to prepare a layout before the area is subdivided and sold. Planning and surveying work has, in the past in some of the areas, been done by unqualified personnel such as retired land adjudicators or land survey, planning or public health assistants. Although the services provided by these quasi-professionals are more popular than those provided by professionals, who charge more and may insist that formal standards and procedures are followed, the layouts prepared may not comply with formal planning standards.

Some land-buying companies, shareholders and purchasers apply for regularisation, sometimes many years later. Where the subdivisions comply (more or less) with the formal requirements and there are no disputes over land ownership, the subdivision can gain retrospective approval and subsequent transfers and current ownership can be registered. Such regularisation may be sought for a whole area or a single plot. At this stage, the informal turns formal and the illegal becomes legal. However, many subdivided areas cannot be regularised, for a variety of reasons.

In 1998 there were said to be twelve land-buying companies in Eldoret<sup>45</sup>. It is difficult to establish the total or current number of land-buying groups because some are dissolved once land is acquired and subdivided amongst the original shareholders and many of them are un-registered. Nevertheless, it is clear that they deliver the bulk of housing land in the municipality. Before assessing the strengths and weaknesses of these land delivery processes, the case study settlements will be described in more detail.



## Subdivision and infrastructure provision in the case study settlements

The three study sites were acquired from white settler farmers by different land-buying groups. Their origins, the subsequent process of subdivision, the extent to which infrastructure and services have been installed and current physical characteristics of the areas are described below.

### Kamukunji

Kamukunji is located in the northern part of the municipality about 6km from the town centre and borders the town's main industrial area. At the time the farm was acquired it was outside the municipality and it remained so until the 1988 municipal boundary extension. The area of 585 acres (237 hectares) was purchased from a white farmer in 1965 by a Kikuyu land buying company, the Uasin Gishu Farmers Land Buying Company (UGFLBC), comprising 100 members. The membership mainly comprised migrants from Central Province who had worked in large settler farms during colonial times. The migrant workers lived in appalling conditions in council houses in Eldoret West, adjacent to Kamukunji. The inadequate quantity and size of their accommodation was one of the factors that motivated them to purchase the Kamukunji farm. Members contributed Ksh 900 per share. At the time, the minimum monthly wage was below Ksh 100 and that is what the majority of African Kenyans earned.

### *Subdivision of the farm*

Part of the farm (about 100 acres or 41 hectares) is fairly flat and low lying, while the rest is located above a small steep escarpment and is rocky in parts. The 100 acre portion was identified for residential development and subdivided into about a hundred 50 x 100ft (15.24 x 30.48 metre) plots for the members. The higher part was also subdivided, but into 5 acre (2 hectare) land parcels, so that each member got a 50 x 100 ft plot for housing development (*Kijiji*, i.e. village) and a 5 acre parcel for farming (*Shamba*, i.e. farm) locally known as *Mashambani*. The 50 x 100 plots are presently densely developed and do not seem to have undergone any further subdivision. This portion is already consolidated, with houses of varying quality – while some are of permanent materials, others have mud walls and are in poor condition. The 5 acre portions that were originally for farming (and some people still use them for that purpose) have started to undergo subdivision. Some of the subdivisions are done informally while others are formal depending on the parties involved.

Subdivision of the farm was done according to the number of shares a member had bought. Most of the members had full shares, meaning that they got a residential plot and a portion for farming. The company hired a private surveyor who did the demarcation. Beacons were put in place to mark all the plot boundaries. Given the topography of the area, the company decided to number all the plots after demarcation so that the members could ballot to ensure a fair distribution of plots. Thus the plots were already demarcated at the time the members were shown their plots.

Settlement began in 1965. At the time the shareholders had payment receipts, ballot numbers and share certificates. They did not obtain title deeds until 30 years later in 1995, when the settlement was regularised. Some of the owners have not bothered to collect their title deeds, as the absence of titles does not prevent them from living on and developing their plots.

### ***Infrastructure and services***

At the time that development of the residential section began in 1965, there were no services in the area. The first settlers got water for domestic use from a well in a neighbouring land parcel. As more shareholders settled, some dug shallow wells which are still in use although a number of plots now have piped water.

During the World Bank funded Third Urban Project, Kamukunji was selected for upgrading and a few services were introduced,

including piped water, electricity, solid waste collection, tarmacking of the main street and construction of storm drains. Upgrading took place in the 1980s and ended in the early 1990s. The municipal council was loaned money for the project by the World Bank and in turn was to recover the costs from the beneficiaries by apportioning them between plot owners<sup>46</sup>. However not all the plots are serviced. The piped water, electricity and recently a sewer were installed in the main street, which was considered to be the only road into which such services could be squeezed. Thus only 35 percent of the sampled plot owners have an electricity connection. Although the settlement has a grid pattern layout, according to the formal service providers most of the access roads are too narrow to accommodate trunk services.

The *mashambani* (farm section) does not have services. There is no piped water, or electricity and access roads are mostly inadequate.



*The original residential portion of Kamukunji*



*Subdivision in the mashambani area of Kamukunji*

## Langas

Langas is located in the southern part of Eldoret Municipality adjacent to the Eldoret-Kisumu road, about 7 km. from the town centre. The area (measuring 1,050 acres or 425 hectares) was acquired in 1965 by a Kalenjin land-buying company from a white settler. The Langas land-buying group was not registered at the time it purchased the farm but kept a register in which the names of the members were recorded. The minimum contribution was Ksh 2,000 (the value of twenty acres of land) and members contributed what they could afford. In addition, a loan was secured from the Agricultural Finance Corporation (AFC) using the title to the farm as security. The farm together with the assets (vehicles, equipment and 101 cattle) cost about Kshs 170,000. The group comprised 53 men but title was registered in the names of two members/

officials. The seller had a contract to supply fuel wood to a factory in Eldoret and passed it on to the land-buying group. The contract and the cattle provided sources of income.

However, after some time some of the members felt that the officials were misappropriating the proceeds and this led to ten members withdrawing their membership, leaving the group with 43 members. The ten members that withdrew their membership were refunded their shares. The 43 that remained did not stay together for long, as three officials were thrown out of the group for alleged misappropriation of the farm's funds. According to them, they were not refunded their shares. However, the names of the original two remained on the title deposited with the AFC. This, according to a key informant in the camp of the three officials, was the genesis of the protracted dispute over the ownership of the farm

between two officials in whose names the farm is registered and their partners and the other 40 shareholders. According to a key informant from the camp of the 40, the complainants were refunded the equivalent of their shares.

The Langas land-buying group was later registered as Langas Farm Limited (LFL) by the 40 shareholders, who repaid the AFC loan and had the title discharged to them, although quite how is unclear as it did not bear their names. In 1974 the farm was informally subdivided amongst these shareholders in proportion to each member's shares. They were issued with share certificates, many sold plots and housing development commenced. The 40 members then decided to engage a government surveyor to formalise the subdivision.

However the two ex-officials in whose names the farm is registered sought and were granted a court injunction stopping the intended survey, arguing that they had never been refunded their shares, and that they are the registered owners of Langas farm. They also went to collect the title document from AFC. When they were unable to obtain it, they reported its loss to the Commissioner of Lands and were issued a replacement after the expiry of a 30-day notice, usually posted in the *Kenya Gazette*. Neither the 40 members or their lawyer saw the notice. Thus according to informants, currently the farm has two titles in the names of the same two ex-officials.

The uncertainty over ownership of the title does not seem to have interfered with land development. Owing to its proximity to Eldoret, the area attracted low-income

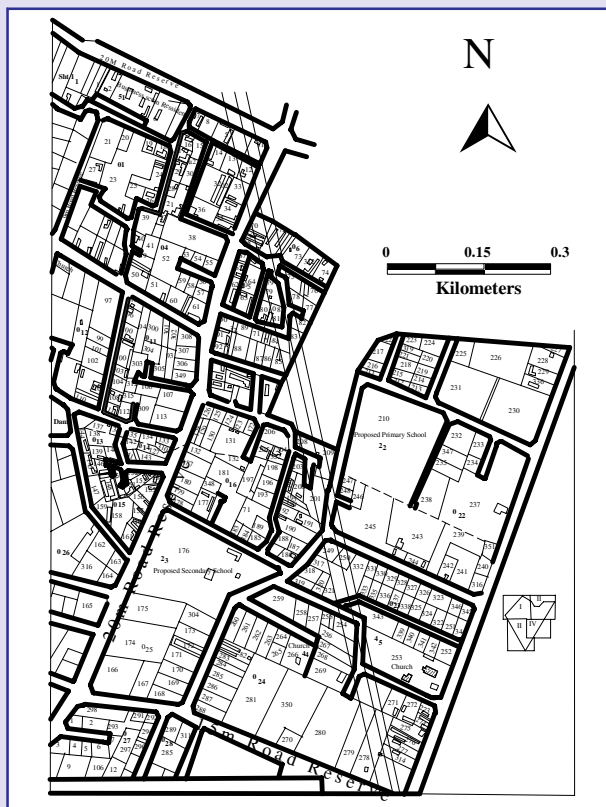
housing developers, leading to further subdivisions that are still continuing. To date there are over 3,000 plots in Langas, none of which is titled. It is a mixed-density settlement with a population of over 26,000 people in 1999. Although much of the area has been subdivided in a fairly orderly fashion with access ways, some of the subdivisions are not done in an orderly manner and the resultant sub-plots and circulatory system are irregular, with some of the plots lacking access. Because of the magnitude of the development that was taking place, the Eldoret Municipal Council chose part of the farm (Phase 1) for upgrading during the World Bank funded Third Urban Project in the late 1980s. The planned street layout to be achieved during upgrading for a portion of the area is shown in Figure 8.

### ***Infrastructure and services***

At the time that settlement in Langas began, there were no basic services. Early settlers dug shallow wells. During the Third Urban Project, Phase 1 of the settlement benefited from the provision of municipal piped water, electricity, a survey of the plots, solid waste management, and tarmacking of the loop road linking the settlement with the highway.

Piped water is obtained from kiosks, where residents buy it from licensed vendors, or connections to individual plots. However, the coverage appears to be low, as only 42 percent of the 100 sampled plots (none of which still belong to original shareholders) have piped water. Similarly, electricity coverage is low, with only 25 percent of the plots having a supply. The inadequacy of service coverage was a major issue of concern in the Langas focus group discussions.

**Figure 8: Upgraded layout for a section of Langas**



## Munyaka

Munyaka is located on the northeastern side of Eldoret town about 5 km from the town centre. It is a fairly recent settlement and is small compared to Kamukunji and Langas. It has developed on part of a 300 acre farm owned by a white settler. This farm was purchased by three individuals in the 1960s, each buying 100 acres (40.5 hectares). In 1983, the 100 acre portion that became Munyaka was purchased from the individual who had initially bought it by a 5-member self-help group, as a business venture. Later the five members subdivided the area into small portions, all of which were sold and buyers started settling on the farm from 1984. The self-help group that bought Munyaka later purchased the Mwitirithia farm adjoining the

area to the south and changed its name to Munyaka-Mwitirithia Land Buying Company.

### *The subdivision*

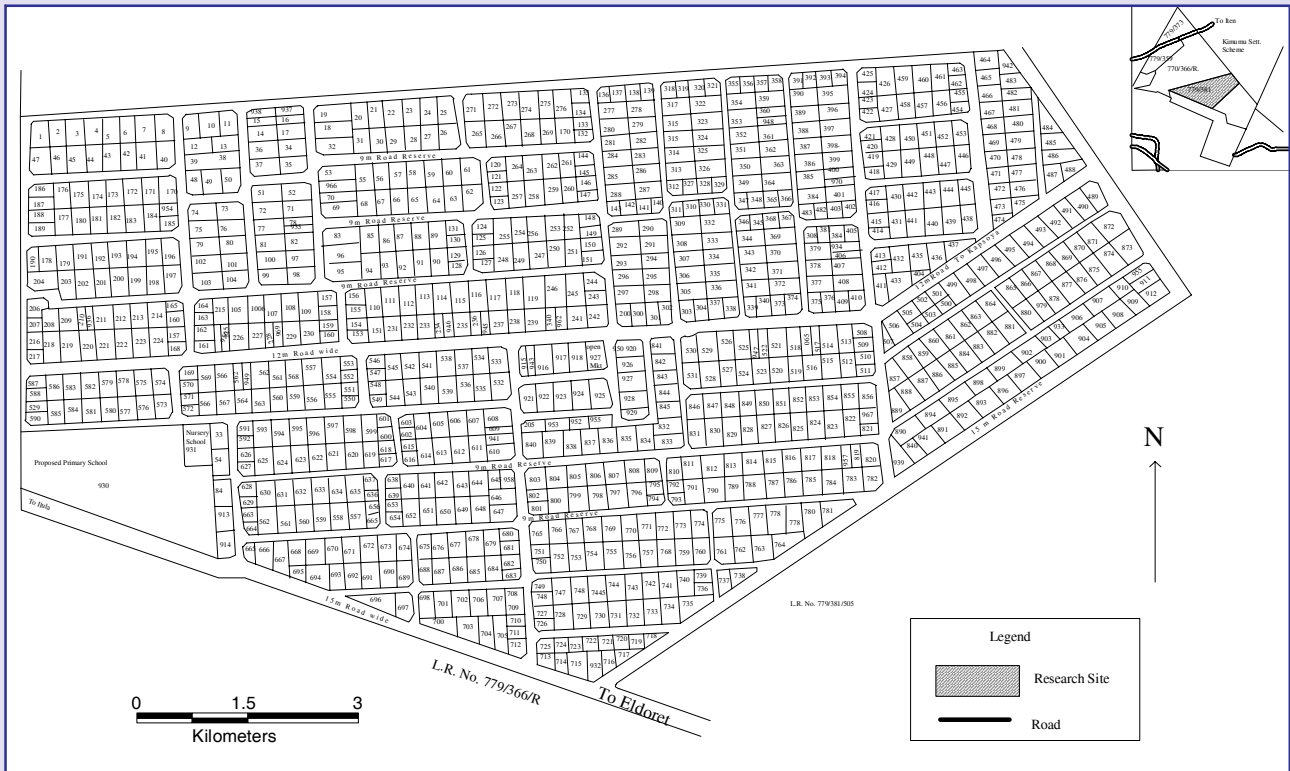
The self-help group subdivided Munyaka farm into 969 plots measuring about 50 x 100 ft (46.5 sq m) (see Figure 9). The resultant layout is regular. Development was slow initially, but gained pace as a result of the infamous 1991/2 ethnic/land conflicts, as immigrants from areas affected by the clashes purchased plots on which to live. As a result, the price of land rose from the initial plot price of Kshs 7,000 (for those buying from members of the 5-member self help group) to Kshs 50,000 or more. The plots are not titled because the subdivision has not been regularized, for two main reasons.

First, although according to the rights holders they have made contributions to the cost of regularisation, funds are currently insufficient to finance the process, and the area committee has not explained what has happened to the funds. Second, during subdivision of the farm, official planning standards were not met so that inadequate land for community facilities such as open spaces and health facilities was set aside. Most of the plots are developed and according to the census, Munyaka had a population of about 4,000 in 1999.

### *Infrastructure and services*

At the time buyers started settling in Munyaka there was no piped water and people relied on a common well on the southern side of the settlement. Currently piped municipal water is supplied through individual connection to some plots and there are also taps run by water vendors. The settlement has no electricity, although a few relatively rich rights-owners (14 percent) use solar energy. None of the roads leading to the settlement or those within it are tarmacked.

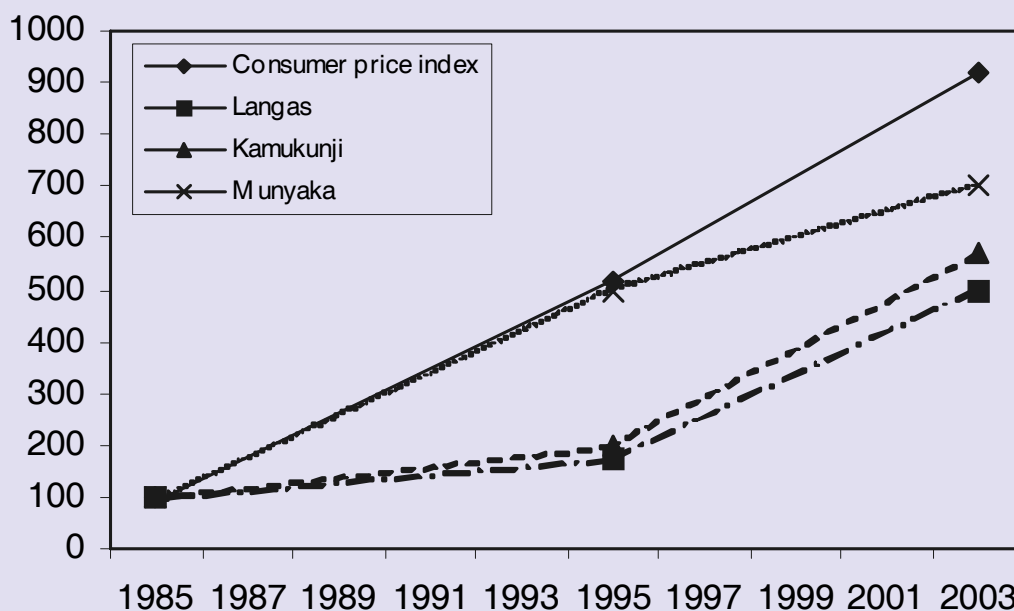
Figure 9: The layout of Munyaka



Household surveys in the three settlements showed that plot prices have varied over the years since the initial subdivision of the sites. In Kamukunji, whereas the initial 100 shareholders paid only Kshs 900 for a residential plot of 50 x 100 ft and a 5 acre farm portion, land prices have appreciated and a quarter acre plot in the unserviced *mashambani* section now costs over Ksh 200,000. In Langas, a quarter acre residential plot in the serviced area now costs about Ksh 400,000, up from Ksh 140,000 in the 1990s, while in Munyaka an eighth of an acre costs about Kshs 70,000 compared to Kshs 7,000 in the early 1980s.

In real terms, these price increases are less dramatic – the estimated price per square metre for plots in Munyaka appreciated at approximately the rate of inflation in the early years of the area’s development, but has risen less rapidly in recent years, whereas in Kamukunji and Langas the approximate unit price of plots increased less rapidly than inflation in the 1980s but at roughly the same rate in more recent years (Figure 10).

**Figure 10: Unit prices of land in the case study settlements compared to inflation**



Although the study sites were initially acquired by land-buying groups formed along ethnic lines, the present ethnic composition of owners and rights holders is diverse. Analysis of the survey data shows that most (85 percent) of the rights holders and plot owners are in-migrants from other, mainly rural, areas - only 9 percent were born in Eldoret. Three quarters of the rights holders/plot owners are Kikuyu, while the Kisii account for about 9 percent, the Luhya 8 percent and the Luo 4 percent. The Kalenjin, who are the indigenous ethnic group in the Eldoret area, constitute just 2 percent, with other communities such as the Kamba, Meru, Mijikenda and Embu accounting for 3 percent. Although some of the land-buying groups were formed by Kalenjin, the small proportion of Kalenjin amongst individual plot owners/rights holders is partly explained by the nature of their economy, which is mainly based on large-scale agriculture and livestock production. As a result, most Kalenjin choose to live in rural areas. The ethnic composition of plot owners in these settlements reflects dominant patterns of migration

from Central, Western, Nyanza and Eastern provinces to high-potential areas, including the Rift Valley. Uasin Gishu, whose administrative headquarters is Eldoret, is one of the main migrant receiving Rift Valley districts. It also reflects some of the tensions to which such migration and resettlement give rise, as demonstrated in the influx of displaced persons from rural areas following the political and land conflicts in the early 1990s.

The majority of owner households are nuclear families (couple with own children): most of these households occupy three or four rooms and let out the rest to tenants. House renting is a source of income to many of the plot owners. Most owners (80 percent) are married, with about 13 percent widowed. Divorce and separation are uncommon. Cohabiting is unpopular, accounting for only 2 percent of respondent heads, because of the risks for women – if a marriage has not been formalised, a woman is likely to be sent back to her parents with nothing on the death of her spouse.

# Assessment

## The strengths and weaknesses of alternative land delivery processes

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In this section, the efficiency of the alternative channels through which land is delivered for housing in Eldoret is assessed, with respect to their ability to meet demand for housing for low and middle-income households, their ability to provide plots with secure tenure, the scope they offer for revenue generation, the quality of the environment they provide, the extent to which they provide housing land to the poor and women, the effectiveness of regulatory institutions, and their legitimacy in the eyes of ordinary land market actors.

### Meeting demand

The efficiency of alternative land supply channels was assessed with respect to their ability to supply land in appropriate locations, in sufficient volume and at appropriate prices to meet demand. The alternative land delivery system is better able to meet demand and deliver land in large quantities than the formal system. For instance, Langas farm has been able to provide over 3,000 plots and subdivision is continuing. Similarly, subdivision of Kamukunji's residential section delivered about 100 plots and many more have been and continue to be produced in the 5-acre section that was initially for farming, while Munyaka farm delivered 968 plots. Formal schemes do not provide as many plots on attractive terms to middle and low-income people.

As pointed out earlier, the terms of sale for plots in most informal settlements allow for flexibility, especially in the mode of payment. Thus even if prices are high by local standards, a buyer may not feel the effect because of the acceptability of paying in instalments. Where there is a high level of trust then buyers may be allowed to build as they pay. According to focus group participants, this was common in the 1970s and early 1980s, especially in Kamukunji when the population was small and many of the residents knew each other through social networks such as merry-go-rounds and worshipping in the same church. A participant in one group

discussion clearly captured this trust based on social networks: *'People of good reputation and background would be known as the residents of the settlements interacted.'* But as more newcomers, whose background is unknown, acquire plots in a settlement, levels of trust are eroded.

### Tenure security

In informal areas 'use rights' seem to supersede 'ownership' as conceived of in English property law. Most plot owners feel ownership is synonymous with use rights. Focus group discussions in Kamukunji revealed that some landowners had lived on their plots for many years (some over 15 years) without titles. They have no fears because they have developed the plots and no one disturbs them over ownership.

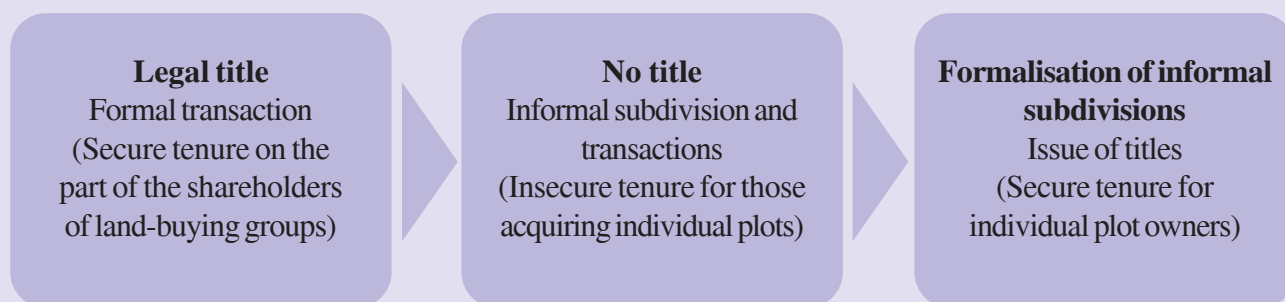
To many plot owners/rights holders in the informal areas, secure tenure means having the freedom to build and live on their plots undisturbed and, as long as this is not violated, they feel that they have security of tenure. Some respondents have faith in agreements drawn up by lawyers, considering that such agreements are as good as a formal certificate of ownership. However, others consider that lawyers contribute to insecurity of tenure, as some may unknowingly draw up an agreement for a plot that has already been sold to a different buyer. A written agreement signed in the presence of *wazee wa mitaa* (local elders) and/or witnesses provides enough security for many plot owners to feel that they own their property, as the use of witnesses and *wazee wa mitaa* are perceived to guard against fraud/cheats. In most cases the *wazee wa mitaa* are men who have lived in the settlement long enough to know nearly every plot and its owner. They are more popular than advocates because they know where a plot is located and will, therefore, not authenticate sales of fictitious/non-existent plots.



The findings of this research show that plot buyers have their own ways of consolidating their tenure. One such way is to develop the plot, which makes it difficult for others to claim it. Of the three study sites, it is in Langas that security of tenure is most uncertain, because the initial shareholders are embroiled in a dispute over ownership of Langas farm. However, this is also the most extensive of the informal areas studied and is densely developed in parts.

An even more certain way of achieving secure tenure is by regularisation. This cannot always be achieved quickly, but experience in Eldoret shows that what begins formally with group purchase of land with title may turn informal (insecure) following subdivision only to turn formal (secure) at a later stage when the tenure of purchasers is regularised (Figure 11). What is of concern here is perhaps the time it takes for tenure security to be achieved – for Kamukunji it took 30 years from the initial subdivision and Munyaka is still in the process of being regularised twenty years after the plots were originally sold.

**Figure 11: Sequence of land acquisition and subdivision by most of the land-buying companies in Eldoret.**



## Revenue generation

One of the arguments for recognising informal settlements is that, in order to provide them with infrastructure and services, they need to generate revenue, both for the local government and, perhaps in the form of user charges, for relevant service providers. Most informally delivered land does not yield significant revenue to city authorities, because in most cases plots in such areas are not registered and it is, therefore, difficult for a municipal council to capture all the taxable properties. In addition, because owners are liable for payment of land rates in the Kenyan system, normally proof of ownership is required. According to key informants, in the case of Eldoret there is an unwritten understanding between the municipal council and rights holders in

the areas with unregistered subdivisions to use their existing plot documents as proof of ownership. This makes it possible, in theory, for the municipal council to collect land rates in the informal areas, as well as exercising development control.

Land rates are set at a simple annual amount per plot, depending on the level of services in an area: currently they are Ksh 220 in Langas, Ksh 600 in Kamukunji and Ksh 152 in Munyaka. While the flexibility of the Council is to be commended, in practice collection rates are low and declining. Reasons include the Council’s failure to update the valuation roll, owners’ tendency to postpone payment until they wish to sell, dissatisfaction with services and concern over delays in regularisation. In Langas, rights holders refused to pay rates in 2003

citing the lack of improvement to services despite their payments. They are demanding that they be issued with legal certificates of ownership as a precondition for recommencing payment of rates.

## Infrastructure and service provision

The regularity of initial layouts and the acceptability of the planning standards they adopt varies. In some areas, layout plans are commissioned by the land-buying group, although their need to make the best possible use of land and make plots affordable to their shareholders and subsequent buyers may lead to the adoption of planning standards and plot sizes that are below the municipal requirements. For example, formal actors cited Kamukunji as an example of a settlement with sub-standard access roads that cannot accommodate trunk services. This has led to the installation of mains services only along the main street. Most participants in the focus group discussions felt that owners of plots along this street had benefited more than other owners from the infrastructure installation and had probably exerted influence to bias it in their favour. Elsewhere, subdivision is a more individual and incremental process. While some access ways are safeguarded, the layout may be haphazard in other areas and some plots may end up without adequate access.

Initially most subdividers and settlers in informal settlements rely on shallow wells for water and pit latrine sanitation. As densities increase, the health hazards worsen. For example, many of the wells in Langas are contaminated by effluent from nearby pit latrines<sup>47</sup>. Actors in the informal land delivery system are of the view that the procedures for obtaining subdivision and development permission are inappropriate, obscure, costly and slow. They also complain that the Council does not provide building plans for the sort of houses they can afford to build and does not consult them on the type of houses that might be affordable. Thus they have

devised ways round the requirements, including informal subdivision, feigning ignorance of unrealistically high planning standards, constructing houses at night or during weekends, and bribing officials to turn a blind eye to construction that does not meet the required standards. As participants in one discussion group put it “*council workers are ‘talked to well’ so as ‘not to see’ what people are putting up*”.

There are, however, good practices by both land-buying groups and the Council. Some of the groups reserved land for access ways and public facilities without being coerced to do so by formal sector actors. Two such examples are Munyaka and Kamukunji, where the subdividers ensured that every plot has access. In addition, in Munyaka, about six acres of land was set aside for a primary school, which is already developed and in use, while another piece of land was left for a market. In Kamukunji land was reserved for a primary school, a nursery school, a cemetery and a market in addition to roads. As one key informant put it “*We knew we would need all these facilities*”. This suggests that many actors in the informal land delivery systems are not ignorant of planning matters.

While the Municipal Land Control Board insists on title before a rights holder can apply for subdivision or development permission, the municipality’s more relaxed attitude means that it can negotiate with plot holders to safeguard access ways and sites for social facilities and sometimes to submit plans for their proposed development for building approval. Land acquired and developed informally does not initially benefit from infrastructure services, for in most cases such development is considered illegal by urban authorities. But over time the settlements gain acceptance from the municipality and services start to be provided incrementally. This was observed in all three study settlements.

## Access to land for housing by the poor

Due to limited resources, this study was not able to collect detailed information on household income and expenditure. The poverty or wealth status of owner households was, therefore, assessed using other criteria. National figures for the incidence of poverty are based on consumption and show that about 50% of urban residents and 53% of the people in rural areas are poor<sup>48</sup>. Participatory poverty assessments show that the poor are seen as those with fewer material possessions, such as household items, limited access to services such as medical services, and have difficulty keeping their children in school because of financial problems and lack of employment<sup>49</sup>. People in the study settlements perceived the poorest as those who cannot afford, or have extreme difficulties in meeting the basics of life, which are food, shelter and clothing. The average poor can afford some of these but not in adequate quantity and/or quality – for example, their children may attend school but drop out due to lack of funds to pay for fees or uniforms. In this research work status and educational level of the household head at the time he or she acquired the plot and current household assets were used to estimate whether households were poor at the time they became owners and are currently poor.

Most of the plot owners (83 percent) were working at the time they acquired their plots. Half of these were in full-time employment and half in self-employment or business. Many of those in full-time employment worked for private large-scale farms or public sector bodies. Very few (3 percent) were employed in piecework or casual work. About 17 percent were not working at the time they acquired their plots. Currently most of the plot owners/rights holders are in self-employment or business. Data on the educational level of owner household heads reflect these occupational patterns: only ten percent of the total had never attended school, and 9 percent

had higher educational qualifications. While 44 percent had received only primary education, 32 percent had had secondary education and 4 percent vocational training. Although the work status and educational level of plot owners and rights holders varies widely, therefore, a significant proportion have secondary education or above and are in stable wage employment or have reasonably successful businesses.

Using ownership of assets as a proxy for household wealth or poverty status, this research found that about 60 percent of the 280 informants interviewed could be categorised as poor at the time they acquired their plots (59 percent in Kamkunji, 60 percent in Langas and 63 percent in Munyaka). These are households who did not own a vehicle or possess two or more of the following assets: television, telephone (fixed line), large gas cooker, electric cooker or urban house. When the figures are disaggregated between the early and more recent years of settlement in each of the areas, there is some indication that a higher proportion of early settlers were relatively poor households than more recent purchasers. Nevertheless, some of those who have purchased (or sometimes inherited) land in recent years have been relatively poor households.

Thus the wealth status of households that have over the years benefited from informal and semi-formal land delivery has been mixed. Land-buying groups are able to pool their resources to buy land that people could not purchase as individuals due to the high costs involved and the large areas sold<sup>50</sup>. In addition, some members of land-buying groups and purchasers are poorer than others. They can acquire shares or land by pooling resources, buying a relatively small area or paying in instalments. For example, one respondent in Kamukunji indicated that her late husband had not been able to buy a full share. He had, therefore, pooled resources with his brother. Both initial members of groups and subsequent purchasers can usually pay in instalments. Many of the members of the land-buying company

that purchased Kamukunji farm paid their contributions in instalments because they could not afford to pay for their shares in full, and over a third (35 percent) of current owners had paid for their plots in instalments. Many of those who paid in instalments said that this mode of payment is accommodating and enables people less endowed with financial resources to look for money in between the times when the instalments are due.

Clearly some plot owners would not be able to acquire a plot were it not for this flexibility that allows members to buy the size of plot they can afford, pool resources or pay in instalments. However, the poorest are unlikely to be able either to purchase a share in a land-buying company or a subdivided plot.

## Access to land by women

Ownership of land in Kenya is governed by both statutory and customary law. Most women have rights to rural land through men under customary law. The adoption of individual ownership of family land through the tenure reform of 1950s, which did not recognise women's rights in land, left them vulnerable to landlessness and disinheritance. Statutory law does not bar any Kenyan from owning land. It recognises that women can own (buy/sell or charge) land and according to some informants women who contribute the required finances to a land-buying group benefit in the same way men do<sup>51</sup>. However, only a few women have the economic means to buy land. A national welfare monitoring survey of 1997 established that in only 6 percent of households were women holders of titles. Only 16 percent of landowning household heads in the informal areas of Eldoret we studied were women. Of these 52 percent were married and 21 percent widowed. Many of these, especially the widows, had accessed land through their affiliation to men. Only 18 percent of women landowners had never been married. The study also found that most land documents bear men's names only, even in cases

where the land has been acquired after marriage. Thus 81 percent of the documents held by landowners in the study areas were in men's names only, as compared to 4 percent in the names of both husband and wife and only 1 percent in a married woman's name alone.

Although most research on property rights portrays women as marginalised with respect to ownership of land, in this study mixed reactions were obtained from women themselves. In focus group discussions, some of the women said that they were comfortable with their husbands being the sole registered owners of their plots. They felt that their ownership is implied under that of their husbands. Some of the women echoed the male view that co-ownership of family property is both a reflection of a troubled marriage, demonstrating a lack of trust between the spouses, and increases the risk that family land might be lost to a family following the death of a husband or breakdown of a marriage. Given the prevalent patrilineal inheritance system, both men and women expressed a fear that registering family land in a woman's name only would increase the risk that a family might lose its land to the woman if she leaves the marriage.

Some women and men think it appropriate that the majority of land documents are in men's names because men are the main contributors to property acquisition. However, some women consider that women who are not engaged in income-generating activities make an indirect contribution to property acquisition by taking care of the family (cooking, child minding, cleaning, washing etc). Others cited recent cases of disinheritance and agreed that there is greater security for married women in co-ownership than in implied ownership and that even women household heads' right to inherit land from their relatives (e.g. mother) can be challenged by male relatives.

## Regulating transactions: the strengths and weaknesses of informal institutions and formal rules

Transactions in informal areas may be regulated by the use of informal rules, enforced by informal institutions. In particular, as described earlier, land transfers are witnessed by *wazee wa mitaa* or local elders as well as neighbours. Some purchasers use the services of a lawyer to draw up an agreement of sale, and perhaps later to regularise the transaction. However, local witnesses are preferred by many, since they know the physical location of the plot concerned and its history. Although the elders have to be paid a token for their services, the amount involved is considerably less than a lawyer's fee, which is another reason many prefer to use their services. Sale agreements with local witnesses, including the elders, are recognized by the courts and are considered to be legally binding.

However, informal acquisition of land has risks, including uncertainty of ownership and the difficulty of obtaining a title deed. Some informal plot sales are characterised by disputes, ranging from those about boundaries to double/multiple sales. Some people who sold plots in the 1970s resell those that have not yet been developed to other buyers. Some plot owners use different lawyers or *wazee wa mitaa* to conceal double sales of the same plot. It is not enough to have a lawyer's sale agreement, as another can be prepared by a different lawyer for a different buyer for the same plot. The same applies to the use of village elders, as dishonest plot sellers approach different elders to seal transactions on the same plot. The rights holders suggested that, for this problem to be overcome, buyers should insist on having witnesses who are their neighbours, in addition to an advocate and/or the village elders. When resolving disputes about multiple sales of plots, village elders consider the first buyer as the real

owner. In this respect, formal and informal rules converge, as the formal courts also recognise the first buyer as the true owner of the plot.

Informal institutions seem to work well in newly developing areas, as there are fewer residents and, therefore, owners know and trust one another. In particular, in Eldoret, the homogeneous ethnic composition of land-buying groups nurtured trust. There may, however, be a problem of enforcement if one of the parties acts contrary to an informal agreement. In addition, there is some evidence that these institutions operate with greater difficulty as areas become consolidated and more densely settled. As an area develops, newcomers move in, while some of the original plot owners pass on and others move out to other areas. As a result, social networks become more complicated and trust lessens. This phenomenon is discernible in Kamukunji, especially the initial residential section, where many of the original shareholders have since moved out to other neighbourhoods. The newcomers are mostly strangers, often from different ethnic groups and a different generation, thus providing grounds for mistrust. It emerged during a group discussion that in the 1970s formal authentication of land sales was not necessary in Kamukunji because people knew one another. However, as the years went by and more 'strangers' arrived, it has become necessary in some instances to involve advocates in plot sales.

Formal rules seem to be more widely used in consolidated areas. They are preferred where trust has been eroded, due to out-migration and in-migration, which bring in strangers. The application of formal rules in a land transaction is expensive and the process takes a long time due to the bureaucratic requirements. But the level of security they offer is greater because they are formally recognised.

It is sometimes suggested that as informal settlements become older, more consolidated and more densely settled, the number of disputes increases and

informal institutions become less able to resolve them. Land disputes occur when there is a breach of the formal and/or informal agreement on which land transactions are based. In the Eldoret study sites, few disputes were reported to have occurred – only one in ten of the sampled plot owners/rights holders had had some form of dispute at the time of the survey. Ten percent of informants in Langas, 18 percent in Kamukunji and 3 percent in Munyaka reported that they had had a dispute with regard to their plots. The few disputes identified occur in both titled and informal areas of the study settlements and arise from the following:

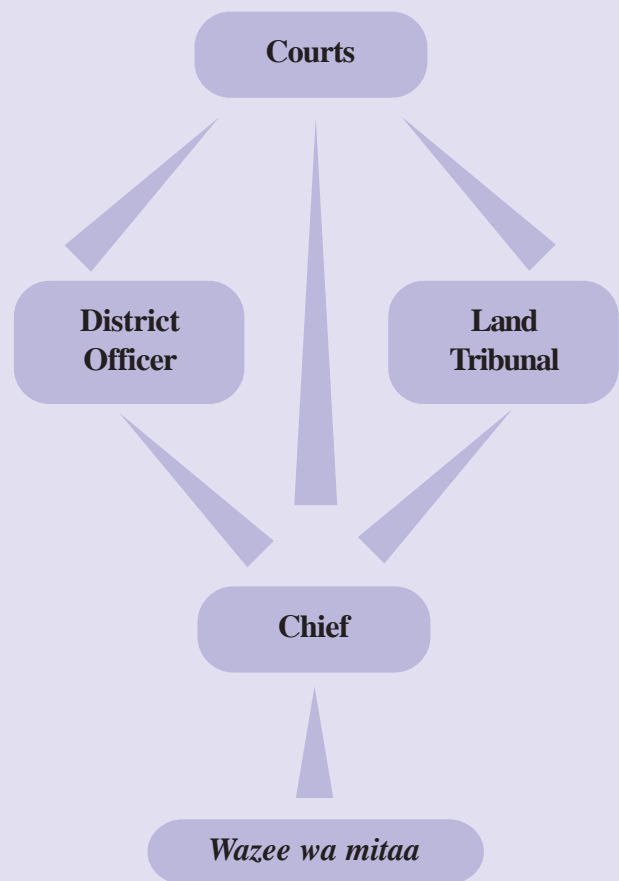
- A seller may demand more money than agreed initially.
- The original seller (usually the head of the family) may die and his heirs, upon taking over the administration of the estate, refuse to recognise a transaction, sometimes unless additional money is paid
- A seller may sell the same piece of land to more than one buyer
- Conflicts over boundaries, especially in safeguarding road reserves
- Inheritance disputes
- Sale of fictitious/unavailable plots
- Spillage/drainage – directing waste and flood water to a neighbour’s compound
- Illegal occupation of a plot
- Blockage of access streets/roads.

Of the disputes recorded, 40 percent were boundary disputes (especially in Kamukunji and Munyaka), a third involved dubious sales (especially in Langas) and 12 percent involved ownership.

Various methods are employed in resolving land-related disputes. These methods are both formal and informal and include courts, tribunals, the provincial administration, families and *wazee wa mitaa*. This study found that plot owners generally employ traditional/informal methods of dispute

resolution through the elders or the chief/sub-chief (the local official of the provincial administration). Under customary law, the elders enjoy broad discretion in relation to land disputes and land transactions<sup>52</sup>. In the urban setting, the *wazee wa mitaa* are not purely traditional in terms of their constitution/composition and operation. Community elections of elders are presided over by the local assistant chief. Young people who traditionally would not qualify to be elders may be elected elders in an urban setting. Also elders in villages would most likely belong to the same ethnic group and share the same cultural background as residents. This is not necessarily the case in urban settings where ethnic composition is diverse.

**Figure 12: Channels for dispute resolution**



According to the respondents, informal institutions are preferred for a number of reasons. Informal institutions are cheaper (each party pays Kshs 500) and take a shorter period to process and resolve disputes. The elders that participate in dispute resolution are easily accessible, known locally and, therefore, more trusted by the people. The local population easily understands the procedures used in dispute resolution and, therefore, many people have confidence in the institutions. The social environment is less intimidating than that of formal law courts and often the local institutions can resolve the dispute in a satisfactory way.

The informal institutions, however, have some weaknesses:

- Respondents cited instances where some of the *wazee wa mitaa* were partial in their determination of a dispute in which one of the parties influenced them through bribes.
- They largely rely on the good will of those involved in the dispute because they have limited means to enforce compliance with the judgement reached, unlike the case in the past in rural areas. In one of the unresolved disputes about an access road to a plot, for example, one of the parties involved in the dispute has refused to permit a surveyor to establish the width of the road, as recommended by the elders, who have no way of compelling him to comply.
- Findings from the focus group discussions indicated that the *wazee wa mitaa* had sometimes been hijacked by the former regime and made KANU youth wingers, at which point they became corrupt and unfair in their arbitration of cases. At that time they really did not command the confidence of residents and were speaking and acting on behalf of the then ruling elite, with the result that they came to be mistrusted and disliked.
- Also according to group participants, the state machinery, in the person of the local chief, sometimes manipulates the *wazee wa mitaa* to reach a biased decision.

The use of formal rules for dispute resolution is not common in the study settlements. Those who preferred the use of formal rules to resolve disputes said that the judgement is binding, since it is based on written law and the court has the means to enforce compliance with its decision. However, their use is avoided by most because they are considered to have some weaknesses. These include high costs and long delays. In addition, some informants felt that powerful and wealthy individuals manipulate the system and subvert justice to the detriment of the poor. The common person does not readily understand the court proceedings because of the legal jargon used.

## Explaining successful land delivery systems

This sub-section briefly considers the reasons why some land delivery systems are considered more effective and reliable than others by the actors involved. The two main channels through which land is delivered for residential development in Eldoret are the allocation of urban land by the government or local authority and land purchase.

### *Allocation by government*

Land allocated by government is more likely to be provided with infrastructure. However, the development standards that are normally prescribed on publicly supplied land plus the infrastructure provided tend to increase the cost, making it inaccessible by low-income households. Very few people in informal settlements know that the government allocates land. In the study settlements only 3 percent of the sampled 280 plot owners/rights holders were aware of land allocation by government. The few who were aware of government land allocation seem to lack information on the availability of plots and the procedures to be followed, as well as not having the necessary social and political contacts. Although plots earmarked by

the government for allocation are supposed to be advertised, in practice this does not always happen and to some actors the entire process is shrouded in secrecy.

The government is the legal custodian of all government land and is empowered by the constitution to alienate such land for various uses. Upon allocation the beneficiaries are issued with letters of allotment and later, certificates of ownership. These documents give security of tenure so that anyone allocated land by the government feels secure. There are, however, cases where the land documents have been challenged. Cases of double allocation and forgery of certificates of ownership and letters of allotment have been cited and in fact are not uncommon. In addition, there is a new form of insecurity resulting from allocations that the current government now considers irregular but were not so during the former regime. Thus some people who benefited from land allocations that were thought to be legitimate at the time no longer have security of tenure. This insecurity has in turn called into question the sanctity of land titles.

### ***Land purchase***

Almost all the respondents considered land purchase the main channel through which to access land. Land purchase is considered to be for those who can afford it and it is universally agreed that one cannot access land without paying for it. As already discussed, land purchase in Eldoret is by individuals as well as land buying groups. Many of the members of land buying groups perceive such groups as vehicles that deliver land to both the rich and the poor, as they facilitate pooling of resources and enable payments to be made in instalments.

There are, however, mixed perceptions of the informal land delivery systems. Some actors expressed feelings of insecurity of tenure because of their lack of title deeds, while others have no problem so long as they are able to use the land

unhindered. Trust and legitimacy originate from knowledge of the people involved (e.g. officials and other members in a land buying company), and also the silent acceptance of these delivery systems by communities and the authorities.

Payment of the agreed price and the document(s) issued upon purchase are important in legitimising any land transaction. These documents may be letters of agreement, supported by witnesses to the transaction, or titles. In the case of land-buying groups, distribution of land is considered just, with each member getting a proportion equivalent to their shares. Trust and legitimacy emanate from the social factors that form the basis of the land-buying groups, including a common ethnic origin and the shared need for land.



*Langas*



# Conclusion

## Conclusions and policy implications

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### Formal land delivery systems

The state has a wide variety of tools for regulating urban land markets, including planning tools, zoning regulations, building regulations and by-laws for enforcing development control. However, government intervention in urban land markets in the context of rapid urban development and with limited resources has had limited results. Institutional factors, especially slow registration and titling and lengthy bureaucratic procedures for land transfer and plot development add to the cost of formal land and restrict the supply of land through formal channels, thus raising land prices and hindering the operation of formal land markets. In order to speed up the process, the possibility of contracting out some of the Ministry of Lands activities relating to the formal delivery of land to professional bodies such as the Kenya Institute of Planners (K.I.P) and Institution of Surveyors of Kenya (I.S.K) should be explored.

Formal channels of land delivery supply land with secure tenure to those with the necessary political and social contacts. Such people are able to access quality land in appropriate locations, in some cases serviced. Although before the change of government formal allocations by government were thought to provide land with secure tenure, the process is often long and expensive. The sanctity of title is now under question following investigations into how government land was allocated in the past. Efficiency is lacking in the formal channels because of the process involved in the allocations and subsequent registration. However, for those with the necessary networks the process can take a short time.

Government land allocations seem to be shrouded in secrecy, resulting in the exclusion of the majority of urban households. Equity is lacking because it is not public knowledge that government and the council allocate land. Women and the poor are disadvantaged because they are not economically empowered and this also limits their ability to develop

the social networks that are a prerequisite for formal land allocation. Formal land delivery channels have, therefore, not succeeded in delivering land in adequate quantities for urban use, particularly to low-income households.

There is a need to make the allocation procedures more transparent and to devise mechanisms for meeting the land needs of low-income households through special land delivery programmes. However, given past experience with sites and services schemes, careful investigation is needed first, in order to assess whether such programmes could meet the needs of low-income households and whether allocation procedures that are fair and transparent can be devised.

The administration of government land allocation should be simplified and made more transparent

The potential for government to play a greater role in supplying land for low-income urban households should be investigated

The processes of formal land subdivision and tenure registration are too slow, complex and costly. These high costs discourage use of the formal procedures, especially by low-income sellers and buyers. There is a need to shorten the processes and make them more affordable, to encourage developers to seek planning services before embarking on development. This, among other things, could be achieved through decentralisation of survey approval and registration of land, so that these services can be offered at the district and division levels.

Procedures for subdivision, tenure registration and obtaining development permission should be simplified and speeded up.

Survey approval, registration of land and the administration of government land allocations should be decentralised to the district and division levels.

The Municipal Land Control Board handles only land that is titled, leaving out the unregistered areas of the municipality. There is a need to revise the Land Control Act in order to accommodate unregistered areas, permitting the board to recognise commonly available land documents (e.g. sale agreements) for the purpose of achieving orderly urban development.

Documents commonly used in connection with land transactions in informal subdivisions should be recognised for administrative purposes by relevant government bodies, including the Municipal Land Control Board, to improve the potential for achieving well-planned urban residential development.

Residents' representatives at the local level (councillors) form an important link between the residents and the local government. Ideally the councillors are supposed to make known their area needs to the municipal council to be addressed. However, many of the residents interviewed in this research indicated that their councillors frequent their areas during campaign period. However, once they have been voted in they are rarely seen, making it difficult for people to communicate their development needs to the municipal council. The councillors can

help improve the performance of the municipal council in the informal areas by regularly collecting information on development needs of these areas and ensuring that such needs are met by the municipal council since property owners pay property taxes just like those in formal areas.

## Informal land delivery

The inefficiency and ineffectiveness of formal land delivery has led to the emergence of informal land delivery systems to satisfy the unmet demand. This study shows that informal channels of land supply play an important role in delivering land for urban development. This situation obtains not only in Eldoret but also elsewhere in urban Kenya, as demonstrated by other studies<sup>53</sup>. It has been argued that it is only the urban poor who access land informally. However, the findings of this research are at variance with this argument. While the majority of people who access land informally are relatively poor (about 60 percent, using one basis for estimation), the better off also access urban land through informal avenues. This is evidenced by the number of plot owners in the study sites who were relatively wealthy at the time that they acquired their plots.

Informal systems deliver land more quickly and cheaply than the formal ones. They supply land in large quantities, thus meeting the increasing demand for urban residential land. They can, to some extent, provide relatively low-income households with access to land for house construction because the terms are attractive – in most cases payment is by instalments. The main suppliers of land through informal channels in Eldoret are individuals and land-buying groups. The latter facilitate pooling of resources, thus enabling relatively low-income households to access land.

Informal land delivery systems should, therefore, be tolerated and accommodated, but their strengths identified and enhanced and their weaknesses identified and addressed. Recognition and acceptance should, however, be designed so that, wherever possible, the poor are not further disadvantaged.

Plot holders in informal settlements in Eldoret conceive of tenure in terms of use rights, so that if one has use rights over a piece of land then that is considered secure tenure. A certificate of ownership is important to people in informal areas, but what seems to be a more important concern is for their use rights to be guaranteed. Lack of title does not prevent rights holders from developing their plots. In any case, certificates of ownership as such do not lead to proper use of land, as demonstrated by the amount of land allocated by government but lying idle within the municipal boundaries.

This study found that security of tenure in informal settlements varies, depending in part on the history of the settlement. For example, security of tenure is lower in Langas than in Munyaka and parts of Kamukunji (*mashambani*) although informal subdivision has taken place in all these areas. This is because the ownership of the entire Langas farm is in dispute. Thus Langas rights holders are not certain they will ever get titles, given the unclear ownership status of the original farm. In contrast, rights holders in Munyaka and the unregistered parts of Kamukunji feel that eventually their land transactions (like customary tenure in rural areas) will be regularised and they will, therefore, be able to obtain titles. This is because, first, the ownership of the two farms is clear. Second, the initial informal subdivision of Kamukunji was regularised. Thus rights holders in these areas are worried more about the time it will take for their use rights to be transformed into ownership rights than whether it

will happen. In the meantime, they have a reasonable degree of security of tenure derived from the use of existing institutions that are either informal or a hybrid between formal and informal, which work reasonably well, which are relatively simple and cheap and which they understand. Acceptance of these institutions and documents by all relevant agencies would improve their security further.

The security of land rights holders can be enhanced by accepting documentation innovations developed and used in informal systems

On a practical plane it is becoming increasingly difficult and perhaps impossible to draw a clear distinction between ‘legal’ and ‘illegal’ settlements. There seems to be a silent acceptance/legitimation of informal settlements by the state and its agencies. The collection of rates, service provision and eventual registration of plots that were acquired informally turns ‘legal’ what was initially considered ‘illegal’. This in itself implies recognition of informal land markets by the government. There is need to officially show such acceptance by involving landowners/rights holders in these areas in land management. Indeed, the view that urban land development can be classed into formal or informal is only theoretically conceivable. As Kombe and Kreibich argue, this dichotomous view only serves to mask the dynamics involved in urban land markets and development<sup>54</sup>. The term informal is itself ambiguous because informality has many shades. When an informal settlement like Kamukunji is formalised after thirty years of informal development, this formalisation applies only to tenure because there are many aspects of the settlement that remain informal, for example, its layout and the structures.

However, land delivered through informal channels tends to be of lower quality in terms of serviced provision. None of the study sites had basic services at the time settlement began. The lack of services did not stop people from settling; instead shallow wells and pit latrines were adopted while waiting for conventional services to be introduced.

Recognition of informal areas can contribute to service provision, through enabling cost recovery and local authority revenue generation. In order to produce these results, there is a need for the municipal council to maintain land registers in all unregistered areas, in order to capture unincorporated properties for the purposes of improving service delivery and tax collection.

The ability of the informal development sector to withstand new challenges cannot be underestimated. The social regulation process and institutions in informal processes have, unlike formal land delivery, tried to cope with changing social, economic and political circumstances and have even adopted some of the prevailing formal sector requirements<sup>55</sup>. For example, in Langas community facilities such as land for a school, a health facility and a market was purchased by the community from some Langas landowners.

Disputes that arise in informal channels of land acquisition are largely resolved through informal institutions/mechanisms, mainly by village elders, *wazee wa mitaa*. But when informal mechanisms of dispute resolution are unsuccessful, people turn to formal state rules by involving state agents. These state agents include local provincial administrators and courts or land tribunals. This in itself implies that the state machinery recognises informal land transactions.

While land-buying groups do, to some extent, provide a land delivery channel through which the relatively poor can access land, there is need for actors in the formal sector to provide guidance for the subdivision of such land at an early stage to avoid development patterns that compromise safety, health and the environment. Many informal settlements develop before the land on which they are situated is incorporated within urban boundaries and so they are not subject to urban development regulation. There is a need to apply development guidance to areas just outside town boundaries, using appropriate planning standards, although strict development control is neither necessary nor feasible. Guidance can be strengthened by strategic investment in major infrastructure including roads and mains water.

Most subdividers recognise the need for orderly layouts and land for public facilities but extending full development control to all informally developing areas is not at present feasible. In the interim, the layouts in informal settlements can be improved by providing guidance to subdividers, both inside and outside the urban boundary, together with strategic investment in major infrastructure, especially roads and water.

The views of informal sector actors on planning standards should be obtained as part of the current review of planning standards

In Langas, rights holders have unsuccessfully tried to get titles through those from whom they purchased their plots. They have now turned to the government agencies to help them acquire titles, some making the issue of titles a pre-condition for resuming payment of rates. This, they hope, will attract attention from these authorities.

The government is no longer able to service residential land before allocating it to private developers, except in specific donor-funded projects such as the sites and services schemes. Thus the land delivered through the formal channels is not necessarily superior in quality to that delivered informally. Most informal areas are inadequately serviced in terms of both the quantity and quality of services, even though the Eldoret Municipal Council collects rates from these areas. State intervention in service provision remains low in the informal areas of Eldoret and the landowners/rights holders feel cheated because, according to them, they pay land rates yet some of them lack very basic services such as access roads to their plots. Land owners/rights holders feel that the property tax they pay in the form of land rates is not invested in service provision in their areas.

Services in informal areas are introduced incrementally. In Muniyaka, for instance, only piped water and graded roads have so far been provided, although there are promises that other services will follow. However, Kamukunji and Langas, which were upgraded during the World Bank funded Third Urban Project, were provided with several services at once, including piped water, solid waste collection, storm water drains, electricity and tarmacking of the main streets. Kamukunji is currently being provided with a sewer. Inadequate services harm the health of residents and the environment within and beyond informal settlements, and also discourage payment of rates and therefore deny the local authority revenue. There is resistance by professionals to introducing services in areas where layouts are below the prescribed minimum standards. Often, this seems to be based less on the practical obstacles to installing improved services than on inflexible professional mindsets.

Unrealistically high planning standards discourage informal sector actors from following formal development procedures. There is a need to introduce flexible development standards that take

into account the socio-economic realities of low-income urban groups. Appropriate standards could be achieved through guidance plus negotiation between planners and other actors, providing that there are safeguards against corruption. Recognition of the contribution of informal settlements to urban land supply should include supporting these processes at an early stage to avert environmental degradation, and by planning for incremental improvements to utilities and services, including water, solid waste management, sanitation and drainage.

Incremental improvements to utilities and services should accompany subdivision, development and densification, based on consultation of all relevant actors to secure agreement on the services to be provided and standards to be adopted in return for resident contributions.

## Access to land for women

There is evidence that women, both married and unmarried, are discriminated against with regard to land in the urban setting. Women are disadvantaged because of social and cultural practices, norms and values. Married women are not registered as landowners for fear that, should the marriage end, then the husband's family is likely to be disinherited if the woman leaves with the property registered in her name. This view is based on the perception in many local cultures that women are 'outsiders' (meaning they do not fully belong to the families into which they are married), a notion held by both men and women. This fear seems to derive from cultural practices of the ethnic groups covered in the study, according to which women access land through their affiliation to men either as wives, sisters or daughters. Furthermore, men are considered *de jure* household heads and, therefore, property owners. This fear

was well captured by focus group participants in the study settlements who felt that women could not be trusted with family land. Female participants expressed similar sentiments. Some women household heads who had never married were discriminated against with respect to inheriting land from their parents. Women thus face many hurdles, both internal and external to households, in their quest for property. However, cultural practices are not homogenous - some ethnic groups, such as the Kikuyu and Kamba, allow women who are unmarried or divorced to inherit land. It appears that the only mode of land access in which women do not face discrimination is to buy, if they have the means to do so.

To improve security of tenure of family land and guard against the disinheritance of women if they are widowed, or loss of family land through clandestine deals by the title holder who is usually a male household head, there is a need for the

government to make it a requirement that family land be registered in the names of both spouses. To check unscrupulous title holders, the current presidential decree that title holders appear before Land Control Boards with their spouses and grown-up children before proceeding with transactions in agricultural land needs to be made into a law.

Law and practice need to change to provide married women with secure rights to marital property, to ensure that all married women are consulted before land held in a husband's name can be sold, and to provide all women with the opportunity to acquire land in their own names should they wish to do so.

# Appendix

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Data were collected from November 2002 to November 2003 using a combination of different methods permitting data triangulation. These methods included a review of secondary information, semi-structured and focus group discussions, household surveys, key informant interviews, observations and in-depth interviews. As part of the qualitative approach employed in this research, an anthropologist was identified and recruited as an advisor to provide social-anthropological insights.

Semi-structured interviews were carried out with 28 key informants selected on the basis of their positions in the local authority, central government departments and the private sector. Interviews were conducted with local leaders, central and local government agents and private sector professionals dealing in land matters, including surveyors, planners and lawyers.

Sample surveys of landowners and rights holders were carried out in the three case study settlements using a questionnaire jointly developed by the six teams involved in the comparative research project and slightly modified to suit the circumstances of Eldoret. The intention was to achieve a sample size of approximately 100 responses in each settlement. A total of 280 questionnaires were completed, 100 each in Langas and Munyaka and 80 in Kamukunji. Two of the settlements (Langas and Kamukunji) did not have a usable sampling frame, as they have not been systematically subdivided and lack up-to-date plans. In Langas, the area was divided into six blocks defined on the basis of physical boundaries and their distinguishing characteristics. Between 10 and 24 households were selected from each block, depending on its size. Kamukunji is divided into two parts: the densely settled original residential area and an original smallholding area that is currently being subdivided. 55 households were selected

from the parts of the residential settlement either side of the main access road that transects it and 25 from the area of current subdivision activity. Fewer questionnaires were completed in this area because of the large number of plots with non-resident owners who were impossible to trace. In each of the blocks in Langas and Kamukunji, the first respondent was selected randomly and further plot owners/rights holders identified by snowballing. Munyaka has a formal layout and so it was possible to randomly select 50 plots from two blocks, one on either side of the main road that bisects the area. The data were analysed using SPSS.

Focus group discussions with plot owners/rights holders were held to discuss a number of themes raised by but not considered in depth in the questionnaire survey. During administration of the survey, potential participants in the focus group discussions were identified, on the basis of their age, gender, ethnic representation, willingness to participate and their knowledge of land acquisition processes. The age of the participants ranged from late 20s to early 70s. In all the groups ethnic composition was considered to ensure representation of the various backgrounds of plot owners, and to capture a variety of views informed by cultural diversity. A total of six discussions were held, with each comprised of between eight and twelve people: two in Kamukunji, one in Munyaka and one of the three in Langas were mixed men and women, while one of men only and one of women only were held in Langas.

Finally, in-depth interviews were carried out with informants purposively selected on the basis of their knowledge of and involvement in the issues being investigated. These included three urban land sellers, five land buyers/developers and three land agents/brokers.

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