LAND FOR HOUSING IN AFRICAN CITIES: ARE INFORMAL DELIVERY SYSTEMS INSTITUTIONALLY ROBUST AND PRO-POOR?

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1. Introduction

In the early years of rapid rural-urban migration and urban growth, many poor households were able to get access to land to manage the construction of their own houses for little or no payment, through claims to family land, 'squatting' or similar arrangements. Following research in the 1960s and 1970s, there was a feeling that the processes of 'squatting' and allocation of customary land by legitimate rights holders, as well as more complex variations on these in some cities, were fairly well understood. Upgrading policies and projects of the 1970s and 1980s were designed and implemented on this basis. However, even though, in recent years, informal land delivery processes have provided half or more of all residential land in African cities, research has concentrated on analysing the shortcomings of formal land administration rather than understanding how these processes have been evolving. 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.

This paper will report on some of the findings from a recent research project that examined contemporary informal land delivery systems in five medium-sized cities in Anglophone Africa: Eldoret in Kenya, Kampala in Uganda, Maseru in Lesotho, Gaborone in Botswana, and Enugu in Nigeria[1]. The aim of the project was to improve understanding of informal urban land development processes. It analysed the characteristics of contemporary informal land markets and delivery systems

   i. To develop an in-depth understanding of the institutions that underpin and regulate transactions and disputes in land, by comparing how they operate in a number of cities

  ii. To assess the strengths and weaknesses of alternative land delivery channels, both formal and informal, especially with respect to the extent to which they enable the poor and other vulnerable groups (especially women) to access land with secure tenure, and

 iii. To explore the implications of the findings for policy and practice.

The research built on recent studies, especially in Tanzania and Lesotho (Rakodi, 1997; Kombe, 1994, 2000; Leduka, 2000; UCLAS/IRPUD, 2000), and complements related research in Mozambique (Jenkins, 2001). It also complements recently completed studies of neo-customary land tenure in both Anglophone and Francophone countries.

In this paper, the initial hypotheses 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.

2. Starting points

The starting hypotheses of the research were that, first, the success of informal land delivery systems in supplying between 50 and 70% of all land for urban residential development, including land for the poor can be attributed to their practical attributes and their social legitimacy (Rakodi and Leduka, 2003). Around a half of the households in the cities studied are below the poverty line, although as disaggregated data are not available, it is impossible to be precise about the incidence of poverty or

income levels. The practical attributes of informal land delivery, 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. In addition, wide understanding and acceptance of the social rules (or institutions) that enable transactions to occur and govern 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, the modified versions of traditional social institutions underlie quite smooth processes of conversion of agricultural land for urban uses. However, that research also showed that, as areas consolidate and the density of development increases, the rules and social relationships governing transactions and regulating disputes become increasingly strained, and may eventually break down altogether.

The conceptual framework employed was based on three building blocks. First, it uses ideas of structure and agency (Giddens, 1984). Many studies analyse urban development in terms of compliance with formal rules, and assume essentially passive relations between land market actors and the state. Structure and agency theory allows for actors to interpret, use and challenge formal rules, which creates opportunities for changes both to rules themselves and to the relationships between the state structures that govern land delivery and non-state actors (Healey and Barrett, 1990; Tripp, 1997).

Institutional analysis stresses the importance of institutions or rules because of their roles in minimising the cost of transactions or proscribing certain actions and behaviour (North, 1990). Social institutions govern the social, economic and political relations between individual actors. They may be divided into formal institutions, which devised rules of the game (in particular state law), and informal institutions, which are embedded in social norms and practices, including customary rules (Pamuk, 2000, van Horen, 1999). They are revealed through transactions and disputes (Razzaz, 1998). Often, analysis of the different sorts of rules is underlain by a legal pluralist approach and a refusal to give one system of law greater standing than another (Benda-Beckman, 2001; Benton, 1994).

Finally, ideas of societal non-compliance arise from attributing individual social actors with agency. Sometimes termed the 'weapons 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 (Scott, 1985; Razzaz, 1994). If non-compliance becomes sufficiently widespread, it may even produce changes to government policy and practice; as Tripp (1997) argues, it did in Tanzania with respect to government attitudes towards informal sector activity. However, a distinction needs to be made between cases where non-compliance leads to conflict and where it leads to accommodation or co-production, identifying the reasons for these different reactions and their outcomes, because this is potentially important in identifying workable improvements to urban land delivery systems.

3. Components of the analysis and methodological approach

In order to hold some factors relatively constant (particularly the principles on which the formal legal system is based), it was decided to select cities from Anglophone Africa. These included cities from eastern, southern and western Africa, but excluded cities where recent or current research on related issues was already under way. The cities were located in countries with different colonial policies with respect to land and urban development, arising from whether a system of direct or indirect rule was adopted. They also represented countries with very different post-colonial economic and land policies. These varied from free-market oriented Kenya to heavily state-led Botswana, and included countries that had been subject to military or single party rule in the period since independence (Nigeria, Kenya, Lesotho) as well as a country that 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, therefore, varied between the countries and the responsibilities for urban land delivery, regulation and tenure registration were differently allocated between government levels and agencies. The research focused on five medium-sized cities, some capitals of relatively small countries, and other secondary cities[2].

Box 1. Land Development in Five Anglophone Sub-Saharan Africa Medium-Sized Cities

Eldoret

With a population of about 197,000 in 1999, Eldoret is the fifth largest town in Kenya and a major regional centre. It 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 and agro-processing centre for the surrounding European commercial farming region. Selected as a growth centre and politically favored 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 land-buying 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

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 is split between three Local Government Councils, each with a directly elected Chairman and councilors 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 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 group purchasers.

Gaborone

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. 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 labor camp, which has since been regularized 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 and 1987 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 work 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

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.

Maseru

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 reserve 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% of all land demand is met outside the formal state delivery system, by chiefs and landowners working together. 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 nationalized 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.

In each city, in addition to reviewing secondary material and interviewing key informants in relevant central and local government departments, primary data collection was carried out in three informal settlements: a newly developing peripheral area, a partly consolidated area in which active subdivision and development was still under way, and a consolidated inner city area with relatively high densities, 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 plotholders 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 to analyse 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 that had eventually reached the formal courts.

4. Channels of land delivery for residential use in African cities

The strengths and weaknesses of the alternative channels through which land is made available for housing development in the cities studied are assessed using a number of criteria suggested by the

research questions and hypotheses, and by the responses of participants in the research with respect to the attributes that they value in urban residential land, namely

i.   ***Scale***: has the channel delivered land in sufficient volume (and in appropriate locations) to meet the demand for residential development 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 for 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 (both women heads of household and other women in their own names)?

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 proportion of households who are able to become house/land owners varies between cities and over time, depending on land supply, but generally indicating a downward trend. The main conclusion emerging from the research is that it is no longer possible for poor urban households to access land for new residential building, either through the formal system or in informal 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-share in a land-buying company in Eldoret

- Poor households who are allocated land for free by the Land Board on the periphery of Gaborone, although the process operates very slowly because the Board lacks 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.

Because of the failings of the formal land delivery system and the commercialization of land, the vast majority of households in contemporary cities who manage to obtain land for residential use do so through purchase. In recent years, the primary channels through which residential plots have been made available, especially to middle and lower income households, have been:

- Sales of customary land (Maseru, Enugu, Botswana)
- Informal subdivision by land buying companies (Eldoret)
- Informal subdivision by *mailo* owners and tenants in Kampala

Access to land, therefore, is restricted very largely to households with the necessary financial means to purchase it. These are primarily upper-low, middle and upper-income households, with the latter dominating in formal housing areas and the former in informal areas. Informants consider that, while in the past it was possible for some poor households to obtain access to plots for free, today, very poor households cannot become plot owners. However, low-income households with some income (not the poorest) negotiate flexible methods of payment for land delivered through informal channels, including installments. Nevertheless, for many newly-formed households, although not necessarily the very 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.

The grounds for these main conclusions will now be elaborated by examining the alternative channels for land delivery in turn (see Table 1)[3].

a) 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, colonial and post-colonial changes in the land tenure system left both owners and tenants of *mailo* land with rights to substantial tracts of land that have subsequently been subdivided and sold.

In these cities, private sales of land to individual purchasers provide significant numbers of housing plots, but in others it is unimportant. Such sales afford some access to land by the poor, for example, through purchasers combining to purchase a single share in a land-buying company in Eldoret and subsequently subdividing the plot, or through arrangements to pay in installments. However, in no cases did this channel enable the poorest households to access land and most of the purchasers are those in the middle of the wealth range .

Although the initial owners of the land may have formal rights of ownership, they rarely have individual title. For example, in Eldoret, the title is generally held jointly 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 the transaction and typically a letter of agreement is used instead. Such letters are generally witnessed (by local leaders, neighbours etc.) and the validity of the letters is generally respected by other actors in the land delivery process, including the formal system for land registration 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 names by its social unacceptability.

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 having 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 are based on common ethnicity – most companies are formed by members of a single ethnic group. However, although this does enable some low-income people to access land, by definition it excludes members of other ethnic groups from becoming initial shareholders in purchased land (although not from subsequently buying land from the original shareholders).

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b) Delivery of customary land through state-sanctioned channels

The extent to which customary systems of tenure and land administration have been formally recognised in law and policy varied between countries in colonial times and has differed since. In the case-study cities, land delivery through state-sanctioned customary channels is a reasonably accurate description of the situation in Botswana[4]. 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 the customary authorities abuts 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 allocate land to individuals for an indefinite period, with a customary land certificate[5].

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 meant that very long waiting lists have formed and large numbers of plots have been allocated but remain undeveloped. In addition, the adoption of higher standards in recent years has 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 just outside the city boundary and under the administration of Land Boards. The study concentrated on land delivery in Mogoditshane to the west. In such areas, a significant volume of land for housing has been made available in recent years. However, acquisition of land by the Boards for allocation is hindered by disputes over the level of compensation payable to customary rights holders. In addition, plots should 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 wishing to sell 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 and is not likely to occur. Women heads of household can obtain land through this system, with a certificate in their own names, and in theory married women could do so also. However, in practice social norms adhered to by both purchasers and Board officials mean that married women 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 normally resolved at the local level between neighbours or families. When, relatively rarely, they cannot be easily settled, they are resolved by the Land Board and, if necessary, taken to the Land Tribunal.

c) 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. Today, even in these cities, supplies of free land through this channel are increasingly limited. This process of delivery primarily occurs in Enugu, where land is effectively 'owned' by families, 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 means by which new households obtain family land.

Land supplied through customary channels to members of the group 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 they are vulnerable to government action, since the Government of Nigeria has powers under the Land Use Decree to expropriate land required for public purposes. It has not hesitated to use these powers on quite a large scale (for example for industrial areas and the airport in Enugu). However, access to land through this channel 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. In both Enugu and Maseru, the social institutions governing land transactions and dispute resolution are widely understood and generally respected within the group. However, the amount of land available through this channel is shrinking. In inner-city Enugu, 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 within the group. In addition, there are occasional threats to the security of tenure enjoyed by those allocated land through this system and there are also examples of the customary dispute resolution procedures being challenged.

d) 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 planned layouts, when the landowning community decides to formally subdivide and sell part of its farmland, and informal subdivisions. For decades, both these processes have been central to the development of the city and both continue today. In Kampala, the subdivision and sale of customary land is also important, but in terms of volume contributes less than subdivision of *mailo* land. In Gaborone, it is also significant in the peripheral parts of the built-up area. However, strictly it is prohibited and so sellers and buyers alike disguise it as 'inheritance'.

Thus the sale of customary land contributes a significant volume of plots for housing development in many cities, and those acquiring plots through this channel have confidence 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. It may also make it possible for members of indigenous groups that have no remaining undeveloped land to obtain housing plots. The prices are lower than for plots with title purchased through the formal private market, but they are nevertheless market prices, which precludes poor people accessing land through this channel, although it does facilitate access to land for women, especially where customary rules exclude them.

The efficiency of markets in this type of land has improved as institutions have emerged to improve information flows. For example, brokers have started to operate in Kampala and Enugu. In the past transactions in customary land were verbal. However increasingly, written evidence of a transaction between buyer and seller is secured, initially with lay witnesses such as senior family members and neighbours and later often involving lawyers to draft and witness the 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, periodic 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. 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 a transaction. 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.

e) *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 have settled on wetlands in the 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 their 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 area claimed is later subdivided and sold, these 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 also *labeled* '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 getting the permission of the Land Board.

5. Main conclusions and policy implications

Systematic city-wide data on African cities and their land and housing markets are generally not available. Although it would be desirable to collect the data needed to build up a more comprehensive picture of the dimensions of alternative channels of land supply and the wealth levels of households able to access land through them, this research project did not have the resources to do so and instead concentrated on developing an in-depth understanding of the way in which these channels work. It has not been possible in this paper to present much of the empirical evidence that underlies the above analysis or to describe the details of channels of land delivery and the social institutions through which they are organised. The conclusions drawn here, therefore, will also be very general and will, to an extent, skate over the contrasts among the case-study cities.

Informal land delivery systems are, first, a response to the failure of the formal tenure and land administration systems, including the low levels of compensation paid by government when it expropriates land and which lead to resistance to such acquisitions on the part of land owners and customary rights holders. Second, it is clear from our detailed empirical evidence that they 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 tend to be derived from customary institutions, but the latter have 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 borrowed from and often mimic formal rules and procedures, or take advantage of formal rules, especially where the latter are ambiguous or inconsistent. However, urban development and growth do increase the pressure on such social institutions and in some cases, they weaken and break down. In such situations, actors in land transactions seek to use formal institutions to protect their rights and investments.

Informal systems of land delivery are, indeed, the main channel of housing land supply. However, it is no longer possible for poor households to access land for new residential building, with a few, often minor, exceptions. These include members of indigenous landowning communities in Enugu, some of whom can still claim their entitlement to a plot family land; settlers in wetland areas in Kampala; people who pool their resources to buy part-shares in land-buying companies in Eldoret; and those in Gaborone who can

successfully negotiate the systems for official allocation of customary or public land (through a tribal Land Board or government administered serviced plot programme respectively). 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 child to build a house on part of their own plot, or through inheritance of the parents' own plot or house. Scope for the latter will decrease in future, as plots become too small for further subdivision, a situation which has already been reached in some densely settled areas, for example in Kampala and Enugu.

Informal land delivery systems have both strengths and weaknesses (see Table 1). Their strengths include their ability to provide land in significant volumes to meet the housing needs of various socio-economic groups, which sometimes include the relatively poor and women. Their weaknesses include the inappropriate locations in which settlements are sometimes located, the poor layouts that sometimes emerge, and the almost universal infrastructure and service deficiencies. Arguably, however, these weaknesses emerge as much from their relationships with the formal tenure and land administration systems and with government agencies as from their own shortcomings.

The findings of the study have been fed back to the local communities studied, to validate the findings and obtain residents' and local key informants' comments on some of the policy issues. The conclusions and policy implications have also been discussed at policy workshops in each of the case-study countries. They do, no doubt, need to be further refined and also adapted to local circumstances. Not all those attending these events would agree with all the policy implications identified below. There is considerable resistance by government officials in all the countries studied to acknowledging that the failures of state systems of land administration. This may imply a need for radical rethinking, even though, where formal land administrative systems have adopted more flexible ways of interacting with informal actors and processes, more promising approaches to the intractable problem of ensuring land delivery for urban residential growth show signs of evolving. Nevertheless, all the recommendations have support from some actors in the case study cities and countries and it is hoped that the findings can contribute to current land policy and legislative revisions that are under way in most of the case study countries.

Policy Implications

The most obvious policy implication is that informal land delivery systems should be tolerated and accommodated, but not without recognising their shortcomings and the problems that such toleration and accommodation might pose. While their strengths are recognised and built upon, their weaknesses should also be identified and policy should concentrate on addressing these weaknesses without compromising the positive contribution they make to meeting demand for housing land.

Table 1 Strengths and weaknesses of informal land delivery channels

Strengths	Weaknesses
Purchase of land through the market	
Significant supply (Eldoret and Kampala)	Insignificant supply in some cities
Affords some access to land for the poor	Does not provide access to land for the poorest
Letters of agreement generally witnessed, respected and recognized in applications for title	Possibility for multiple sales using different witnesses
Access to land for women with means	Record-keeping by lowest level of government poor (Kampala)
Disputes often resolved by Local Councils (Kampala) or elders (Eldoret)	Married women's access to land constrained by social rules and customs
Trust between shareholders in landbuying companies based on shared ethnic origin	LCs/elders may be partial or corrupt
	Excludes other ethnic groups from membership of landbuying companies
Delivery of land through state-sanctioned channels	
Significant land supply (Gaborone)	Acquisition of land hindered by disputes over compensation
Security of tenure	Requirements for survey and servicing prior to allocation restricts supply
Women household heads entitled to land, and in theory married women also	Excess demand strains capacity and encourages rent-seeking
Dispute resolution mechanism available (Board, Customary Court, Tribunal)	Boards can demand return of the land
	In practice, married women are not allocated land without their husband's permission
Delivery of land through customary channels to members of the group	
Often free	Access to unmarried men restricted (Maseru)
Access to poor members of the group	Access to all/majority of women only through men
Security of tenure for men	Limited supply for groups in built-up area (Enugu)
Fast	Vulnerable to government intervention to acquire land for public purposes (Enugu)
Institutions widely understood and generally respected within the group	Restrictions on the sale of customary land inhibit choice
Dispute resolution mechanisms effective and respected, with some exceptions	
Purchase of customary land	
Significant supply	Possibilities for multiple sales of land
Provides access to land to non-members of the group as well as members	Market price restricts access by the poor
Relatively cheap	Insecure, especially if sales have to be concealed
Facilitates access to land for women with means	Government intervention may restrict supply
Efficiency of the land market increases as institutions emerge to provide information flow (brokers in Kampala, Enugu)	Systems of keeping records undeveloped
Written evidence of transactions	Documents not always valid/trusted – owners try to upgrade to state-sanctioned tenure
Formal legal system accepts these types of written evidence	Insecurity leads purchasers to seek legal title (mainly Enugu)
Institutions supporting system widely understood	Despite obtaining family/group agreement, some sales challenged by family members
Often family/group agreement precedes sale	
Self allocation	
Enables the poor to access unused public or marginal at no cost	Very limited supply due to commercialization of land and (threat of) eviction
Enables family members otherwise not entitled to plots to access family land	Public land may be required for other uses
Unused land suitable for housing made available with implicit family agreement or informal approval from official sources (Local Council officials in Kampala)	Marginal land often unsuitable for residential development
	Many occupiers have insecure tenure and lack services

Urban residents and house builders seek **security of tenure**. Even without well-developed housing finance systems, this can often lead 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. The main threats to such security often arise from the actions of governments themselves, particularly evictions.

- Thus one of the most obvious implications is that, in the vast majority of cases, governments should **cease evicting settlers and demolishing their houses**.

- In addition, security can be enhanced by public-sector agencies **accepting innovations in documentation** that have emerged in the informal systems, because these are generally popularly understood, widely accepted, cheap and procedurally simple.

Recognition of areas in the process of being settled through informal processes of 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 environmental infrastructure). As well as generating user charges for services, the **registration of occupiers** makes it possible for local governments to **generate tax revenue**. However, such 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 processes of gentrification. The difficulty of ensuring this is acknowledged.

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.

Finally, **revised compensation provisions**, requiring government to pay adequate and fair compensation when it expropriates land for public purposes from private or customary rights holders, would improve both the operation of some subdivision and allocation processes (such as the operations of Land Boards in Gaborone) and the ability of government to fulfil public-sector goals without antagonising local land rights holders (for example in Enugu).

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studied; see also www.idd.bham.ac.uk/research/researchprojs.htm. The UK Department for International Development (DFID) supports policies, programmes and projects to promote international development. DFID provided funds for this study as part of that objective but the views and opinions expressed are those of the author alone.

[2] It was decided to avoid the largest cities, partly because they have already been relatively well studied and partly because their very active property markets are not necessarily typical of urban centres more generally.

[3] To complete the picture of land delivery in the case study cities, the allocation of public land through formal procedures was also examined, mainly using secondary data. The findings on this channel of land delivery, which is of varying significance, are not presented in this paper, but see Ikejiofor, 2004; Kalabamu and Morolong, 2004; Leduka, 2004; Musyoka, 2004; and Nkurunziza, 2004.

[4] The situation in Ghana, especially in Kumasi, is somewhat similar.

[5] 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 regularizes land occupied by *mailo* tenants or those to whom they sell, rather than allocating new plots.

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