

# Informal Land Delivery Processes and Access to Land for the Poor: A Comparative Study of Six African Cities

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# Summary

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To improve policy and practice, a better understanding is needed of how the informal systems through which half or more of the residential land in African cities is delivered operate, are evolving and interact with formal land administration systems. This study analysed the characteristics of informal land delivery systems in six medium-sized cities in Anglophone Africa: Eldoret (Kenya), Enugu (Nigeria), Gaborone (Botswana), Kampala (Uganda), Lusaka (Zambia) and Maseru (Lesotho). Its *aims* were to

- assess the strengths and weaknesses of alternative land delivery mechanisms, especially with respect to the extent to which they enable the poor and women to access land with secure tenure
- increase understanding of the institutions that underpin and regulate transactions and are used to resolve disputes in land

The main *conclusions* were that

- i. Informal land delivery systems are in part a continuation of earlier land administration practices and in part a response to the failures of the formal tenure and land administration systems. These failures include the low levels of compensation paid by government when it expropriates land, as well as cumbersome and costly regulatory procedures.
- ii. Informal systems of land delivery are the main channels of housing land supply. In the past, in many cities, they enabled all but the poorest to access land for self-managed house construction. Today, non-commercial channels for obtaining land are restricted and the vast majority of households who obtain land through informal channels purchase it. The plots are supplied through subdivision and sale of land held under customary tenure (Enugu, Gaborone, Maseru), by owners and tenants of *mailo* land (Kampala), by the shareholders in landbuying companies (Eldoret), and semi-officially by party and local government officials in and adjacent to regularised informal settlements (Lusaka). It is no longer possible for poor households to access land for new residential building, with a few, often minor, exceptions:

- membership of an indigenous landowning community (e.g. Enugu, Maseru)
- settlement in hazardous areas (e.g. Kampala)
- allocation of customary land or a serviced plot in Gaborone
- payment for informally subdivided land in instalments
- pooling resources to purchase a plot, for example in areas subdivided by landbuying companies in Eldoret
- some local residents in regularised informal settlements in Lusaka.

Women generally get access to land through marriage. In older-established areas women plot holders are mostly widows. Women with means increasingly purchase land through informal channels.

- iii. For many new households in contemporary African cities, especially the poor, the only way of becoming the owner of a plot on which to build a house is through subdivision or inheritance of a parent's plot. In practice, most poor households are tenants.
- iv. Informal land delivery processes are often effective in delivering land for housing, because of their user-friendly characteristics and social legitimacy. This legitimacy derives from the widely understood and accepted social institutions that regulate transactions in these informal systems. These institutions are generally derived from customary institutions, but have evolved over time. In particular, in urban contexts, they have often borrowed from and mimic formal rules and procedures, or take advantage of ambiguities and inconsistencies in formal rules.
- v. Urban growth and development increase the pressure on such social institutions, and in some cases, they weaken and break down, leading to increased tenure insecurity. In such situations, actors in land transactions and disputes seek to use formal institutions to protect their rights and investments. The extent to which formal legal and administrative systems recognise and work with or resist informal practices varies.

## *Policy implications*

- i. Informal land delivery systems play a significant and effective role in urban residential land supply in African cities and so should be tolerated and accommodated. Their strengths should be recognised and built on. However, their shortcomings should also be identified and addressed.
- ii. To encourage investment in both owner-occupied and rental housing, the tenure security available to those who access land through informal delivery channels should be enhanced. In some circumstances, this may imply individual titling, but wholesale titling is often not appropriate, for three main reasons:
  - Titling massively increases the value of urban land, making it even less accessible to low-income groups
  - There is rarely capacity in the formal regulatory system to adjudicate, survey and register large numbers of individual titles. Rather than issuing titles to a minority of landholders, the resources available should be used more strategically, to guide urban development
  - Owner-occupiers are unlikely to mortgage their homes in order to release the capital tied up in property for other purposes. The reasons include the absence of developed financial systems, as well as the priority households give to livelihood security and their desire to bequeath urban property to their successors.

In many countries, alternatives to universal individual plot titles are available under existing legislation.

In addition, threats to security often arise from government action, especially evictions.

  - Governments should provide basic short-term security to residents in informal settlements and, in the vast majority of cases, should cease to evict settlers and demolish houses
  - Security can be enhanced by public sector agencies accepting innovations in procedures and documentation that have emerged in informal systems, because these are popularly understood, widely accepted, cheap and procedurally simple.
  - Threats to women's security of tenure should be tackled through matrimonial as well as property law.
- iii. The poor layouts and inadequate services that often characterise informal settlements can be addressed by recognising such areas, paving the way for working with subdividers and sellers to improve layouts and enabling the early provision of basic services.
- iv. As well as making it possible to charge users for services, the registration of occupiers enables local governments to generate tax revenue.
- v. To build on the strengths and address the weaknesses of informal delivery systems in varying local contexts, the formal land administration system should be decentralised, in particular to provide for local registration of land rights and transactions.
- vi. Revised compensation provisions are needed, requiring governments to pay adequate and fair compensation when they expropriate land for public purposes from private or customary rights holders. This would
  - Deter premature informal subdivision intended to preempt arbitrary and under-compensated expropriation (e.g. Enugu and Maseru)
  - Improve the operation of some state-led subdivision and allocation processes (e.g. tribal Land Boards in Gaborone)
  - Increase the ability of governments to provide land for infrastructure or industry without antagonising local land rights holders (e.g. Enugu)
  - Enable governments to increase the supply of serviced land for low income housing.

# Introduction

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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. The subdivision and allocation of residential plots by governments 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<sup>1</sup>.

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 and 1980s 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.

Informal systems for delivering and accessing land operate according to a variety of social rules that are understood and complied with by actors in the system. These can be conceptualised as institutions that enable transactions to occur and regulate relations between actors. They have been

documented for indigenous land tenure systems, generally with reference to the rural areas. However, not only do indigenous land tenure arrangements change over time in rural areas due to changing social, political and economic circumstances, they also change when they come face to face with the demands of urban growth. In part the changes are reactions to the demands for small plots for residential development by both indigenes and strangers. However, they are also adaptations to the introduction by colonial and post-colonial governments of land tenure changes and formal rules intended to regulate urban land development. Thus in urban areas, the social institutions that regulate transactions in land and relations between the actors involved are hybrids of formal and informal rules.

However, the ways in which informal land delivery processes are evolving in contemporary cities have been little studied. As a result, the land policy and administration reforms on which many countries have embarked since the 1970s have not only concentrated on rural land but have also often been ill-informed and ineffective with respect to urban land. In addition, they have lacked legitimacy, giving rise to difficulties of compliance and enforcement, in part because they are not based on an understanding of the social rules governing how people act in partly commercialised informal land systems. To improve policy and practice, a better understanding is needed of how both formal and informal systems operate, interact and are evolving.



*Maseru*

## Aims of the research

The aim of the project was to improve understanding of contemporary 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 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

- to increase understanding of the institutions that underpin and regulate transactions and disputes in land, and
- to identify and explore implications for policy.

Six medium sized cities in Anglophone Africa were studied: Eldoret in Kenya, Enugu in Nigeria, Gaborone in Botswana, Kampala in Uganda, Lusaka in Zambia and Maseru in Lesotho. In all of these cities informal land delivery systems are

important. They also typify different colonial and post-colonial policies, legal frameworks, governance arrangements and urban management experiences.

In this summary paper, the empirical and theoretical starting points for the research are first outlined, followed by the analytical and methodological approach adopted. Each of the main channels of land delivery is then discussed in turn, and their strengths and weaknesses identified, with reference to a common set of criteria. The paper draws on selected empirical examples from the case study cities to illustrate ways in which the social institutions governing relations between actors in informal land delivery systems have evolved, as a result of conflict or accommodation. Finally, the main conclusions and policy implications are identified.

## Starting points

Much research on urban land and property in African towns and cities assumes that the state has both the obligation and the capacity to intervene in land management. As a result, analyses often focus on failures to comply with formal state law and regulations, thereby elevating formal state law over other socially embedded rules on which actors draw to regulate transactions in land. In this research, we attempted to give non-statutory law and custom, as well as social relations between actors in informal land delivery systems, equal status with state law and organisations, and to focus on the predominant contemporary processes of land delivery and not merely the weaknesses of public land administration. To understand how the processes of land delivery operate and how transactions and disputes are regulated, we drew on insights from three types of social analysis.

### *Social structure and the agency of social actors*

Many studies assume that the state plays a dominant role in society and analyse urban development in terms of actors' compliance with formal state rules. It is assumed that the state has access to resources that enable it to exercise power over other social actors, who respond passively<sup>2</sup>. In practice, although power is unequally distributed, no actors are powerless. Even dominated social groups possess resources that enable them to actively engage with other actors. These resources give them agency and therefore power, perhaps enabling them to influence the actions of dominant groups. For example, apparently powerless actors can re-interpret, use or challenge the formal rules specified by the state, creating opportunities for changes both to the rules themselves and to the relationships between state structures and non-state actors, in this instance with respect to urban land and property<sup>3</sup>. If we are concerned to understand not just the exercise of power by the state and elite social groups but also what happens when apparently less powerful groups take action themselves, we need to understand the nature of relationships between various social actors. Institutional analysis can assist in developing such an understanding.

### *Analysing social institutions or rules*

Social institutions govern the social, economic and political relations between individual actors and, together with resources of various types, make it possible for social systems to exist and function. They may be divided into formal and informal institutions.

Formal institutions are rules of the game that are explicitly drawn up and defined, in particular state law. They specify rules to be followed in performing certain activities or fulfilling obligations, in theory enforceable because of state access to legal and coercive power.

Informal institutions, on the other hand, are embedded social norms and practices, including customary rules<sup>4</sup>. They are revealed through actors' everyday practices, transactions and disputes<sup>5</sup>. This implies a pluralist view of law, which sees non-state legal forms, whether or not recognised in state law, as relevant to understanding practices and relations relating to land and does not give one system of law greater standing than another<sup>6</sup>.

Institutional analysis evolved to explain the operation of markets. It stresses the importance of institutions or rules because of their roles in minimising the cost of transactions or proscribing certain actions and behaviour, thereby enabling markets to work effectively<sup>7</sup>. It has been used to explain land disputes in informal settlements in Jordan<sup>8</sup>; land and housing markets and informal credit in Trinidad<sup>9</sup>; the provision of infrastructure services to informal settlements in Turkey and Egypt<sup>10</sup>; and the strengths and weaknesses of informal land management systems in Tanzania and Lesotho<sup>11</sup>.

In urban studies, institutional analysis has primarily focused on the efficiency of rules in enhancing or constraining market transactions, but has been rather silent on issues of equity and power relations between market actors. While sociological theory acknowledges, as suggested above, that the poor actively engage with the better off and with the state, we need a way of understanding how such groups organise themselves and exert influence on more powerful social actors.

### *Understanding the actions of social groups*

To analyse how apparently powerless social groups can organise themselves and assert their own interests against more powerful groups, including the state, it is helpful to conceive of a social group with few formal resources as nevertheless capable of generating informal norms and rules of behaviour, with which its members can induce or enforce

compliance<sup>12</sup>. This does not mean that such groups are autonomous with respect to society as a whole – each is also embedded “in a larger social matrix which can, and does, affect and invade it..”<sup>13</sup>. Members of such a group may, however, jointly fail to comply with rules that do not suit their interests, in particular state or formal rules.

The idea of societal non-compliance arises from acknowledging the agency of individual social actors. Sometimes termed a ‘weapon of the weak’, non-compliance may be exercised by those without overt power in order to subtly challenge the actions of those with formal political or organisational power<sup>14</sup>. If non-compliance becomes sufficiently widespread, it may even produce changes to government policy and practice, as Tripp argues it did in Tanzania with respect to government attitudes towards informal sector activity<sup>15</sup>.

The interaction between land market actors may take a variety of forms: direct confrontation between social groups and state agencies, attempts by the disadvantaged to capture property rights or power from the rich, or ‘covert’ non-compliance with formal rules. Direct challenges or protests by the poor, for example through land invasions, are risky. An alternative may be to seek political patronage, in order to access state resources, obtain redress for grievances or provide backing for challenges to private property rights. Probably more often, quiet individualistic actions, with no discernible organisation or planning, are taken, in which actors aim to avoid direct confrontation with the authorities. Informal settlements in the cities of developing countries are often the outcomes of a combination of tactics. To Razzaz, the most compelling attribute of those involved in gaining access to land through informal channels is their ability to take advantage of inconsistencies in state rules and enforcement strategies<sup>16</sup>.



### *Hypotheses*

Based on insights drawn from this wider body of literature, the starting hypotheses of this research were, **first**, that the success of informal land delivery systems in supplying between a half and seventy per cent of all land for urban residential development, including land for the poor, can be attributed to their practical attributes and their social legitimacy<sup>17</sup>. The practical attributes, it was suggested, make the arrangements more suited to the needs of urban land rights holders and those seeking land for housing, including the poor, while wide understanding and acceptance of the social rules governing relations between actors in the system serve to secure wider compliance than is common for formal land regulation.

**Second**, it was hypothesised that, as urban development proceeds, the informal institutions that regulate land transactions and use change over time, vary between residential areas and sometimes break down. The pressures generated by urban property markets and increased demand result in changes in traditional social institutions in order to make them more suited to the circumstances of urban areas. In newly urbanising areas, as shown by research in Dar es Salaam, modified versions of traditional social institutions underlie quite smooth processes of conversion of agricultural land for urban uses. However, this research also showed that, as areas consolidate and the density of development increases, the informal social rules used to regulate transactions and resolve disputes become increasingly strained, and may eventually break down altogether<sup>18</sup>.

**Third**, the relations between disadvantaged groups seeking land and state agencies are likely to involve both conflict and accommodation. A distinction needs to be made between cases where non-compliance leads to conflict and where it leads to accommodation, identifying the reasons for these different reactions. The outcomes of conflicts are

uncertain – in some instances, state agencies can enforce compliance, for example, through eviction and demolition, but in other cases, informal actors may prevail, perhaps by sheer weight of numbers, leading to recognition and upgrading of informal settlements.

In their interactions, both state and non-state actors may adhere to the formal rules of state law and regulation, but may also be influenced by informal social norms and ways of regulating transactions. The relations between state structures and informal actors are, therefore, complex and dynamic, because, although formal state rules are in theory omnipotent, in practice they are negotiable<sup>19</sup>. Understanding the circumstances in which accommodation rather than conflict occurs is potentially important in identifying workable improvements to urban land delivery systems.



*Busega, Kampala*

## The comparative study

Coordinated by Carole Rakodi of the University of Birmingham and Clement Leduka of the National University of Lesotho, the research was comprised of in-depth studies of six cities. The criteria for selection of the cities are explained first, followed by a summary of the methodological approach adopted. Some basic information on each city is also given.

Even within countries, the circumstances in different cities vary. International comparisons are even more complex, because of the enormous variation in the characteristics of cities, their land markets and their administrative arrangements. In order to make it possible to draw conclusions from comparative analysis, it is desirable to hold some factors relatively constant. In this research, it was considered that one such critical factor was the principles on which the formal legal system is based and it was, therefore, decided to select cities from Anglophone Africa. These include cities from eastern, southern and west Africa, but exclude cities where recent or current research on related issues is already under way<sup>20</sup>.

The cities are located in countries with different colonial policies with respect to land and urban development, arising in part from whether a system of direct or indirect rule was adopted. They also represent countries with very different post-colonial economic and land policies. These vary from free-market oriented Kenya to heavily state-led Botswana and Zambia, and include countries which have been subject to military or single party rule in the period since independence (Nigeria, Zambia, Kenya, Lesotho) as well as a country which has been a multi-party democracy throughout (Botswana).

Some had attempted to nationalise land and introduce other reforms in the 1970s (although many of these reforms had subsequently been reversed) and some had not. The governance arrangements at both national and local level, including the role of

traditional authorities, vary between the countries and the responsibilities for urban land delivery, regulation and tenure registration are differently allocated between government levels and agencies.

It was decided to avoid the largest cities, partly because they have already been relatively well studied, partly because their very active property markets are not necessarily typical of cities in general, and partly because researching land in situations where land issues are highly politicised is very difficult. Thus the research focused on six medium-sized cities, some capitals of relatively small countries, and others secondary cities. The cities and the local researchers are shown in the box opposite.

The aims of the project and the methodological approach were jointly developed by the researchers. The local teams studied

- a) The context for urban development, including socio-political and economic conditions, the legal and administrative framework for land administration and the actors in land development
- b) Land delivery systems, including the volume, types and regulation of land transactions in each delivery channel<sup>21</sup>. Although the research focussed on informal land delivery, formal systems were also investigated (mainly using secondary sources). It is well known that, although the performance of formal delivery systems is variable, they have often not delivered land with appropriate characteristics and in sufficient volumes to meet the demand for housing land. A review of their effectiveness was, however, felt to be necessary as a basis for comparison with informal delivery channels. Moreover, there is often no clear division between formal and informal systems.
- c) The characteristics of those accessing land through the alternative delivery systems, in order to assess whether the channels identified did in the past and continue today to supply land to the

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

urban poor and other disadvantaged groups, especially women.

- d) The authority structures, both those vested in the state and those associated with other social institutions, and their roles in land transactions and dispute resolution
- e) The institutions regulating transactions and disputes in land, including an assessment of the extent to which these function well and are legitimate in the eyes of actors in land delivery
- f) The effects of urbanisation pressures on land market operation and regulation, and the extent to which the channels through which most land is delivered for residential use can be relied on to continue to meet the demand for secure tenure in appropriate locations as urban growth proceeds.

In each city, a city-level analysis was complemented by detailed studies in three informal settlements – a peripheral developing area, a partly consolidated area in which active subdivision and development was still under way, and a consolidated inner city area with a relatively high density, where pressures on land might be expected to produce a higher level of problems and disputes. A combination of quantitative and qualitative methods was used,

drawing on both secondary sources and primary data collection. In each of the case study settlements, a sample survey of ploholders was carried out using a structured questionnaire. The survey was complemented by key informant interviews and a series of focus group discussions.

Finally, each team enlisted the services of a lawyer to provide background on law and court cases relevant to understanding urban land issues in general and the resolution of disputes in particular, including cases initially dealt with through informal or customary mechanisms.

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. Following the workshops, full reports of the studies and policy briefs were published and are listed on p. 45.

## Eldoret, Kenya

With a population of about 197,000 in 1999, Eldoret is the fifth largest town in Kenya and a major regional administrative, commercial, educational and industrial centre. It is the centre of Uasin Gishu District and is administered by an elected Municipal Council. Located on poor quality land in an otherwise high potential agricultural region in the so-called 'white highlands', it developed as an agricultural service and agro-processing centre for the surrounding European commercial farming region. Selected as a growth centre and politically favoured in the 1980s, it attracted public investment in infrastructure and industries.

Although the publicly owned land on which the town initially developed has mostly been built on, the urban boundary has been extended to incorporate privately owned farmland. Today, there is limited public land for subdivision and a cumbersome formal land delivery system.

The availability of formerly European-owned farms in and around the urban boundaries and post-independence encouragement to Kenyans to purchase private landholdings have led to the purchase of farms by landbuying companies formed for the purpose. Transfer of freehold title is followed by subdivision and sale: formal in the case of high-income developments, or informal for middle and low-income purchasers. Large numbers of plots have been provided in this way.

## Enugu, Nigeria

Originally a coal mining town, Enugu later became more important as a railway and administrative centre. Its population in 1991 was just under half a million and today may be between 800,000 and 1,000,000. Capital since 1991 of Enugu State, today the city has administrative, educational, industrial and commercial functions. The city is currently split between three Local Government Councils, each with a directly elected Chairman and councillors elected on a ward basis. However, many important land-related and utility services are provided by State agencies.

Indigenous landholding groups ceded some land for mining, railway and housing development in the early years of Enugu's development. However, the colonial system of indirect rule left most land in the hands of the indigenous groups. Today, there is little undeveloped land in public ownership and public agencies use expropriation powers under the 1978 Land Use Decree to obtain land for public purposes, including industrial estates and major infrastructure.

The indigenous groups and families have formally subdivided and leased large tracts of their land. Nevertheless, they retain ownership of much land both within the built up area and on the outskirts of the city. Family heads and traditional rulers of the various landowning communities have to secure agreement of the family or group to the disposal of farmland, while homestead land is retained for use by the family and its descendants. Farmland is subdivided and sold to individuals or speculators. A large volume of informally subdivided land for residential development is thus provided for group members as well as middle and upper income purchasers.

## Gaborone, Botswana

Gaborone is the capital of Botswana and had a population of about 186,000 in 2001. It has mainly developed on state land, enabling rapid and large-scale subdivision of publicly owned land for housing for all income groups, assisted by buoyant government revenues derived from Botswana's mineral wealth. Surrounded by privately owned commercial farms, when additional land has been required, the government has been able to purchase a large farm and has also occasionally acquired areas of tribal land.

With the exception of Old Naledi, an early labour camp, which has since been regularised and upgraded, informal settlements within the urban administrative boundary have not been tolerated. The obstacles faced by households wishing to obtain a residential plot are considerable. They include a ban on new construction between 1982-7 because of water shortages, long waiting lists and infrastructure costs.

As a result, in recent years there has been rapid subdivision and development in areas of tribal land outside the administrative boundary to the west and east of the city (Mogoditshane and Tlokweng respectively). In theory this development is under the control of Tribal Land Boards established by the government for this purpose, although the system does not operate smoothly. The elected Gaborone City Council and the two district councils within whose boundaries the main areas of informal settlement lie (Kweneng and Southeast) have limited resources. As a result, central government retains the main policy and administrative roles related to land.

## Kampala, Uganda

Kampala is the capital of Uganda, with a 2002 population of 1.2 million. Capital of the Buganda kingdom since the 1700s, colonial rule transformed it into a divided city, part governed by the Kabaka (king) and part by a local council established by the colonial government to administer the European section of the city. Much land was ceded to the Crown, while the Baganda chiefs were transformed into a ruling landed oligarchy, exercising extensive control over *mailo* land, at the expense of both the Kabaka and the peasantry. While colonial indirect rule initially depended on the chiefs for local administration, by 1920 they had become less necessary and their power declined, although they retained their status as big landlords.

The Kabaka's attempts to retain control over the kingdom's land and administrative power, the chiefs' determination to protect their own interests, and the peasantry's struggles to restore the land rights eroded by colonial advancement of the chiefly class have been important in both the pre- and post-independence periods. The destructive rule of Idi Amin from 1971 to 1979 led to a rapid expansion of the informal economy, urban-rural migration and near-collapse of the civil service. The current regime has struggled to restore economic growth and state institutions.

A unified administration for the city of Kampala was established in 1966/7, and lower layers of local government put in place by the current regime in 1986. However, parallel systems of land tenure and administration persist and little progress has been made with implementing the 1998 Land Act provisions intended to regulate the ownership and use of land and simplify ownership and occupancy systems.

## Lusaka, Zambia

The capital of Zambia, Lusaka originated as an agricultural service centre on the railway line leading to the Copperbelt. Along the railway, a belt of land was taken into Crown ownership and subdivided into commercial farms for Europeans. Only at some distance from the urban centre was there any land in indigenous ownership, and much land in and around the town was retained in public ownership. In addition, much of the land near the central business district was retained in public ownership because it was unsuitable for farming and costly to develop. As independence neared, some European farmers permitted shack development on their land, while many European farms were abandoned.

The relaxation of migration controls and post-independence growth in wage employment led to rapid population growth. Many of the new households were able to obtain free land and to manage the construction of their own houses, although the provision of infrastructure in the informal settlements had to await regularisation and upgrading, starting in the 1970s.

It was important to the rival political parties of the 1960s and 1990s (and to UNIP under the one-party state of the 1970s and 1980s) to secure the support of residents in informal settlements. Thus party and City Council administrative structures developed side by side in these areas. Despite their designation as Housing Improvement Areas, Zambia's economic and political difficulties and the lack of local government financial and administrative capacity have hindered the achievement of improved living conditions for their residents.

## Maseru, Lesotho

With a 1996 population of 140,000, Maseru is the capital of Lesotho. The innermost part of the city, within the original 1905 administrative boundary, developed on colonial government reserved land. This was inherited as public land at independence.

The city is surrounded by villages and extensive informal settlements have developed on former agricultural land held under customary tenure arrangements. Families retain ownership and use of their homestead land, while *masimo* (fields) are subdivided for sale. Approximately 70 per cent of all land demand is met outside the formal state delivery system. The government's reaction has generally been benign neglect, punctuated with instances of intolerance marked by evictions and demolitions. These have usually occurred when the government has had financial resources for land servicing and development, mainly from donor funds.

In order to curb the process of informal land development and loss of agricultural land, especially in the peri-urban areas, new legislation was put in place in 1980, the Land Act 1979. This Act effectively nationalised all land, with rights to be leased from the state. It also extended the urban boundary to incorporate large areas of informal settlement, with the intention of establishing controls over further subdivision. Dogged by ambiguities and implementation problems, few of its aims have been achieved. A new land bill has been drafted, but has yet to be enacted into law.

# Delivery channels

## Land for residential use in African cities

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The studies identified the different channels through which land for new residential development is made available in each of the cities and assessed the strengths and weaknesses of these alternative channels. This assessment used a number of criteria suggested, first, by the research questions and hypotheses, and also by the research participants' responses with respect to the attributes that they value in urban residential land. These criteria were:

- i. Scale:* has the channel delivered land in sufficient volume (and in appropriate locations) to meet the demand for housing land from a rapidly growing urban population, is it continuing to do so today, and what are the prospects of it continuing to do so in future?
- ii. Cost:* has the channel delivered housing plots at a cost that can be afforded by people seeking land for housing, especially those with middle or low incomes? Is it continuing to do so?
- iii. Security of tenure:* has the channel delivered housing plots with sufficient security of tenure to encourage owners to invest in housing? What are the threats to security and can owners deal with these threats and retain their rights?
- iv. Access to disadvantaged groups:* has the channel in the past and today delivered residential plots to disadvantaged groups, especially poor households and women (whether they are heads of household or not)?
- v. Service provision:* has the delivery of land through each channel been accompanied by the provision of infrastructure and services, either in advance, on subdivision or subsequently?
- vi. Dispute resolution:* are there widely available and socially legitimate means of dispute resolution available to those accessing land through each channel?

The research bore out the general view that most landholders in Africa's cities both in the past and today obtain access to housing plots through informal channels of land supply. In the past, many were able

to obtain plots through non-commercial channels, through squatting on publicly owned land or land abandoned by private owners, or membership of indigenous rights-holding groups. The availability of such channels enabled many relatively poor households to obtain a plot (although not necessarily the poorest). Today, the research showed that it is no longer possible for poor households to access land for new residential building in urban areas, with some relatively minor exceptions:

- Members of indigenous land owning families and communities in Enugu
- Individuals in Kampala who claim wetland areas, initially for cultivation and then for building, at considerable risk to themselves and their investments
- People who pool their resources to buy a share or part of a share in a land buying company in Eldoret
- Poor households who are allocated land for free by the tribal Land Boards on the periphery of Gaborone, although the process operates very slowly because the Boards lack the resources to speed it up
- Those allocated a plot in a public-private partnership serviced plot programme in Gaborone, although they are only able to access such a plot after a long wait
- Locally resident households with good party political or official connections in areas in Lusaka where party or local government officials are semi-officially subdividing publicly or privately owned land in or adjacent to informal settlements designated as Housing Improvement Areas.

The vast majority of households in contemporary cities obtain land for residential use through purchase. The sources of plots include

- Sales of customary land in Maseru, Enugu and Gaborone
- Informal subdivision by land buying companies in Eldoret

- Informal subdivision by *mailo* owners and tenants in Kampala
- Informal subdivision and ‘sale’ by party or local government officials within or adjacent to settlements designated for regularisation in Lusaka
- Purchase of undeveloped land from existing plotters.

Access to land, therefore, is restricted very largely to households with the necessary financial means to purchase it. These are primarily middle and upper income households. Low-income households that have some income (not the poorest) can often negotiate flexible methods of payment for land delivered through informal channels, including instalments. In some cases, the payments are token ‘fees’ to party or government officials rather than a market ‘price’ for the land. Nevertheless, for many newly formed households, especially the poor, the only way of accessing land is through

- plot sharing, either from the outset (e.g. by buying half a share and thus half a plot in an informal subdivision in Eldoret) or through the subdivision of a plot by a parent for a child (Eldoret, Kampala, Maseru).
- inheritance, at least until the plots are too small for further subdivision and sharing amongst children, at which point the prospect of being able to inherit a plot will decrease.

In practice, most poor households are tenants.

Many households who are unable or do not wish to acquire land to construct their own houses purchase existing properties, often in informal settlements. The relative importance of markets in secondhand houses increases as cities and settlements age, but these markets were not the main focus of this research.

The grounds for the main conclusions will now be elaborated by examining the alternative channels for land delivery in turn.

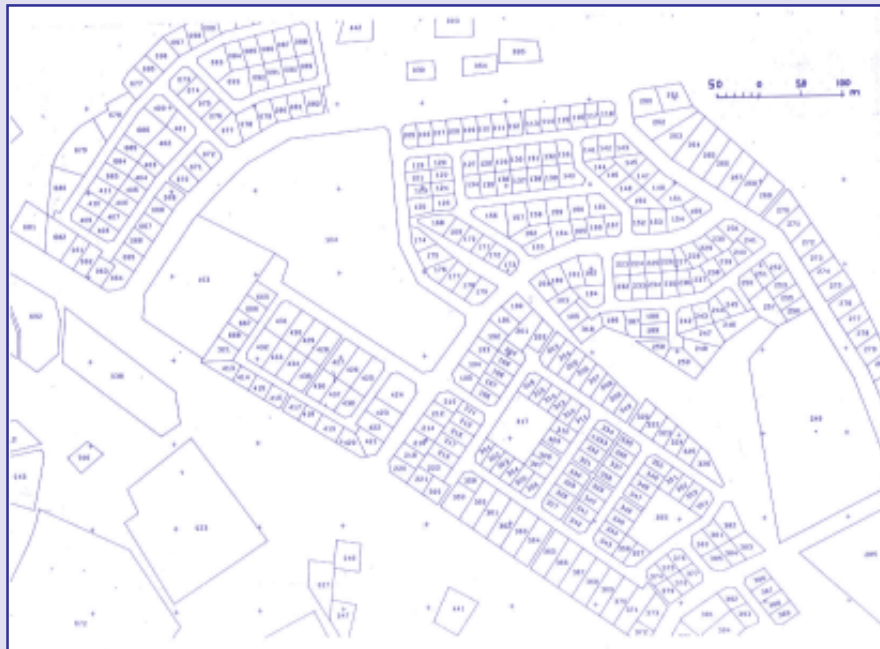
## Allocation of public land

The allocation of public land for housing is of varying significance. In Gaborone, it always has been and continues to be the main source of residential land within the urban boundary. There have been serviced plot programmes in Maseru, Eldoret, Lusaka and Kampala, often when external funding is available, but their scale is limited. In Kampala, customary occupiers of land taken over by the Crown under the 1900 Buganda Agreement retained their usufruct rights and subsequent legislation has reinforced protection of their rights. Today, land administered by the Kampala District Land Board (municipal land – 15 percent of the city’s area) and the Uganda Land Commission (government land – 20 percent) is fully subdivided and occupied.

Because of the historical development of Enugu, the public sector has never owned much land in the city and land for public purposes has to be purchased from private rights holders, curtailing the government’s ability to subdivide land for housing. In addition, the charges for allocation of plots include an application fee, survey fee, development premium (supposedly to cover the cost of infrastructure installation) and fees for the preparation of the certification of occupancy. The total amount payable places such plots, even if available, beyond the reach of low-income households.

The reasons for the large contribution of this channel in Gaborone include government capacity, the nature of the political regime and the patterns of land ownership on the outskirts of the urban area. The government of Botswana (and, by extension, Gaborone City Council) has been relatively well endowed financially because of the discovery of diamonds. The country has had a relatively stable regime, based on multi-party democracy, peaceful transitions of power and elite consensus. This has enabled it to manage its economic resources relatively well, buy in expertise when required and adopt developmental policies that have spread the benefits





*Ha Matala in Maseru*

of revenue from diamond exports broadly within society. In addition, much of the land on the outskirts of the city is divided into large commercial farms in private ownership, which has enabled the government to purchase a farm when land is required for urban extension. One or more of these conditions are absent in all the other cities studied.

Thus in Gaborone, public land allocation has resulted in a significant volume of land for residential development, but this does not apply in the other cities. When available, subdivided public land provides a plot with security of tenure (formal freehold or leasehold title), but the process of allocation is susceptible to the discretion of those responsible and therefore sometimes to favouritism and corruption (see box). Land provided by the government is more likely to be serviced, but the standards adopted and therefore the cost is likely to reduce access to such land by low income groups and never provides access for the poorest (for example in Maseru). A further problem is that the system of public land supply is often not well known and transparent, so that people with low levels of literacy and little knowledge of the bureaucracy are marginalised. This is likely to include poor people and many women. Women heads of

household qualify for publicly provided plots in all the cities studied, although they are often under-represented in actual allocations because they find it more difficult to satisfy eligibility criteria such as wage employment or a minimum income. In some circumstances, the regulations governing allocation allow women who are not heads of household to obtain land in their own names, although there is considerable social resistance on the part of both officials and women and their husbands to exercise this right, since for a woman to acquire land in her own name is considered to indicate a weak marriage. However, women married in community of property (especially in Lesotho) cannot register land in their own names without the permission of their husbands.

There are normally provisions for individuals with complaints against the system of public land allocation to appeal and for disputes to be resolved or redress sought through the formal court system. However, bureaucratic unresponsiveness, arcane language, lack of court capacity and the cost mean that the official channels for obtaining redress are difficult to access, slow and costly.

<i>Strengths</i>	<i>Weaknesses</i>
Significant land supply (Gaborone) Security of tenure More likely to be serviced Mechanisms for dispute resolution/complaints Access to women	Insignificant land supply (other cities) Susceptible to discretion/corruption Standards/cost reduce access by the poor Opaque processes Redress hard to obtain Married women discriminated against (Maseru)

## Purchase of land through the market

In two of the cities studied, purchase of land through the market was the most important means of accessing land for housing for all income groups. In Eldoret, informal (as well as some formal and semi-formal) subdivision by land buying companies has, since independence, provided plots for both initial shareholders in the companies and subsequent purchasers of plots.

In Kampala, by far the largest source of land is *mailo* – the freehold land conferred on the King of Buganda and his chiefs under the 1900 Buganda Agreement, in which allotments were measured in English square miles. The tenure rights of pre-colonial occupiers of this land were downgraded to tenancies-at-will and the rights of clan heads to hold and allocate it eroded. Political turbulence, conflict and population movements in the 1970s and 1980s, as well as inconsistencies in the land law and state collapse, enabled people to acquire or sell land in which the ownership of rights was unclear. Land nationalisation in 1975 resulted in further confusion before it was reversed in the 1995 constitution and 1998 Land Act, which attempted to improve the security of occupiers of various types of land. *Mailo* tenure was again defined as freehold, subject only to the rights of ‘lawful or bonafide’ occupants of the land, including longstanding tenants, purchasers and people who had occupied land for at least twelve years prior to 1995 without challenge by the owner. In Kampala, the tenure security of many in the latter category is uncertain because a large proportion of

plottolders occupied their plots more recently and the status of those who have inherited from ‘lawful or bonafide’ occupants is unclear. Nevertheless, the 45 percent of Kampala’s land under *mailo* tenure is today the main source of new housing land supply.

In both Eldoret and Kampala, private sales of land to individual purchasers provide a significant volume of housing plots, but in other cities it is unimportant (see box). It affords some access to land by the poor, for example, through purchasers combining to buy a single share in a land buying company in Eldoret and subsequently subdividing the plot, or through arrangements to pay in instalments. However, in no cases did this channel enable the poorest households to access land and most of the purchasers are those with middle level incomes.

Although the initial owners of the land may have formal rights of ownership, they rarely have individual title. In Kampala, given the contested tenure rights of many occupiers and the complex land administration system, title registration is slow and difficult. In Eldoret, the title is generally held jointly



Mbuya, Kampala

by all the shareholders of a land buying company. However, the processes of obtaining official permission for subdivision and house construction are slow and the standards required are often considered unsuitable by the actors involved, so the subdivisions do not comply with formal subdivision and development regulations.

In these circumstances, title cannot be transferred or registered following a transaction and typically a letter of agreement is used instead. Such letters are usually witnessed (by local leaders, neighbours etc). Their validity is generally respected by other actors in the land delivery process, including the formal land registration agency if title is applied for and the courts if a dispute is taken to court. However, it is possible for an owner to sell a plot more than once, using a different set of witnesses to a subsequent sale.

Women can purchase land through this channel, if they have means. However, married women are constrained from purchasing land in their own name by its social unacceptability, as noted above.

Disputes over transactions are rare, but when they do occur, they are often resolved by local leaders – the elected chairmen of the lowest level of local government (effectively neighbourhood councils) in Kampala and the village elders (leaders usually

identified by approbation rather than a formal election) at the neighbourhood level in Eldoret. However, both Local Council chairmen and village elders may be partial, favouring one party over another for reasons to do with politics, ethnicity or other factors, or they may be corrupt and susceptible to bribery.

Land buying companies formed by shareholders of mixed income groups appear to be a uniquely Kenyan phenomenon, which emerged in the period around independence, when President Kenyatta stressed that Kenyans could not expect to get land for free, and the purchase of land from departing settler farmers was encouraged. The ease with which a company can be established in Kenya facilitates the mechanism, and high levels of trust between shareholders in the land buying companies in Eldoret are based on shared ethnicity – the vast majority of companies are formed by members from a single ethnic group. Some low-income people are able to access land by the purchase of a part-share or subdivided plot. However, membership based on shared ethnicity by definition excludes members of other ethnic groups from becoming initial shareholders of plots in purchased farms (although not from subsequently buying land from the original shareholders)<sup>22</sup>.

<b><i>Strengths</i></b>	<b><i>Weaknesses</i></b>
Significant supply (Eldoret & Kampala) Affords some access to land for the poor Letters of agreement generally witnessed, respected and recognised in applications for title Access to land for women with means Disputes often resolved by Local Councils (Kampala) or elders (Eldoret) Trust between shareholders in landbuying companies based on shared ethnic origin	Insignificant supply in some cities Does not provide access to land for the poorest Possibility for multiple sales using different witnesses Record-keeping by lowest level of government poor (Kampala) Married women's access to land constrained by social rules and customs LCs/elders may be partial or corrupt Excludes other ethnic groups from membership of landbuying companies

## Delivery of customary land through state-sanctioned channels

The extent to which customary systems of tenure and land administration were formally recognised in law and policy has varied between countries both in colonial times and since independence. In Botswana, one of the channels by which land is made available for housing can be termed state-sanctioned customary land delivery<sup>23</sup>. As noted above, some of the land on the outskirts of the city of Gaborone was subdivided into privately owned commercial farms. However, in other directions, land under the administration of customary authorities adjoins the urban boundary. Under current government policy, this land has been vested in Land Boards (one for each tribal area) on behalf of all citizens of Botswana. The Boards acquire land from individual rights holders, subdivide it and allocate plots to individuals for an indefinite period, with a customary land certificate<sup>24</sup>.

In Gaborone, although there has been a significant supply of publicly subdivided and serviced land available for both high and low income households within the city boundary, the eligibility criteria and allocation process have resulted in the formation of very long waiting lists. In addition, large numbers of plots have been allocated but remain undeveloped, and the adoption of higher standards in recent years have made the serviced plots unaffordable to low income households, even though no charge is made for the land itself. As a result, much new housing land is being made available, acquired and developed in a few areas under the administration of tribal Land Boards outside the city boundary.

The study concentrated on land delivery in Mogoditshane to the west (see also p.24-25). In such areas, a significant volume of land for housing has been made available in recent years. However, acquisition of land by the Boards is hindered by disputes over the level of compensation payable to

customary rights holders. In addition, plots are supposed to be surveyed and serviced prior to allocation, but the Boards lack the financial and technical resources needed to achieve this. Therefore demand exceeds supply, encouraging customary rights holders and prospective acquirers to seek ways around the system, and tempting Board members to favour those with something to offer.

If the Board officially allocates a plot with a certificate, then the acquirer has security of tenure, including the right to pass on the land to heirs and to mortgage it. Although in principle the Board is entitled to demand the return of land, the legislation does not spell out the timing or conditions of any such return, and in practice it has not occurred and is not likely to occur. Women heads of household can obtain land through this system, with a certificate in their own name, and in theory married women could do so also. However, in practice social norms held by both purchasers and Board officials mean that the latter would not do so in practice without the explicit permission of their husbands.

As in all the other channels of land delivery studied, disputes are uncommon and are normally resolved at local level between neighbours or families. When, relatively rarely, they cannot be easily settled, disputants appeal to the local Customary Court. Many of the disputes are between customary owners or plot acquirers and the Land Board over ownership rights or compensation. While sometimes resolved by an approach to the Board, few trust this organisation and most litigants prefer to take their grievances to the Customary Court. In the late 1990s, a Land Tribunal was established to hear appeals from or against the Land Boards. Generally, both the Customary Courts and the Tribunal adopt a more conciliatory approach than the formal court system, favour customary owners and those to whom they have sold land rights over the Boards, and are trusted by land market actors.

<i>Strengths</i>	<i>Weaknesses</i>
Significant land supply (Gaborone) Security of tenure Women household heads entitled to land, and in theory married women also Dispute resolution mechanism available (Board, Customary Court, Tribunal)	Acquisition of land hindered by disputes over compensation Requirements for survey and servicing prior to allocation restricts supply Excess demand strains capacity and encourages rent-seeking Boards can demand return of the land In practice, married women are not allocated land without their husbands' permission

### **Delivery of land through customary channels to members of the group**

Only in some of the case study cities was there land in customary ownership on the outskirts of the urban area in the past or today, and today, even in these cities, supply of free land through this channel is increasingly limited. It primarily occurs in Enugu, where land is effectively 'owned' by families (who have often registered their title), and members of the family are often still able to obtain land for new housing in family homestead areas. It also occurs in Maseru, although the supplies of new land available through this channel are increasingly limited. Nevertheless, inheritance is a significant way of obtaining family land for new households.

This land is often supplied free (or in exchange for a token of appreciation), and so it is one of the only ways in which poor households can obtain access

to land in contemporary cities. Men allocated plots through this channel have security of tenure, although there is some vulnerability to government action. For example, the Government of Nigeria has powers under the 1978 Land Use Decree to expropriate land required for public purposes, which it has not hesitated to use on quite a large scale (for example for industrial areas and the airport in Enugu). However, access to land in customary tenure is restricted almost entirely to men, and women can only gain access to such land through their relationships with men (normally their husbands). It is a straightforward way of obtaining land, since the eligibility criteria are well known and the processes simple.

The social institutions governing land transactions and dispute resolution are widely understood and generally respected within the group in both Enugu and Maseru. However, the amount of land available through this channel is shrinking. In inner city Enugu,

<i>Strengths</i>	<i>Weaknesses</i>
Often free Access to poor members of the group  Security of tenure for men Fast Institutions widely understood and generally respected within the group Dispute resolution mechanisms effective and respected, with some exceptions	Access to unmarried men restricted (Maseru) Access to all/majority of women only through men Limited supply for groups in built-up area (Enugu) Vulnerable to government intervention to acquire land for public purposes (Enugu) Restrictions on the sale of customary land inhibit choice

for example, the land belonging to some communities has long been built up and they no longer have undeveloped land to allocate to new households formed within the group. In addition, there are occasional threats to the security of tenure of those to whom land is allocated through this system and examples of the customary dispute resolution procedures being challenged.

### Purchase of customary land

In both Maseru and Enugu, the sale of land held by customary rights holders is the predominant means of delivering land for new residential development. In Enugu, this channel can be subdivided into informal subdivisions and planned layouts, in which the landowning community decides to formally subdivide and sell part of its farmland. Both these processes have been central to the development of the city for decades and continue today (see also p. 26). In Kampala, the subdivision and sale of customary land is also important, but in terms of volume contributes less than subdivision of *mailo* land (see also p. 16-17). In Gaborone, it is also significant in the periphery of the built-up area. However, it is officially prohibited and so sellers and buyers disguise it as ‘inheritance’.

The sale of customary land thus contributes a significant volume of plots for housing development in many cities, and those acquiring plots through this channel are confident that they have de facto security of tenure. However, sellers do occasionally sell the same plot to more than one buyer if the first buyer has not developed it, and government intervention restricts supply in Gaborone. The sale of customary land provides access to non-members of the group, in other words those who would normally not be entitled to free allocation, but may also make it possible for members of indigenous groups that have no remaining undeveloped land to obtain a housing plot. The prices are lower than for plots with title purchased through the formal private market, but

they are nevertheless market prices (except for members of the group), which precludes poor people from accessing land through this channel. However, it does facilitate access to land for women, especially where customary rules exclude them.

Markets in this type of land may become more efficient if institutions emerge to improve information flows. For example, brokers have started to operate in Kampala and Enugu. In addition, whereas in the past transactions were verbal, increasingly, written evidence of a transaction is secured. Initially such agreements involve lay witnesses such as senior family members, neighbours and local officials. Later, lawyers are often employed to draft and witness an agreement of sale.

Although letters of agreement are exchanged, tenure may be relatively insecure if sales have to be concealed or if evictions are in progress anywhere in the urban area. For example, evictions of purchasers in one neighbourhood in Maseru (on the grounds that the subdivision and sale is illegal) make purchasers in other areas jittery. In Enugu, although in many cases consultations within the family or community precede the sale of land, where these have not occurred (and sometimes even if they have), challenges from family members may arise at a later date. In addition, systems of keeping records are undeveloped, which tends to cause more problems as time passes.



Ogui Nike, Enugu

<i>Strengths</i>	<i>Weaknesses</i>
<p>Significant supply</p> <p>Providers access to land to non-members of the group as well as members</p> <p>Relatively cheap</p> <p>Facilitates access to land for women with means</p> <p>Efficiency of the market increases as institutions emerge to improve information flows (brokers in Kampala, Enugu)</p> <p>Written evidence of transactions</p> <p>Formal legal system accepts these types of written evidence</p> <p>Institutions supporting system widely understood</p> <p>Often family/group agreement precedes sale</p>	<p>Possibilities for multiple sales of the same plot</p> <p>Market price restricts access by the poor</p> <p>Insecure, especially if sales have to be concealed</p> <p>Government intervention may restrict supply</p> <p>Systems of keeping records undeveloped</p> <p>Documents not always valid/trusted – owners try to upgrade to state-sanctioned titles</p> <p>Insecurity leads purchasers to seek legal title (mainly Enugu)</p> <p>Despite obtaining family/group agreement, some sales challenged by family members</p>

The social institutions underpinning this system are widely understood and generally respected, including by the formal legal system, which often accepts letters of sale and written agreements as valid evidence of transactions. However, the documents produced are not always valid or trusted, leading some purchasers to attempt to upgrade their sale agreements to state titles, especially in Enugu.

### **Allocation by officials**

In Lusaka, precedents for the operation of land delivery mechanisms today were set by widespread squatting on publicly and privately owned land, informal subdivision by occupiers given permission to build a house on land by its owner (often their former employer), the issue of land cards by the Minister of Lands when areas were outside the urban administrative boundary and the exercise of many governance functions in informal settlements by the local party political organisation. In addition, legislation in the mid-1970s provided for the designation of informal settlements as Housing Improvement Areas. This entitled house owners to Occupancy Licences (30 year renewable use rights) and provided for the extension of infrastructure

services. By 2002, 22 of the 37 settlements in the city had been regularised. Today in such areas, despite the establishment of non-party political Residents' Development Committees, the dominant political party still exercises considerable power, although service improvements generally depend on the availability of external funding.

Informal subdivision and allocation of plots occurs on both publicly and, in some circumstances, privately owned land. In the early years of a settlement's life, newcomers are encouraged by both party officials and the original settlers, since increased numbers reduce the likelihood that the government will attempt to demolish houses and evict the residents. Once an area has de facto security because of its large population or following its designation as a Housing Improvement Area, the process of informal subdivision becomes more commercialised. Thus newcomers seeking land for house construction obtain plots from early settlers, party leaders or local government officials, both within and adjacent to the boundaries of the designated area. Payment is often expected, but is generally not the equivalent of a market price, since the officials are not entitled to sell the land. Some (e.g. local residents

who are supporters of the political party in control of the settlement) may be allocated plots free or for a reduced payment.

Today, in practice, especially in the older-established areas, the majority of plot holders have purchased or inherited a house. Residents and prospective plot owners have become so used to the major role played by party organisations that they accept controls exercised by the party controlling an informal settlement, even though the one party system of the 1970s and 1980s has been succeeded by a multi-party system.

Designation as a Housing Improvement Area provides security of tenure, through registration of plot holders in local government records, even though many occupiers never complete the administrative procedures required for issue of an Occupancy Licence. Nevertheless, significant minorities claim that they have an Occupancy Licence or registered title. The obstacles to universal issue of Licences are less to do with inappropriate

procedures than with limited Council administrative capacity and lack of enforcement mechanisms (unless an owner wishes to sell the plot). However, most of those without Licences have documentary evidence of ownership, generally a letter of agreement between seller and buyer, and many invest considerable amounts in house construction and improvements.

Disputes, most of which appear to be over boundaries or encroachment on adjacent plots or access ways, are generally resolved between neighbours, with appeal to the party branch chairperson or the Local Court. However, an aggrieved owner is constrained from taking an unresolved dispute further because a premium is placed on neighbourliness by households conscious of their dependence on others during times of difficulty. In addition, households with little political influence may not be able to secure intervention by a party official to resolve a dispute.

<b><i>Strengths</i></b>	<b><i>Weaknesses</i></b>
Significant land supply (Lusaka) Relatively cheap (and free to some) Women can obtain access to land Written evidence of transactions Tenure generally secure following regularisation or because of semi-official sanctions Local dispute reduction	Subdivision may encroach on land in private ownership, designated for non-housing uses or unsuitable for building In desirable regularised areas, payments tend to exclude the poor Most plot-owning women are widows Issue of occupancy Licences constrained by limited local government capacity Infrastructure provision inadequate Households without party political connections disadvantaged





*Ngombe, Lusaka*

## Self allocation

There is little opportunity in contemporary cities for people to obtain land through non-commercial channels by their own actions. It occurs through different mechanisms in three of the case study cities, but only on a small scale.

In Kampala, some households settle on wetlands in valley bottoms. This strategy provides one of the few ways in which poor households can obtain access to land for free, but it has problems from the point of view of both settlers and the government. Settlers face extreme insecurity, since building in these areas is prohibited and houses may be demolished (especially if they have not sought the permission of the Local Council officials). In addition, in the early years, until further infill and drainage has occurred, their living conditions are very unhealthy and their houses liable to flooding. The land is officially in government ownership so not only is settlement forbidden for environmental reasons, but also if the initial settled area is later subdivided and sold, such sales are illegal. Moreover, even if the settlement becomes extensive and semi-permanent, the

topographical conditions make the sites difficult to service.

In Maseru, women may allocate themselves plots of family farmland without the permission of their families. As noted above, under customary rules of access, women are not normally allocated land in their own names and divorced or never married women may not be able to obtain family land. However, the number of women taking matters into their own hands is small.

In Gaborone also, family members may occupy an area of family land to which they consider themselves entitled without obtaining the express permission of those with decision-making power. This process is labelled 'squatting' by the government and made out to be widespread, although in practice it appears to occur only on a very small scale. By using the pejorative term, the government is probably expressing its disapproval of the more widespread subdivision and sale of land by customary rights holders, which is informal in the sense that it is done without obtaining permission from the Land Board (see above).

# Conflict or harmony?

## Relations between informal and formal institutions and actors

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The purpose of this section is to provide further insights into the ways in which formal and informal institutions and actors relate to each other in terms of land delivery. The examples deepen our understanding of how the social rules governing transactions in land operate and are understood by the actors involved, how and why conflicts occur, and how day-to-day practices evolve as a result of both conflict and accommodation. They provide pointers to promising innovations and trends, on which future policy and practice can build, as well as problems that need to be addressed. Selected examples of interactions between formal and informal institutions and actors from each of the cities are presented in the boxes on from p. 24 to 36.

### Conflicts

Attempts by the state to enforce formal rules by eviction and demolition of houses built by settlers they regard as illegal result in overt conflicts. Given state monopoly of coercive power, informal subdividers and settlers generally cannot win in such conflicts, as demonstrated by recent evictions in Gaborone (see box p. 24-25) and Maseru. Legal provisions that enable public agencies to appropriate land from customary owners with compensation levels equivalent to the value of unexhausted improvements on the land also give rise to conflicts with landowners, especially when the land so acquired is not, in the eyes of its former owners, used appropriately. Again, owners cannot win in overt conflicts with the state, as illustrated by the experience in Enugu (see box p.26), Gaborone and Maseru. Elsewhere (for example, in Kampala), the problem for those who believe themselves to have ownership rights is that tenure complexity and failure to satisfy planning standards makes it difficult for them to prove and register their rights.

### Gaborone: land rights in a state-sanctioned customary tenure system

Before 1970 chiefs, through ward headmen, allocated tribal land in the areas surrounding Gaborone. Since 1970, control over land subdivision and allocation in tribal areas has been vested in a hierarchy of tribal Land Boards, which are, as described on p. 17, supposed to re-acquire land from field owners, plan its subdivision and provide infrastructure before the plots are allocated. Until the late 1980s, however, the land board in Mogoditshane, on the outskirts of the city, merely rubber-stamped allocations of arable land agreed by headmen, who were paid ‘thank you fees’ for their services.

Alarm at the rapid subdivision and sale of plots in the older parts of Mogoditshane, increasingly to non-tribespeople, led to the board demarcating a semi-circular road as a boundary beyond which further subdivision would not be permitted until it had re-acquired the land and subdivided and serviced it. Following a Presidential Commission of Inquiry in 1991, detailed layout plans were prepared for these areas. However, existing plot boundaries and buildings were ignored and no local consultations undertaken. Between 2000 and 2002, a number of houses that did not comply with the new plans were demolished.

The result has been silent confrontation between the state and tribal land (*masimo*) owners in peri-urban areas. *Masimo* owners have continued to privately subdivide their land into residential plots for sale, with the collusion of headmen and purchasers, often

disguising the transfer as ‘inheritance’. The conflicts between the Mogoditshane Land Board and customary owners or plot acquirers, as well as the tactics used to evade Board controls and requirements, are outcomes of unclear, even unfair, state land acquisition rules and lack of land board capacity. While the state pays handsome compensation when it acquires freehold land, it pays virtually nothing for the acquisition of tribal land, save for unexhausted improvements, such as standing crops, boreholes and buildings.

Land Boards argue that tribal land is a free good, the market value of which is difficult to determine beyond the loss of unexhausted improvements. They are reluctant to use the unit price of freehold land as a guide to the amount of compensation to be paid. Inadequate compensation has encouraged pre-emptive action by *masimo* owners and headmen and fuelled the informal subdivision and sale of *masimo* land in Mogoditshane and other peri-urban areas.

The land boards are also unwilling to pay compensation because they claim that, according to the 1970 Tribal Land Act, tribal land rights are vested in them and *masimo* owners have only usufruct rights. These disappear upon change of use by the tribal holder or when the land is no longer suitable or required for the purpose for which it was initially granted i.e. agriculture. However, on the basis of their pre-1970 rights, individual *masimo* owners assert ownership as well as use rights. These conflicting claims have led to numerous court challenges between tribal land boards and *masimo* owners. In the majority of cases, the courts and land tribunals have decided in favour of *masimo* owners. Kalabamu and Morolong argue that these

decisions seem to confirm that informal conversion of *masimo* land to predominantly residential uses without land board authorisation is lawful, negating the land boards’ claim that *masimo* owners are today only entitled to usufruct rights<sup>25</sup>.

In addition, the Mogoditshane board’s inability to issue Certificates of Rights to all those granted plots by headmen has resulted in lack of clarity over rights to individual plots. The demolitions of 2000-2 temporarily halted new construction. However, the board’s inability to acquire, subdivide and service sufficient land to keep pace with demand has encouraged continued subdivision by *masimo* owners. Further plans for demolitions, long waiting lists and alleged land board favouritism and corruption encourage owners and purchasers to find ways around the board’s attempts to enforce the legislation.

In particular, Kalabamu and Morolong argue that inheritance claims have been used to justify occupation of land without due authorisation or to resist eviction by the land boards. The formal rules (the 1970 Act) recognise land acquisition through inheritance, and also seem to put such inherited land outside the jurisdiction of the land boards. Kalabamu and Morolong cite numerous court cases where the land tribunals have ruled in favour of people who the land boards claimed to be unlawfully occupying and using land in peri-urban areas. All these cases rested on the counterclaims of the accused that they were the lawful heirs of the individuals from whom they had informally acquired the land. The success of such cases, according to Kalabamu and Morolong, has encouraged people to claim fictitious blood relationships in order to circumvent the rules of the land boards. Amendments to the law have apparently done little to change the situation.

## **Enugu: the interface between indigenous, market and government systems**

The 1978 Land Use Decree provided for the government to appropriate land from communal owners for public purposes, including subdivision and supply for low income housing, on payment of compensation equivalent to the value of the unexhausted improvements on the land. Not only are the levels of compensation regarded as inadequate, but also payment is often delayed. In addition, communities resent the fact that much of the land is not used for the stated purposes but is parcelled out to individual users ('big men') for private rather than public use and that the land seized pays no attention to the location of ancestral homes. Resentment of the powers the Act confers on government and of the limited compensation paid has fuelled informal subdivision and sale of community land, especially in Emene, in the east of the city, where large amounts of land have been appropriated in the past for infrastructure and industry. Nevertheless, indigenous communities feel powerless to resist such compulsory acquisition.

Many sales by indigenous communities in Enugu are semi-formal. For example, in Achara in the early 1960s, indigenous landowning families requested the Enugu Town Planning authority to prepare a planning scheme for areas of their farmland, in accordance with which individual plots (typically 20x30m) have been demarcated and sold freehold, often for the construction of blocks of apartments for rent as well as owner-occupation. The extension in which active subdivision and construction is currently

occurring was not part of the original layout but has since been subdivided and surveyed by its indigenous owners – here plots are sold leasehold. Direct sales to individuals are preferred. Although land brokers increasingly operate as go-betweens, they are perceived as driving up land prices and are regarded as a necessary evil rather than a desirable information channel. Documentation of transfers takes the form of letters of agreement accompanied by receipts, legal memorandums of agreement or titles. Disputes are rare, in part because transactions are accompanied by elaborate rituals.

In theory purchasers of land should obtain a building permit from the local government and pay a once-off development levy and annual property tax. In practice, as soon as a buyer begins to develop a purchased plot, officials of the local planning authority arrive at the site with an order to stop work. The developer pays the required levies in order to obtain a building permit and resume work. Seemingly, local governments regard this process primarily as a way of generating revenue rather than regulating development. However, owners have little success in holding them to account for their failure to provide the infrastructure ostensibly funded from the proceeds of the development levy. Instead the indigenous selling community considers buyers responsible for obtaining utility connections and extending road access<sup>26</sup>.

## The tactics of non-state actors

In reaction to the exercise of coercive power by the state, non-state actors have devised a variety of strategies, including evasion, non-compliance and the development of clientelist relationships with political and government officials. The illustrations given in this section show that land rights holders devise tactics based on false compliance, appeal to sympathetic components of the state and preemptive action.

### *False compliance*

The use of backdated Form Cs in Maseru (see box p. 27) and inheritance claims in Gaborone (see p. 25) are examples of sellers and purchasers of plots, with the collusion of chiefs and headmen, using dissimulation to increase the apparent legality of transactions that are, strictly, illegal.

### **Maseru: documenting transactions and de facto rights through ‘false compliance’**

Under Lesotho law, a certificate of ownership of customary use rights to rural land (a Form C) was issued by the customary chief (in consultation with his advisory committee, but often alone) after allocating land to a subject. Introduced in 1965, this provision was carried through to subsequent Acts. On June 16<sup>th</sup> 1980, the LA 1979 came into force. All Form Cs issued in respect of allocations made prior to this date were considered lawful, and those that were issued for allocations after this date were considered illegal<sup>27</sup>.

The LA 1979 also extended the boundaries of Maseru town to cover many peri-urban traditional villages, most of which still had extensive areas of *masimo* land (fields), which were quickly being informally subdivided into residential plots for sale. As indicated earlier, the government had hoped that, by extending the town boundaries, the informal subdivision of *masimo* land would cease. In practice, local customary chiefs and *masimo* owners continued to subdivide and sell *masimo* land as if no law existed. However, to maintain a show of compliance with the legislation, albeit false compliance, Form C certificates were (and still are) routinely dated prior to June 16<sup>th</sup> 1980. A primary reason for this practice is that, until 1986, no compensation was payable by the state for the acquisition of land held under customary use rights, save for crops and other improvements. Amendments to the LA 1979 in 1986 and 1992 resulted in virtually no change to the status quo. A new land bill is now in place, but is yet to be enacted into law.

### *Appeal to sympathetic components of the state*

When in dispute with an official body, land market actors appeal to the mechanisms most likely to decide in their favour, including local informal mechanisms (administrative or political officials, customary authorities), customary courts or formal tribunals. In, Kampala, LCI officials, and in Lusaka, local party officials, play an important intermediary role. In Gaborone a Land Tribunal has been established to resolve disputes between plot holders and tribal Land Boards. (see p. 24-25)

### ***Preemptive action***

To prevent compulsory acquisition of land with inadequate compensation, customary owners, with the collusion of the relevant traditional authorities, subdivide and sell their farm (not homestead) land. Such sales are generally informal (as in Maseru – see box, Mogoditshane in Gaborone, and Emene in Enugu, and on *mailo* land in Kampala). Occasionally they are formal (as in the layouts prepared by indigenous communities in Enugu – see box p. 26). Sometimes, such actions seem reasonable and checks and balances on abuses, such as multiple sales or chiefs profiting at the expense of their subjects, still appear to operate. However, elsewhere, as in Ha Mabote in Maseru, the actions of customary owners are designed to exploit the opportunities for excess profits arising from state actions (see box p. 28).

### **Maseru: expropriation of farmland for public purposes**

In order to curb the process of informal development of land, especially in the peri-urban agricultural areas around Maseru, a new land law was put in place on the eve of June 16<sup>th</sup> 1980, the Land Act of 1979 (LA 1979). This act effectively nationalised all land, with rights to be leased from the state. In order to facilitate the acquisition of land for public purposes, the LA 1979 made provision for the designation of areas for development as Selected Development Areas (SDAs). The effect of SDA declaration is to extinguish existing interests in land, pending the grant of substitute rights by the minister responsible for lands.

One of the first areas to be declared an SDA in 1980 for the purposes of a World Bank financed low-income housing project was

Khubetsoana on the periphery of the city. The state successfully appropriated the land without compensation, which was one of the objects of the SDA declaration. However, although the land acquisition process in Khubetsoana was uneventful, the experiences of *masimo* owners had telling repercussions in adjacent areas, which in turn frustrated further state land appropriation efforts.

One such area was Ha Mabote, which is separated from Khubetsoana only by a main road. Ha Mabote was declared an SDA in 1984 for the purpose of a mixed income site-and-service project co-sponsored by the then British Overseas Development Administration (ODA) and the government of Lesotho. Private (informal) subdivision in this area was encouraged by the appropriation of land without compensation in neighbouring Khubetsoana.

In Ha Mabote, the state attempted to evict so-called ‘illegal’ occupants using police force, but called off the attempt when it transpired that one of the local customary chiefs had solicited assistance from the armed forces, members of which had acquired plots from him at concessionary prices. As a result, the enforcement strategy changed from eviction to accommodation, which entailed the state undertaking to recognise existing (albeit illegal) occupation in the process of implementing the project. The change of enforcement strategy by the government opened up an opportunity for private (informal) subdividers to compile fictitious lists of plot buyers, burdening the project with accommodating the excess demand for plots. In the end, many field owners were able to make significant profits, as were their local customary chiefs, who charged a fee for every

false Form C certificate that they issued. When the ensuing chaos could not be resolved, the ODA withdrew its support and the project collapsed.

## State tactics

As noted above, sometimes the state attempts to enforce formal rules through the exercise of administrative or coercive power. More commonly, the large scale of non-compliance with formal rules and regulations, in the face of limited public sector capacity and the need to secure political support, leads the state to adopt a strategy of accommodation rather than conflict. Some parts of the state apparatus may refuse to compromise, hoping that one day illegal land transactions will be halted and only those subdivisions and buildings that comply with formal requirements will be regularised. However, many other parts of the state apparatus are prepared to tolerate, compromise with and even recognise land subdivision and transactions that do not comply with one or more legal requirements.



*Farmstead in Mogoditshane, Gaborone*

## *Recognition and reform of customary practices*

Sometimes, colonial practices accompanying indirect rule resulted in the recognition of customary tenure and land administration practices. Tolerated since independence, in some cases post-independence governments have, for political or pragmatic reasons, formally recognised the rights of customary owners and the arrangements used to administer land in customary tenure, even formalising such arrangements by legal and administrative changes. Examples in the case study cities include the Buganda Land Board in Kampala and the tribal Land Boards in Botswana. However, the experience in Gaborone demonstrates that successful intervention is hard to achieve (see box p. 24-25).

## *Toleration of informal subdivision*

In many cities, the activities of informal subdividers are tolerated, especially if the legal provisions are ambiguous. Toleration is also common where the activities of those engaged in informal land delivery are directly or indirectly sanctioned by the politically influential, local officials sympathise with them, or government employees (such as surveyors) are prepared to act in a private capacity to facilitate transactions. In Kampala, complex and uncertain tenure rights and political imperatives have led to widespread tolerance of informal settlements (see box p. 30).

### **Kampala: formal and informal actors colluding in compliance and non-compliance**

Subdivision and building consents depend on the production of a registered title, as well as compliance with complex bureaucratic requirements and high standards. As a result, regulations are unknown, ignored or evaded. Either evasion or obtaining permission is likely to entail the payment of bribes to officials at both senior and street levels. Not surprisingly, the majority of households who had subdivided their plots had neither sought permission from the lower level councils (LC 1s) nor the Kampala City Council (KCC), as required by law.

Nkurunziza argues that, despite elaborate legal powers at the disposal of the KCC, planning officers confessed powerlessness in controlling the development and use of private land, particularly *mailo* land. This powerlessness was partly due to limited material and human resources and partly to lack of political muscle to confront the vested interests of different actors. Moreover, strong evidence exists that KCC planners and surveyors undertake subdivision and survey work privately and, because of their knowledge of how the system operates, approval of their subdivision plans is virtually guaranteed. Therefore, it is not only the poor who are implicated in informality, but also state bureaucrats and the well-connected, who are well able to stand astride the divide between state rules and everyday practices outside state rules<sup>28</sup>.

### **Compromise**

The state may compromise with informal actors to

- secure political support (e.g. Lusaka – see box p. 30)
- provide services to prevent epidemics
- obtain external finance which is conditional on the regularisation of informal areas (e.g. in Lusaka and Eldoret)
- raise revenue from registration of plot holders in such settlements (e.g. in Eldoret – see box p. 31).

### **Lusaka: conflict and accommodation with private landowners**

Originally a compound for workers in the paddock of a ranch, new occupiers were permitted to join the original inhabitants of Ng’ombe when ranching declined in the 1960s. Gradually, settlement encroached on more of the land belonging to the ranch owner and an adjacent church. In the mid-1990s an indigenous NGO started to support infrastructure installation and a Residents’ Development Committee was established. Eventually, in 1999, the owners surrendered part of their land, in order to prevent further encroachment.

The area taken into public ownership was declared a Housing Improvement Area. This paved the way for the issue of occupancy licences and service improvements. It also fuelled further subdivision and plot allocation by party and local government officials in the undeveloped parts of the designated area. In addition, the area’s desirable location and recognised status attracted further settlers, leading to further encroachment to



adjacent areas still in private ownership. This time, however, the owners felt that their agreement with the Lusaka City Council gave them sufficient legal and political standing to evict the settlers and demolish their houses.

### **Eldoret: recognising letters of agreement for property tax purposes**

Officially, the Eldoret Municipal Council can only collect property tax on properties with registered title. However, a large proportion of all housing is in informally subdivided areas belonging to landbuying companies, where there are significant constraints on tenure regularisation. As a result, Musyoka argues, an unwritten understanding has evolved between the municipality and plot-holders in unregistered areas to use *letters of agreement* as evidence of ownership.

Most owners of subdivided plots in Eldoret, especially where the original company title is not disputed, consider that they have secure tenure and many invest considerable resources in house construction. Their sense of security is buttressed by the widespread adoption of written documentation of transactions in land. Most of those who have purchased land have *letters of agreement*, typically witnessed by neighbours, family members and/or local elders. While the courts accept such letters of agreement as evidence of transactions when settling disputes over land, the Eldoret Municipal Land Control Board, which is responsible for giving permission to subdivide farmland, refuses to

accept such letters for the purpose of granting consent to subdivide. The Board's inflexibility has encouraged landowners to follow the informal route.

However, because the Municipal Council has been willing to compromise, it raises revenue from property taxes set at rates related to the level of services it provides in particular areas. This has enabled it to incrementally improve services, exercise a limited degree of control over development and negotiate with occupiers to reserve land for improving access or providing social facilities.

In one large informal settlement (Langas) a longstanding dispute over the original title has prevented regularisation of title and hindered infrastructure upgrading. Today, plot-holders in this area are trying to use the Municipal Council's recognition of their ownership for property tax purposes as leverage to resolve this problem. They are threatening to withhold rates payments, demanding that titles to their plots are issued and municipal services improved<sup>29</sup>.

Such compromises may take the form of

- de facto recognition of informal settlements,
- regularisation despite non-compliance with formal standards (e.g. in Eldoret – see box p. 32), or by the Buganda Land Board in Kampala – see box p.33),
- the introduction of legislation containing specific and appropriate provision for regularisation (e.g. in Zambia)
- acceptance by the formal (state or customary) court system of oral traditions and testimony and/or informal letters of agreement as evidence of land transactions and ownership rights (e.g. in Enugu – see box p.34).



*The original residential portion of Kamukunji, Eldoret*

### **Eldoret: compromising over planning standards to regularise informal subdivisions**

In Eldoret, formal land delivery has been hampered by the limited supply of land in public ownership, high planning standards, and corrupt and costly formal procedures for delivering and registering land. As a result, urban land supplied through formal channels is beyond the reach of the majority of the poor because access requires economic means and socio-political patronage. Lack of capacity to provide adequate land through the formal system has been compensated for by tolerance of informal delivery systems, which co-exists with elements of exploitation and/or manipulation.

The formal title for land purchased by landbuying companies is transferred jointly to the shareholders in the company, who subdivide the land in proportion to their original shareholding, for their own occupation

and/or for further subdivision and sale. The slow speed and cost of obtaining subdivision and development permission, together with planning standards that are regarded as inappropriate, mean that all such subdivision is undertaken outside the formal rules, although it is not necessarily unplanned. Some shareholders employ professionals to prepare layouts, while others attempt to adopt good practices such as leaving land for access to each plot and sites for community services, such as markets and schools. In such circumstances, title to individual plots can only be registered if the plot is surveyed. Not only is this costly, but it is also impossible if the plot does not satisfy the planning standards.

In some areas, negotiations between the shareholders, plot purchasers and the official bodies have eventually resulted in compromise, followed by the issue of titles for individual plots.

## **Kampala: impediments and incentives to regularisation of tenure**

Uncertain tenure rights and complex titling procedures mean that plot occupiers and purchasers rarely comply with full procedural requirements. In colonial times, the Kabaka of Buganda ceded large areas of land to various churches and missionary groups. Today, for an occupant of church land, the first step in obtaining title is to obtain proof of user rights from the Local Council and many do not proceed beyond this stage because they feel that LC consent guarantees them tenure security. Few *mailo* owners take the complicated and costly steps needed to obtain title to their land and so subdivision and sale proceeds informally, subject only to informal written agreements or *endagaano*. These are typically witnessed by members of the local LC 1 executive, as well as elders, religious leaders, relatives or neighbours, and are accompanied by a sketch map.

Purchasers of subdivided plots (especially those that satisfy the official minimum plot size standards) may further increase their security by obtaining a cadastral survey of the plot – the first step in registering a title (they may even instal beacons without a survey). However, many owners stop once a plot has been surveyed and beacons installed, since the presence of a surveyor and beacons provides public evidence of their claim, and potential challengers need never know that they have failed to pursue the subsequent steps necessary to obtain a registered title. The main motivation for those who do take the process further is to protect the claims of their descendants.

In contrast, following the restoration of Buganda kingdom properties and the Kabaka's private assets in 1993, the Buganda Land Board has, albeit without direct legal sanction, devised relatively simple and user friendly procedures for occupiers and purchasers from existing occupiers to regularise their tenure by obtaining leases, although relatively few occupiers (especially Baganda) feel the need to do so.



*Apartment blocks in Achara, informal subdivision, Enugu*

### **Enugu: legitimising informal transactions**

In Emene, the Amechi, Oguru and Otuku communities were allocated land in perpetuity by the traditional ruler of Nike. In the 1940s, each of these communities arranged for a boundary survey of their land. From long practice, these communities have developed skills in laying out and measuring plots, and they try to maintain registers of land sales.

Every letter of agreement (so-called lease certificate) must carry the signature of the lessee and ten members of the land selling community, including its ruler. Today they are often drawn up by lawyers, and are accepted by government as evidence of ownership if a buyer wishes to obtain a certificate of occupancy or formal leasehold title. If a buyer wishes to re-sell, consent must be obtained from the community that originally sold the land. Nevertheless, differences of opinion do surface within landowning communities, especially between those who have benefited from land sales in the past and young men who fear being deprived of their land rights, and the actions of the latter may threaten particular transactions. Reduced lease periods in recent years have emerged as a strategy to reduce family members' opposition to land sales, although they are unpopular amongst buyers.

While levels of trust in the initial transactions between indigenous communities and purchasers of subdivided plots are high, subsequent transactions in the purchased plots are purely market transactions, and are not governed by social obligations and processes. Actors involved in such transactions therefore feel obliged to use the provisions of state law to protect their interests and register

transactions. Only if they have obtained a survey and title to the plot being bought and sold do they feel confident that their claims can be defended in a court of law. However, state institutions accept the letters of agreement associated with initial transactions as evidence of valid ownership.

### ***Supporting informal actors***

Sometimes, governments have supported actors in informal land delivery systems even when not legally empowered to do so. Examples include the registration of property owners in order to charge rates (property taxes) in Eldoret (see p. ?) and dispute resolution mechanisms in which formal systems recognise the functions and decisions of informal dispute resolution mechanisms, including the evidence they use and the decisions they reach. Examples from Kampala, Eldoret and Enugu are given in the boxes.

### **Kampala: linking formal and informal rules and systems for dispute resolution**

In Kampala, disputes were more common in the highest density settlement studied, where 22 percent of landowners had experienced a dispute, compared to 9 percent in the newest and least densely settled area. Increased dispute occurrence seems to be associated with a period of intense activity in the land market in the 1990s. Dispute's mostly concern ownership or boundaries, with inheritance disputes more important in the oldest area.

Until 1998, LC 1 chairmen and their courts were entitled to hear and resolve land disputes, referring them to Magistrates' Courts if

necessary. The Land Act withdrew jurisdiction from both LC and Magistrates' Courts and bestowed it on land tribunals. However, the latter have not been established and in 2000 the powers of LC and Magistrates' Courts were restored to enable them to clear the backlog of cases.

LCs have continued to perform this function, treating fresh disputes as though they were outstanding in 2000. In practice, LCs continue to deal with land matters, some in ignorance of their legal position, and most LC chairpersons regard the settlement of land disputes as part of their administrative roles and community leadership obligations. The system operates at a local level and is relatively quick and informal, generally using the local language. Although the LCs are supposed to keep written records, they often do not do so – this speeds up the process but does pose difficulties if a litigant appeals against a decision. Before 1998 appeals moved up the ladder from LC1 to LC2 and LC3 levels, before reaching the Magistrate's Court. With the removal of these provisions, appeals have to be referred directly to the High Court, although to avoid this, some disputants solicit assistance from the Resident District Commissioner (a central government appointee) instead.

Specific examples illustrate the ways in which LC dispute resolution links formal and informal rules and administrative systems. For example, in one case an official valuation surveyor was employed in a private capacity to arrive at a compensation figure for occupants who had not been notified of a land sale by an owner.

In a boundary dispute, members of the LC 1 court were able to combine the roles of jurists, land surveyors and community leaders. The procedure adopted to resolve the boundary dispute mimicked the formal approach of 'boundary opening' undertaken by qualified surveyors. Using tape measures borrowed from local builders and the sketch accompanying the plaintiff's original written agreement, the LC members were able to retrace the original boundary. In passing their judgement, they adopted a 'traditional' approach by emphasising reconciliation and imposing a 'beer' fine (a symbolic cash fine).

In another boundary dispute, the LC court adopted a similar procedure to confirm a boundary, but also observed that the defendant had failed to leave a setback between the plot boundary and his development for access by his tenants. In this example, the LC mimicked formal planning approaches by devising local 'byelaws', although the setback standard used was more affordable than the official one (0.9m compared to 3m in the Public Health Act).

Since legislative changes have removed the powers of LC courts to enforce their decisions, LC arbitration now often aims to obtain agreement and conciliation between disputants. However, their lack of legal standing also makes it more difficult for the LCs to charge court costs or for the aggrieved to hold LC court members to account.

### **Eldoret: linking informal and formal dispute resolution mechanisms**

Disputes over land are relatively rare in Eldoret, with only one in ten plot owners in informal settlements reporting a dispute. Most disputes had been settled by local elders - unpaid leaders identified at community level, usually acceptable to the local administration, and generally having social legitimacy in the eyes of local residents. Although they lack legal or coercive powers, in taking on dispute resolution roles, they draw on understanding of the traditional role of elders in village society. Where the elders are unable to resolve a dispute, it is referred first to the local chief or sub-chief (administrative officers appointed by the national government). Only then is recourse had to the District Officer (the chief's superior) or the Land Tribunal, from where the dispute may be referred to the courts.

Formal and informal rules coincide in the resolution of disputes over ownership, conferring it on the first buyer of a subdivided plot, especially where that person has constructed a building. Owners' knowledge of this rule and their confidence that it will be upheld by both the formal and informal systems, together with the written agreements that are commonly used, provide them with a relatively high degree of perceived de facto security of tenure.

### **Enugu: customary and state mechanisms for dispute resolution**

In Enugu, disputes are, if possible, resolved through customary arbitration, relying on families, elders and traditional rulers, who are considered to be knowledgeable with respect to the customs and traditions regulating land tenure in a community. A litigant may take a case to the Customary (Native) Court (Sharia Court in northern Nigeria), from where appeal is possible to the Customary Court of Appeal. Sitting in judgement in a Customary Court is a government-appointed president, who is usually an indigene of the area where the court has jurisdiction and is versed in local customs and traditions. Even purchasers of land from indigenous communities prefer to use these channels where possible, rather than resort to the formal court system, because of the high cost of litigation and delays. In practice, disputes are rare – no plot owners in Emene (a developing peripheral area) reported a dispute and one in ten or fewer in the other areas studied.

Both oral and documentary evidence is used in dispute resolution, as well as oath taking. The formal court system admits oral evidence based on family history or communal tradition, the decisions of Native Courts, and documentary evidence such as letters of agreement. However, *juju* oaths are not accepted unless there is sufficient supporting evidence.

# Conclusions

## Conclusions and policy implications

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### Main conclusions

Five main conclusions emerge from this overview of detailed studies of housing land delivery in six cities. Inevitably, conclusions drawn from a comparative international study emphasise common features of the case study cities and some of the contrasts are downplayed in this summary.

#### *Informal land delivery systems build on earlier practices and respond to state failures*

Informal land delivery systems are in part a continuation of earlier land administration practices, especially those associated with customary tenure systems, whether or not these were recognised and codified by colonial or post-colonial governments. They directly involve indigenous communities in cities where such groups hold customary tenure rights over land ripe for urban development. The continued social legitimacy and organisational capacity of such social groups enables them to exercise considerable agency, and to enforce social institutions amongst both their own members and many of the non-members purchasing their land. Even where subdivision of land by groups with customary tenure rights is not possible, the practices associated with customary tenure systems influence the assumptions and actions of many actors in both the formal and informal land administration systems.

Informal land delivery is also a response to failures of the formal tenure and land administration systems. These include the low levels of compensation paid by government when it expropriates land, which lead landowners and customary rights holders to resist such acquisitions. They also include the cumbersome and costly procedures that prevent many aspiring landowners from complying with formal regulations for subdivision, registration and construction.

#### *The main channels of housing land supply*

Informal delivery systems are the main channels of housing land supply. Widespread non-compliance has, in the face of limited government capacity for enforcement of regulations and the need to secure political support, generally led to accommodation rather than overt conflict.

In the past, in many cities, informal delivery mechanisms enabled all but the poorest to access land for self-managed house construction. Today, non-commercial channels for obtaining land are restricted and the vast majority of households who obtain land through informal channels purchase it. The plots are supplied through subdivision and sale of land held under customary tenure (Enugu, Gaborone, Maseru), by owners and tenants of *mailo* land (Kampala) and by the shareholders of land buying companies (Eldoret). In Lusaka they are also sold by original settlers and allocated semi-officially by party and local government officials, who may or may not expect payment.

It is no longer possible for poor households to access land for new residential building, with a few, often minor, exceptions. These include

- membership of an indigenous landowning community – some male members of indigenous landowning communities in Enugu and Maseru can still claim their entitlement to a plot of family land
- settlement in marginal or hazardous areas, such as in wetland areas in Kampala
- allocation of customary land or a serviced plot in Gaborone, the former by tribal Land Boards and the latter by government in serviced plot programmes
- payment for informally subdivided land in instalments
- pooling resources to purchase a plot, for example, in areas subdivided by land buying companies in Eldoret

- allocation of free land to some local residents with good political or official connections in or adjacent to regularised informal settlements in Lusaka

Women generally obtain access to land through their husbands, and increasingly by inheritance. Most believe that informal social roles provide them with sufficient rights and protection. Legal provisions for joint registration of ownership, consultation before matrimonial property is sold, and inheritance of the matrimonial home are quite common (though not universal). However, social attitudes deter women from exercising their rights. Increasingly, women with means purchase land through informal channels.

***New and poor households face severe difficulties in accessing housing land***

However, for many newly formed households in urban areas, especially the poor, the only way in which they can access a plot or house today is through their parents. This may be through a process of plot sharing, in which parents allow a son or daughter to build a house on part of the parents’ own plot, or through inheritance of the parents’ plot or house. Scope for the former will decrease in future, as plots become too small for further subdivision, a situation that has already been reached in some densely settled areas in Kampala and Enugu. In practice, most poor households are tenants.



*Kamwokya, Kampala*

***Informal systems are effective in delivering land for housing***

Bearing out the first hypothesis stated in the introduction, it is clear from our detailed empirical evidence that informal systems are often effective in delivering land for housing, because of their user-friendly characteristics and social legitimacy.

- User friendly features include simple locally-witnessed written agreements between sellers and buyers, informal recognition of transactions from neighbourhood power holders, use of customary and local mechanisms for dispute resolution, standards adjusted to suit local realities and affordability, and use of customary materials for demarcating plot boundaries.
- Their legitimacy derives from the widely understood and accepted social institutions that regulate transactions. These tend to be derived from customary institutions, but have, as hypothesised in the introduction, evolved over time, and often are very different from those that operated in pre-colonial times in rural areas. In particular, in the urban context, they have often borrowed from and mimic formal rules and procedures. In addition, they may take advantage of formal rules, especially where these are ambiguous or inconsistent.

Institutional analysis has provided a potent tool for understanding the widely understood informal social rules with which actors engaged in informal land transactions comply, their interpretations of formal rules, and the ways in which they exercise agency to use and adapt formal rules when appropriate.

***Informal social institutions are under pressure***

Many of the social institutions revealed are resilient. However, as hypothesised at the outset, urban growth and development increase the pressure on them, and in some cases they weaken and break down, leading to more frequent disputes and increased tenure insecurity. In such situations, actors



in land transactions seek to use formal institutions to protect their rights and investments, for example regularising their ownership of a plot by title registration. As shown in the previous section, the extent to which formal legal and administrative systems recognise and work with or resist informal practices varies between cities and over time.

Informal land delivery systems have both strengths and weaknesses. Their strengths include their ability to provide land in significant volumes to meet the housing needs of various socio-economic groups that sometimes include the relatively poor and women. Their weaknesses include the inappropriate locations in which settlements are occasionally located, the poor layouts that sometimes emerge and the almost universal infrastructure and service deficiencies. Arguably, however, these weaknesses stem as much from their relationships with inappropriate formal tenure and land administration systems and ineffective government agencies as from their own shortcomings.



*Shared Water supply in Ogui Nike, Enugu*

## Policy implications

The findings of the study were fed back to the local communities studied, to validate the findings and obtain their comments on some of the policy issues. The conclusions of the study were also discussed at policy workshops in each of the case study countries, and at an international comparative workshop. The conclusions and policy implications have, therefore, drawn on feedback from both key informants at the local level and those in the public and private sectors with the relevant expertise and responsibilities. Although not all those attending these events would agree with all the policy implications identified below, all have support from some actors in the case study cities and countries. The land policy and legislative reviews that are under way in all the countries studied will provide opportunities for further assessment of their relevance and appropriateness to local circumstances.

Informal land delivery systems play a larger role in residential land delivery in most African cities than formal and public sector led systems. The delivery of over half the land needed for middle and low income housing by informal systems has not resulted in chaos. Such systems play a significant and effective role in housing land delivery systems. They should, therefore, be tolerated and accommodated. Their strengths should be recognised and some ways in which their positive features can inform future action are explored below. However, their shortcomings should also be identified and policy should concentrate on addressing these weaknesses without compromising the positive contribution they make to housing land supply.

Informal land delivery systems should be tolerated and accommodated, building on their strengths but also identifying and addressing their weaknesses.

Urban residents and house builders seek security of tenure – even without well-developed housing finance systems, this often leads to substantial investment in housing for both owner occupation and rental. One priority should therefore be to improve the tenure security available to those accessing land through informal delivery channels. In some circumstances, this may imply individual titling, but wholesale titling is often not appropriate, for three main reasons:

- Titling massively increases the value of urban land, making it even less accessible to low-income groups
- There is rarely capacity in the formal regulatory system to adjudicate, survey and register large numbers of individual titles. Rather than issuing titles to a minority of landholders, the resources available should be used more strategically, to guide urban development. This may include investment in main access roads and water supply, and surveying the boundaries of large land parcels, within which non-state actors can subdivide and sell land.
- Owner-occupiers are unlikely to mortgage their homes in order to release the capital tied up in property for other purposes, such as business investment. One reason is the absence of developed financial systems that might enable owners with title to release equity in their properties. In addition, middle and low-income households in African cities give high priority to livelihood security and are reluctant to jeopardise this by becoming indebted. Further, urban households attach high importance to ensuring the future wellbeing of their children and regard their ability to bequeath urban property as important to achieving this goal.

In many countries, alternatives to universal individual plot titles are already available under existing legislation. Experience with implementing alternative forms of tenure, usually based on usufruct, varies. However, the legislative base and implementation

experience of countries such as Zambia (block surveys, occupancy licences) can inform future development of policy and practice.

One of the main threats to tenure security is often the action of governments themselves, particularly evictions. Thus one of the most obvious ways of improving tenure security is for governments, in the vast majority of cases, to cease to evict settlers and demolish their houses.

- Governments should provide basic short-term security to residents in informal settlements, perhaps by a simple statement that residents will not be evicted. In some instances, (construction on privately owned land, land needed for other public purposes, or land that is completely unsuitable for residential use), it will not be possible to tolerate informal settlements. In such cases, eviction (accompanied by suitable arrangements for resettlement) may be the only option. However, generally governments should cease to evict settlers and demolish houses.
- Security can be enhanced by public sector agencies accepting innovations in procedures and documentation that have emerged in informal systems, because these are popularly understood, widely accepted, cheap and procedurally simple. They include witnessed letters of agreement and local registers of transactions, as well as ways in which formal and informal systems work together to solve problems and resolve disputes.

Threats to women's security of tenure should be tackled through matrimonial as well as property law. Because there is considerable resistance to increasing the rights of married women in practice, advocacy and changes in social attitudes will also be needed.

To encourage investment in both owner-occupied and rental housing, the tenure security available to those who access land through informal delivery channels should be enhanced. In most cases, this implies recognition of informal settlements and ceasing to evict settlers. In some circumstances the most appropriate way of increasing tenure security is to extend individual titling. However, given limited state capacity and the threat posed to middle and low-income households' ability to access land by price increases and speculation, alternatives to individual titles may be more appropriate.

Recognition of areas in the process of being settled through processes of informal subdivision and sale can pave the way for working with subdividers and sellers to improve layouts, ensure the reservation of access ways and sites for social facilities, and make it possible for the early provision of a basic level of services. Local initiatives have instituted such a flexible approach in Eldoret, even when external funding for regularisation and upgrading has not been available. Recognition can also contribute to incremental improvements in service provision, since once areas are de jure or de facto recognised, utilities can be provided on a full or partial cost recovery basis, as demonstrated by some utility providers in the case study cities (commonly electricity, often water, more rarely other infrastructure).

The poor layouts and inadequate services that often characterise informal settlements can be addressed by recognising such areas, paving the way for working with subdividers and sellers to improve layouts and enabling the early provision of basic services.

As well as generating user charges for services, the registration of occupiers makes it possible for local government to generate tax revenue. However, recognition of informally settled areas and acceptance of their occupants should be designed in such a way that, wherever possible, the poor are not further disadvantaged by the imposition of unaffordable costs or gentrification. The difficulty of ensuring this should not be under-estimated. Earlier sites and services programmes were often small-scale and unaffordable by low income households, and some local governments' ability to provide serviced plots is constrained by the limited land remaining in public sector ownership. Nevertheless, strategies to reduce poverty and improve livelihoods in urban areas must include ways of ensuring access to adequate shelter. This entails providing land for low-income housing, as well as giving policy attention to rental housing. As private land delivery becomes increasingly commercialised, it may be necessary for governments to revisit sites and services approaches.



*Informal settlement on the outskirts of Maseru*

Local governments should register occupiers in informal settlements. As well as making it possible to charge users for services, this can enable local governments to generate tax revenue.

To build on the strengths and address the weaknesses of informal delivery systems in varying local contexts, the formal land administration system should be decentralised, in particular to provide for local registration of land rights and transactions.

Laws relevant to the administration of urban land include tenure laws, planning and development control legislation and provisions for land taxation and dispute resolution. In each case, the basic legislation is accompanied by regulations and procedures that govern administration and practice, sometimes decided centrally and sometimes specified in local bye-laws. Much of the legislative framework for the administration of urban land has been inherited from laws introduced by British colonial governments, influenced by the system of rule adopted and the colonial administration's relationships with the indigenous authorities. Much of this legislation is inappropriate and outdated. Post-independence land reforms have often neglected the realities of land markets, limited government capacity and political interests, especially in the large constituencies constituted by informal settlements. In addition, they have often concentrated on rural issues and neglected urban land. As a result, they have also often been inappropriate and ineffective. Nevertheless, despite implementation problems, not all the existing legislation is inappropriate.

Current reviews of land policy should consider whether the existing legislation, including laws, regulations and administrative arrangements, provides an adequate framework for guiding urban growth and development. To build on the strengths and address the weaknesses of informal delivery systems in the local context, much of the relevant legislation is likely to need revision. In addition, as agreed in most of the country policy workshops, there is a need for the formal land administration system to be decentralised, in particular to provide for local registration of land rights and transactions.

Legislation providing for compulsory acquisition of land to which indigenous groups claim tenure rights gives rise to many problems, exacerbated by provisions for the compensation payable to be based on the value of improvements on land rather than its market value. Not only does this seem unfair to rights holders, particularly in the case of peri-urban land, but also delays in payments and government failure to use the land for the public purposes for which it was ostensibly acquired increase their resistance to such acquisitions, especially in Gaborone, Enugu and Maseru. Although governments claim that their resources are insufficient to pay higher rates of compensation, the current provisions encourage owners to take matters into their own hands, with adverse results for the pattern of urban development.

Revised compensation provisions are needed, requiring governments to pay adequate and fair compensation when they expropriate land for public purposes. This would

- Deter premature informal subdivision intended to preempt arbitrary and under-compensated expropriation (e.g. Enugu and Maseru)
- Improve the operation of some state-led subdivision and allocation processes (e.g. the operations of Land Boards in Gaborone)
- Increase the ability of governments to provide land for infrastructure or industry without antagonising local land rights holders (e.g. Enugu)
- Enable governments to increase the supply of serviced land for low-income housing.

# Footnotes

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<sup>21</sup>The small proportion of land delivered through formal channels and officially registered, as well as the general inadequacy of data on population, land transactions and construction meant that it was not possible to undertake quantitative analyses of the land markets in these cities.

<sup>22</sup>There is a longstanding dispute between original shareholders in one company. This concerns the title to the farm concerned. Disputes over the title held by shareholders in other companies in Eldoret appear to be rare, as are disputes over subdivided plots. By all accounts, the operations of land buying companies give rise to more conflicts elsewhere

in Kenya. The smooth process in Eldoret may be due to the ability of plot supply to keep pace with demand because of the ready availability of farm holdings for purchase, compared to the pressure on land in and around other Kenyan cities.

<sup>23</sup>The situation in Ghana, especially in Kumasi, is somewhat similar.

<sup>24</sup>In Kampala, the Buganda Land Board, which was established by the Buganda Kingdom, also has a statutory right to allocate land to individuals on behalf of the Kingdom. However, today it regularises land occupied by *mailo* tenants or those to whom they sell, rather than allocating new plots.

<sup>25</sup>Kalabamu, F. and Morolong, S. (2004) *Informal Land Delivery Processes and Access to Land for the Poor in Gaborone, Botswana*, Birmingham: International Development Department, School of Public Policy, University of Birmingham, Informal Land Delivery Processes in African Cities, WP 3.

<sup>26</sup>Ikejiofor, C.U. with input from Nwogu, K.C. and Nwanunobi, C.O. (2004) *Informal Land Delivery Processes and Access to Land for the Poor in Enugu, Nigeria*, Birmingham: International Development Department, School of Public Policy, University of Birmingham, Informal Land Delivery Processes in African Cities, WP 2.

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# Publications

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## **Informal Land Delivery Processes in African Cities**

### **Working papers**

1. Rakodi, C. and Leduka, C. (2003) *Informal Land Delivery Processes and Access to Land for the Poor in Six African Cities: Towards a Conceptual Framework.*
2. Ikejiofor, C.U. (2004) *Informal Land Delivery Processes and Access to Land for the Poor in Enugu, Nigeria*
3. Kalabamu, F.T. and Morolong, S. (2004) *Informal Land Delivery Processes and Access to Land for the Poor in Greater Gaborone, Botswana*
4. Musyoka, R. (2004) *Informal Land Delivery Processes and Access to Land for the Poor in Eldoret, Kenya*
5. Leduka, R.C. (2004) *Informal Land Delivery Processes and Access to Land for the Poor in Maseru, Lesotho*
6. Nkurunziza, E. (2004) *Informal Land Delivery Processes and Access to Land for the Poor in Kampala, Uganda*
7. Mulenga, L.C. and Rakodi, C. (2004) *Informal Land Delivery Processes and Access to Land for the Poor in Lusaka, Zambia*

### **Policy briefs**

1. Ikejiofor, C.U. (2004) *Informal Land Delivery in Enugu, Nigeria: Summary of Findings and Policy Implications*
2. Kalabamu, F.T. (2004) *Land Delivery Processes in Greater Gaborone, Botswana: Constraints, Opportunities and Policy Implications*
3. Musyoka, R. (2004) *Informal Land Delivery in Eldoret, Kenya: Summary of Findings and Policy Implications*
4. Leduka, R.C. (2004) *Informal Land Delivery Processes and Access to Land for the Poor in Maseru, Lesotho*
5. Nkurunziza, E. (2004) *Informal Land Delivery Processes in Kampala, Uganda: Summary of Findings and Policy Implications*
6. Rakodi, C. and Leduka, R.C. (2004) *Informal Land Delivery Processes and Access to Land for the Poor: A Comparative Study of Six African Cities*

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