

Local and Urban Governance

Robert Home *Editor*

Land Issues for Urban Governance in Sub-Saharan Africa

 Springer

Local and Urban Governance

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Foreword

The centrality of land in most societies is indisputable. Land not only anchors social and economic activities in most countries but is also the source of individual and communal identity, and the basis for shelter, food production, livelihoods and environmental health. Five of the 17 SDGs specifically refer to the role of land, and the New Urban Agenda identifies it as a key driver for inclusive and sustainable human settlements and urban development. Land governance is, therefore, a critical focus for developmental agenda and related interventions.

Land governance, particularly in urban sub-Saharan Africa, is important for various reasons. First, UN-Habitat estimates that by 2030, the region's urban population will account to over half of total population and will require infrastructure, social services, affordable housing and employment opportunities, which all depend upon land. Second, land governance systems continue to be influenced by the continent's colonial past, which entrenched exclusion, exploitation and delegitimization of rights and livelihoods for the majority of the population. Third, conflicts over land and natural resources require appropriate rules, processes and structures for resolution. Fourth, sub-Saharan Africa has a plurality of tenure types, often existing side by side, each vying for legal recognition and social legitimacy. With all these challenges, the legitimate land rights of the poor, women and marginalized groups are disproportionately and adversely affected.

Inadequate land governance has dire consequences for urban areas in sub-Saharan Africa. It fosters social and economic inequalities, as elites benefit from access to land and capture most of its value while the majority are disenfranchised. It promotes environmental degradation, with weak controls on land use and natural resources. Weak land governance also leads to inadequate investments and poor-performing property taxation systems which rob governments of much-needed revenues. Insufficient mechanisms to mediate competing interests over land may result in long-standing grievances that can degenerate into violence and conflict.

These effects are worsened by COVID-19, which is putting land rights under pressure from evictions and strained land markets. As governments re-direct funds and resources in response to the pandemic, this affects the quality of land

governance services and the implementation of policies and programmes. Emergency measures by countries, combined with the inability of mediation institutions (such as courts) to function normally, are undermining public confidence.

This volume brings together scholarship from different disciplines in the humanities and social sciences to discuss urban governance from a legal and institutional point. It boasts an accomplished team of contributors, drawn from diverse disciplines and geographical homes, and is aimed at readers from urban specialisms in law, geography and other social sciences, and professionals and policy-makers concerned with land use planning, surveying and governance.

Readers will benefit from this book through its elaboration of the link between global initiatives including SDGs, New Urban Agenda, Sendai Framework and Addis Ababa Action Plan, as well as regional ones such as the Framework and Guidelines on Land Policy in Africa. Themes include the role of legal and institutional frameworks, land use planning, taxation, responsible land administration, urban resilience, women's land rights, informal settlement upgrading and dispute resolution.

It is hoped that the book will raise awareness and stimulate new research from cross- and post-disciplinary perspectives with particular attention on promoting inclusive access to land, eradicating negative colonial legacies, reforming urban laws and regulations, changing top-down cultures of planning, improving public space, educating citizens, stimulating entrepreneurship and innovation, and recognizing the community role of urban and oral history. This book is timely for land and urban professionals, academia, civil society actors, and stakeholders in public and private sectors who are keen to promote better land governance in a rapidly urbanizing Africa.

Chief of Policy, Legislation and Governance Section,
UN-Habitat

Remy Sietchiping

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List of Abbreviations and Acronyms

AfDB	African Development Bank
ADR	Alternative Dispute Resolution
ANC	African National Congress
AU	African Union
AUC	African Union Commission
CBO	Community Based Organisation
CSO	Civil Society Organisation
ECA	United Nations Economic Commission for Africa
ECOWAS	Economic Community of West African States
GDP	Gross Domestic Product
GLTN	Global Land Tools Network
IPT	Informal Public Transport
LGAF	Land Governance Assessment Framework
LMLT	Land Management and Land Tenure
LR	Land Readjustment
LVT	Land Value Tax
MDG	Millennium Development Goal
MSDF	Municipal Spatial Development Framework
NELGA	Network of Excellence on Land Governance in Africa
NGO	Non-Governmental Organization
NUA	New Urban Agenda
OAU	Organisation of African Unity
PiLAR	Participatory inclusive Land Readjustment
SDG	Sustainable Development Goal
SPLUMA	Spatial Planning and Land Use Management Act (2013) (South Africa)
SSA	Sub-Saharan Africa
SALA	Subdivision of Agricultural Land Act (South Africa)
TUM	Technical University of Munich
UCLG	United Cities and Local Governments
UNDP	United Nations Development Programme
USD	United States Dollar

Chapter 1

Land, Law and African Land Governance: Introduction



Robert Home

Abstract This collection of essays is one in a series of books on local and urban governance, bringing together scholarship from different disciplines in the humanities and social sciences. It is aimed at readers from urban specialisms in law, geography and other social sciences and professionals and policymakers concerned with land-use planning, surveying and governance. Urban land governance has arisen recently as a policy concern influencing, practices, discourses and institutions in the area. A narrative or genealogy is presented of when and how the concept came about, involving complex policy developments at international, regional and national levels. The case of the African continent, particularly sub-Saharan Africa (SSA), is discussed, having acquired importance because of its particular history and growth rates of both population and urbanisation. The chapter contributions in this book are then outlined and how they contribute to evolving ideas on urban land governance.

Keywords Urban land governance · Sustainable development goals · Sub-Saharan Africa

1.1 Introduction

Urban land governance has arisen in the last decade as a policy concern influencing, practices, discourses and institutions in the area. This chapter begins with a narrative or genealogy of when and how the concept came about. The case of the African continent, particularly Sub-Saharan Africa (SSA), has acquired importance because of its particular history and its population and urbanisation growth rates.

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1.2 A Genealogy of Urban Land Governance

The concept of governance, seen as a broader term than government, concerns the traditions and institutions by which authority is exercised, and the processes of interaction and decision-making between those institutions (Fukuyama 2013). Governance comprises a network of institutions: the “state” (central and local)/public administration) plus many other institutions both public and private (network government). It includes the capacity of governments to formulate and implement effective policies and the attitude of citizens towards the institutions that govern them. Governance recognises the importance of politics and power yet seeks to be conceptually neutral. This section applies a genealogical approach to the recent emergence of governance generally and urban land in particular.

The World Bank, launching in 1996 its Worldwide Governance Index, identified six defining dimensions of governance: voice and accountability, political stability, government effectiveness, regulatory quality, rule of law and control of corruption (Kaufmann et al. 2007). Its projects and programmes have given great importance to good governance for achieving development goals, failings in which have serious adverse consequences for society as a whole, and the twenty-first century has seen land and natural resources rising rapidly on the governance policy agendas of international development agencies. The Peruvian economist Hernando de Soto achieved global status for arguing that a framework of secure, transparent and enforceable property rights is a critical precondition for poverty reduction and economic growth – even claiming it as the solution to global poverty (De Soto 2000). Among professions involved with the land sector, the influential network of the International Federation of Surveyors (FIG) moved from a narrower, more procedural and state-centred view of land administration into the wider conceptual space offered by the concept of land governance. A working definition has been offered:

[L]and governance concerns the rules, processes and structures through which decisions are made about access to land and its use, the manner in which the decisions are implemented and enforced, the way that competing interests in land are managed. When land governance is weak, the powerful are able to dominate the competition for scarce land resources. (Palmer et al. 2009)

The argument for good land governance runs something like this. Land is the single greatest resource in most countries. Access to land, security of tenure and land management have significant implications for development and touch all aspects of how people live and earn a living, while land-based taxes raise revenue for public finances. Land title registration should provide security for people and mortgage transactions. Weak governance means that the poor are not protected, left marginalised and outside the law, while land is not best used to create wealth for the benefit of society. Thus good land governance is vital to achieving good governance in general.

The World Bank, in support of its funding for large-scale projects of land titling, devised a Land Governance Assessment Framework (LGAF) for use in countries and regions. This identified five major areas for policy intervention: legal and

institutional framework, land-use planning, management and taxation, management of public land, public provision of land information and mechanisms for land disputes resolution (Deininger et al. 2012). The framework initially arose in connection with FAO guidelines for land tenure in the agricultural sector and had a rural rather than an urban focus (FAO 2007, 2012), but that was soon to change as urban land grew in importance on other international development agendas.

The global community, under the cloak of the United Nations, has twice formulated sets of development goals, each operating under a 15-year time frame. The UN's 8 Millennium Development Goals (MDGs) for 2000–2015 expanded to 17 Sustainable Development Goals (SDGs) for 2015–2030, and the latter were accompanied by no less than 169 targets and 232 monitoring indicators (Global 2030 Agenda 2015). A new goal added in 2015 was SDG11 (“Inclusive, safe, resilient and sustainable cities”), which the UN-Habitat Executive Director in 2019 claimed to be “at the heart of the SDGs”:

Land underpins all the key aspects of the New Urban Agenda because it is a key driver for inclusive and sustainable urban development. (UN-Habitat 2019)

This reflected a realisation that globally urban populations now outnumber rural and are growing faster (NUA 2016). SDG 11 aimed to “make cities and human settlements inclusive, safe, resilient and sustainable” and added various dimensions: social, economic and ecological sustainability, access for all to adequate, safe and affordable housing, green and public spaces, transport systems and basic services (such as water, food, electricity, sanitation, waste disposal).

Other new SDGs included 16 (“Peace, justice and strong institutions”), which is relevant to growing the “civic space” needed for better access to land and justice for citizens. SDG 17 (“global partnerships”) supports new knowledge production, management and sharing. SDG 15 was also relevant to land governance: “Protect, restore and promote sustainable use of terrestrial ecosystems, etc.”(Global 2030 Agenda 2015).

When the SDGs were announced in 2015, the UN's Human Settlements Programme (UN-Habitat) had already set itself goals of adequate shelter for all, and sustainable human settlements in an urbanising world. It adopted a wide-ranging New Urban Agenda at its Habitat III Conference (NUA 2016), and Chap. 2 by Chigbu in this book maps the SDGs against paragraphs in the NUA. Better urban land governance is increasingly seen as important if towns and cities to be sustainable, especially in the “Global South” (Parnell and Oldfield 2014). UN-Habitat through its Global Land Tool Network (GLTN) has been for over a decade promoting globally innovative urban planning tools such as land readjustment and the social domain tenure model (GLTN 2012).

Established in 2006, the GLTN is an alliance of diverse global, regional and national partners that has taken forward the security of tenure agenda and shifted thinking towards pro-poor inclusive approaches. The GLTN brief has four key commitments: tenure security for all, ensuring sustainable land use, generating land-based revenues for the benefit of all and enabling responsible land governance. Practical tools have been developed and tested at country level, security of tenure

improvements provided for everyday people in local communities, innovative projects delivered and key stakeholder capacity strengthened. The new GLTN Strategy (2018–2030) comes at a time when the vast scale of land governance is acknowledged and is facing new challenges of climate change and resilience. Resources for the land sector are constrained, but the actors and stakeholders asking for them are growing. Five of the 17 SDGs specifically refer to the role of land, and the NUA focuses squarely on tenure security, housing and community development as key requirements in the search for sustainable, inclusive and efficient cities. Five years on from the formulation of SDGs, the 2020s are now identified to be “the decade of progress”.

1.3 The African Dimension

The African continent – with its large land mass, diverse populations and often fragile states – experiences many conflicts over land and natural resources. Its development prospects depend upon how its states accommodate rapid population growth and climate change. This gives it a distinctive place in matters of land governance in general and urban land governance in particular.

About the same time the MDGs were being set, the African Union also came into existence, replacing the former OAU as a new supranational institution. While the word “land” does not appear in the African Charter on Human and Peoples’ Rights (the Banjul Charter adopted in 1981), land soon assumed greater importance, as was recognised when the AU in 2009 adopted a declaration on land (AU 2009). The global financial crisis after 2008 was triggering anxiety over food security, leading investors acquiring large tracts of land in Africa for biofuel and food production, but they were often discouraged by problems of land governance and corruption. Africa’s Agenda 2063 (AUC 2015), in the same year as the launch of SDGs, had in its first 10-year implementation plan 7 aspirations, 20 goals, 13 fast-track projects, 39 priority areas and 255 targets; it concerned wide issues of democracy, cultural identity and continental integration and envisioned an Africa of good governance, democracy, respect for human rights, justice and the rule of law.

Africa’s complex land governance structures have been shaped by its history of external colonial interventions, especially in the “scramble for Africa” triggered by the Berlin conference of 1885; white settlers took large tracts of land and exploited natural resources. The British colonial dual mandate policy associated with Lord Lugard introduced a strategy of separate racial development, most famously articulated in apartheid South Africa, seeing towns as European creations, where land was owned by the state and subdivided for leasing out – but rarely to Africans. Outside the towns and white settler lands, “native reserves” or “tribal trust lands” were demarcated, where customary tenure was maintained under a systematic policy of tribal reserves (sometimes called tribal trust lands). Colonial land ordinances allowed tribal land to be taken (or “set aside”) without compensation, if required by the state for some self-serving perception of a “public interest”, such as for mining,

forestry or township creation. Across Africa there was a division between those colonies where white settler colonialism imposed white supremacist policies and those areas typically classed as protectorates, where peasant rather than plantation economies predominated and customary land tenure persisted (Elkins and Pedersen 2005; Mamdani 1996). In Africa the so-called and much-debated “land question” usually refers to the exclusion of much of the African population from access to land, whether by a white settler minority, post-colonial elites or foreign investors (Land question 2020). Those with powerful political connections prefer an environment of insecure land rights and corruption in the land sector (Onoma 2010; Manji 2012).

The social and physical consequences of such policies continue to affect urban development in SSA. British indirect rule and dual mandate policies allowed cities to develop without an overall plan and coordination, while French direct rule featured integrated city planning and land allocation mechanisms. Satellite data shows that cities of Anglophone colonial origin have less intense land use than Francophone ones, more irregular layouts and more leapfrog development at the urban edge. As a result households in Anglophone informal areas also have poorer connections to electricity and piped water, linked to the difficulties and higher costs of providing infrastructure for urban sprawl (Baruah et al. 2017).

An estimated two-thirds of Africa’s usable land area is communal (the highest proportion in the world), with many living in informal settlements that are illegal in the eyes of the state and under threat of demolition and eviction (Forced evictions 2007). The temporary structures of informal settlements reflect not only their occupiers’ poverty and limited access to building materials but also the threat of demolition and eviction. Official disapproval and harassment of the poor, often problematised as squatters and slum-dwellers requiring removal, have deep roots in the colonial experience and have only moderated in recent years as slum-dwellers exert pressure on their elected politicians. The poor could be better protected from arbitrary eviction through progressive legalisation and better adherence to due process and appropriate compensation, if the political will exists.

Independent African countries kept not only their former colonial boundaries under the *uti possidetis* principle but also a largely intact colonial legal and bureaucratic framework. Some states have imported legal systems from more than one colonial power: good examples are the former German colonies transferred after 1918 to other colonial powers and the South African mixed Anglo–Dutch legal order. After independence many African states reformed their land laws in attempts to redress historical injustices, but law reform is complex and highly political, so these reforms have not always achieved their aims.

Growing recognition of the importance of land was reflected in the formation of an African Land Policy Centre in 2014, based in Addis Ababa as a joint programme by the AUC, the African Development Bank (AfDB) and the United Nations Economic Commission for Africa (ECA). It produced land policy guidance (AUC 2012), and its third international conference, held in 2019, had the theme of “Winning the fight against corruption in the land sector”. Whether this will change

anything or was an example of “isomorphic mimicry” (see below) to reassure international sponsors is yet to be seen.

1.4 Academic Perspectives

To review academic scholarship on urban land governance necessarily involves several disciplines, mainly in the social sciences. Scholarship is moving from disciplinary to interdisciplinary and even post-disciplinary approaches, and there are various theoretical concepts and insights to draw upon, a few of which this section explores.

“Governance” scholarship has widened from concern with “government”, drawing particularly from disciplines of politics and political economy. The study of politics has long concentrated upon the state as a sovereign authority, embodying the general will of its people and based upon certain fundamental principles (Heritier and Silvestri 2012; Senn 2010). That essentialist approach is being challenged by a more radical and decentred theory of the state (Bevir and Rhodes 2010). This sees the state as neither monolithic nor a causal agent but rather a result of contingent actions of individuals, diverse beliefs about public authority and contending (and perhaps unstable) cultural traditions and practices. Ethnographic and observational methods can uncover such beliefs and preferences, and historical narrative methods can trace the development of traditions in response to challenges. Bevir and Rhodes thus argue for an anti-foundational analysis, bringing people back into the study of the state through diversity, contingency and ruptures.

The theory of historical institutionalism investigates sequences of social, political and economic behaviour and change over time, as they influence institutional and political structures and outcomes (Mahoney and Thelen 2010). A related concept of path dependence argues that decisions we face are limited by past decisions, even when past circumstances may no longer be relevant, so that inefficiencies are perpetuated by generic drivers such as lock-in and self-reinforcement (Sorensen 2014, 2018). Critical junctures in path dependence occur when existing political structures fail to respond to change, and different actors develop new dynamics and institutions. One such critical juncture can be seen to have occurred when SDG11 and NUA shifted the international development discourse towards a greater concern over urban land governance, although post-colonial path dependency has also meant African resistance to reform and change, for instance, in town planning law and practice.

Actor–Network Theory, transferred into urban studies from science and technology, offers an alternative lens. It examines complex urban transformations through chains or networks of causation and through multiple agents, both human and non-human; it explores how networks operate in relations that are both material (between people and things) and semiotic (between concepts) (Farias and Bender 2010). One such actor–network is urban land governance, comprising people, concepts and institutions and, increasingly, both state and non-state actors such as urban social movements (Domaradzka 2018).

Another, and challenging, concept is that of isomorphism, which refers to the similarity of processes or structures between entities, resulting from imitation or independent development under similar constraints. Originating in mathematics and sociology, the concept has been applied in evolutionary biology as isomorphic mimicry: the idea that animals may appear more dangerous than they are in order to enhance their survival chances. A rather unsettling application suggests that organisations may adopt a camouflage of capability but not actually perform in practice. Thus in development discourse fragile states may adopt institutional, legal and organisational forms without carrying out the expected functions (De Maggio and Powell 1983; Pritchett and de Weijer 2010). The AU may sign up to gender equality and improving women's access to land, yet also proclaim "African solutions for African problems", when patriarchal social traditions in Africa deny women's property rights (as Bhatasara and Ngang explore in Chaps. 6 and 13 of this book). Other examples of isomorphic mimicry are the persistence of corruption in the land sector: governments profess to guarantee property titles which are not in practice guaranteed; statutory planning authorities follow the expected legal and organisational forms – development management, plan-making and enforcement – yet do not function effectively and may even facilitate corrupt practices (UN-Habitat 2019).

If one moves from general theories about governance to focus upon the local specificities, land governance operates in physical space and translates into material realities on the ground. Its stakeholders are a broad spectrum of actors, including state and non-state, private and professional interests, customary authorities and the public. Complex bureaucratic systems and regulations involve multiple agencies, professions and multilevel institutions. The activities they perform include confirming rights to ownership and use, surveying and dividing land, valuing and managing property, handling disputes and reviewing laws and regulations. The state may claim to manage the conversion of land to urban uses, yet exclusionary zoning and lack of capacity mean that much (even most) new development in Africa is unauthorised, leading community-based organisations (CBOs) to increasingly negotiate new local styles of land rights and dispute resolution.

Within such a narrative, the history of land governance in SSA has been one of external colonial interventions, importing and adapting laws, and followed by decolonisation that meant displacement for new post-independence elites, yet retaining institutional structures embedded in the state. New interventions by international agencies, importing such soft law instruments as MDGs and SDGs, do not displace such structures of law and governance created over the "long twentieth century". Colonial administrations formed over a period of some 50 years in much of SSA's interior, and it is now some 50 years since independence, when new actors with different cultural traditions took over governmental institutions. In the twenty-first century, new responsibilities embodied in MDGs and SDGs were agreed by the global community of states, and such universalist aims and expectations of the modern nation state are supposed to translate down into urban land governance yet may conflict with cultural norms and practices. Population pressures are now translating into demand for housing and livelihoods in the rapidly expanding informal areas

that have grown up outside the relatively controlled urban spaces formed by colonialism.

A rich yet eclectic legal geography scholarship has evolved over the last 30 years beyond disciplinary boundaries towards a post-legal geography, connecting law with spatiality. Nearly every aspect of law is either located or takes place within some spatial frame of reference. Landscapes, social space and lived places all are inscribed with legal significance and spatial boundaries (Braverman et al. 2014). To deploy some rather obscure and difficult academic language, the “nomosphere” refers to the cultural material environs that are constituted by the reciprocal materialisation of “the legal” and the legal signification of the “socio-spatial”, while “nomoscapes” are the spatio-legal expression and the socio-material realisation of ideologies, values, pervasive power orders and social projects (Delaney 2010). In SSA the often artificial boundaries between colonial territories became fixed after independence by the legal principle of *uti possidetis* (paraphrased as “what you have you keep”), which meant the continuance of previous institutional structures: differentiating physical planning standards for urban and rural areas, or segregating land uses originally devised on racial grounds. These are classic examples of both path dependence and isomorphic mimicry.

Critical legal geography has also widened the traditional model of property, as absolute exclusive ownership and a tradable commodity, to embrace relational approaches that include “non-owner” interests – collective or communal, family and secondary (Graham 2010; van Wagner 2017). This is particularly relevant to SSA, where customary land tenure and traditional authorities, previously assumed to be withering away under the forces of modernity, are proving tenacious in supporting collective or communal rights (Baldwin 2016).

1.5 Scope and Overview of Chapters

The chapter contributors for this book come from a variety of disciplinary and geographical homes, drawing in part upon the themes and priorities expressed in the World Bank’s Governance Index and LGAF that have been mentioned above in the genealogy of urban land governance. Good land governance needs a legal and institutional framework, as the LGAF identifies and the first five chapters explore.

Chigbu in Chap. 2 proposes a good governance approach to urban land issues and interrogates the concept through a mapping exercise that links the SDGs with paragraphs in the NUA. His case study of Windhoek (Namibia), through an e-content analysis of social media posts, shows how its citizens perceive the city’s key governance issues. They identify an acute lack of low-cost housing land, water supply shortages and poor access to essential infrastructure and services, all of which combine to make life a daily struggle for most residents and exclude its urban poor in informal peri-urban settlements. Chigbu recommends more local self-governance and autonomy for African cities, to allow visions and activities in such areas as equitable access to land, integrating slum areas into the formal planning system and

promoting citizen education and participation. These themes recur elsewhere in the book.

Cirolia in Chap. 3 addresses the issue of strengthening local autonomy in the fiscal relations between Africa's growing urban areas and their local governments. African cities have historically not been a focus for international infrastructure lenders, and local authorities have long been under-funded. She explores moves towards fiscal decentralisation and the history of local government funding, which has resulted in weak, fragmented and hybrid urban governance and consequently poor infrastructure, both hard and soft. She argues that recent international initiatives such as the NUA and the Addis Ababa Action Agenda still provide little explicit guidance on how fragmented systems for financing can be improved and then explores the little-used potential of land-based finance approaches.

Ross and Guèye's case study of the holy city of Touba (Senegal) in Chap. 4 shows how an Islamic religious institution (the Muridiyya Sufi order) has successfully managed urbanisation to provide affordable housing and basic civic amenities to all its residents, largely independent of state agencies. Its noncapitalist land management system, first developed as agricultural homesteading in the 1880s, has been adapted for the purpose of mass urbanisation since the 1970s without being based on private property ownership, real estate markets and financial debt, which is the norm for city-building today. Traditional, precolonial legal practices and Sufi socio-religious concepts have propelled Touba to become Senegal's second city (after Dakar). The role of traditional authorities is being revived in both rural and urban areas, sometimes unwelcome element to state but not to be ignored.

Chapters 5 and 6 bring a legal human rights perspective to two aspects of urban governance – the right to the city and women's rights to development and access to land – and show a failure to convert soft law commitments into real action “on the ground” in practical land governance. Kamga in Chap. 5 explores the right to the city as a composite of civil and political rights, as well as socio-economic rights, which are embodied in the World Charter on the Right to the City, as well as regional and national human rights instruments. He relates these essentially unenforceable soft law undertakings to South African and African Commission jurisprudence, to show that protecting the right to housing through meaningful engagement of urban dwellers is essential to give the development process a human face. Ngang starts Chap. 6 with a presumption that a right to sustainable development exists for the women of Africa. The scholarly literature supports his argument that women may be the cornerstone for development in Africa but too often are subjugated under largely patriarchal societies that limit their landownership and potential to contribute fully to development. A Protocol on the Rights of Women in Africa was adopted in 2003, Article 19(c) of which sought to “promote women's access to and control over productive resources such as land and guarantee their right to property”. Yet increasing urbanisation and competition for urban spaces means that such entitlements to urban landownership are not guaranteed in practice.

The next group of Chaps. (7, 8, 9, and 10) concern the realm of land-use planning, management and taxation, another one of the five major areas for policy intervention identified in the World Bank's LGAF. The system of land-use planning at

state and local levels is supposed to help urban development and economic productivity, with a particular role in managing the conversion of land to urban use. Good quality urban law should give confidence to investment, economic performance and wealth creation and provide predictability and order to urban development. British land-use planning law (transferred and still applied in many of its former African colonies) defines development, not as broad economic and social rights but in concrete terms as “building, engineering and other operations in, on, over or under land, or the making of any material change in the use of any building or other land”, yet the planning system in many African countries is failing to manage physical development well (Habitat 2019).

Lewis-Lettington in Chap. 7 presents findings from a recent study by UN-Habitat’s GLTN on the effectiveness of planning laws in SSA. Planning law, largely built on colonial origins and conservative models, remains relatively static, with little or no questioning of its aims and processes and fails to translate urban development policy into tangible outcomes. It governs both the making of spatial plans – at city, town, village or district level – and the regulation of land use and development. It should determine the buildable and non-buildable areas and also the legality of buildings under enforceable rules, regulations to protect public spaces, development rights, building codes and street and plot layout standards. Planning law should balance the competing interests of stakeholders and their existing legal rights, bring about positive human rights outcomes through minimum physical standards and create adequate spaces for social activities. It can also delegitimise and even criminalise the way of life of the poor who lack protection of property rights against planning interventions. Therefore, planning law can be either redistributive or consolidate existing privilege. The GLTN study, of a sample of 18 SSA cities selected from a representative sample of 200 cities worldwide, found planning systems that performed poorly against several key variables: urban growth boundary lines, urban population density (compared with UN-Habitat’s target density of 15,000 people per square kilometre), spatial planning instruments, compliance with zoning, plot sizes and subdivisions, public acquisition of land, planning staffing and enforcement. The state, if repurposed and acting with local community participation, could potentially improve conditions in informal settlements despite the restricted resources. Densifying African cities, as recommended in various studies (Visagie and Turok 2020), means expanding upwards and that requires participatory planning, more tenure security, settlement redesign and in situ investments in public services and housing.

In Chap. 8 Duran-Diaz, de Vries and Chigbu present the story of 20 years of capacity development in land management by the Technical University of Munich (Germany), what changed over the years and what remained the same. TUM has provided an internationally celebrated Master’s programme in Land Management and Land Tenure, which evolved over 20 years of research and postgraduate education, conceptualising, coordinating, evaluating and adapting the programme. The chapter reviews the history as a cycle of theory and practice, against a changing context that has affected the current role and position of the Master program in an international training environment. The programme has moved towards a more

technological engineering approach that embraces the rapidly developing technical rather than political aspects of governance.

Chapter 9 by Chavunduka discusses an instrument in the GLTN toolkit with particular potential for improving peri-urban development – Participatory and Inclusive Land Readjustment (PiLAR). Land readjustment has long been associated in various countries associated with consolidating rural farm holdings, but has for over a century been applied in urban situations, as a method of pooling landownerships to plan urban extensions and densification. The pooled ownerships create opportunities to plan and finance better physical infrastructure, public space and other amenities. The GLTN introduced it in 2010 to enable stakeholder participation and inclusiveness in decision-making, and the chapter assesses its progress in SSA through case studies of completed projects. It can narrow the gap between governments’ centralised control approaches and the reality of people’s needs on the ground. The case studies suggest that further refinement is needed to incorporate community knowledge, expert opinion and city needs, while adoption of the tool requires enabling legislation and a framework for resolving disputes.

Chapter 10 by Ismaila Rimi Abubakar addresses what Professor Vanessa Watson has called “urban fantasies” – the planned and self-contained satellite settlements arising around major cities, of which he identifies some forty in SSA. They are influenced by the new town movement and recent visions of global, smart and sustainable cities are funded largely through international real estate investment and aim for an upper-income market. Far removed from Africa’s impoverished masses, their governance structure undermines the social inclusiveness goals of contemporary global development agendas.

Kalabamu in Chap. 11 presents a Botswana case study of procedures for land dispute resolution through statutory tribunals, which were introduced to complement and ultimately replace costly and slow court processes. One of the areas for policy intervention in the World Bank’s LGAF was identified as “accessible mechanisms to authoritatively resolve disputes and manage conflict”. Such disputes generate social unrest, wars and forced displacement of people from land (Forced evictions 2007; UN 2019). Kalabamu’s quantitative evidence from Botswana shows tribunals reducing court cases and some success in improving relations between the disputing parties but also raises concerns about trust and impartiality, because the people view the tribunals as primarily a state agent, not independent and more like a common law court. He proposes principles for a more just and effective system.

The next four chapters (12, 13, 14, and 15) explore issues of power relations in urban governance, particularly in matters of planning and housing, bringing disciplinary perspectives from sociology and urban geography.

Chapter 12 by Levenson concerns the limitations of post-apartheid housing delivery in the Republic of South Africa, which is the continent’s largest economy and has a complex history of land dispossession by white settlers over several centuries. Land reform is still seen politically as a rural and agrarian question, yet the country is now predominantly urban. While majority rule government since 1994 has delivered many free housing units, the segregatory geography of apartheid continues, as homeowners who cannot afford increased costs tend to sell their homes

and return to the informal settlements from which they were relocated, while others have never left them. The post-apartheid government has largely failed to redistribute land, and, while municipalities may possess better located land, they often hold it for investment purposes, making future targeted delivery of affordable housing unlikely.

Chapter 13 by Bhatasara returns to the subject of women's land rights, previously addressed from a legal perspective in Ngang's Chap. 6. She applies a historical, sociological and feminist approach to colonial and post-colonial urban Zimbabwe; there have been many studies on rural women and land rights in Zimbabwe but few on urban land. Gender inequalities and social exclusion inherited from the colonial past still constrain women's everyday lives in urban areas and limit their access to land, property, entrepreneurial and livelihood activities, compounded by unsuitable historic urban housing designs and land-use patterns that still generate disparities.

Chapter 14 by Chiweshe addresses across SSA the complexities of corruption in the land sector, which was identified as one of the six dimensions of governance in the World Bank's governance index and was a theme of the third African Land Policy conference in Abidjan in 2019. He identifies from a sociological perspective a political economy of accumulation in which increased demand for urban land across the continent allows political power to claim a share in the lucrative urban land market. This subverts the urban land governance structures through an intricate mix of multiple illicit land deals and shadow land markets, in which politicians and politically connected individuals (often popularly known as land barons) swindle desperate land seekers of their money. Those supposedly responsible for fighting corruption are involved in this web of corrupt dealings. Chiweshe makes proposals to improve citizen participation and advocacy and also increase the integrity of official urban land titling systems.

By way of contrast, Chap. 15 by Meredith and others presents a more positive story: the Soweto East Project for environmental and social improvements in Kibera, Nairobi (Kenya), which has been called the largest informal settlement in SSA. The project was a partnership of the Kenyan Government, UN-Habitat, a local NGO with 20 years' experience (*Maji na Ufanisi*, meaning in Swahili "water and development") and community-based leadership groups. The project overcame the inherent mistrust of Kibera residents towards outside interventions, and identified locally acceptable procedures that would improve living conditions; it relied heavily on community engagement to build an access road, a community resource centre, water supply, sanitation and waste management. The finding is that socially acceptable enhancements in informal settlements require commitment from within the community and sustained, responsive and well-resourced support from outside institutions.

The next four chapters (16, 17, 18, and 19) address practical issues of daily urban living: food security, mobility and public transport, urban resilience against disasters and responses to public health hazards.

Chapter 16 by Cobbinah examines urban resilience for achieving sustainability, with Ghana as a case study. The urban resilience philosophy in Ghana is weak when

compared with developed countries, and its planning and management efforts in a context of rapid urbanisation have contributed to a mushrooming of unplanned and informal settlements, vulnerable to the impacts of climate change, especially periodic flooding. The three factors at work are: limited planning and management capacity in implementing resilience principles; the pressures of rapid urbanisation and population growth; and the severe impacts of specific climate changes that compound these challenges.

Chapter 17 by de Visser addresses the particular constitutional architecture of the Republic of South Africa as it affects food distribution and security. The country produces enough food to feed its people, yet distribution and market problems mean that many experience food insecurity and malnutrition. Food security and agriculture are primarily the constitutional responsibility of national and provincial governments, so that local authorities bear little statutory responsibility and fail to recognise the importance of urban supply networks. This argument also relates to Chap. 3, where Cirolia explored the fiscal relationships between Africa's growing urban areas and their local governments, and called for greater local autonomy and fiscal decentralisation.

Chapter 18 by Moyo and Olowosegun addresses the role of informal public transport through a case study of Ibadan (Nigeria). Falling public sector investment in public transport in developing countries has contributed to the growth of informal transport servicing the sprawling cities as a flexible alternative to formal public transport; its resilience has both positive and negative impacts on the wellbeing of urban dwellers. User perceptions of informal public transport gathered from a survey reflect the real world situation to inform urban development and transport policy.

Chapter 19 by Birch examines the roles of urban governance in the public health response to the disease outbreaks of Ebola and cholera in Monrovia and Harare, respectively. In Harare the deterioration of urban infrastructures and the political competition over the city itself showed how politics and decisions made at the urban level contributed to the health crisis, with President Mugabe's role contributing to the cholera outbreak being perceived as a "man-made" crisis. Monrovia, by contrast, saw the initial outbreak of Ebola in a remote rural community spilling over into deadly outcomes in the unsanitary living conditions of the capital city. In both cities no formal political opposition could mobilise to contest the actions of the national government, while the framing by the international community served to hide the role of urban governance in the spread and magnitude of the outbreak. Politics and urban governance were at the centre of diagnosis and response, and eventually prompted new investment in water and sanitation, with better opportunities for urban resilience.

Chapter 20 by Home African explores the potential contribution of urban history towards issues of land governance in SSA cities, especially for housing and peri-urban areas. He applies a post-disciplinary approach in order to tackle "wicked problems", and explores precolonial building forms and the impact of colonial policies towards towns or townships. The discouragement of African families living in towns banished them to a "septic fringe" of peri-urban settlements where they lived in temporary structures, sometimes under threat of demolition and displacement. He

also shows that study of place names (or toponymy) within the broader politics of space helps to understand how place identity and attachment to place may develop, and oral and community histories can help build civil society at local community level, allowing better rules for land governance, both formal and informal, to be negotiated.

Chapter 21 by Sait examines the relocation of slum-dwellers in Monrovia, Liberia, who are vulnerable to hazards, especially flooding and the Ebola health epidemic. Multi-stakeholder endeavours to develop voluntary relocation guidelines emerge as a condition for sustainable slum resettlement, community-led and based upon human rights.

Finally, the editor in “What next?” reviews some recent scholarship and stakeholder activity, and discusses what might come next for urban land governance, as the 15-year period of operation for the United Nations’ SDGs moves into its second decade – the decade of action.

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Chapter 2

The Quest for “Good Governance” of Urban Land in Sub-Saharan Africa: Insight into Windhoek, Namibia



Uchendu Eugene Chigbu

Abstract There is an increasing demand for good urban governance by city residents all over sub-Saharan Africa (SSA). This chapter traces the historical background of land issues in the region in response to the growing quest for “good governance” in urban land affairs. It critiques current and past urban governance approaches in past decades and synthesises the main objectives of the SDGs and the NUA to propose a good governance approach to land issues in sub-Saharan cities. A case study of land-related governance issues in Windhoek (Namibia) suggests how a good governance approach can be applied and advocates city autonomy in managing challenges. Local self-governance of cities (with less interference from national and regional governments) would allow city administrators and their residents to develop visions and implement activities to fulfil the specific needs of their city through land-based methods.

Keywords Africa · Urban governance · Land governance · Namibia · SDGs · Sub-Saharan Africa · Urban · Windhoek

2.1 Introduction

The majority of people living in urban areas in Namibia reside in informal settlements. Tackling this challenge through good governance “requires that local authorities take on the responsibility to plan prior to occupation of land and deliver affordable land to low-income residents with immediate effect” (Christensen 2019: 4). The central question this chapter strives to answer is that of how to reinforce

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local city governments to develop own capacity (and degree of autonomy in relation to central government), and to enable them to engage in a governance practice that is *good* enough to benefit their citizens.

The meaning of *good governance* is diverse and contested, made worse by the normativeness embedded in the word *good*. This chapter takes *governance* to mean the procedures involved in making or not making decisions and the process involved in implementing or not implementing made decisions (Chigbu 2011: 118). The qualification of the concept with the word *good* – meaning a state of social approval – is deconstructed before delving into the urban land issues addressed in this chapter.

Good governance should provide leadership, knowledge and physical infrastructure that enables communities to have access to the basic needs of life and carry out their daily activities with ease. Making decisions and implementing plans (of any kind) that will improve the living conditions of people in sub-Saharan Africa (SSA) are a direct way to engender development in the continent. This chapter responds to the various calls for good governance in the management or administration of urban land in SSA (Antonio et al. 2016; World Bank 2017; Chigbu et al. 2019). Land governance entails an acceptable manner of making and implementing policies, processes and institutions so that land, property and natural resources are managed efficiently and effectively (Global Land Tool Network 2018: 41).

Land issues are vital parts of the everyday lives of SSA people, whether in the city (urban) or village (rural). All communities in SSA have a culture on how to allocate, use and dispose of land. Due to differences in land agendas among individuals, groups, corporate bodies and governments, SSA cities encounter land issues or challenges. In order to discuss how to achieve good governance for development agendas in urban SSA (especially in Namibia), one should (re)examine its connotations in the region and grasp the definitions, perceptions, the African origin of good governance and how it links to land issues. Most importantly, it provides an approach to city governance that is based on good governance practice.

2.2 (Re)Examining Good Governance: Definitions, African Origins and Link to Urban Land Issues

Governance, in literature, is not a new concept. Max Weber outlined it as part of “the functions of a bureaucracy that would facilitate development and called for strict observance of the rule of law and legal rationality –and also advised against a mixture of private interests with the public responsibilities of the bureaucrat” (Bhattarai 2006: 2). In contemporary literature, it “evolved from the search by economists and political scientists for an all-embracing concept capable of conveying diverse meanings not covered by the traditional term government” (Chigbu 2012: 4). Contemporary African scholars have put efforts to contextualise the term in Africa, leading to the evolution of the concept of good governance (Ake 1993; Amoako 2013; Chigbu 2012; Mlambo et al. 2019).

Good governance is defined differently (and sometimes indifferently) by scholars and development agencies. The World Bank focuses on economic efficiency, the European Union on democracy and many global civil society agencies on human rights. It is challenging to agree a definition, so this chapter considers good governance from a wider perspective, as a system “that embodies processes that are participatory, consensus-oriented, accountable, transparent, responsive, effective and efficient, equitable and inclusive, and (which follow) the rule of law” (Chigbu 2012: 7). Literature on the SSA origins of good governance is rich, and the use and practice of the concept are evident in both today’s SSA traditional communities and ancient societies. The Great Zimbabwe Empire governed with the help of courts, and *mambos* (chiefs) who exercised political governance in cities to ensure benefit for all (Huffman 1996). The Igbo people of Nigeria considered good governance as a political system, *oha karasi* (all peoples’ leadership), that ensures citizenship equality in leadership and decision-making processes. Different contexts of good governance can be found in the histories of *Buganda*, *Bamana*, *Lunda* and *Ovaherero* people of SSA (among others). The basis of good governance in SSA is represented by the philosophy of *Ubuntu*¹ which means humanity and permeates the traditional day-to-day life of people throughout SSA (Rwelamila et al. 1999). *Ubuntu* promotes reciprocity of human kindness, and this Africa-wide normative tradition of self-help and community development generates local understandings of good governance in SSA.

The term good governance was identified in the World Bank’s (1989) Report, *Sub-Saharan Africa: from Crisis to Sustainable Growth* as a structural necessity for market reform in Africa (Chigbu 2012). This report was compiled by African scholars including Claude Ake, Waheed Oshikoya and Gladson Kayira (World Bank 1989: x), who coined the term good governance. This is probably why Mkandawire (2007: 1) revealed that the concept of good governance originated among African scholars who were concerned about the state-to-society relations in the continent in the 1980s. Whether this assertion is entirely correct or partially accurate is not the concern of this chapter. It has been brought up to emphasise that it may have an African connection – a significant reason why African governments should embrace good governance principles and practice.

2.3 Unveiling the Land Issues in Urban Areas in Sub-Saharan Africa

What has *good governance* to do with urban land issues or urban land governance? A root cause of various land-related challenges in SSA cities is the failure of institutions and weak policy performance (World Bank 1989). Good governance, in the

¹The word *Ubuntu* is derived from the Nguni Bantu aphorism, *Umuntu Ngumuntu Ngabantu*” (translated: a person is a person because of or through others).

context of failing institutions and weak policy performance, would entail creating an enabling environment for improvement. This means that any action meant to engender good governance should seek to make land-related public services efficient, supported by a reliable judicial system, and a land administration system accountable to its public. The enabling environment which good governance can bring is mandatory for tackling urban land issues in SSA because the region has many such issues, including (but not limited to) poor housing, land tenure insecurity, poor infrastructure, climate change, inappropriate land use, food insecurity, urban poverty and unequal development. Together these reflect the nature, extent and dimensions of land-related challenges in urban areas, and are exacerbated by poor governance, insecurity, climate change-related concerns (flood, drought and famine, etc.), corruption and rapid population growth. They make it challenging to tackle the primary urban problems, including paucity of spatial data for policymaking, poor primary education and healthcare provisions, lack of access to energy, inadequate physical security, environmental degradation, housing, land tenure insecurity and poor infrastructure. Many of these urban challenges are linked to governance, hence the quest for good governance of urban land in SSA.

This chapter presents a synthesis of the land issues based on AUC–ECA–AfDB Consortiums (2010a, b, 2011, 2012), an assessment of the problems in Central, Eastern, Western and Southern Africa, and uses the data to identify urban land challenges (Table 2.1). Various parts of the SSA region (Central, East, West and Southern Africa) have more in common than differences in terms of land issues. Their historical backgrounds on land issues slightly differ, but the manifestations of their various land issues in the urban areas are similar (with only differences in the degree of the challenges experienced in individual parts and countries). All countries in the region are seeking ways of handling their urban problems, leading to a quest for good governance in SSA (Buyana et al. 2015; Antonio et al. 2016; Christensen 2019; Chigbu and Antonio 2019).

2.4 The Quest for “Good Governance” in Urban Land Governance in Sub-Saharan Africa

SSA is the world’s fastest urbanising region (World Bank 2017), with its urban areas accommodating nearly 500 million people, a figure expected to double within the next 23 years (Lall et al. 2017). Urbanisation has both positive and negative dimensions. On the positive side, the region has more than 150 major cities generating a combined US\$0.5 trillion, 50% of the region’s gross domestic product (Saghir and Santoro 2018). They also serve as regional centres for alleviating or eliminating poverty through sustainable socio-economic growth. On the negative side, urbanisation is putting a burden on development policies of many of these countries. To find a balanced way to handle the urban challenge, good governance practices should be brought into urban land governance. Hence, the renewed quest that has been made by the African Union for good governance in urban land governance in SSA (AUC–ECA–AfDB Consortium 2010c).

Table 2.1 Historical background of land issues in SSA and their manifestation in urban areas (Source: author)

SSA region	Historical background on land issue SSA region	Urban land challenges
East Africa	This region displays a diverse colonial legacy, ecosystems, cultures, tenure systems and complex and dynamic history. Consequently it has a wide variety of land policy strategies and land administration and management systems, operating within a legal-pluralistic environment	Unequal land access
		Legal dualism and pluralism
		Overlapping institutional responsibilities in the land sector
		Unequal distribution of land for development
Southern Africa	A significant distinction can be drawn concerning land issues between Southern African countries: those that experienced high-level settler colonialism (Namibia, South Africa, Zimbabwe), those that experienced lower settler colonialism (Swaziland and Mozambique) and those that did not or in which colonial settlers were relatively few (Lesotho, Botswana, Malawi and others)	Unsustainable land management methods
		Rapid urbanisation and proliferation of informal settlements
		Lack of specific strategies to address peri-urban challenges
West Africa	West Africa has a legal-pluralistic environment underpinned and influenced by different colonial systems – English, French, Portuguese and German – and operating within different customary systems. Islamic rules apply in some countries such as Mauritania and Nigeria, while hybrid systems (colonial legacy, traditional beliefs and Islamic religious values and jurisprudence) have developed in the Gambia. In Mali vestiges of Sharia law operate, derived from periods of Arab domination in the north of the country. These influences vary from country to country, depending upon the past policies of the specific colonial authority	Spatial disparity in urban settlements (informality versus formality)
		Inefficient land markets
		Lack of methods for valuation and taxation of urban real estate
		Land conflict
		Poor capacity development in land governance
		Lack of clear urban land policies
		Gender issues, particularly land access for women
Central Africa	The Central African region includes Angola, Burundi, Cameroon, Central African Republic, Chad, Congo, Democratic Republic of Congo, Equatorial Guinea, Gabon and Sao Tome and Principe. A common trait in the region is state sovereignty over land and non-recognition of customary-based land rights held by local communities	Lack of land access to young people

Buyana et al. (2015) have argued that new modes of good governance are necessary for tackling underlying challenges of urban growth, urban poverty and environmental unsustainability, because the majority of urban dwellers in SSA face difficulties in receiving effective and reliable land-related services. The global challenge set by the global SDGs is an agenda that needs to be localised in SSA to ensure its realistic attainment. Achieving the SDGs “requires good land governance which will only be achieved when effective land administration systems are fully operational” (Global Land Tool Network 2018: 13). The path of good land governance – a land governance system based on good governance principles – is needed to tackle urban problems, rather than bureaucratic barriers (Fig. 2.1).

Some fundamental good governance principles necessary for administration of urban land issues include efficiency, subsidiarity, the rule of law, equality and inclusiveness, equality, transparency, security, accountability and participation (Chigbu 2011; Penco et al. 2020). Applying these principles in SSA cities would mean governing (or managing) them in a way that allows city residents to exercise their rights and fulfil their responsibilities. The practice of good governance in cities demands that city administrators use transparent and participatory processes to tackle the many land-related challenges they face, meaning a change in the culture of communication between city residents and city administrators. It also means that political parties, media organisations, corporate firms and individual citizens are responsible for ensuring negotiated problem-solving and decision-making. Operationalising good governance in SSA cities will also demand a change from bureaucratic structures to frameworks based upon locally realistic normative and institutional parameters, ensuring greater political decentralisation and urban self-governance.



Fig. 2.1 The principles of good governance necessary in good urban land governance. (Source: author)

2.5 Approaches to Urban Land Governance in SSA

Approaches to urban governance (particularly as it relates to urban management or development) in SSA are similar in philosophies or ideologies but usually vary in the manner they are implemented, due to differences in scoping the local needs of communities, resulting in distinctions in setting urban development goals and objectives. City authorities in SSA have different levels of budget and human resource and capacities for action towards resolving their urban challenges in general and land issues in particular. For instance, one SSA city might have a thousand land professionals (such as land surveyors, geodetic engineers, quantity surveyors, urban and regional planners, and estate surveyors and valuers, etc.) while others have only a few hundreds and some even a few tens. The processes involved in mobilising and engaging stakeholders can differ between them, and consequently a variety of urban governance or development approaches have been practised (Table 2.2).

Table 2.2 A summary of urban governance approaches in SSA over time (Source: author)

Approaches	Objectives	Examples of cities that practised it	Period of practice
Government control	Colonisation	All colonial SSA cities	Colonial era (ongoing)
“Blackspots” removal and townships building	Apartheid or racial segregation	South Africa and Namibia	The 1940s to 1990s
Community modernisation	Industrialisation	All colonial cities	1950s (ongoing)
Urban community improvement	State protection	All SSA cities	1960s (ongoing)
Basic needs promotion	Social services provision	All SSA cities	1960s (ongoing)
Master planning	Urban exclusiveness	All SSA cities	1960s (ongoing)
Women development	Gender equality		1980s (ongoing)
Environment and ecology	Sustainability	All SSA cities	1980s (ongoing)
Participation	Community empowerment	All SSA cities	1990s (ongoing)
Local community development	Economic development	All SSA cities	1990s (ongoing)
Poverty reduction	Wealth creation	All SSA cities	1990s (ongoing)
Urban renewal and slum upgrading	Informal settlement removal	All SSA cities	2000s (ongoing)
Asset-based	Asset development	All SSA cities	2000s (ongoing)
Citizen control (governance)	Institutional efficiency	All SSA cities	2000s (ongoing)
Urban agriculture	Food security	All SSA cities	2010s (ongoing)
Spatial planning	Urban inclusiveness	All SSA cities (in principle)	2010s (ongoing)
Climate change	Sustainability and disaster risk	All SSA cities (in principle)	2010s (ongoing)

As Buyana et al. (2015) put it, “If we do not rethink and coalesce our approaches and practices, there will be rising urban inequality and conflicts, underpinned by accelerated resource scarcity and uncontrollable environmental impacts”. The different approaches presented in this chapter have been identified and categorised based on governance or development strategies, rather than from core urban planning perspectives, and been presented from their philosophical or ideological position. The list provided is a generalised summary of the situation in SSA and excludes various service-based approaches tailored towards education, healthcare, urban electrification and malaria mitigation, among others. Some of these approaches have been abandoned (e.g. “blackspots” for removal in segregated townships), but most are still integrated into the general frame of urban governance in many SSA cities (e.g. urban community improvement, basic needs promotion, master planning, women development, environment and ecology, etc.). They are, however, practised differently, and never as a stand-alone approach, but usually as a cocktail of approaches from earlier times (e.g. government control, community modernisation, urban community improvement and basic needs promotion) to the most recent approaches (such as climate change).

2.6 Policy Neglect of Land Governance in Sub-Saharan African Cities

Most of the recent approaches in the last two decades have land governance components, such as master planning, poverty reduction, urban renewal and slum upgrading, asset-based, urban agriculture, citizen control, spatial planning and climate change. The question that arises is whether city administrators can operationalise these approaches.

From an urban policy perspective, poverty (usually located in informal settlements) is a significant challenge in SSA cities, the effects of lack of access to land, food insecurity, tenure insecurity and inadequate infrastructure (among other challenges). These cannot be addressed without tackling the land issues, which relate to land use and land rights or property rights administration. SSA cities lacking access to adequate infrastructure and essential services are more likely to be impacted by natural disasters (Saghir and Santoro 2018: 4). Lack of essential services (such as safe drinking water, waste management and drainage) has negative consequences on sanitation and health. So, policies related to healthcare, environmental risk and social services must be based on land-use decisions, a missing piece in most policies (of any kind) in SSA (Gwaleba and Chigbu 2020). An urban land policy (agreed by all citizens, including women and the youth) should govern ownership (and access to), use and management of land and natural resources in cities.

Since urban governance approaches are not directly embedded in city-specific policies in many SSA countries, land issues become disconnected from the broad urban governance affairs. “Ensuring that the youth are not left behind in the effort

at improving land access and securing tenure” is important (Chigbu et al. 2020: 131). Also, ensuring that women develop tenure awareness and gain the knowledge (and skills) necessary for promoting better use and management of land/natural resources in SSA is critical (Chigbu 2019a, b). These are all policy neglects that need to be addressed in land governance in sub-Saharan African cities.

From a practitioner’s perspective, there are many ways that understanding land issues can enable the achievement of urban governance objectives. It has the potential to close the knowledge gap that exists in the areas of land administration and land management, food security and the strengthening of land rights of people living within the urban space. For instance, the integration of tenure security objectives and urban land-use management could lead to “tenure responsive land-use planning” (Antonio et al. 2016; Chigbu et al. 2019). This can be a hybrid (double-edged) approach to solving the problems posed by tenure insecurity and inappropriate land use in cities. Also, land issues have direct linkages to social exclusion in the cities. For instance, the consequences of tenure insecurity have a damaging effect on the formal housing sector in the region. According to Thandiwe (2018), 15% of adults in SSA are eligible to apply for formal financing from 2014, but only 5% of adults have managed to secure a mortgage loan from a formal bank until 2018. United Nations Statistics Division (2019) indicates that about 56% of the urban dwellers in SSA live in slum conditions. These damning statistics evidence a dire need to understand better the unique role land can play in city governance in SSA. Without integrating land issues in the city governance affairs, the situation may not improve.

2.7 Towards “Good Governance” in Land in Sub-Saharan African Cities

Urban land challenges in SSA pose complex questions. Re-evaluation of previously applied strategies or approaches is needed to grasp what was poorly done and project the *right* way towards governing cities to reduce the land issues they face. Dealing with land-related pressures – such as the balanced provision of infrastructure, spatial inequality, affordable housing supply, environmental risks, and climate change, etc. – cannot be done as a linear process.

What modes of urban governance will be most practicable for tackling the underlying challenges of poverty, informal settlements and environmental unsustainability (among many other challenges)? Answering this question is a task that no single theory will be able to define and calls for multiple responses at different governance levels. Any approach to urban governance to tackle land issues in SSA needs to have a good land governance component. Good land governance is a means of supporting the SDGs which has 17 goals and 169 targets (Global Land Tool Network 2018: 42) and must not neglect the prescriptions of the New Urban Agenda (NUA). Both the SDGs and the NUA recognise the role of cities in achieving sustainable development, so any efforts towards solving the SSA urban challenge demands policies and

implementation approaches that achieve the development targets stipulated in the SDGs (in general) and the NUA (in particular). Doing this requires the localisation of the land issues in SSA in the context of the SDGs and NUA. In order to argue for a good governance-focused approach to resolving the land issues in SSA cities, Table 2.3 presents the SDGs and their corresponding articles in the NUA with possible land governance tools identified.

Table 2.3 indicates that many articles of NUA support various goals of the SDGs (but in an urban context) and shows the local context of the SDGs and NUA in SSA cities and a corresponding list of land-based approaches that can improve the various challenges bothering SSA cities today. For details on possible land-based approaches, refer to Antonio et al. (2016), Thandiwe (2018), Global Land Tool Network (2018), Saghir and Santoro (2018) and Chigbu et al. (2019). Details about NUA and SDGs are available through the United Nations (2017), United Nations Statistics (2019), and Louwsma et al. (2020).

The list of tools and approaches identified in this study are not new to African countries, but have not succeeded in most cases because an enabling environment for their operationalisation is lacking. They are also not necessarily good governance-focused unless they are implemented based on good governance principles. This chapter considers a good governance approach to tackling land issues in SSA cities to be a city governance system where there is an interplay between city self-governance and institutions (Fig. 2.2).

Self-governance is the main missing piece in urban governance in nearly all countries of SSA (except for some few cities in South Africa). The recognition of local self-governance of cities by central governments in SSA is the starting point towards good governance-focused approach to urban development in SSA. In SSA, it is common that the local city authorities are mostly responsible for carrying out decisions made by central governments instead of independently at the city level. Self-governance of cities can activate the relevant land-based approaches for tackling localised city-specific problems, leading to the independence of institutions over time. This (in turn) can enable self-governance as the outcomes from applying land-based approaches to localised city-specific problems have the potential to nurture renewed self-governance in cities.

When a city is self-governing, it has the potential to focus on the four areas of city development that allow for inclusivity: people, place (or space), living (and working) and networking. The city is not a city without the people, so people-centred policies and their implementations are mandatory. A city is a physical place which will not be liveable if it is not maintained in ways that would allow people to enjoy it while protecting its environment. Living and working are an essential aspect of what makes cities functional, so efforts must be put in place to ensure employment and housing. Networking is crucial for turning relationships into opportunities for city development. If land management (and administration) systems and land-use planning or spatial planning (two vital components of land governance) work well, they allow for a spatially enabled and people-to-work linked society. Hence, a land perspective of development is the engine that drives the development (of people, place, work and networking) in the urban space. This is

Table 2.3 SDGs and NUA local applications for good land governance in SSA cities (Source: author)

SDGs Nos.	Short SDG	Supporting NUA paragraphs	Localised situations for achieving SDGs and NUA in SSA cities	Possible land-based approaches for actions
1	End poverty in all its forms everywhere	25	Boosting access to essential services	Tenure regularisation, land reform and recognising women’s land right
2	End hunger, achieve food security and improved nutrition and promote sustainable agriculture	5 and 123	Enhancing agricultural productivity in urban areas	Redistributive reform and women’s land rights implementation
3	Ensure healthy lives and promote wellbeing for all at all ages	95	Securing land rights to widen livelihood options to generate income for healthcare	Land use, recordation of land and women’s land rights
4	Ensure inclusive and equitable quality education and promote lifelong learning opportunities for all	61	Increasing the proportion of people educated in land disciplines to increase capacity for good urban governance	Land-related undergraduate and higher education (including research), capacity building and capacity development
5	Achieve gender equality and empower all women and girls	5, 11 and 14	Improving women’s (or female) land rights	Women’s and youth’s land rights recognition and implementation
6	Ensure availability and sustainable management of water and sanitation for all	73 and 120	Ensuring access and availability of safe (and affordable) drinking water	Land-use planning and land/water access through tenure improvements
7	Ensure access to affordable, reliable, sustainable and modern energy for all	54, 75 and 121	Intensifying access energy infrastructure (e.g. electricity)	Efficient land-use planning for equitable access to land
8	Promote sustained, inclusive and sustainable economic growth, full and productive employment and decent work for all	43–44 and 56–60	Broadening access to employment or availability jobs in the sector	Land-use planning for balanced control of economic and social needs
9	Build resilient infrastructure, promote inclusive and sustainable industrialisation and foster innovation	45	Building active small-scale industrial sector	Land-use planning, land banking, infrastructure and facility cadastre

(continued)

Table 2.3 (continued)

SDGs Nos.	Short SDG	Supporting NUA paragraphs	Localised situations for achieving SDGs and NUA in SSA cities	Possible land-based approaches for actions
10	Reduce inequality within and among countries	10–18, 33, 36, 40, 62 and 89	Reducing gender inequality and improving income growth equality between the sexes	Creation of equal land rights and redistributive reform
11	Make cities and human settlements inclusive, safe, resilient and sustainable	30, 34, 37, 46, 49, 51–53, 55, 63 and 96–102	Deescalating the urban slum population and problems	Upgrading of informal settlements and recognition of informal rights
12	Ensure sustainable consumption and production patterns	10, 13–14, 45, 63, 69, 75, 95 and 137	Improving urban resource uses and waste management	Responsible use of land through land-use planning
13	Take urgent action to combat climate change and its impacts	63, 67–68, 79–80, 101, 115, 143 and 165	Boosting resilience to climate change and global warming	Efficient land-use planning and land and natural resource management
14	Conserve and sustainably use the oceans, seas and marine resources for sustainable development	13 and 72	Managing coastal areas of cities to ensure biodiversity growth	Responsible governance of tenure in and on water
15	Protect, restore and promote sustainable use of terrestrial ecosystems, sustainably manage forests, combat desertification, halt and reverse land degradation and halt biodiversity loss	13–14, 19, 34, 35, 37, 49, 54, 64, 67, 70 and 88	Increasing the forest ratio to city area to ensure biodiversity growth	Land use, land registration and governance of tenure
16	Promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels	13, 37 and 40	Reduce casualties and deaths due to land (and natural resources) conflicts	Secure tenure, documentation, land education and conflict resolution
17	Strengthen the means of implementation and revitalise the Global Partnership for Sustainable Development	21, 92, 96, 126, 149, 153–154, 162, 169 and 172	Creating partnerships between land researchers and policymakers to implement research results	Collaborative planning across sectors with linkages to land

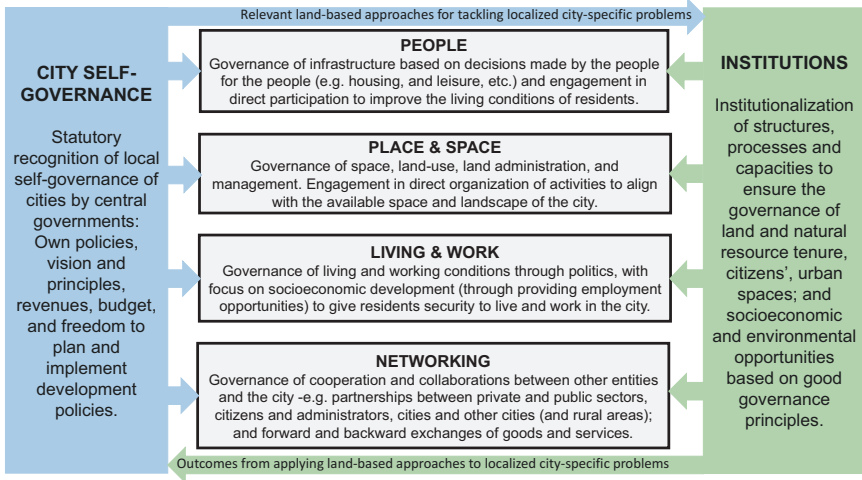


Fig. 2.2 Framework for good governance-focused approach to tackling land issues in SSA. (Source: author)

what SSA cities need to reduce their challenges linked to land issues. Nevertheless, urban development practitioners must not forget that city governance issues are highly heterogeneous among SSA cities. Any success in applying the good governance-focused approach in the region must be city-specific, based on an understanding of every city’s needs, people and development vision.

2.8 City-Specific Discussion: Windhoek, Namibia

The city of Windhoek, which lies at an altitude of about 1700 m, was founded in 1890. During its 130 years of existence, it has become the commercial, industrial and administrative hub of Namibia. The Windhoek City Council is the governing body of Windhoek. As the central city of Namibia, it is home to more than 15% of the Namibian population and has to face the land-related pressures of about 600 people moving into it every month (Shikangalah et al. 2019; Brandt 2019). The official website of the Windhoek City Council (2019) describes Windhoek as a “city of many faces. Pulsing with life, opportunity and the promise of adventure” and “a multicultural city, characterised by the tranquil co-existence and ample *lebensraum* (habitat) for its people” and that “visitors and residents alike enjoy the best of both worlds from European-style culture and comforts to the vivid drumbeats of Africa”. This description of Windhoek evidences a development vision. It also alludes to the city’s localised SDGs and NUA vision to be considered in achieving sustainable development in the city.

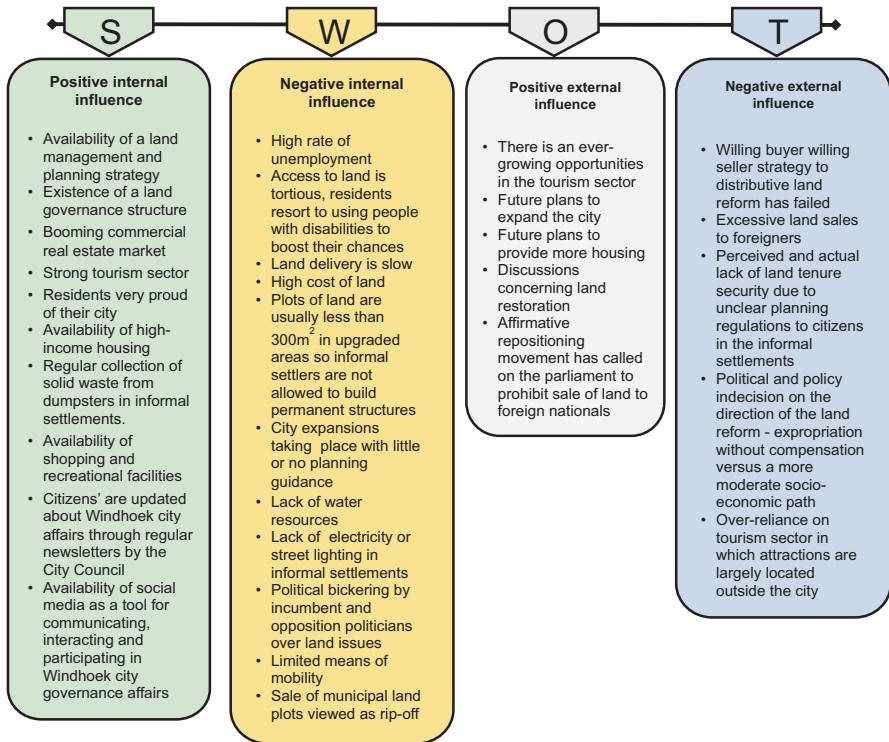


Fig. 2.3 SWOT matrix of the urban governance issues related to land in Windhoek. (Source: author)

Figure 2.3 presents the results of a SWOT (strength, weaknesses, opportunities and threats) survey of Windhoek, using e-content analysis of social media posts by Windhoek citizens between 2014 and 2019, focusing on the Twitter platform as one of the most accessible social media platforms for residents. Evidence from SWOT shows that the conditions of the city (focusing on land-related issues) are influenced by external (not fully within the control of the city) and internal factors (entirely within the control of the city) in positive and negative ways (Fig. 2.3). The most crucial strengths (S) are the availability of land management and planning strategies for the city and the existence of a land governance structure that can tackle governance issues. The significant weaknesses (W) noted include the following: land delivery is slow, with acute unavailability of low-cost land for low-cost development, low-income earners in the city and a lack of water resources in the city, while the dams that supply water are vulnerable to contamination from domestic and human wastes coming from informal settlements.

The most severe threats (T) identified include a lack of perceived land tenure security due to unclear planning regulations to citizens in the informal settlements. There is an over-reliance (by the city) on the tourism sector, but many of these tourist attractions are largely located outside the city. The opportunities (O) identified include future chances or changes to provide more housing for residents and plans

to engage in land restoration. Affordability of access to essential infrastructure and services (such as housing, food securing amenities, leisure, etc.) is a daily struggle for most residents of the city, and lack of opportunities to access property rights in the city keeps its urban poor in peripheral informal settlements, excluded from decision-making. The high standard of living in Windhoek and lack of job opportunities contribute to economic exclusion.

Windhoek development needs are represented by the weaknesses (*W*) identified in the survey, and threats (*T*) represent what must change if those weaknesses are to become strengths (*S*) through a good governance-focused approach. Currently, the city (unlike many SSA cities) enjoys quasi autonomy in land governance, but greater autonomy in the management of land resources is needed for Windhoek to realistically engage in tackling its many urban land issues. With such autonomy in place, the following recommendations could help Windhoek tackle its immediate urban land issues:

- **Policy solutions – City-wide land policy with focus on equitable access to land (including housing) and a path out of climate vulnerability:** There is need for a city-specific land policy framework that gears towards achieving equal spatial equality and inclusive citizens’ participation. Equal spatial balanced development will integrate the slum areas into the formal planning system of the city. This will give citizens living outside the formal borders of the city access to infrastructure and services and help reduce poverty emanating from lack of access to formal land uses. Inclusive citizens’ participation would guarantee citizens the right to the city. Any policy solutions must include issues relating to its vulnerability to climate change (Handayani et al. 2017). This is necessary as Windhoek is vulnerable to both coastal and desert vulnerabilities.
- **Capacity solutions – Citizens’ education (including capacity development) in land and natural resources issues:** The awareness of citizens about the structure, needs and development visions of the city is a core factor for catalysing development. However, even with such an awareness, the governance of the city would be a daunting challenge because technical knowledge (from human resources) would be crucial for doing the needed on-the-ground work. Hence, citizens’ education (including capacity development) in land and natural resources issues is mandatory to generate the necessary knowledge needed for proactive actions. There is requirement for better education and training of more land professionals (du Plessis et al. 2020). For instance, highly qualified experts (such as planners, land management experts, architects, land economists, valuation experts, public administrators and politicians that are knowledgeable in land-related subjects) are highly needed in Namibia. Educating and capacitating more people to become land professionals will be key to achieving sustainability in the governance of the city of Windhoek.
- **Technical solutions – Tenure responsive land-use planning with focus on the upgrade of informal settlements:** Tenure insecurity manifests in various forms in Windhoek, especially the prohibition of informal settlers from building permanent structures on plots of less than 300 m². The tortuous path to land access

also creates insecurity. On the land-use aspect, the coordination of land to enhance expansion plans by the Windhoek Council is a planning challenge. The lack of water resources is a problem that needs urgent solutions. Tenure responsive land-use planning is a strategy that would enable the integration of slums into the city, upgrading without impeding the de facto tenure of residents. This will contribute to inclusiveness in the city's urban structure and living conditions of the urban marginalised groups. Chigbu et al. (2016) and Antonio et al. (2016) provide details on the operational steps for implementing tenure responsive land-use planning at the city level.

These recommendations form the relevant policy, technical and capacity development solutions. They also represent the possible land-based approaches for actions that would help the city achieve its localised SDGs and NUA objectives.

2.9 Conclusion

After the establishment of quasi-democratic structures in many SSA countries (at least at city administration levels), demand for good land governance by urban residents is rising. Members of the urban communities are seeking equitable access and spatial and socio-economic inclusion in the land policies and implementations. Deteriorating urban governance is the main reason SSA cities face challenges to service delivery, maintaining poverty. It is possible to ensure good land governance in urban areas of SSA by an inclusive, participatory process to make and implement policies that can set urban people free from the difficulties they face. The key take-away from this study is the need for city autonomy to manage the challenges that are unique to their cities, a reinforcement of local governments to engage in purpose-driven governance (that is, *good governance*) that would benefit their citizens. Therefore, administrative decentralisation, with more local autonomy (organisational, functional and financial), is the way forward towards good governance.

The difference between the more and less successful cities is the level of autonomy (political and financial) in providing the needed governance to its residents. Local self-governance of cities should allow city administrators and their residents to develop visions and implement them based on local needs. Guaranteeing local self-governance can be done through legislations or constitutions and be applied in city development practices. Unfortunately, in many SSA countries, this is not reality.

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Chapter 3

Financing African Cities: A Fiscal Lens on Urban Governance



Liza Rose Cirolia

Abstract Understanding how African cities are governed requires a close look at how they are financed. From a fiscal and financial perspective, the chapter makes several important contributions to our understanding of urban governance in Africa. First, it shows that understanding public finance, in particular revenue, expenditures, and borrowing, is key to understanding urban governance. The design of sub-national fiscal systems, and the ways in which these systems are put into practice, shape how cities are governed, with direct implications for the daily operations and ongoing sustainability of urban areas. Second, the chapter argues that African cities require more dynamic financial tools, mobilising flexible, just and locally empowering sources of revenue. Land-based financing is a good place to begin to improve the revenue streams of city authorities, but must be accompanied by more creative expenditure models, to contend with the limitations of large-scale networked infrastructure and the potential for more hybrid approaches to service delivery.

Keywords Urban governance · Public finance · Service delivery · Land-based finance

3.1 Introduction

Cities are dynamic and complex. The overlapping material, discursive, political, administrative, technological, social and ecologic dimensions of cities are not reducible to a single theorem or discipline. Trying to better understand this complexity, and the power dynamics behind it, is at the heart of much contemporary urban research (Pieterse 2008; Amin and Thrift 2017). This endeavour undeniably

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requires accounting for many urban dynamics and processes. It is nearly impossible to understand cities and their governance without understanding finance, vital to the making of both material places and urban institutions.

Public finance is, at its core, about how the state manages money (Tanzi 2016; Moeti et al. 2007). The state is required to expend money to provide goods and services which are agreed to be public or social in nature (what is called expenditure). To do this, the state must raise funds (what is called revenue or income) (Rosen 2004). Urban public finance focuses on cities and urban areas. As Bahl and Bird (2000) point out, this can be cut in two distinct but interrelated ways. One way to look at urban public finance is to focus on urban areas and trace the public money which flows through them. This approach tends to be conflated with city financing or urban infrastructure finance. The well-referenced finance or infrastructure “gap” calculated by a number of development finance institutions takes this approach, estimating the total urban infrastructure investment needed in African cities in comparison to the available funds (Paulais 2012). Another way to look at urban public finance is through the public institutions with mandates over urban areas, analysing their financial conditions and arrangements. The term urban public finance is often used interchangeably with terms like urban sub-national finance, municipal finance and local government finance. Notably, the definition of “urban” used across African countries and within public finance debates is not uniform (Farvacque-Vitkovic et al. 2008).

Financing cities and the fiscal health of urban authorities is high on the agenda of the international development community (UN-Habitat 2009; United Cities and Local Governments 2016; Lincoln Institute and World Bank 2016). Within global policy arenas, financing is critical for ensuring socially, ecologically and politically sustainable urbanisation and urban development. Undeniably, any attempt to respond to the United Nations’ New Urban Agenda (NUA) and Sustainable Development Goals (SDGs) requires scaled mobilisation of resources (Kharas et al. 2014). Development banks, national governments and local governments will need to work together towards sustainable funding mechanisms to meet these goals (United Nations 2017). The United Nations Capital Development Fund went so far as to claim that the “challenge of municipal finance is fundamental to the SDGs (and indeed to our survival on the planet)” <https://www.uncdf.org/high-level-policy-dialogue-on-municipal-finance> (United Nations Capital Development Fund 2018). The effective and just use of these finances is contingent upon the existence of capable state institutions, particularly at the local level (Palmer et al. 2017).

African cities are a critical part of the public finance story (Tanzi 2016; Turok 2016). Rapid urbanisation, daunting infrastructure backlogs, strained management capacity and weak data pose a formidable set of challenges to the resource base and institutional development of African cities and countries (Parnell and Pieterse 2014). The urbanisation of Africa will continue, driven by natural growth of the existing urban population, the movement of people to urban areas and the reclassification of local areas – and the populations within them – from rural to urban. In this chapter, I take as given that ignoring the imperative of financing African cities

and the local governments which (at least on paper) support them will have global consequences and detriments.

African cities are diverse, and, while this chapter uses the term “African” loosely, these differences are fundamental to the fiscal development and governance of urban areas. Different historical, structural and institutional dynamics shape cities across the continent: size, colonial legacy and language groups, and the nations and regions within which they are based. For example, public finance and governance systems vary in Lusophone, Anglophone and Francophone cities because of their colonial legacy and post-colonial reform programmes. Northern African cities are often seen to be exceptions, with significantly higher levels of income and expenditure controlled at the city scale. South African cities are again quite different, with highly developed systems of intergovernmental relations, urban infrastructure, planning and metropolitan government.

This chapter focuses on the intersections between financing urban local governments and the material systems of cities. The question of land, and more broadly the territorial and spatial arrangements through which urban systems operate, is the lynchpin of this contribution. I begin with an overview of the basic concepts necessary for understanding urban public finance and how it shapes governance dynamics in African cities. Section 3.2 focuses on municipal finance, looking at both questions of policy and management, providing some of the basic vocabulary for non-finance readers to understand the content. In Sect. 3.3, I trace the fiscal reform processes which have been undertaken in Africa over the past thirty years, reforms which sought to decentralize responsibilities and empower city authorities, but have resulted in a fractured urban governance apparatus overlaid on decades of partial and ad hoc investments in urban infrastructure and land delivery systems. In Sect. 3.4 of this chapter, I consider possibilities for financing both city governments and urban areas, and explore one process aimed at improving urban governments’ revenue: land-based finance. However, I argue that money alone cannot address the imperative of Africa’s urban infrastructure future. We must also ask the question: what sorts of investments respond to the local and global processes which shape the future of African cities? I conclude by arguing for new modes of infrastructure delivery, that will require new technologies and governance arrangements.

3.2 Public Finance Policy and Management

Public finance policy deals with the structure of intergovernmental relationships and the assignment of functions. Most countries have “multilevel government” systems, with national, regional (often called intermediate) and local levels of state (Liesbet and Gary 2003). For this chapter, the most important public finance policy issue relates to the roles, responsibilities and rights granted to urban sub-national and local governments (Brosio 2000). Sub-national government refers to all tiers of government excluding the central state (i.e. all decentralised levels of government),

while local government refers to the lowest level of government, for example, municipalities in South Africa or communes in Senegal.

There is a strong discourse around the most appropriate assignment of functions to sub-national and local governments which has shaped public finance policy and contributed to the push for fiscal decentralisation and urban autonomy in Africa (Smoke 2001, 2003). The first significant concept is the principle of subsidiarity, the idea that public goods or service provision should be assigned to the smallest and lowest level of government practicable (Boadway and Shah 2007). Subsidiarity is closely aligned with the neoclassical “decentralisation theorem” (Oates 2008). Both argue that lower levels of government are better suited to the provision of public goods and the prioritisation of competing demands than central governments (Oates 2008). Many issues, including weak capacity, local patronage and corruption, and ill-conceived territorial boundaries, shape the ability of local government to be effective.

Core to the fiscal empowerment of urban local authorities is control over revenues. The process of revenue collection, the amount of revenue (i.e. the budget) and the nature/constraints of this revenue shape the governance of cities and urban areas. The public finance literature identifies two ways in which urban sub-national governments raise money: through transfers and through “own-source” collection, broken down into various subcategories and classifications. In Table 3.1, I set out one common way in which sub-national government income is categorised and classified (common Francophone variations are not included). Transfers and own-source revenue together make up the revenue of sub-national governments. The relative importance of each varies considerably across different countries in Africa; for example, in South Africa and Senegal, transfers are a small contribution to the income of municipalities and communes, respectively. This means that local governments raise most of their money through charges and taxes (the latter being more flexible than the former). In Kenya, Ethiopia (excluding Addis Ababa) and many other African countries, transfers dominate sub-national income sources (Briceño-Garmendia et al. 2009; Goodfellow 2015; McCluskey et al. 2017). The outcome tends to be higher levels of control by national governments on local activities and priorities, with trickle down effects for the governance of city areas. There are sources of revenue, of particular relevance for urban Africa, which do not fit neatly into the categories. For example, external aid and donations are prevalent in many low-income countries. Some of the more recent literature has included separate subsections on land-based financing or land value capture, catch-all terms for instruments (including taxes, charges and bonds) which draw on the rising value of urban land and demand for development rights to generate sub-national income (Berrisford et al. 2018).

Public expenditure refers to the spending of public money, as either capital or operating expenditure. Current or recurrent spending can be further broken down into staff costs (often called personal emoluments) and operations and maintenance (O&M). Table 3.2 outlines which expenses fall under each category. Spending on capital and operations together makes up the total expenditure of the sub-national government, and varies considerably from place to place. Many urban sub-national

Table 3.1 Categorisation of sub-national government income

Income category	Transfers		Own-source revenue	
Definition	A “transfer” refers to funding which is transferred from a higher tier of government to sub-national governments		Own-source revenue refers to the revenue collected by urban sub-national governments	
Subcategories	Unconditional	Conditional	Charges/tariffs/fees	Taxes
Description	Unconditional transfers have no conditions on their spending	Conditional transfers are transferred with a set expenditure obligation or against a defined output or outcome	A fee or user charge is an amount charged which is directly related to the use of a service or a penalty	A tax is a proportional payment without the direct exchange of a good or service
Examples	Equitable share, equalisation grants	Road maintenance grants, health and education grants, grants for housing subsidies	Water and electricity tariffs, land leasing, developer charges (DCs), planning review fees, building permits, business licences	Property tax, goods and services taxes, business taxes, entertainment taxes
Public finance theory rationale (Anglo-Saxon tradition in public economics)	Vertical and horizontal equity (Musgrave 1990)	Conditional transfers allow national governments to pursue a national policy goal which requires sub-national government delivery (Bahl et al. 2013)	Charges follow the principle of “user pays” (Paulais 2012)	Tax is ideal for the nondivisible expenditure or for redistribution (Oates 1993; Bahl et al. 2013; Kelly 2013)

governments in Africa, for example, can cover little more than their basic operational costs – most of their budgets being allocated for spending on salaries. Where there is budget for some investments, there is a tendency to spend on new infrastructure, at the expense of maintaining the existing infrastructure – resulting in degradation and poor maintenance of existing systems. Even in South Africa, where sub-national government units are well financed, trade-offs are made as resources are limited (Bahl et al. 2013; Brand 2016).

Borrowing provides a link between revenue and expenditure, allowing for expenditures to be made now, and paid for by future revenue streams. This has direct

Table 3.2 Categorisation of sub-national government expenditure

Expenditure category	Capital expenditure	Operating expenditure	
Subcategories		Staff costs	O&M
Description	Capital expenditure includes spending on fixed assets or spending which increases the value of fixed assets. Capital expenditure is generally a one-off investment (often phased over several years), with value accruing over a long period	Staff costs refer to all costs associated with personnel	O&M refers to the costs of maintaining and operating the urban systems. These costs are incurred on an annual basis
Examples	Capital expenditure includes investment in the development or rehabilitation of road, water or sewerage infrastructure	Staff costs include salaries, stipends, pensions	Operating costs include the cost of fuel to operate government vehicles, labour and materials costs to maintain and operate public infrastructure, fixing of potholes, chemicals for treating public water supplies

Table 3.3 Level of debt for selected African countries

Country name	General (central) government debt dollars PPP/per capita	Sub-national government debt dollars PPP/per capita	Sub-national government debt as % of GDP	Sub-national government debt as % of total government debt	Regional government debt dollars PPP/per capita	Local government debt dollars PPP/per capita
Kenya	1679	16	0.50%	1.00%	0	16
Morocco	6474	130	1.60%	2.00%	0	130
Nigeria	803	171	2.90%	21.20%	170	1
Rwanda	101	0.2	0.00%	0.20%	0	0.2
Senegal	322	3.3	0.10%	1.00%	0	3.3
South Africa	6801	642	4.80%	9.40%	0	642
Tanzania	435	0.0	0.00%	0.00%	0	0.0
Uganda	90	0.3	0.00%	0.30%	0	0.3

Source: SNGWOFI

implications for governance, implicating future users in today's investment decisions, and brings international and local lenders into direct conversations with local states, creating new constituencies and stakeholders in urban governance and development processes. Depending on the applicable legislation of the country, urban sub-national governments may be allowed to borrow money to provide city infrastructure, leveraging their future revenue surpluses to pay for the lumpy capital costs. This, of course, contrasts with short-term borrowing necessary to overcome operational cash flow issues. As can be seen in Table 3.3, many countries have negligible levels of sub-national borrowing, although South Africa has one of the most

advanced municipal borrowing systems in Africa, with many local governments taking on significant levels of debt, both in proportional and absolute terms.

Within the public finance sector, borrowing is an important component of sub-national sustainability. Creating “bankable” projects and creditworthy governments forms part of an increasingly strong narrative within development policy.¹ (Bahl and Bird 2000; Paulais 2012; Lincoln Institute & World Bank 2016). The two most common methods of municipal borrowing are through a loan (from a lender) and through issuing bonds (to buyers). Sub-national governments can take loans from banks, borrowing from commercial private sector banks, multilateral development banks (such as the AfDB or the World Bank) and national central banks. In general, commercial banks have short-term liabilities and prefer not to make long-term loans (a challenge intensified by the Basel III regulations established in the wake of the 2008 financial crisis) (Arezki and Sy 2016), although loans are still used for financing projects. Bonds are the most commonly used capital market instrument exercised by governments, and are considered “debt finance”. While bonds are a common form of debt financing for local government globally, this has not been the case in Africa. A number of local governments in African countries do regularly raise bonds (e.g. in South Africa), but efforts to develop city bonds in other places have stalled (Gorelick 2018).

There are several important requirements without which sub-national, and particularly local, government borrowing becomes difficult. A basic regulatory framework must be in place which allows sub-national tiers, spheres and units of government to borrow legally (United Cities and Local Governments 2016). There must also be investors and lenders willing to lend to sub-national governments and with the capital to do so. After all, the capital market is a market for money, and there must be willing sellers in this market. To be attractive to a seller of long-term capital, sub-national governments need to have stable and adequate revenues to repay debts, strong financial management and a credible investment strategy for how the capital will be deployed and the benefits it will bring (Alm 2010; Brand 2016). Owing to the absence of many of these prerequisite conditions, African urban sub-national governments have struggled to access debt finance. High reliance on grants, low revenue surplus and perceived political instability shape lenders’ attitudes towards sub-national governments. In addition, large urban infrastructure projects require better organisation, resourcing and brokerage than sub-national governments can achieve.

Therefore, financing for urban infrastructure in Africa – when it flows at all – tends to flow through state-owned enterprises (SOEs), public–private partnership (PPP) arrangements or directly into revenue-producing infrastructure projects. The benefit of having (semi-)private sector players undertake such developments is that they can leverage capital either through debt or equity or a combination thereof. This can shift the risk–return ratios of the development and thus expose the project

¹ See the World Bank’s City Creditworthiness programme: <http://www.worldbank.org/en/topic/urbandevelopment/brief/city-creditworthiness-initiative>. Also see PwC: <https://www.pwc.co.za/en/industries/public-sector/material-funding.html>

in favour of certain types of investors. The drawback, however, is that these flows circumvent the sub-national governments, leaving them outside of critical decision-making processes which affect their urban development trajectory.

3.3 Fiscal Decentralization and City Finance

Reforms implemented over the post-colonial period have sought to decentralize responsibilities and empower city authorities. However, they have been contested and have resulted in a fractured urban governance apparatus at the local level. These governance challenges are overlaid on decades of partial and ad hoc investments in urban infrastructure and land delivery systems, shaping how cities operate today.

Since the advent of post-colonial states, in most African countries, local governments have been weak, granted few powers and functions as well as limited resources (Bahl and Bird 2000; Smoke 2001). Emerging from colonisation, strong liberation parties used centralised power to build national identity and embark on nationally driven development projects. They used or adapted the local authorities put in place by the colonial governments for purposes of management or basic administration, with little attention to their resourcing (Smoke 2001). In many places, for example, Kenya, continued centralisation was internationally supported. Centralisation allowed for colonial powers and multilateral lenders to sustain their access to decision-makers and continue to exert influence on country-level processes.

Despite mixed evidence of the benefits of decentralisation globally, fiscal decentralisation reforms have been pursued aggressively in Africa since the 1980s (Ribot 2002; Smoke 2003). These policy projects were underpinned by neoclassical economic arguments for efficiency, political arguments for democracy and accountability and fiscal arguments for austerity (Farvacque and Godin 1998; Ribot 2002). Dovetailing with the structural adjustment of African economies, decentralisation formed part of a suite of reforms which focused on “institution building” and “good governance”, terms which had become ubiquitous in development discourse by the mid-1990s (Becker et al. 1994; Clarke Annez et al. 2008). In some African countries, such reforms were supported by central states in order to access debt relief. In other cases, decentralisation allowed states to “neutralize regional ethnic tensions”, offering fiscal, administrative or political power to regional elites and curbing opposition (Smoke 2003: 12). Regardless of the reason, most African countries agreed, at least on paper, to undergo reform.

A large part of these decentralisation reforms involved new classifications of territorial units. As Paulais (2012) describes, the 1990s saw a rapid growth in the number of small local governments, called by all manner of names – towns, communes, municipalities, villages and the like. Following on from the rapid formation of local government units was the need to build their capacity to fund themselves and their growing local functions (Clarke Annez et al. 2008). A range of international projects were developed which focused on municipal and local government service provision, some of which targeted newly developed urban authorities. For example, the

World Bank, the United Nations Development Programme and the United Nations Centre for Human Settlements (UN-Habitat) developed the Urban Management Programme (UMP). The programme's first phase began in 1986; its focus was on issues of public finance, in particular financial management and revenue generation for participating local governments (Farvacque and McAuslan 1991; Pieterse 2008). The sub-national financial management focus of the UMP was paralleled by efforts on the part of the World Bank and other multilaterals to streamline national financial management information systems, implementing large-scale IT programmes across the continent (Wegelin 1994; Dener et al. 2011).

Studies of decentralisation across Africa demonstrate the diversity and challenges evident in the design and implementation of decentralisation reforms. Perhaps most consistently, the African cases show the sustained resistance of central governments to decentralisation (despite constitutions and legislations which purport to support it) (Brosio 2000; Ribot 2002; Rocaboy et al. 2013). Even when local governments are provided with political power, few national governments have taken sufficient steps to also decentralise fiscal power. For example, there is a common trend towards the national financing of SOEs, rather than resourcing local governments to provide services (Foster and Briceño-Garmendia 2010). The design and development of robust systems for local government revenue-raising, grant transfers and borrowing have been the anomaly. Where they have existed, they have been limited to capital cities, which often have special designations (e.g. Nairobi City County), revenue-sharing arrangements (e.g. in Addis Ababa) or revenue-raising capacity (e.g. in Cape Town).

In much of Africa, decentralisation has been partial and fragmented. Local governments remain fiscally weak and are placed under strain by rapidly expanding catalogues of responsibilities without the necessary fiscal instruments to meet these (Ribot 2002; Pieterse 2008). This is particularly true for urban local governments which have experienced not only growth in their mandates but also urbanisation pressures that increase the spatial jurisdiction and populations they need to serve.

This fragmented urban governance apparatus is overlaid onto complex and partial systems of service delivery and land administration. Centralized and networked service delivery has been the exception, rather than the norm in African cities. City infrastructure has often been an afterthought, with the focus of major investments being on national and regional growth agendas. At the city-scale, investment have often been poorly coordinated, with aid organizations, lenders, national governments and local governments failing to align their projects. The outcome has been a hybrid set of service delivery systems, on and off grid, formal and informal, manual and mechanized. Similarly, local land administration systems have experienced hybridity, reflecting a diversity of tenure arrangements, planning regimes, and actual uses. As urban service delivery and urban land administration is a common function of local governments, this hybridity provides a complex landscape for urban governance generally and fiscal governance in particular.

3.4 A Future Agenda for Fiscal Africa: Land-Based Finance and New Service Delivery Modes

The outcome of the combination between contested (fiscal) decentralisation and material fragmentation of urban areas requires creative thinking about the future of financing African towns, cities and metropolitan regions. It is, in this context, impossible to consider a progressive urban governance agenda outside of this institutional and material palimpsest which characterises urban Africa. I propose two important threads in this endeavour to think creatively about the future of financing cities. Both of these threads operate at the intersection between the material city (e.g. land and the built environment) and the urban authorities (in their various forms). These are: land-based finance and alternative infrastructure systems.

3.4.1 *Land-Based Finance*

Part of the empowerment of city governments will be the capacitation of city governments to raise and manage their own revenue. This will allow for such revenues to be deployed towards local priorities, many of which might be poorly understood or accounted for by higher levels of government. New and innovative revenue-raising instruments are needed, and existing instruments must be more robustly deployed. Land-based financing, a more generous and less provocative term for land value capture, becomes an important set of instruments for raising funds for urban development projects and programmers. Land-based finance refers to a plethora of revenue-raising instruments which allow the rising value of urban land to be leveraged by the state (and particularly the urban state) (Peterson 2009; McGaffin et al. 2014). The process requires quantifying, collecting and distributing the rising value of urban land gains which have been achieved through state investment and regulation (Crook et al. 2015). The concepts of land value capture and land-based finance have been mobilised by practitioners, academics and activists in African cities who have concerned with the “social value” of urban land and equity in the urban property market (Brown-Luthango 2010; Napier et al. 2013). There are many different instruments which can be used for land-based finance in African cities. However, many of these instruments are complex and require significant levels of state capacity and a clear understanding of the supply and demand of land and development rights for them to operate effectively. For this reason, some of the more basic land-based financing tools are likely to be the most effective as local governments in African build capacity (Berrisford et al. 2018). In this section I discuss some of the tools and their possibility for African cities, starting with the most basic and moving to more complex instruments.

Property tax is the most basic and commonly applied form of land-based finance for local governments. A property tax is a recurrent tax levied on property by the local government. There are various ways this can be calculated, including a flat

rate, an area rate or a value rate, levied on the land, the property or both (Suzuki et al. 2015). In some situations, a property tax surcharge can be levied. Like the betterment levy (discussed below), a surcharge may be applied in some areas or situation, such as if the property is in a business improvement district or receiving benefit from a public investment (UN-Habitat 2009). While property tax is the most basic form of land-based finance and a cornerstone of the municipal finance system in many countries, it remains a relatively small contributor to national revenue mobilisation in most African countries (Fjeldstad Ali et al. 2017; Franzsen and McCluskey 2017). Its importance is even weaker in Francophone countries where it is often administered as a national, rather than a local, tax (Ibid.). In some Anglophone countries, property tax has been recentralised due to perceived inefficiencies and incapacity at the local level (Fjeldstad and Therkildsen 2008). Many efforts have gone into improving Africa's poor property tax performance, few of which have had significant impact. However, there is significant scope to improve collections, not only through technological interventions (such as digitising cadastres, etc.) but also through more everyday relationship building between urban dwellers and the state (Mizes and Cirolia 2018).

Impact fees and development charges (terms often used interchangeably in the literature) are a once-off capital contribution made by the developer (Tanzi 2016). As I have pointed out in other work, these are the “low hanging fruit” of value capture. This charge is designed to cover the costs of the bulk and connector infrastructure associated with the development. They require a consistent and transparent formula for calculating the impact which the development will have on the infrastructure network (thus differentiating themselves from ad hoc contributions) (Peterson 2009). Many cities have tools like these; however, they operate in different ways. For example, in Cape Town there is a complex formula (and an online calculator). In Nairobi, a more rudimentary calculation is used.

The sale of development rights is another form of land-based finance which could be incredibly useful in African cities. Development rights are valuable in all cities, particularly those which are growing rapidly. By granting these rights to developers, the value of land is increased. Local authorities can sell development rights to land to developers. For example, the right to convert rural land to urban land, to increase densities or to convert residential land to commercial land all increases the value of that land (Peterson 2009). The sale of development rights is a very effective way to raise funding for infrastructure, in particular when there is rapidly increasing demand for urban development. To sell development rights, African cities need urban plans which provide clarity on the regulatory framework for land development. If cities do not have these, this mechanism does not work. In the same breath, cities require that there is actual demand from developers for these rights. In most African cities and towns, there is demand from developers for building rights— however, in each case it is necessary to study the spatial nature of this demand to ensure effective use of the tool.

Public land leasing and land sales are another important option. Most public authorities own some urban land which can be leased or sold to raise revenue (Peterson 2009; Goodfellow 2015). For land sale and land lease options to really be

effective as a tool for addressing city development, the local state must have control over a large supply of land. This is the case in African cities such as Addis Ababa or Luanda. In Addis Ababa, land leasing is the main source of local government revenue generation for the City Administration. A proactive urban authority, with the requisite financial resources and technical capacity, can also land bank (such as has been done in many South African cities). This refers to buying up land in areas where land will become more valuable over time (e.g. in urban expansion areas or where there will be high levels of infrastructure investment in the future). In African cities, land sales is a challenging approach as, without proper regulation, it can lead to the pilfering of public assets which could be used for development (Klopp 2000).

There are also more complex instruments, such as land readjustment, betterment levies and TIFs, which require significant levels of state capacity. Land readjustment has been used in several cases, best documented in Angola. Land readjustment is a tool whereby landowners who own property adjacent to one another pool their land together for reconfiguration and reconstruction. A betterment levy is a tax or charge levied on a specific group of properties (Paulais 2012; Peterson 2009), and Tax Increment Financing (TIF) is a tool that allows municipalities to borrow money to promote economic development and then to earmark property tax revenue from these areas for bond repayment (Dye and Merriman 2006; Weber 2010). South African local governments have been exploring these options, particularly in location around new high-speed train lines, but no other African cases currently exist.

3.4.2 Alternative Modes of Infrastructure

The questions of addressing the infrastructure backlog and projected future needs in African cities is not only about mobilising funding. It is also about ascertaining what the “right” types of investments will be for Africa’s future. The type of infrastructure which is developed will determine how African cities grow, if they become viable places for developing and extending markets and services and if they become nice places for people to live. Key considerations when deciding what the right type of infrastructure will be for future African cities include issues of climate resilience, job production, affordability and the effective use of emergent smart technologies.

There are many limitations to the conventional models for financing infrastructure. The conventional model focuses on large-scale and capital intensive projects, where economies of scale can be achieved and which produce centralised networks, which are connected and regulated. In these projects and programmes, the projected returns outweigh the calculated risks, many of which are borne by national states, rather than risk adverse lenders. This model is not possible in African cities (and increasingly out of date even in high income cities). This is not only because the public sector is fragmented, under-resourced and often unable to manage complex contracts. It is also shaped by global economic logics, climate change, and technological innovation. In other words, African cities have been structurally excluded

from access to the sorts of financial flows which supports the development of large-scale networked urban infrastructure. Moreover, many parts of African cities are already inhabited (without infrastructure) making it difficult to install large networks and requiring incremental intervention. In the context of this structural deficit, other modes of service delivery have come in to take the place of traditional service networks, controlled by powerful interest groups and operators.

This patchworked African urban infrastructure has resulted in gaps in the urban networked systems, generating a plethora of responses from state and non-state actors, formal and informal. For example, in cities such as Addis Ababa and Dakar, the lack of a sewerage system results in the creation of a complex web of septic tanks, vacuum trucks and dumping stations, either state sanctioned (such as in Addis) or privately provided (such as in Dakar). In many African cities, there is minimal investment in public transport systems such as buses and trains; and many parts of the city are not served effectively, with private enterprise emerging to fill these gaps (Wilkinson et al. 2009; Behrens et al. 2015). Such off-grid or partially networked approaches to providing urban infrastructure are an increasing focus of urban governance scholarship, with a growing valorisation of incremental and informal practices of “knitting” and “suturing” the city (Pieterse 2008; De Boeck and Baloji 2016).

This African urban environment and the actors and service delivery systems currently in place do not map out well on a traditional risk model, making it difficult to mobilise funding. African cities cannot be forced into an existing, and now dated, model. They require embracing different physical designs, new ways of working with governments and new ways of incorporating diverse stakeholders. A key part of this is understanding and working with risk in different ways.

New modes and models for governing and financing infrastructure and service delivery systems are needed which build on existing systems. These will likely be smaller scale, more diverse and more adaptable. For the private sector, the value of these systems comes in their scalability, overtime and in ways which can respond to emerging risks. For the public sector, the value comes from meeting the public mandate for service delivery in ways which do not create long-term liability. For both, becoming comfortable with heterogeneity, redundancy and incrementality is essential. Notably, efforts are needed to integrate and extend smaller investments over time. There is, of course, a risk that smaller more incremental investments fragment urban systems making governance impossible. Ensuring that investments develop the urban network as an integrated system, the urban state (including the local governments), and local economies are imperative to the future of infrastructure investment in African cities. This means thinking beyond big infrastructure (which requires a lot of money) and thinking about smaller-scale interventions which can be replicated across places to achieve scale. This can also reduce, spread and diversify risk. New governance relationships are needed to deliver on the new infrastructure agenda for Africa. Key to these new governance arrangement is a robust understanding of how finance is integral to both the formation of the urban state and urban service delivery systems.

3.5 Conclusion

This chapter addresses the issue of financing cities in Africa. In doing so, it explores the intersections between the financing of city institutions – urban local governments – and the financing of urban infrastructure systems. This novel frame foregrounds the ways in which both the governance apparatus of cities and the material systems which underpin them are deeply fragmented. These issues are, of course, interlinked: it is nearly impossible to understand the fiscal operations of urban local governments without also understanding the material development patterns of the cities which they have (however partial) jurisdiction over. The implications of this work are twofold. First, the chapter argues that any effort to finance cities must contend with this materially and institutionally fragmented reality. Overlaying “best practice” solutions which ignore this complex history is a mistake. Second, the chapter argues that we need to think creatively about the future of financing cities in Africa. This is as much about mobilising flexible, just and locally empowering sources of revenue as it is about setting priorities about what sorts of investments are most desirable and applicable. Undeniably, we will need much more creative models for investment into the future, and these will require innovations in fiscal and governance structures to sustain them.

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Chapter 4

Urban Governance Through Religious Authority in Touba, Senegal



Eric Ross and Cheikh Guèye

Abstract Based on the study of the holy city of Touba in Senegal, this chapter demonstrates how the autonomous management of urbanisation by a religious institution can produce a city which provides affordable housing and basic civic amenities to its residents. Touba is the spiritual capital of the Muridiyya Sufi order, which administers it largely independently of state agencies with a distinctly noncapitalist land management system. Rather than being based on private property, real estate markets, financial institutions and debt, which is the norm for city building today, this system is founded on traditional, precolonial legal practices and on Sufi socio-religious concepts. This Sufi system of land management was first developed for the purpose of agricultural homesteading in the 1880s and since the 1970s has facilitated mass urbanisation.

Keywords Religious institutions · Urban development Senegal · Noncapitalist land management

4.1 Introduction

How are today's cities produced? Capital, mostly borrowed from financial institutions, is invested to create goods (buildings) which must then produce a profit, or at least cover the cost of servicing the debt incurred. This debt-financed urbanisation (Harvey 2008) is conditional upon the private ownership of property and the existence of a real estate market where that property can be bought and sold. In much of

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Africa colonial rule imposed this method of producing cities, and other land development and tenure systems were either suppressed or subordinated. Many of the continent's urban "dysfunctions", namely, lack of access to land and capital and insecurity of tenancy can be attributed to the awkward or misaligned fit between this capitalist way of producing urban goods and the noncapitalist socio-economic systems many, if not most, urban residents rely on. (Myers 2018) These include the "real economy" (formerly known as the "informal sector") as well as a host of social, ethnic, religious, lineage and geographical networks interwoven through the fabric of urban society. This chapter explores how autonomous management of urbanisation by a religious institution can produce a city that provides affordable housing and basic civic amenities to its residents, through a case study of Touba, an autonomous Muslim holy city in Senegal, which has been built by adapting its own, hybrid land management system founded on traditional, precolonial legal practices and on Sufi socioreligious concepts.

Touba is a Muslim holy city, the spiritual and administrative centre of a Sufi order,¹ the Muridiyya. It was founded by Sheikh Ahmadu Bamba Mbacké (1853–1927), in a sparsely settled region of Senegal in 1887, at the outset of French colonisation. Its development as a city, however, is a more recent, post-colonial phenomenon. Until the completion of construction of its monumental great mosque in 1963, Touba consisted of a collection of villages and had fewer than 5000 inhabitants (Ross 2006:97). By 2013 Touba had 753,313 inhabitants (République du Sénégal 2015). Along with the neighbouring town of Mbacké (77,256 inhabitants in 2013), it now forms an agglomeration of a million people, Senegal's second largest after Dakar. The agglomeration's spatial growth has been equally rapid. The built-up area grew from 575 ha in 1970 to 3900 ha in 1990 (Guèye 2000) and is estimated at about 30,000 ha in 2019.² An analysis of the system and practice of land management in this holy city offers insight into how a rural land tenure system, anchored in indigenous social practices and perceived to be legitimate, can contribute to the building of both a large metropolitan area and coherent urban neighbourhoods.

The paradigm that sees land issues in Africa as a contradiction between legal systems (colonial in origin) and actual practice (indigenous) has been largely superseded by new understandings of complexity, hybridity and entanglement (Bertrand 1994). In the case of Touba, hybridity arises from the city's spiritual foundations and socioreligious organisation and is most manifest in the degree of administrative autonomy it enjoys. In legal terms, despite its large size, until 2013 Touba was a rural place, an "autonomous rural community or" a collection of "villages". The "capital"³ of the Muridiyya order is thus an autonomous city, itself an exceptional

¹A Sufi "order" (*ṭarīqah* in Arabic), also referred to as a "brotherhood" (*confrérie* in French), is a more or less hierarchic religious institution whose purpose is to bring believers closer to God through a variety of ritual practices. See Schimmel 1975.

²Estimate based on satellite imagery, courtesy of Google Earth.

³In Senegal, the term "capital" is used to designate cities that harbor the central administrative organs of major Sufi orders. In addition to Touba, Tivaouane, Kaolack, Médina Gounass, Tiénaba, Ndiassane and Yoff are also referred to as "capitals". This popular designation for such cities is an

phenomenon in Francophone Africa. At independence in 1960, Senegal became a unitary secular republic on the French model. In the 1970s the country implemented policies aimed at reducing regional disparities and stimulating economic development and also pioneered a novel form of autonomous local governance based on religious exceptionalism. Two of its Sufi capitals (Touba and Madina Gounass, the headquarters of a branch of the Tijaniyya order) were designated “autonomous rural communities”, a status that allowed local religious authorities much sovereignty over civic life and urban space, including land tenure and the production and distribution of allotments. In 2013 Touba and Madina Gounass became “communes” (municipalities), equivalent in status to all other Senegalese localities. Yet, both still enjoy a significant degree of *de facto* administrative autonomy based on the religious authority they house.

Despite decentralisation and regionalisation policies, Senegal’s urban network is still dominated by its capital, Dakar – a primate city located at the extremity of the Cap-Vert Peninsula – and by the relative stagnation of other centres, mostly located within 100 km of the coast. Touba’s growth nearer the country’s demographic centre of gravity has recalibrated the urban network and is now a strong contender to Dakar as a destination for a large proportion of Senegal’s rural–urban migrants. In contrast to Dakar, access to land and security of tenure is easier in Touba, especially for people with little access to financial capital, and is not contingent upon government planning agencies converting rural areas, over which it exercises the right of eminent domain, into building lots allocated through a combination of market forces and clientelism. Instead, land in and around Touba is controlled by cadres of the Muridiyya, sheikhs of the Mbacké and related lineages, who acquired rights over it by having pioneered agricultural production there in the 1880s–1910s – a right recognised in Wolof customary law as the “right of the ax”. From the 1970s the leadership of the Muridiyya instrumentalised control of land in pursuit of an ambitious project for a great holy city. Uniquely for Senegalese cities, Touba has been able to expand across the landscape unhindered by any physical, legal or administrative barriers as the order effectively controls the rural lands that surround it in every direction. This situation stands in contrast to that of Dakar on its peninsula which suffers chronic land shortage.

For the approximately 4,500,000 affiliates of the Muridiyya, who account for about 30% of Senegal’s population,⁴ Sheikh Ahmadu Bamba Mbacké provides a supreme spiritual identity, second only to identification with Islam itself. The holy city of Touba is central to Murid identity. In Wolof, Ahmadu Bamba is also called Sëriñ Touba (Sheikh of Touba) and Borom Touba (Lord of Touba). His project of raising a city on a blessed spot revealed to him by God was taken up after his death by the entire community of Murids he had assembled and organised in his lifetime.

indication of the important socioreligious functions of the orders within wider Senegalese society. See Mbacké 2005.

⁴No official data on affiliation to Sufi orders is collected in Senegal. It is generally agreed that Murids account for about 30% of the population whereas affiliates to the various branches of the Tijaniyya account for about 50%. See Mbacké 2005: ix.

The city is thus a collective endeavour of the entire Muridiyya order, under the supreme authority of Ahmadu Bamba's spiritual successor, the caliph general of the Murids.

The Muridiyya first developed in a rural context, as a peasant movement in the period 1880–1910 (Searing 2002; Babou 2007), and its rural land management system continued as an urbanisation project. Through a flexible, paternalist system of land allocation based on the concept of “donation” (Arabic *hadiyya*) in exchange for “service” (*khidmah*), unfettered by colonial land registration and property markets, the Murid sheikhs transformed an unsettled wilderness into a productive agricultural heartland (Sy 1969; Cruise O'Brien 1971; Copans 1988). Murid leadership then used this rural system to channel the massive rural–urban migration of the last 50 years to create a city that has recalibrated Senegal's national urban network and connects to global flows of people, capital and ideas (Ross 2011). They have thus avoided or moderated major spatial dysfunctions of contemporary African urbanisation, such as lack of access to land and to safe drinking water, lack of secure tenure, land speculation, affordability of housing and recourse to informal and precarious housing.

The sections that follow trace the origins of the Touba system in the late nineteenth century, when the founder and his disciples opened up new land by the “right of the ax” and created the early holy city. Then the successful adaptation of the religious order to accommodate rapid urbanisation in the last half century is traced, with its complex land subdivision and homesteading requirements, before drawing lessons for alternatives to modern secular urban governance institutions.

4.2 Rural Land Management in the Pioneering Era (1880s–1910s)

The area around Touba, corresponding to the eastern part of the Kingdom of Baol and the neighbouring province of Mbacol in the Kingdom of Cayor, was systematically opened up to agricultural production in the 1880s, having formerly been pastoral land used mostly by Fulani (Halpular, Peuhl) cattle herders. Late in the eighteenth century, the King of Baol had awarded a land grant (*lew* in Wolof) to Sheikh Ahmadu Bamba's great-grandfather, a renowned jurist, who established the town of Mbacké with his family and students. Such autonomous clerical settlements were a feature of governance in Senegambian kingdoms (Ross 2005). Sheikh Ahmadu Bamba spent a good part of his childhood in Mbacké and returned to the town with his students and disciples in 1884. He established several religious retreats (Arb. *khalwa*) in the wilderness around Mbacké (one of which was Touba) and mandated his brothers, sons and disciples to establish villages where agricultural production was coupled with religious instruction (schools called *daara* in Wolof). By clearing the brush and bringing land under cultivation, these sheikhs of the emerging Murid order acquired land through the “right of the ax”, thereby

establishing an inalienable right of first occupation and creating a strong bond between the pioneer (the *borom dëkk* or founding landlord), the land and future generations that will inhabit it. The pioneering sheikh becomes leader of the new community, a legitimacy inherited by his descendants and making the land “ancestral” and inalienable.

As the French colonial authorities were eager to promote cash crop peanut production, they came to an accommodation with the Murid leadership, who opened up new lands by “right of the ax,” whose cultivation of staple crops and peanuts contributed to the financial viability of the colony (Robinson 2000). In exchange for boosting peanut production in new areas, the colonial authorities let Murid sheikhs manage the villages (land and inhabitants) pretty much as they wished. The foundation of Touba and the other khalwas and daaras by Murid sheikhs established inalienable rights of ownership that persist today. As the various *borom dëkk* were all related and were all working within a common religious institution, the Muridiyya order, this institution effectively owns and controls all land within about 40 km of Touba. The few semi-pastoral Fulani encampments predating Murid pioneering lacked political leadership or economic leverage and were mostly assimilated. The Murid heartland (Fig. 4.1) contains Touba and other Murid shrines, as well as daara villages where generations of Murid disciples have been educated and socialised into the religious institution and whose agriculture output was a source of wealth for the order.

In addition to the traditional Wolof land management system, a seminal religious imperative characterises the land of Touba, seen as a gift from God and a divine promise to the followers of Sheikh Ahmadu Bamba. An important chapter in his hagiography, taking place in Touba during the holy month of Ramadan 1894, is a mystical encounter with the Prophet Muhammad, who assured him that the blessed spot in the wilderness to which God has guided him is under His protection (Mbacké 1995:155). For Murids Touba is *mahrûsa* (a protected place), a *himâ* (sanctuary) and a *harîm* (sacred precinct)⁵ (Ross 2006:54) and God’s gift in exchange for Ahmadu Bamba’s devotion and travails at the hands of the colonial authorities.⁶ Sheikh Ahmadu Bamba bequeathed it to his community of disciples and affiliates who have managed it ever since.

Donation (Arb. *hadiyya*, Wolof *adia*) is a key principle within the Muridiyya. An aspirant on the mystical path that leads to proximity to God (*taalibe* in Wolof) acquires the necessary esoteric knowledge from a spiritual master (Arb. *murshid*, *shaykh*, Wolof *sëriñ*) and is expected to obey and serve their sheikh in any way they can (Babou 2003). Early in the movement’s history, service (Arb. *khidma*, Wolof

⁵In a *qaşıda* (ode) entitled *Maṭlab al-Fawzain* (In Pursuit of the Two Accomplishments), which serves as Touba’s founding charter, Ahmadu Bamba Mbacké uses these terms to describe the future city.

⁶The colonial authorities arrested Sheikh Ahmadu Bamba Mbacké in 1895. He was tried and sentenced to exile, first to the colony of Gabon (1895–1903) and then to the colony of Mauritania (1904–1907). When he died in the Senegalese city of Diourbel in 1927, he was still living under house arrest.

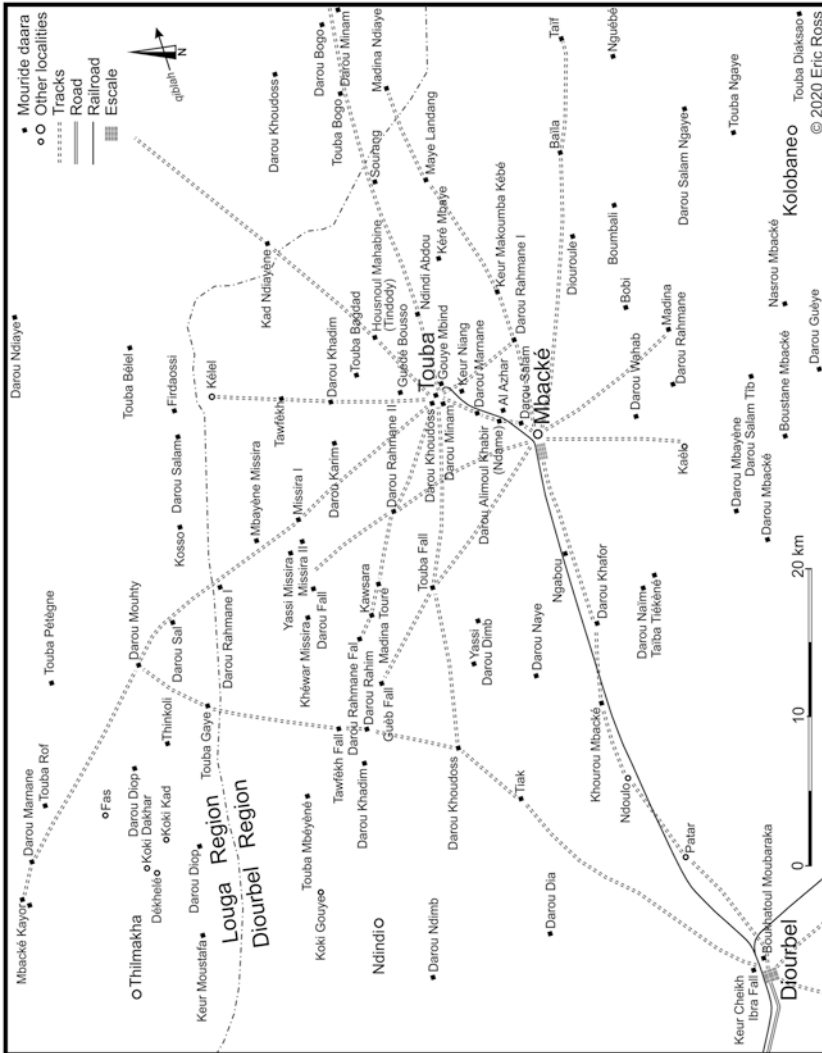


Fig. 4.1 Settlements of the Murid Heartland, 1882–1935

xidma) comprised mostly agricultural labour, but now, in mostly urban contexts, it consists of gifts (*adia*) of money or presents, in exchange for which the *taalibe* can expect religious instruction and spiritual guidance. After years of devoted service cultivating their sheikh’s fields, the sheikh will give *taalibes* a field of their own to cultivate. The *taalibes* do not own the gifted land outright – ownership remains with the founding sheikh or descendants – but they have use rights that pass to their descendants. In this Sufi system, land is not acquired by investing financial capital but by accumulating social capital by “serving” God, one’s sheikh and the community. The Muridiyya order created an internal economy for exchange of wealth, land and services, embedded within the capitalist cash crop economy under colonial rule, yet this internal economy remained autonomous. Symbolic and social capitals were worth more than financial capital in the Sufi economy, which was based not on wage labour and commodity markets but on spiritual guidance, education, land and a social safety net.

The master–disciple relationship within the hierarchic organisational structure of the Muridiyya means that every *taalibe* has a sheikh and every sheikh in turn owes service to a spiritual master.⁷ At the summit of the order is the caliph general, a direct male descendant of Ahmadu Bamba Mbacké. Since the death of the last of Ahmadu Bamba’s surviving sons in 2007, leadership devolved to his grandsons (Fig. 4.2). The caliph general is *primus inter pares* among lineage caliphs. Ahmadu Bamba’s brothers and sons each established a distinct community of disciples within the order, each distinct lineage now having its own caliph, while other Murid caliphs head maternal lineages (the families of Ahmadu Bamba’s various wives) and the lineages of principal disciples, with significant authority over their respective communities. All these distinct lineages recognise the supreme authority of the caliph general.

The caliph general is the supreme authority in Touba, where he officially resides. Since its great mosque construction began in 1928, all major decisions on the city’s growth and administration emanated from the caliph general, who initiated Touba’s various master plans (1958, 1974, 1993, 1999) and appoints the municipal

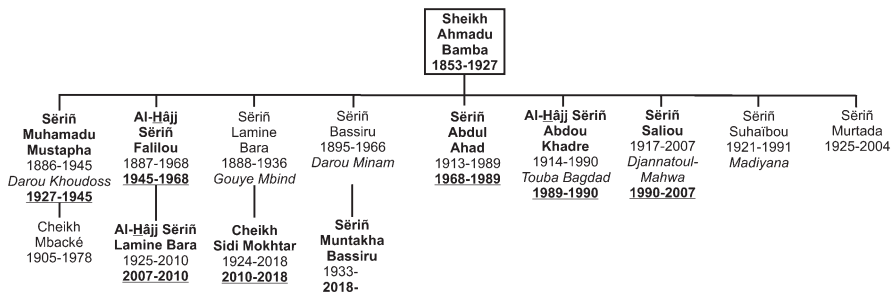


Fig. 4.2 Genealogy of the Mbacké caliph generals

⁷ While the vast majority of sheikhs are men, women can also be sheikhs and even lineage caliphs. (Lake 1997) In all cases, today, the position of sheikh is inherited.

administration (the *communauté rurale* then the *commune*, see below). He controls ex officio only one of Touba's wards but as caliph of a specific Mbacké lineage may have jurisdiction over another ward. All the city's other wards are under the jurisdiction of lineage caliphs, known as "ward heads" (*chefs de quartier*), who recognise the caliph general's authority, yet have significant autonomy over the settlements under their jurisdiction, now being absorbed into the growing city. The lineage caliphs/ward heads are ultimately responsible for the prosperity and welfare of their communities, allocate land and ensure Quranic instruction and supply of drinking water. They delegate management to a "village head" (*chef de village*), a sheikh from an important lineage, who manages local community issues in the name of the caliph who is rarely physically present. Each lineage ward of Touba is subdivided into a number of "villages" likewise managed by designated village heads, as if they were rural *daaras*, often assisted by a lieutenant (Wolof *diawriñ*).

4.3 Urbanising Touba Since the 1970s

Building a city in Touba, in fulfilment of God's promise to Sheikh Ahmadu Bamba, has been a priority of the Murid order, of its leaders as of its rank-and-file affiliates, since the death of its founder. Ahmadu Bamba's first caliph, Sëriñ Muhammadu Mustapha (reigned 1927–1945), initiated construction of the great mosque in 1928 by obtaining a 50-year lease for a 400-ha area around the site from the colonial land registry (Guèye 2002: 158–161). The lease was in his name as sole representative of his father's community and was a way for the colonial authorities to strengthen his legitimacy against opposition from some of his older and more powerful uncles. In 1930 the lease for the 400 ha was transformed into a property deed,⁸ recognising Muhammadu Mustapha as sole owner of the land around the mosque site, including the adjacent daara villages which belonged to him (Darou Khoudoss), his brothers (Darou Minam, Gouye Mbind) and other sheikhs (Guédé Bousso, Keur Niang). The colonial authorities had a policy of facilitating the acquisition of "new" agricultural land by powerful sheikhs through the issue of property deeds, as part of the accommodation between the authorities and the emerging orders. The colonial-era lease and property deed, the official legal foundation of Touba's land management system, establishes the legitimacy of its owner, the landlord–caliph, to use and allocate the land and secures the land acquired under the customary "right of the ax" into the imported French legal system which became the system of the Republic of Senegal in 1960.

The 1930 property deed was amended in 1945. A succession crisis for leadership of the Muridiyya followed the death of Muhammadu Mustapha, pitting the former caliph's eldest son, Cheikh Mbacké (1905–1978), who had inherited his father's

⁸Property deed #528, dated August 11, 1930, is registered with the Service des Domaines in Diourbel (Guèye 2000).

properties, against Muhammadu Mustapha's eldest surviving brother, Falilou Mbacké. The colonial authorities favoured Sëriñ Falilou (caliph general 1945–1968) and helped consolidate his authority by reissuing the deed. Henceforth, the 400 ha would be owned collectively and indivisibly by all descendants of Sheikh Ahmadu Bamba Mbacké, under the leadership of their caliph general.⁹ At the time, the collection of villages around the construction site had a population of 1750 (Ross 2006:97). The issuing of a property deed for Touba in 1930 marks the beginning of a hybrid land management system. Touba's land is effectively privately owned, conforming in principle to the capitalist mode of city building, but the 1945 amendment turned it into an inalienable indivisible property, owned collectively, meaning that the property theoretically lies outside of the real estate market and the forces that drive it.

The 1930 property deed secured caliphal authority over the holy site, allowing the Murid caliph, as owner of the property, to impose religious prescriptions and proscriptions on those living in or visiting Touba. It also allowed construction of Touba's monumental mosque to proceed. A 50-km-long Murid-financed railway linking the construction site to the colonial rail network in Diourbel opened for service in 1931. As a sanctuary protected by God, Touba must be preserved from corruption and irreligious practices. Alcohol, tobacco and secular entertainment are proscribed in Touba, although legal in the colony and in the secular Republic of Senegal today. The enforcement of these religious injunctions engendered a strong tradition of local autonomy, and Sëriñ Muhammadu Mustapha was able to refuse the request of colonial authorities to lay out an *escale* neighbourhood at the Touba railhead. *Escales* were exclusionary rail-towns intended for the commercialisation of peanuts and other produce, and they served as anchors for local colonial administration (Ross 2015). Muhammadu Mustapha acquiesced to the laying out of an *escale* in the ancestral town of Mbacké, 7 km away, but not in Touba (Babou 2005).

While never explicitly stated in any legal document, the autonomous management of Touba by the Murid order was a *de facto* feature of late-colonial rule, one that was inherited by the newly established Republic of Senegal in 1960. The 1930 property deed had never been demarcated on the ground. By the 1970s it had been interpreted by Murid authorities as a circular area 4 kilometres in diameter centred on the great mosque¹⁰ (Fig. 4.3). Moreover, the first urban master plan, adopted in 1974, proposed an encircling boulevard for the holy city. For a time, this "Rocade", laid out about 2 km from the great mosque between 1976 and 1980, served as a symbolic limit to the city and actualised its special status on the ground. Those state agencies that had any jurisdiction in the area were located beyond the Rocade. These included the offices of the *arrondissement* (county) of Ndamme and the "special" brigade of the gendarmerie (state police) which intervenes in Touba only at the

⁹On June 26, 1975, Ministry of Finance fiat #06553 partially subdivided this property, recognising the individual lots to eight of Muhammadu Mustapha's descendants residing in Darou Khoudoss (Guèye 2000).

¹⁰The national atlas of Senegal published in 1980 shows 4-kilometer wide circle labeled "limit of special status zone" centered on the mosque (Pélissier 1980:45).

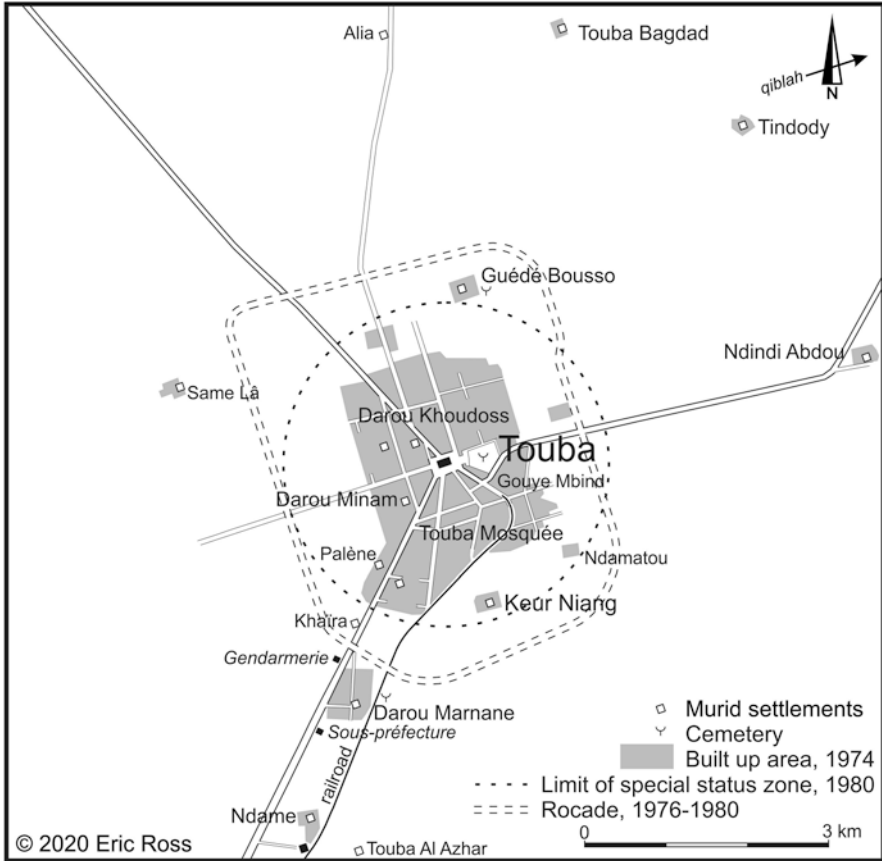


Fig. 4.3 Circular configurations of Touba’s autonomous zone

behest of the caliph general. Murid injunctions against tobacco and alcohol were, and still are, enforced by state police at check points along the encircling Rocade where major roads enter Touba.

Touba’s de facto autonomy was officially recognised in 1976, with the creation of an administrative agency, the “rural community” of Touba Mosquée. The creation of rural communities was part of a government decentralisation policy which aimed to stimulate development in rural areas following the great droughts of the late 1960s and early 1970s. Typically, a rural community was a collection of a dozen or so villages which, together, elected a council to administer funds allocated to it by the central government. The rural community is Senegal’s smallest unit of territorial administration. While the moral authority of customary “village heads” over the population of villages has been recognised by the state since independence, villages are not legal entities and have no budget. The new rural communities were and their elected councils functioned under the administrative oversight of the sub-prefect of the local arrondissement, the next highest rung in the administrative

hierarchy. The rural community created around Touba in 1976 was exceptional in several regards. First, it was an “autonomous” entity, meaning that members of the council, while technically elected by citizens, are in fact appointed by and responsible to the caliph general. It was therefore a hybrid type of organisation. It emanated from the hierarchic paternalistic and clientalist Sufi order, yet it operated within the strictures of democratic governance and state bureaucracy.¹¹ Secondly, the autonomous rural community of Touba Mosquée¹² was Senegal’s largest. It covered an area of 553 km² and included 74 Murid daara villages extending anywhere from 10 to over 20 km from the great mosque (Guèye 2002:342) (Fig. 4.4). Its

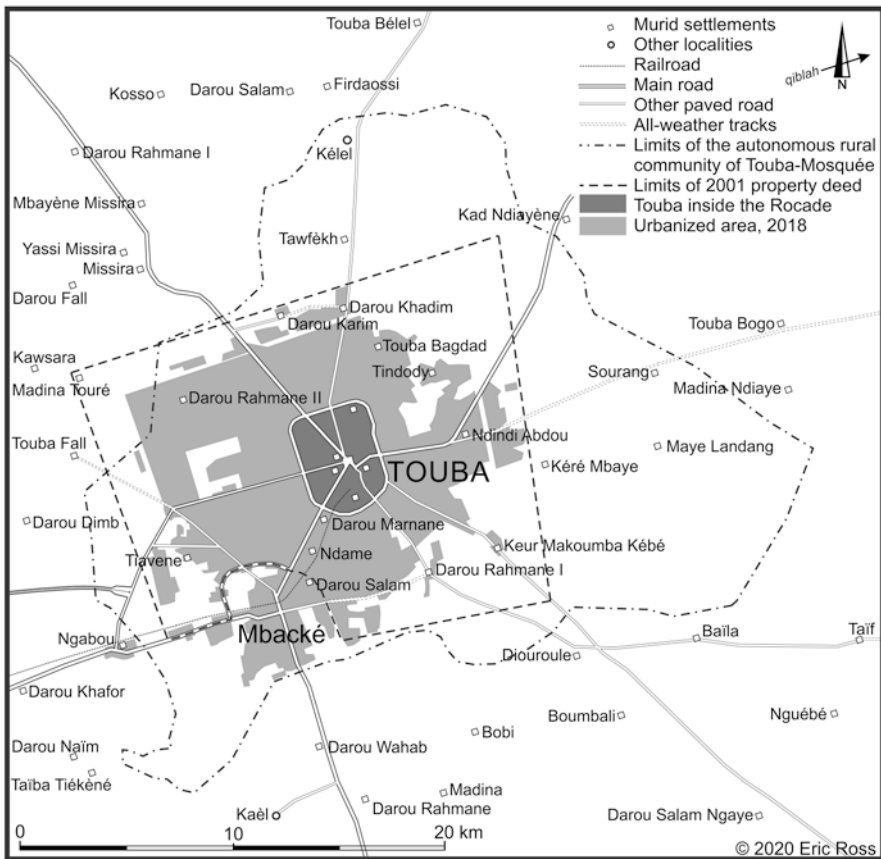


Fig. 4.4 Touba’s current administrative limits

¹¹ In 1978 a second autonomous rural community was created around the Tijani “capital” of Madina Gounass, in the Kolda region of upper Casamance (N’Gaïde 2002).

¹² The rural community was named for Touba Mosquée, the only ward in Touba controlled directly by the caliph general.

population of 753,315 in 2013, many times larger than any other rural community in the country, belied the notion that it was in any way a rural entity. Touba's legal status changed that year. The decentralisation legislation adopted in December 2013 transformed all of Senegal's "rural communities" into "communes" with the same status as urban municipalities. Touba Mosquée is now a commune, the legal distinction between urban and rural localities having been abolished. In contrast, the neighbouring town of Mbacké, ancestral home of the Mbacké clan, has been a full-fledge municipality since the 1950s. It is administered by an elected municipal council according to standard practices and is not part of the commune of Touba Mosquée.

The hybrid nature of the administrative entity created in 1976, and the legal fiction of its "rurality", set the stage for the spectacular growth of Touba as a city. In 1974 Sëriñ Abdul Ahad Mbacké, the third caliph general of the Murids (reigned 1968–1989), initiated a master plan for the urban development of Touba and publicly called on Murids to come live in the holy city. New housing allotments were platted all around the existing urban nucleus. Water was pumped from beneath the city and freely distributed to the new neighbourhoods.¹³ At the time, declining agricultural productivity across the country conjoined with high demographic growth, particularly in rural areas, was fueling mass rural–urban migration. With the certainty of free land and free water in Touba, many Murid affiliates chose to move to Touba rather than to a government-run city. From 29,738 inhabitants in 1976, Touba's population rose to 125,127 by 1988. Subsequent master urban plans (1993, 1999) devised for Sëriñ Saliou (reigned 1990–2007) allowed the population to grow to 421,748 by 2002 (Ross 2006:97).¹⁴ The successive master plans have been developed at the behest of the caliph general by government officials who are also Murid disciples (Ross 2006:86). The hybrid administrative system allows the use of their engineering and planning expertise in the "service" of building Touba, seen as a meritorious act for any disciple.

By the 1990s new residential allotments were being laid out well beyond Touba's encircling Rocade, the topographical actualisation of its 400-ha property deed. The lands being urbanised were the fields and villages first settled by Murid sheikhs and disciples in the 1880s–1910s, lands acquired under the "right of the ax" but that had never been officially registered. These former rural lands, still ostensibly under the jurisdiction of the lineage of the founding sheikhs, were incorporated into the urban landscape at the request of the caliph general, acting in these outer areas in his capacity of supreme moral authority of the Muridiyya rather than as landlord of a private property. In practical terms, the distinction made little difference to how urbanisation was being implemented. Yet the discrepancy between the original 400-ha property deed and the size of the city which now greatly exceeded it required a

¹³Free distribution of water in Touba is based on a religious imperative. Water, essential to life, should not be monetarised/marketed.

¹⁴Population figures for 1976, 1988, 2002 and 2013 are from the national census.

legal fix. In 2001, following the election of Abdoulaye Wade¹⁵ to the presidency, Touba was the recipient of a new, enlarged property deed. The 2001 deed, configured more as a quadrangle than a circle, covers nearly 30,000 ha (or just under 300 km²), an area over 70 times larger than the 1930 deed and extending some 10 km or more from the great mosque. Like the older deed it replaced, the new deed classifies the property as indivisible and collective, belonging jointly to all descendants of Sheikh Ahmadu Bamba Mbacké represented by the caliph general. In contrast to the 1930 deed, however, the limits of the new deed have been demarcated on the ground. Touba's newest residential allotments, to the north, east and south, extend right up to the new property line (Fig. 4.5). Yet, even the greatly expanded 2001 property is not likely to provide definitive limits to the holy city, land beyond which is still Murid land, organised as villages and under the jurisdiction of the Murid sheikhs. When the need for additional urban land arises, these rural areas are likely to be urbanised in exactly the same fashion no matter their official legal

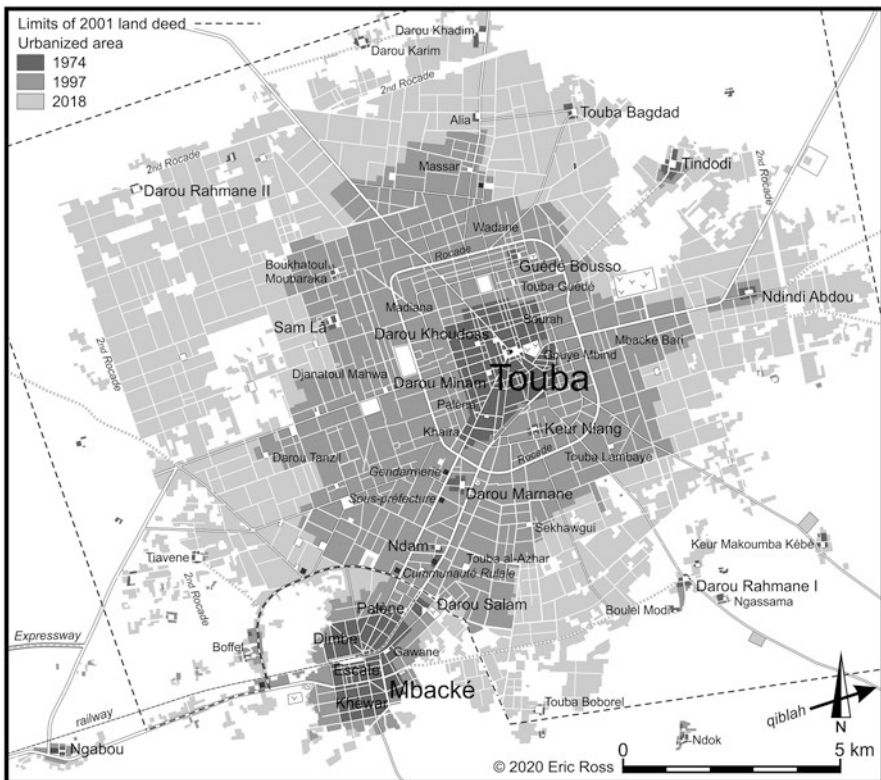


Fig. 4.5 Touba's urban growth since 1974

¹⁵Abdoulaye Wade, president from 2000 until 2012, was an ardent Murid disciple.

status. Similarly, the 2013 legislation that transformed Senegal's former rural communities into communes makes no reference to administrative autonomy for Touba Mosquée and Madina Gounass. Yet in practice, these Sufi capitals continue to thrive under the authority and jurisdiction of religious institutions. In other words, the legal bricolage of expanded property deed and revised administrative status weigh lightly on actual urbanisation practices, which remain hybrid and locally controlled in an alternative approach to the formal local/sub-national governance structures preferred in modern nation states.

4.4 Touba's New-Build Urban Homesteading System

The city of Touba's spatial growth has occurred on agricultural land controlled by sheikhs of the Murid order since its initial settlement in the 1880s. This settlement occurred under conditions of customary Wolof law (the "right of the ax," *borom dëkk*), at the same time as a modern government system of land registry was being put in place by the French colonial regime. During the colonial era, registering land with the state agency was mostly reserved for urban properties or for major investors in capital-driven agricultural production. However, the 1930 registration of Touba by the colonial administration was not so much a tool of economic development as it was a political act. It aimed at consolidating the power a young caliph over other members of the Mbacké clan. Rural land, whether in ancient villages headed by *lamanes* (traditional village chiefs, Diop 1981:120) or newer *daaras* headed by Sufi sheikhs, was mostly subject to traditional management systems outside of the modern state system created by colonialism.

In 1964, newly independent Senegal passed the Law of National Domain which placed all land not yet registered with the land registry under the state's control. Theoretically, this law extinguished all previous forms of landownership and tenure across the country. While traditional rights to use and inherit land were respected, for land to be purchased, it first had to be officially registered. Moreover, the state acquired the right of imminent domain over all unregistered land, allowing it to expropriate rural landowners and to allocate that land to purposes of public benefit, including urbanisation. In fact, the Law of National Domain changed little to land management practices in the Murid heartland around Touba. The accommodation between the Sufi orders and the colonial administration, first reached to promote agricultural expansion, was continued after independence to promote political stability. In rural areas, where most Senegalese voters lived, sheikhs wielded great authority over vast numbers of Sufi affiliates. Politicians were eager to accommodate them and acquiesced to the extra-constitutional authority they wielded over their communities (Creevey 1977). The sheikhs of Murid *daara* villages around Touba continue as before to manage the agricultural and social affairs of the communities they inherited from the *borom dëkk*. The only superior authority they recognise is that of their lineage caliph and of the caliph general in Touba. State agencies defer to them and intervene only lightly in local affairs.

Given the hierarchic and strongly unified structure of the Muridiyya, the local sheikhs who manage villages around Touba comply with request from the caliph general to urbanise them. Agricultural production having largely stagnated since the 1970s, the sheikhs are generally happy to see new development. Fields surrounding the existing village are surveyed, allotted and then distributed through a homesteading system described below. In the process, the village sheikh becomes the sheikh of an urban neighbourhood and can now distribute some of the house lots to disciples, clients and family members. In cases such as these, it is not so much an issue of rural–urban migration. The urbanisation of the population occurs in situ as the village is transformed into a neighbourhood. Most of the lots created in this way are organised into new “villages” and allocated by the caliph general to other sheikhs for the settlement of their disciples. Allotments in the new urban neighbourhoods reproduce the spatial principles first developed for the agricultural daara villages, centred on a public square, with a local mosque and the official residence of the sheikh/village head (Ross 2012). This urban design ensures social cohesion and proximate political–administrative control in new neighbourhoods.

Master plans lay out the intended parameters of new neighbourhoods and are decided by the caliph general. It is also the caliph general who names new wards and “villages”.¹⁶ However, the initiative to urbanise a given piece of land at the periphery of the city is taken by the lineage caliph/ward head who has inherent jurisdiction over it or else who has been assigned the land for urban development. The ward head will call on the caliph general’s official surveyor to plat the land according to the master plan, laying out streets and lots and assigning space for a public square, a mosque and a market (Guèye 2002:25; Ross 2006:105). The lots will then be serviced with water ducts and electric power lines. Touba’s electricity is supplied by the national electric company, Senelec, so Touba’s residents pay for the utility. Drinking water, on the other hand, is locally sourced and controlled by the order, which provides it free of charge. After being surveyed and demarcated, the ward head will allocate, “gift”, new housing lots in a given subdivision to individuals, either to his own disciples and family members or else to affiliates of other Murid sheikhs as decided by the caliph general. As with an agricultural field in the past, a plot of land in Touba is received as a gift from one’s sheikh. In contrast to the older rural system, however, the gift of a lot in Touba today is no longer contingent on past “service” to the sheikh. Lots are attributed to disciples based on need and the principle of generosity. Disciples in need of a lot, those starting families or else those who want to leave the village for the city, are likely to receive a lot from their sheikh regardless of any reciprocal service. Thus, even the poorest disciples, disciples with few resources, are able to legitimately inhabit the holy city. The recipient of the lot does not own it. Ownership remains with the caliph general as landlord.

¹⁶It is Sheikh Ahmadu Bamba Mbacké who named the various *khalwas* and *daaras* he and his disciples established around Touba. Since his death it is the caliph general who names Touba’s new subdivisions. The names reference eschatological symbols or Quranic entities, and, like the toponym “Touba”, they contribute to the spiritual meaning of the holy city (Ross 2006:59).

Rather, the recipient has the right to use it and to live and build on it and transmits that right to their inheritors, who may decide to subdivide the lot among themselves.

Whereas the system of allocating land to disciples in agricultural villages was fairly straightforward, in a rapidly growing city subject to massive rural migration this system has become more complex. The propensity for the well-connected to acquire multiple parcels and accumulate a portfolio of “properties” soon exerted itself. At the outset of mass urbanisation in the mid-1970s, Sēriñ Abdul Ahad reiterated the principle of non-divisibility of Touba’s property deed and that residents of Touba have use but not ownership of their lots (Guèye 2000). Furthermore, he instituted the principle of “effective use”. Recipients of a lot in Touba are given 2 years to build a house on it and begin inhabiting it, failing which the lot can be “repossessed” by the village head and reassigned to another homesteader. This rule was adopted in order to forestall land speculation and the use of land as a tool of capital accumulation (Guèye 2000). Whereas some wealthy Murid affiliates have the means to rapidly build a house, for most Murids the building of a house is a lifetime’s achievement, accomplished little by little as the necessary funds, material and labour are mustered. The first concrete act of inhabiting a lot requires that a perimeter wall be built. A first wall may be built of wattle, but only a “hard” wall of cement bricks with a gate that can be locked will secure family life and possessions. A variety of domestic buildings are then erected inside the perimeter. These will multiply in number and size over decades, according to means and the needs of growing families.

The building of a house in Touba, on land received as a gift by accumulating social capital rather than accessing financial capital, effectively establishes an inalienable right to the city, a right that can be transmitted to one’s descendants. Moreover, this form of access to urban land requires no credit, and it bypasses financial institutions. This urban homesteading system is largely effective in providing affordable housing to the great number of families who migrate to the city. Shantytowns, which characterise most big cities in Africa and which result from their failure to do so, while not completely absent in Touba, tend to be small and temporary. Rural migrants may sometimes settle in subserviced temporary housing – often assembled with walls and roofs prefabricated in the village of origin – while they wait for the delivery of an assigned allotment. While the system is not entirely speculation-proof, it has largely prevented systemic speculation.

Yet, Touba’s land management system is not completely problem-free. The pressure to provide building lots weighs particularly acutely at the neighbourhood scale. Some village heads, who are most responsible for the proper functioning of the land donation system on the ground, have succumbed to the temptation to enrich themselves in the process. The size, configuration and, especially, the location of the lot a disciple has received as a gift from their sheikh are often subject to negotiation with the village head. This opens the door to favouritism, clientelism, patronage and bribery. The Muridiyya may be a highly centralised institution of socioreligious authority, but it is not a bureaucracy. The lots distributed to disciples are registered – they receive a “permit to inhabit” – but there is no system to enforce the 2-year

homesteading policy.¹⁷ Such enforcement will depend on the vigilance and practices of individual village and ward heads. Some ward heads/lineage caliphs may oversee the activities of their village heads more vigilantly than others. The *diawriñ*, or neighbourhood lieutenant, is also under great pressure to accommodate the diverse needs and desires of residents, both those already established and those just arriving. The respective roles of, and relations between the neighbourhood lieutenant, the village head and the lineage caliph vary greatly from one neighbourhood to another, and there is no institutionalised legal system for resolving disputes. Disputes are resolved according to the interpersonal master–disciple relationships and lineage ties that structure the Sufi order more generally. Moreover, a measure of land speculation and the accumulation of “properties” have crept into the system despite the management principles adopted to forestall them. Beginning in the 1990s, some forms of property purchases were tolerated, as in the case of inheritance, for example, when the inheritors decide to sell a house and divide the proceeds rather than to subdivide the lot (Guèye 2000). This has opened the way for incremental speculation. Wealthy, well-connected Murid disciples are able to be gifted multiple lots in various “villages”. They then build houses, establishing their right to inhabit them, before selling these to other disciples for a profit.

4.5 Conclusion

The case of Touba demonstrates that city building today need not be based on private property, real estate market forces, financial institutions and debt. Touba’s land management system is hybrid. The land was acquired through the traditional Wolof legal precepts of the “right of the ax” and transmissible ancestral rights of usage (*borom dëkk*). It was then officially registered as a private property in the modern (colonial) system. Yet, it is not private property as usually understood. It is an indivisible collective property managed collegially by the cadres of a hierarchic religious institution within the structures of an internal Sufi economy. This Sufi economy does not function completely outside of the dominant capitalist economy; Murid disciples are also tax-paying Senegalese citizens, employees or owners of private firms, civil servants, etc., as well as consumers of goods and services produced and distributed by global corporations. Yet the internal economy of the Muridiyya has its own logic, one founded in Sufi pedagogy (exchanges of gifts and service, charity and the public good) which tempers how it interconnects with the larger world economy. The *taalibe*–sheikh relationship operates on a completely different social register than how citizens relate to the state, or how employees relate

¹⁷ In 2003, at the request of the caliph general, a land management GIS was created by a small team of Murid geographers and engineers (the team included co-author Cheikh Guèye). Its purpose was to track lot “ownership” in the city, lot subdivisions, taxation, etc. and to help monitor land speculation. The finished system was presented to the caliph general but was not implemented (Ross 2006:104).

to employers. In the eyes and hearts of taalibe, the legitimacy of the authority exercised by the sheikh far exceeds that of government agencies, employers and bankers. It is nearly unimpeachable. This high degree of legitimacy permeates the entire structure of the Sufi order. It underwrites the Murid economy and Touba's management system.

For Murids Touba is a gift from God and an eschatological promise of prosperity.¹⁸ Rather than using Touba's private property to generate financial capital, or to accumulate and recycle such capital, the Murid leaders have used it to generate symbolic capital. Murid affiliates acquire land in Touba by investing the social capital they have accumulated within the Murid economy, and land is distributed according to need, not means. In urbanising land through its own homesteading system, the Murid order has circumvented two of the most powerful types of institutions in the modern world: the sovereign territorial state and banks. To return to the research question, Touba has managed a successful alternative to urban governance through state-designed institutions, retaining control through a religious institution that has adapted to modern pressures of rapid growth.

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¹⁸“Prosperity” should be understood here in its first meaning of “success” or “accomplishment” in the *hereafter* (Arabic *tawfiq*, Wolof *texe*). It was an eschatological concept akin to “bliss” (*tūbā* in Arabic) before becoming a socio-economic one relating to worldly assets.

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Chapter 5

The Right to the City and South African Jurisprudence



Serges Djoyou Kanga

Abstract This chapter explores the nexus between human rights and the right to the city. Although not formally enshrined in core international human rights instruments, the right to the city is developed by the doctrine, global organisations and activists and has cascaded down into the World Charter on the right to the city as well as few regional and national human rights and policy instruments. The chapter found that the right to the city is a composite right made of civil and political rights as well as socio-economic rights assembled together for the wellbeing of urban dwellers. The chapter draws from the South African jurisprudence to demonstrate that the right to the city can be protected through the right to housing, with strong attention to the need of the very poor and most vulnerable. It also found that ensuring the meaningful engagement of urban dwellers in the urbanisation processes is essential to equip the process with a human face. Failure to consider the interrelatedness of human rights elements of the right to housing will not lead to the enjoyment of the right to the city. The chapter also discusses the role of local government in the fulfilment of the right to the city, and argues that local government is at the centre of the implementation of the right to the city.

Keywords Right to the city · Human rights · South African jurisprudence · Urban governance · Urbanisation · Urban dwellers

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5.1 Introduction

One of the most important features of globalisation is extreme urbanisation. The latter entails building cities to improve peoples' life and improve their standard of living or human rights. On the other hand, it also entails evictions of people for the erection of new buildings and the poor who cannot afford the cost of living in the city see their rights violated as they are deprived of housing, healthcare and education (to list but a few). This conundrum raises pertinent questions: is the right to the city a human right in international law? If so what is its nature and content, how it can be implemented, and what is the role of local government for its implementation?

The chapter argues that the right to the city, although not expressly mentioned in core human rights instruments known as the International Bill of Rights, remains a human right. It is a right of a composite nature including housing, employment, healthcare, education and other basic rights needed to secure human dignity. From this standpoint, urbanisation should be conducted from a human right perspective. To this end the chapter calls for an inclusive urbanisation, characterised by the meaningful participation of the beneficiaries, and the accountability of the state in securing the wellbeing of the beneficiaries in the process. It calls for an urbanisation in which "no one is left behind". The chapter will review the extent to which international law provides for the right to the city. Drawing upon the South African jurisprudence on the right to housing and eviction, it will demonstrate that "living no one behind" entails providing housing for the most vulnerable and avoiding eviction without providing alternative accommodation or embarking on a "meaningful engagement" with the victims. It also demonstrates that the enjoyment of the right to the city is impossible if beneficiaries do not participate to the urbanisation process in a meaningful way. The chapter will also identify the limits of the South African jurisprudence in demonstrating that the implementation of housing policies should emphasise the interconnectedness of human rights elements of the rights to house. Ultimately, the chapter calls for the end of the commodification of urban space, which excludes the poor and hinders their ability to enjoy the right to the city.

The chapter is divided into five sections including this introduction. The second section unpacks the right to the city; the third examines enforcement of the right to the city in time of urbanisation with attention to the South African jurisprudence and the role of local government. The fourth section unveils the limits of the South African jurisprudence, and the final section offers some conclusions.

5.2 Unpacking the Right to the City

Spearheaded by Lefebvre (1968), the right to the city entails the right of "all inhabitants, present and future, permanent and temporary, to use, occupy and produce just, inclusive and sustainable cities" (Purcell 2002: 101). Under this discourse, the government is the duty bearer of the right to the city, and as such should defend,

promote and deliver this right to its citizens (Global Platform). The discourse of the right to the city was further elaborated by urbanists such as Mitchell (2003), Harvey (2003, 2008) Dikec (2007), Busà (2009) and Mayer (2009). The discourse also benefited from the support of global organisations including the United Nations Human Settlement Programme (UN-HABITAT), United Nations Development Programme (UNDP) and United Nations Educational, Scientific and Cultural Organization (UNESCO), who spearheaded the organisation of global meetings and seminars where the notion of the right to the city was debated and refined. Subsequently several non-governmental organisations and activists across the world committed to work for the implementation of the right to the city.

The conceptualisation of the right to the city cascaded down to the 2005 World Charter for the right to the city which describes it to include the right to and appropriate standard of living (Article 1), the right to housing (Article 16), education, safe environment and many other rights provided for in the International Bill of Rights. Following the prescription of the World Charter for the right to the city, the European Charter for the Safeguarding of Human Rights in the city also provides for and expands on this right in associating it with the space where all other human rights should be realised. The right to the city was also enshrined in the UN Habitat adopting it in the official New Urban Agenda as well as the European Union capturing it in the Urban Agenda for the EU (2016). At the national level, countries such as New Zealand, Belgium, Brazil, Canada and Kenya have incorporated this right into their policies to improve the standards of living of their citizens.

While the World Charter on the Right to the City seems to be the catalyst that triggered the adoption of various normative standards to give effect to it in numerous countries, it is non-binding, and thus just an ideal or aspiration rather than a palpable reality. According to Habitat III New Urban Agenda (para 11), the notion of cities connotes:

the equal use and enjoyment of cities and human settlements, seeking to promote inclusivity and ensure that all inhabitants, of present and future generations, without discrimination of any kind, are able to inhabit and produce just, safe, healthy, accessible, affordable, resilient and sustainable cities and human settlements to foster prosperity and quality of life for all.

Composite elements of the right to the city are also highlighted in paragraph 13 of Habitat III, to include, for instance, the social, ecological function of land, adequate housing, adequate standard of living, socio-economic rights, participation, inclusiveness, gender equality, meeting challenges and opportunities. The broadness of this ideal is an indicator of its soft or nonbinding character.

The World Charter on the Right to the City enables the world to dream that the city can become an entitlement for human beings. Put differently, the moral value and persuasive force of the right to the city cannot be underestimated because it offers a bridge to address the difficult relationship between urbanisation and deprivation, and seeks to uncover the nexus between human rights and human habitat (Purcell 2002: 99). Furthermore, as observed by Domaradzka (2018), the “right to the city” is demonstrated in identifying changes in local city management practices

“including the adoption of participatory budgeting, consultation mechanisms and new communication strategies by the cities officials”.

Sometimes after the removal of peoples, buildings and apartments in the city remain empty as potential beneficiaries cannot afford them. This means that urbanisation becomes counterproductive as it violates the right to housing of the poor that should be prioritised in the first place. Urbanisation fosters discrimination based on wealth when only the rich can live in the city, and illustrates bad land governance.

Ultimately, the right to the city encompasses the right to housing, healthcare, education, non-discrimination and safe environment in the city. The right to the city includes a right to urban space but also a right to “a political space as well, constituting the city as a space of politics” (Dikeç 2001: 1790). Lefebvre (1996a, b: 173–174) explains in these words:

The right to the city manifests itself as a superior form of rights: right to freedom, to individualization in socialization, to habitat and to inhabit. The right to the *oeuvre*, to participation and appropriation (clearly distinct from the right to property) are implied in the right to the city.

This highlights the potential of the right to the city paradigm to secure numerous human rights. However, the right to the city is contentious: narrowing its focus to human rights waters down its original uncompromising objective of urban transformation (Turok and Scheba 2018: 2). For Marcuse (2009: 193), the right to the city is the “right to a totality, a complexity, in which each of the parts is part of a single whole to which the right is demanded”.

The controversy on this right is also related to its nature, which is vague, “complex and fluid” (Strauss 2017: 7 and 92). Lefebvre (2009: 108) argues that society is an open “totality” which, far from been static, is permanently changing as a result of human capacity to reinvent its environment. In reality, urbanisation, land governance policies and legislation have been key in “sustaining the unequal social relations created under modern market conditions” (Strauss 2017: 69).

The fluidity of the city is further conceptualised and explained by Lefebvre (1991) in the *The Production of Space*, demonstrating that it is impossible to measure the state quantitatively. Accordingly, there is no space, but “a mental Construct or intellectual idea that is disconnected from its physical manifestation and social substance” to use Strauss’s words (2017: 70) arguing that:

The role of the state, as the primary developer of space at the intersection between land, planning, and housing represents a prominent source of spatial injustice and segregated urban development.

In discharging its role, the state relies on the spaces created by itself to inflict abuse on urban dwellers in shaping their mind and take full control of their lives, and the bridges to this end include urbanisation, land planning and governance mechanisms and legislation (Butler 2009: 324).

The notion of the city is fluid and temporary. Lefebvre (1996a, b: 172–173) writes: “The ideal city would be the ephemeral city, the perpetual *oeuvre* of the inhabitants, themselves mobile and mobilized for and by this *oeuvre*”. This led Mayer (2009: 367) to argue that the right to the city is not unqualified because its

existence is contingent upon social and political action. Harvey (2012: xv) makes a similar point, that the right to the city is “an empty signifier. Everything depends on who gets to fill it with meaning ... The definition of the right is itself an object of struggle, and that struggle has to proceed concomitantly with the struggle to materialize it”. As far as urbanisation and land governance in Africa is concerned, the entire process of urbanisation is a struggle which may leave the citizens abused and disillusioned. With reference to the South African context during apartheid, Strauss (2017: 58) writes: “the legal system used to develop urban space in the areas of land use management, planning, and housing has historically operated on a spatially and racially exclusive basis”. The previously disadvantaged remaining the poorest of the poor in post-apartheid South Africa suggests that current urbanisation is yet to be inclusive or a tool for social justice.

Notwithstanding some positive development in framing the right to the city, more needs to be done to have it universally recognised, as many countries are yet to include it in their legal architecture, while urbanisation is taking place and people are removed from their houses to create more places for buildings, road and modern architectures that make the city. Erection leads to dispossession, deprivation and forced removal (Harvey 2012: 18) of people who lose their livelihood, forced to the street with nowhere else to go without prior consultation.

However, notwithstanding the shortcomings of the notion of the right to the city such as its softness or nonbinding character, its vagueness, complicity and fluidity, the idea of this right is significant. Firstly, it explains the necessity for unconventional and progressive methods of spatial development and urbanisation. Secondly, the right to the city cannot be discarded because as observed by Pieterse (2014: 156) and Strauss (2017: 116), it “offers a valuable theoretical lens through which to reconceptualise and understand issues associated with urban governance, citizenship, the roles of the state, and the content and mode of realising rights such as the right to housing” and other socio-economic rights.

Thirdly, the right to the city seeks to protect human dignity which can be understood as the self-worth of every human being. It echoes the need to ensure that city dwellers acquire affordable housing, education, healthcare, employment and a clean environment in their city. Lefebvre (1966), Turok and Scheba (2018: 4) argue that one of the merits of the right to the city is its objective to destroy economic and political systems that inherently exploit, subjugate and exclude urban dwellers from enjoying a fair share of the city.

5.3 Lessons from the South African Jurisprudence

While South Africa does not explicitly provide for the right to the city in its Constitution, its Bill of Rights (chapter 2 of the Constitution) provides for rights to a clean environment, housing, healthcare, food, water, social security and education, all parts of the right to the city. Thus a right to the city is implied in the South African Bills of Rights, to be protected not only by national government but by local

government as well. Local government is obliged to deliver elements of the Bill of Rights through section 152 of the 1996 Constitution, which underlines its objectives to include (b) “the provision of services to communities in a sustainable manner; (c) the promotion of “social and economic development” (d) of a “safe and healthy environment”.

Lessons from South African jurisprudence include the need to pay attention to the most vulnerable, ensure a “meaningful engagement” in any attempt to evict people to urbanise the area (or for whatever reason) and guarantee a significant or meaningful participation of city dwellers in any urbanisation initiative. Both national and local government are duty bearer of these key elements of the right to the city, as will be demonstrated below.

5.3.1 The Most Vulnerable, Urbanisation and the Right to the City

During gentrification or the process of urban rejuvenation and rebuilding, or renovation, people may be forcefully removed from their property or houses, and are likely to lose their right to live in the renovated city. In the Grootboom case (2000), a hundred adults and children who lived in very unacceptable conditions moved onto a vacant land across the road. The owner of the land approached the court, claimed and got an eviction order for the removal of the occupiers from his land. Because the occupiers had nowhere to go, they approached the High Court (and requested alternative accommodation).

The court relied on Section 26 of the Constitution which reads as follows:

- (1) everyone has the right to have access to adequate housing.
- (2) The state must take reasonable legislative and other measures, within its available resources, to achieve the progressive realisation of this right and section 28 (1)(c) that provides that every child has the right ‘to basic nutrition, shelter. Basic health care services and social services.

Based on these provisions, the court held that, under Section 26 (1) of the Constitution, the government is obliged not to violate the right to adequate housing (Grootboom para, 34); it also held that the right to adequate housing is more than having bricks and mortar, but includes land and services such as water and sanitation, which should be secured through a comprehensive plan (ibid, para 35). In the same perspective, the court in PE Municipality (2005, para 17) stated that:

Section 26(3) evinces special constitutional regard for a person’s place of abode. It acknowledges that a home is more than just a shelter from the elements. It is a zone of personal intimacy and family security. Often it will be the only relatively secure space of privacy and tranquillity in what (for poor people in particular) is a turbulent and hostile world.

In the same vein, the African Commission’s “Principles and Guidelines on the Implementation of Economic, Social and Cultural Rights in the African Charter on

Human and People’s Rights” (2010: para 78) describes the right to adequate housing refers to a right of every individual to:

gain and sustain a safe and secure home and community in which to live in peace and dignity, which includes access to natural and common resources, safe drinking water, energy for cooking, heating, cooling and lighting, sanitation and washing facilities, means of food storage, refuse disposal, site drainage and emergency services.

These components of the right to housing align with those provided by The Committee on Economic, Social and Cultural Rights which list security of tenure, availability of services, physical materials, facilities and infrastructure, affordability, habitability, accessibility, location and cultural adequacy as essential for the enjoyment of housing rights. These are also core elements of the right to the city. Lefebvre (1996a, b: 158) points out that this right is not only a fundamental right to physically inhabit urban space, but also “gathers the interests ... of the whole society and firstly of all those who *inhabit*”.

Equally important, in protecting the beneficiaries of the right to the city with emphasis on the most vulnerable, the South African court held that, notwithstanding the scarcity of resources, the government cannot simply evict everybody, but should ensure that the most defenceless or exposed have a roof over their heads or the very poor should be given a greater attention (Grootboom, para 36).

The lesson from the Grootboom case is that, although urbanisation is unavoidable, it remains important to protect the right to the city of people through a plan to provide alternative accommodation for those likely to be removed. Furthermore, and perhaps more importantly, the very poor and the most vulnerable such as women, children and persons with disabilities should be given priority in the provision of alternative accommodation and other reliefs. Urbanisation should be informed by the need to realise human rights.

5.3.2 “*Meaningful Engagement*”, *Urbanisation and the Right to the City*

The notion of meaningful engagement refers to consultation and cooperation “between the parties as a constitutionally required approach to resolving disputes” (Liebenberg 2016: 4), a notion from the sphere of constitutional remedies. It originated from the case of *Fose v Minister of Safety and Security* (Fose 1997), where the Constitutional Court urged the courts to be imaginative and inventive in fashioning remedial solutions to secure the effective protection of constitutional rights, more so in a context “where so few have the means to enforce their rights through the courts” (Fose, para 69). This prescription was developed through eviction cases. Liebenberg (2016) notes that “meaningful engagement was pioneered in eviction disputes implicating the housing rights in section 26 of the Constitution”.

A ground-breaking case includes occupiers of 51 Olivia Road, Berea Township and 197 Main Street Johannesburg v City of Johannesburg (2008 3 SA 208 (CC)).

City of Johannesburg applied to the Johannesburg High Court for the eviction of more than 400 occupiers of buildings in the inner city on the ground that the buildings were unsafe and unhealthy. The High Court found against the City, and ordered the City to remedy its housing programme which was found to be insufficient or inappropriate. However, the Supreme Court of Appeal upheld the appeal by the City and granted eviction provided the City offered alternative accommodation to those to be removed from the buildings, and requested the parties to engage meaningfully with each other about short-term measures to enhance the living conditions and alternative accommodation for those rendered homeless by the eviction. The meaningful engagement produced a significant result, as the parties agreed that the City would not eject the occupiers but upgrade the buildings and provide temporary accommodation. Eventually, the agreement between the parties became the court order. Following this case, the notion of meaningful engagement became central to eviction jurisprudence, as demonstrated through the cases of residents of Joe Slovo Community, Western Cape v Thubelisha Homes (2010 3 SA 454 (CC)); Schubart Park Residents Association v City of Tshwane Metropolitan Municipality (2013 1 SA 323 (CC)); and Pheko v Ekurhuleni Metropolitan Municipality (2012 2 SA 598 (CC)). One clear lesson from these cases is that it is better to embark on meaningful engagement before the matter gets to court.

Explaining the rationale of the court's decision, Pieterse (2014: 169) writes: "the court depicted the obligation to engage meaningfully as flowing from the housing right, understood in light of the developmental responsibilities of local government". Meaningful engagement will be instrumental in humanising the urbanisation, not to take place without compensation or the provision of a viable alternative accommodation. In this context, the meaningful engagement should be initiated by the local government with those affected by the removal, and together they will find a common ground on which to operate in ensuring that urbanisation does not negate the right to the city of the citizens.

The other lesson is that to secure the right to the city, urban movements or "city-oriented mobilization, affecting structural social change and transforming urban meanings" (Castells 1983: 305) can have a significant role to play. The marginalised poor, the homeless, squatters, housing activists and trade unions have to organise themselves in the form of urban social movements and be ready to litigate for their right to housing and other related rights (Domaradzka 2018).

5.3.3 The Right to Participation, Urbanisation and the Right to the City

The corollary of meaningful engagement is the right to participation of citizens in the decision to urbanise or not. The community should play a role in the entire process and be fully involved in the decision-making and operation. According to Cheetham (2002: 4):

Community participation occurs when a community organizes itself and takes responsibility for managing its problems. Taking responsibility includes identifying the problems, developing actions, putting them into place and following through.

For such participation to be effective, it should be meaningful. This entails a clear provision of information to all those likely to be affected by the project through meetings and discussion with them and their implication on all aspects of the urbanisation of the project. In the process, if necessary, community members should be educated on the disadvantages of the projects and their impact on their culture and way of life including losing their land or houses. Failure to do so will render the participation meaningless. Meeting with a few representatives is not enough to denote participation of the entire community. This was the position of the court in *Poverty Alleviation Network v President of the Republic of South Africa* (2010) where a legislation which changed the boundary between the Eastern Cape and KwaZulu-Natal provinces of South Africa was challenged on the basis that the law-making process did not satisfy the constitutional requirement of public participation. Nkabinde, J held that:

...engagement with the public is essential. Public participation informs the public of what is to be expected. It allows for the community to express concerns, fears and even to make demands. In any democratic state, participation is integral to its legitimacy. When a decision is made without consulting the public the result can never be an informed decision. (para 33)

Busà (2009: 6–7) is correct in pointing out that the right to the city “seeks to encourage the democratic participation of all urban dwellers in decision-making processes [and this is instrumental to] challenge existing power relations”. This view was echoed by the court in *Doctors for Life International v The Speaker of the National Assembly* (2006) which held that:

public participation ought to be real and not illusory and ought not to be treated as a mere formality for the purposes of fulfilment of the Constitutional dictates. It is my view that it behoves County Assemblies in enacting legislation to ensure that the spirit of public participation is attained both quantitatively and qualitatively. (*Doctors for Life International v The Speaker of the National Assembly* (2006), para 75)

Similarly, the African Commission on Human Peoples’ Rights in the Endorois case (*Centre for Minority Rights Development (Kenya) and Minority Rights Group International on behalf of Endorois Welfare Council v Kenya* (276/2003)) and the African Commission on Human and Peoples’ Rights v Republic of Kenya (Ogieck case, Application No. 006/2012), respectively held that the right to participation of local community in projects affecting their lives should be meaningful. Although this case is not urban, it helps to understand the level of participation urban dwellers should expect during building and or renovation of their cities. These dwellers should “effectively involve themselves in creating structures and in designing policies and programmes that serve the interests of all as well as effectively contribute to the development process and share equitably in its benefits” (United Nations Commission for Africa, para 11).

In the South African context, under section 152 of the 1996 Constitution, some of the core objectives of local government are to, within their financial and

administrative capacity, (a) provide democratic and accountable government for local communities; and (e) encourage the involvement of communities and community organisations. In other words, local government is obliged to ensure the participation of urban dwellers and be accountable to them. Even though this should be done within the financial and administrative capacity of local government, in the case of *City of Johannesburg Metropolitan Municipality v Blue Moonlight Properties* (2012), the court was of the view that financial incapacity or other deficiencies cannot exonerate local government from its responsibilities:

This Court's determination of the reasonableness of measures within available resources cannot be restricted by budgetary and other decisions that may well have resulted from a mistaken understanding of constitutional or statutory obligations. In other words, it is not good enough for the City to state that it has not budgeted for something, if I should indeed have planned and budgeted for it in the fulfillment of its obligations. (para 170)

Similarly, in *Joseph v City of Johannesburg* (2010), when residents of an inner city apartment block saw their electricity disconnected by the municipality because the landlord failed to deposit their payment to the City Power's account, the court held that:

Municipalities are, after all, at the forefront of government interaction with citizens. Compliance by local government with its procedural fairness obligations is crucial, therefore, not only for the protection of citizens' rights, but also to facilitate trust in the public administration and in our participatory democracy. (paras 33–9)

While these court's decisions should be applauded for holding local government accountable for service deliveries, it is important to note that in the case of *Nokotyana v Ekurhuleni Metropolitan Municipality* (2010), the court wasted "away the rights of the poor" (Bilchitz 2010). It refused to pronounce against the local municipality that failed to deliver sanitation and street lighting to the community, and called upon the provincial government to decide on the issues within reasonable time (Nokotyana, paras 55, 57 and 62.4; Pieterse 2014: 172; Bilchitz 2010)

Despite this disturbing judgement, the *City of Johannesburg Metropolitan Municipality v Blue Moonlight Properties* (2012) and *Joseph v City of Johannesburg* (2010) clearly highlight what is expected from local government on the implementation of the right to the city.

Ultimately, implementing the right to the city implies the broad participation of urban dwellers. The involvement of city's inhabitants in running the city will help reconceptualise existing "approaches to public housing developments on the urban periphery and informal settlements that fall outside the formal planned boundary of the city" (Strauss 2017: 89). In South Africa, besides the Constitution, the *Local Government: Municipal Systems Act 32 of 2000* S4(2) compels local government among others to "(b) provide, without favour or prejudice, democratic and accountable government"; "(c) encourage the involvement of the local community"; "(e) consult the local community about (i) the level, quality, range and impact of municipal services provided by the municipality, either directly or through another service provider; and (ii) the available options for service delivery". This provision is

unambiguous in describing the nature of consultation to be provided by local government. Architects of this participation should strongly consider Stiglitz's advice (2002: 165):

Processes, not just outcomes, are key to this broader interpretation of participation. The stress on processes is a natural outgrowth not only of the increasing emphasis on equity, but also our greater recognition of *agency* problems. That is to say, we now recognize the great importance of potential discrepancies between the actions taken by a party (the government, for example) and the interests of those the party is supposed to serve.

In other words, the participation of city dwellers should be visible. Not only they should be consulted in designing and running the city, they should be seen to sufficiently occupy urban public areas as well as political processes related to the establishment or renovation of these spaces (Purcell 2002: 103).

Failure to meaningfully engage the local communities is also an impediment to the enjoyment of the right to the city. Lastly, the right to meaningful participation of the beneficiaries of urbanisation is a fundamental right without which the right to the city cannot be enjoyed. In line with the Constitution and the Local Government Municipal Act 32 of 2000, local government is at the centre of operationalising the right to participation of communities.

The South African jurisprudence on the right to housing is instrumental in shaping and clarifying the right to the city as a multidimensional right that not only encompasses bricks and mortar but people's aspiration and freedoms. In his examination of South African Constitutionalism, Klare (2018) described the South African Constitution as transformative as it seeks to build an equalitarian society where social justice is a reality. It could be argued that this constitutional objective will not be achieved until the previously disadvantaged groups sent to townships by the previous apartheid regime enjoy the right to the city.

Currently, South Africa is characterised as a country with two economies (Zulu 2015): one for the wealthy who live in suburbs and the other one for the poor who live in extremely impoverished townships. As long as this does not change with everyone freely choosing their site of habitation in the country, the right to the city will be violated, and the Constitution will not be transformative. Strauss (2017: 7) explains as follows: the right to the city "significantly represents a paradigm capable of facilitating a multifaceted, spatially sensitive, and interdisciplinary approach to the interpretation and implementation of the housing rights of South Africa's urban poor". Instead of calling upon the state to deliver services, or rioting over service delivery failure, citizens should rather define their protests as claims for the right to the city. South African jurisprudence provides "insight into the multifaceted nature of urban housing spaces in South Africa" (Strauss 2017: 7). This will enable them to acquire not only houses but also sanitation, parks, spaces, markets, roads, electricity, schools and everything associated with the right to the city:

the right to the city paradigm can assist in evaluating the responsiveness of South African housing, planning, and evictions law to the constitutional imperatives of spatial and social transformation and the need to substantively realise the housing rights of South Africa's urban poor.(Strauss 2017: 7)

Enjoyment of the right to housing is the precondition for ensuring the right to the city (Bennet 1998: 114).

Beyond the South Africa landscape, the jurisprudence on the right to housing provides numerous lessons on the right to the city for African countries (Coggin and M Pieterse 2012: 259). To this end, this right must be included in the Bill of Rights or the binding parts of the Constitution as to ensure their justiciability, hand- in hand with the institution of a constitutionalism characterised by separation of powers where a strong judiciary operates without fear or favour.

Other African countries should apply the right to the city agenda in securing urban spaces for the most vulnerable, and in the process address the potential injustices that such process can create (Strauss 2017: 7). The right to the city paradigm is a viable tool to build and equalitarian society, empower the society and foster human development, but it is imperative to recognise the role of local government enshrined in the Constitution and supported by appropriate statutes. Besides normative prescriptions through the constitution and statutes on the role of local government in implementing the right to the city, the courts should be seen to enforce these normative standards by compelling local governments to take their responsibility in fostering the right to the city.

5.4 The Limits of the South African Jurisprudence

While South African jurisprudence on the right to housing is a massive step towards to implementation of the right to the city, one must be cognisant of its limits. Firstly, litigation is an expensive and lengthy process, and it is not easy to secure the service of pro bono lawyers. Cases related to housing and eviction can take years to be finalised. For example, although the Grootboom case was the landmark case which produced numerous policies on the right to housing in South Africa, Irene Grootboom (the principal litigant) died without a roof over her head.

Secondly, the outcome of meaningful engagement is often informed by compromise. In other words, city dwellers have to let go some of their aspiration to the city to accommodate the will of the other party. Domaradzka (2018: 1) explains in these terms: “While citizen’s involvement in governance has gradually come to be seen as one of the crucial factors of democratic and sustainable urban development, it remains unclear which of many urban initiatives should be included in democratic processes and how to compromise between their often conflicting goals”.

Thirdly, the outcome of litigation or the order of the court is not always implemented, or not done appropriately, and consequently fails to produce the expected result. For instance, although numerous housing programmes including the RDP originated from the Grootboom case, they led to construction of mere dormitory settlements around the city without access to employment, schools, hospital and other services contained in the right to the city (Turok and Scheba 2018: 9; Turok 2016). While beneficiaries have a roof over their head, the policy had “detrimental effects in reinforcing social segregation, imposing costly travel patterns and making

it even harder for people to access livelihoods or generate their own incomes” (Turok and Scheba 2018: 9). In short, the housing policy ordered by the court was not implemented adequately as most beneficiaries remain unemployed and very poor. Their extreme poverty also originates from the fact that the price of most of these houses has remained below their construction cost; therefore instead of becoming assets that give families financial security and independence (Centre for Development Support (CDS), 2015), these houses are worthless. As a result of this unpleasant situation, some of these houses are sold, and the owners move in search of greener pasture in the “city” (Charlton 2018).

In advancing the right to housing and the right to the city, emphasis should be “on creating places that help people to generate incomes, that facilitate economic mobility and that appreciate in value over time” (Turok and Scheba 2018: 9). Housing should be more than mere building, but rather an enabling environment to assist citizens to realise their full potential.

Ultimately, while it is important to adopt housing policies, it is also imperative to implement them in taking into consideration the interconnectedness of elements of the right to housing as guided by the Committee on Economic, Social and Cultural Rights described earlier. Failure to do so will not enhance the prospect for the enjoyment of the right to the city in South Africa and in other parts of the African continent.

5.5 Conclusions

The aim of this chapter was to explore the nexus between human rights and the right to the city. Beginning with a deconstruction of the notion of the right to the city, I found that, while not formally enshrined in core international human rights instruments such as the International Bill of Rights, the notion was well developed by global organisations and activists, and cascaded down into the World Charter on the right to the city as well as some regional and national human rights and policy instruments.

The chapter found that the right to the city is a composite right, made of civil and political rights as well as socio-economic rights assembled for the wellbeing of urban dwellers. However, it was also found that the right to the city is non-binding in global instruments and is controversial because of its fluidity and vagueness. The vagueness of this right cannot dismiss the inherent dignity to be enjoyed by urban dwellers, and such dignity can be secured by enabling the beneficiary to access all socio-economic rights as well and civil and political rights in urban spaces.

South African jurisprudence shows that, even though the right to the city is not explicitly provided for in the Constitution, it can be protected through the right to access housing with strong attention to the needs of the very poor and most vulnerable. It also found that ensuring the meaningful engagement of urban dwellers in the urbanisation processes is essential to equip the process with a human face. In this respect, local government as the custodian of the right to the city should ensure the meaningful engagement to foster the right to participation of urban dwellers in managing the affairs of the city.

The chapter found that any urbanisation process not informed by the meaningful participation of the beneficiaries will encroach upon the enjoyment of the right to the city. Ultimately securing the wellbeing of the most vulnerable, meaningfully engaging city dwellers and fostering their meaningful and full participation in city affairs and designs are instrumental for the enjoyment of the right to the city. Failure to achieve the right to the city in South Africa will water down the aim of the South African Constitution to “include everyone in the transformation of urban space and society” (Strauss 2017: 7). The inclusion of everyone in the transformation of urban space and society is a duty of local government, mandated by the Constitution and the South African Municipal System Act no 32 of 2000.

South African jurisprudence in this area can inspire other African counties to adopt a Bill of Rights with socio-economic rights, a constitutionalism where the separation of powers increases prospects for implementing the right to the city. Housing policies and urbanisation will not support the right to the city without inter-related human rights, elements of the right to housing. Furthermore, the obligations of local government towards the implementation of the right to the city should be explicitly enshrined in the Constitution as well as recorded in policies. The court should be able to enforce such provision.

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Chapter 6

Urban Landownership and the Right to Sustainable Development for Women in Africa



Carol C. Ngang

Abstract This chapter explores urban landownership in relation to the right to sustainable development granted by law to all the women of Africa. Although Africa is becoming more and more urbanised, its women are largely still relegated to remote rural areas and excluded from the benefits of urban life, which seems to imply that they are ordained exclusively for rural livelihood. Local governance provides an important institutionalised framework within which to address the question of land rights for women. The principle of “no one is left behind” and SDG 11 highlight the need for the inclusive participation of women in urban governance and development planning. While women are the cornerstone for development in Africa, they continue to endure development injustices due to their subjugated status under the dominant cultural and societal norms in African societies. The Protocol on the Rights of Women in Africa (Maputo Protocol), adopted in 2003 provides in Article 19(c) to “promote women’s access to and control over productive resources such as land and guarantee their right to property”, and this chapter seeks to determine how the entitlement to sustainable development could effectively be guaranteed to the women of Africa.

Keywords Landownership · African women · Right to sustainable development · Urban governance · Protocol on the Rights of Women in Africa · The right to development

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6.1 Introduction

This chapter explores the right to sustainable development with respect to women's access and entitlement to urban land. The global agenda for development sets a specific target for parity and equitable ownership and control, to be achieved by 2030. Women are more than half of the world's population yet own less than 20% of the land, with an estimated 25 million urban women lacking constitutional and statutory landownership rights (Boutkhil 2019:14). In rural areas much attention has addressed customary limitations, but urban land rights are subject to more complex dynamics that need closer scrutiny. Urban spaces have generally been planned, designed and governed without the involvement of women as decision makers (UN-Habitat 2012), and reflects existing tensions resulting from competing (patriarchal, political and neoliberal) interests.

Urban land governance systems and practices need to be transformed to benefit the women of Africa and emerging urban spaces designed in relation to the New Urban Agenda (NUA), with meaningful participation of women in decision-making (para 41). Women are generally denied access to land because of societal norms and practices that exclude them. Might it be that the legal guarantees enshrined in the Maputo Protocol among other instruments have not appropriately been explored? Could an expanded conceptual reading of the provisions of the law facilitate effective participation of the women of Africa in the decision-making and conceptualisation of urban land governance policies to their benefit?

In this chapter, first I discuss the right to sustainable development to show that legitimate access to urban landownership guarantees livelihood security and a decent standard of living. Secondly, I argue that women's urban land rights could be explored with the principles of intergenerational equity and spatial justice. In conclusion, I posit that entitlement to urban land entails leveraging African women's potential to participate constructively in urban land governance processes, conceived within a broader conceptual framework of the right to development and the sustainability matrix.

6.2 The Right to Sustainable Development Ascribed to African Women

The African human rights system establishes an explicit connection between human rights and development and provides the mechanisms through which both can be achieved. The African Charter on Human and Peoples' Rights (1981, Article 22(1)) states that "[a]ll peoples shall have the right to their economic, social and cultural development with due regard to their freedom and identity and in the equal enjoyment of the common heritage of mankind". The unambiguous reference to all peoples comprises women who equally have the right to economic, social and cultural development, including entitlement to land; which means that they may rightfully

lay claim to the productive resources such as land from which they have traditionally been excluded.

Entitlement to socio-economic and cultural self-determination includes making their own development choices, equality of opportunities for development, active involvement and meaningful participation in development appropriate to their particular circumstances, and fair (re)distribution of the gains from the development process. Self-determination and freedom in the making of development choices guarantees to the women of Africa an entitlement to freely decide between the alternatives of rural and urban livelihood for sustainable development. The Declaration on the Right to Development (1986) guarantees in Article 1(2) the right to full sovereignty over natural wealth and resources. The African Charter equally states in Article 22(1) that the right to development is subject to the equal enjoyment of the common African heritage, and guarantees that they can equally benefit from fair (re) distribution of the natural resources. The common African heritage consists of a range of natural endowments, especially land as a major determining factor to development.

The liberty to make alternative choices from those imposed by societal norms entitles the women of Africa to prioritise their options in seeking access to urban spaces, where they are disproportionately excluded from the advantages of proximity to opportunities for advancement and socio-economic empowerment. Land, as a primary means of production, constitutes an important component of the urban space.

The New Urban Agenda (NUA) adopted in 2016 highlights effective gender equality and empowerment to ensure that all women meaningfully participate and enjoy equal rights in leadership and decision-making (Sect. 6.3). UN-Habitat has developed a growing focus on urban law linked to SDGs 11 and 16. SDG 11 highlights the need for inclusive participation of women in decision-making processes with regard to human settlements, and SDG 16 seeks to promote inclusive societies and facilitate access to justice as a means to achieve sustainable development for all.

African women's right to landownership and their contribution to development is acknowledged in the Maputo Protocol (2003) and the Declaration on Land (2009) adopted by the African Union. The Protocol supports "women's access to and control over productive resources such as land and guarantee their right to property". The Declaration on Land (not legally binding) promotes access and security of land tenure for women as a key priority. However, in practice, African women continue to experience development injustices, because of inherited colonial urban governance policies, patriarchal norms embedded in African societies, encroaching neo-liberal ambitions to grab urban spaces for business, corrupt leadership and maladministration (Bhatasara 2015).

Reforms have increasingly addressed issues relating to women's subjugation, including land-ownership, but tend to ignore the reality that matters relating to land-ownership are generally undergirded by societal power relations (Rakodi 2014:3). Even as these tensions rob women of substantive entitlements, redress has mostly been sought through disjointed strategies that focus mainly on gender inclusivity in development programming by way of capacity building and affirmative action initiatives (Agarwal 2003:185).

The Kilimanjaro Initiative (2016) seeks to create the opportunity for rural women to participate in decision-making about their rights to land and other natural resources. One of its central objectives is to strengthen rural women's movements and agency in asserting and defending their land and natural resource rights in Africa. The UN-Habitat (2019:7) GLTN Gender Strategy (2019–2030) asserts that “[i]mproving the rights of women and girls to land is vital to overcome poverty and inequality, ensure justice and human rights, and counter trends that further undermine the rights and wellbeing of women”.

Although Africa is becoming more and more urbanised, where large proportions of its populations are increasingly found, its women are largely still relegated to the urban peripheries or remote rural areas, generally excluding the poor and vulnerable from urban life. Initiatives on the empowerment of rural women (UN Women 2012; CEDAW 1976:art 14) seem to imply that women are ordained for rural living, mostly associated to farming and the predominantly informal rural economy.

6.2.1 Policy Obligations

The right to development in Africa is a collective right attributed to groups of peoples, and thus can be claimed by women in Africa as a collective. The fulfilment of this right creates an obligation for suitable policies as articulated in Article 2(3) of the Declaration on the Right to Development, which states; “the duty to formulate appropriate national development policies that aim at the constant improvement of the well-being of the entire population and of all individuals, on the basis of their active, free and meaningful participation in development and in the fair distribution of the benefits resulting therefrom”.

The Declaration provides in Article 8(1) that “[e]ffective measures should be undertaken to ensure that women have an active role in the development process”, and in Article 4 that “[s]tates have the duty to take steps, individually and collectively, to formulate international development policies with a view to facilitating the full realization of the right to development”. The African Charter has similar provisions in Articles 1 and 22(2) which obligate state parties to take the necessary measures to make the right to development a reality for all the peoples of Africa. These provisions impose a moral and legal obligation on African states to create the necessary enabling environment both at domestic and international levels to ensure that women can, as a right, navigate the processes for development and equally contribute thereto.

The principal instruments that enshrined the right to development, however, ignore issues specific to women and do not sufficiently engage with the “exclusion of women at both national and international levels from participating, or indeed in addressing the barriers to women's participation”, noting in particular “the ways in which [they] are prevented from accessing, using and owning land” (Banda 2013:154–155). While a UN Women report of 2012 notes progress with equal representation for women in decision-making, women are generally still left behind.

The guide on reforming urban laws in Africa suggests that urban lawmaking must take into account practical realities that impact on urban land governance (Berrisford and McAuslan 2017), one of which is that women are generally not involved in the decision-making processes on urban land governance, and, consequently, their right of access to urban spaces is unfairly restricted.

The problem has continued to exist because of the lack of conceptual clarity and a defined framework, where women are not only perceived as some passive observers but as active participants of the development process with potential to determine policy direction. In an effort to redress the shortcomings of the African Charter in not sufficiently highlighting women's concerns, the African Union in 2003 adopted an additional Protocol to the African Charter with specific focus on the rights of women, which enshrines the right to sustainable development in Article 19:

Women shall have *the right to fully enjoy their right to sustainable development*. In this connection, the states parties shall take all appropriate measures to:

- introduce the gender perspective in the national development planning procedures;
- ensure *participation of women at all levels in the conceptualisation, decision-making, implementation and evaluation of development policies and programmes*;
- promote *women's access to and control over productive resources such as land* and guarantee their right to property;
- promote women's access to credit, training, skills development and extension services at rural and *urban levels* in order to provide women with a higher quality of life and reduce the level of poverty among women;
- take into account *indicators of human development* specifically relating to women in the elaboration of development policies and programmes; and
- ensure that the negative effects of globalisation and any adverse effects of the implementation of trade and economic policies and programmes are reduced to the minimum for women (emphasis added).

These provide normative directives that are supposed to guide domestic policy-making, at least for state parties to the Protocol, which has been ratified by 37 out of 55 African countries. Elaborate as the guarantees appear, the realities in some African countries (such as Kenya, Ghana and Malawi) are different.

Kenya ratified the Maputo Protocol in 2010, the same year it adopted a new Constitution and a policy framework favouring the advancing of women's land rights. The Kenyan Constitution devotes chapter five to land and the environment. Reflecting the wordings of the Protocol, the Constitution defines land use, ownership and management patterns in relation to equitable access to land, security of land rights, sustainable and productive management of land resources, and elimination of gender discriminatory laws, customs and practices related to land among others (Art 60(1)(a)–(d)). The Kenyan Constitution further provides in Article 61(1) that “[a]ll land in Kenya belongs to the people of Kenya collectively as a nation, as communities and as individuals”. The reference to “all land” implies that Kenyan women are not excluded from equitable access to ownership and use of urban land. Besides the constitutional right to land, the National Land Policy incorporates guiding principles of inclusive participation, equitable access, secure land entitlement, intra- and intergenerational equity, transparent and democratic governance and gender sensitivity in land management. It singles out Kenyan women's land rights as

requiring particular attention and recommends some practical measures (Accord et al. 2012:7), to provide the enabling framework within which Kenyan women can assert entitlement to urban land. The Kenyan Constitution (Art 67(2)(b)) mandates the National Land Commission to enforce the National Land Policy.

Ghana ratified the Maputo Protocol in June 2007, and is legally bound by the provisions contained therein, which ought to be translated into measures for domestic implementation. Nyarko (2016:97) observes that in Ghana, “[n]egative cultural perceptions of gender equality persist, which continue to limit women’s access to productive resources such as land and credit”. Equality in landownership could become a reality for women in Ghana if the provisions of the Maputo Protocol were given domestic relevance, but Ghana (like many other African countries) is noted for ratifying treaties without domesticating them (Nyarko 2016:98). Although there are no legal impediments to women’s rights to landownership in Ghana, Higgins and Fenrich (2011:10–19) show that the realities on the ground are complex. In the Sissala East District in northern Ghana, 37.5% of women surveyed confirmed ownership of urban land acquired through purchase, but only with the knowledge and agreement of the husband (Adolwine and Dudima 2010:98). They report that more married women (58%) own land, as opposed to only 6.7% of unmarried women and 33% of widows. For the women who genuinely own their own land, many may lose the land upon dissolution of the marriage on the basis that “[w]hen a man marries a woman, he owns and controls her, her children, and everything the woman has...” (Adolwine and Dudima 2010:98). Obeng-Odoom (2014) indicates that land policies in Ghana have not only failed to remedy the situation but has rather had perverse implications for women.

Malawi ratified the Maputo Protocol in 2005, yet landownership has largely been regulated by a gender-biased “statutory and customary” framework based upon the “1965 Land Law which fails to guarantee women equal rights to land as men” (Accord et al. 2012:25). Although some concrete actions have been undertaken, notably the Malawi National Land Policy adopted in 2002 and the new Land Bill 2018, envisaging equal access to land for all Malawians, the focus is still primarily on customary (rural) land, which is governed principally by customary law. Perhaps because of their key role in agriculture as the main source of livelihood, “more women own land in Malawi than in most other countries in sub-Saharan Africa” (Oxfam and LANDac 2018:1), but sustainable development requires expanding their options beyond the limitations of rural livelihood. While the NUA encourages inclusive equitable access to the urban space, there is no known policy instrument that guarantees urban landownership rights for women in Malawi. Attention to this reality is important because as indicated in the Habitat III-2016 Policy Paper (2017:30), “[c]urrent urbanization processes are reinforcing inequality and exclusion – particularly for women...”, meaning that without an appropriate urban governance policy that takes into consideration women’s rights and specific needs, they would systematically be “shut out” and denied a place in the urban neighbourhoods of Malawi. Although the lack of an urban governance policy framework constitutes an impediment, it also offers the opportunity for the women of Malawi to campaign for one in accordance with Article 19 of the Maputo Protocol.

While policy implementation has always been a serious problem in all of Africa, the value of having comprehensive laid down legislation, policies and institutional mechanisms as in the case of Kenya cannot be underestimated. The absence of a policy or regulatory framework as noted in the Global Land Tool Network Gender Strategy compromises the extent to which the women of Africa can assert entitlement to urban land (UN-Habitat 2019:2). Where the law is limited, it is recommended to “look beyond legal and policy reforms and adopt broad based social change towards women’s land rights” (Accord et al. 2012:1).

The Maputo Protocol employs the concept of sustainability, which provides theoretical guidelines for understanding women’s struggles for recognition and self-determination in matters of landownership. As a collective right that can only be claimed by groups of persons, the right to sustainable development requires recourse to such extensive measures that can collectively benefit not only women but importantly also advance development in every society (be it urban or rural) across the African continent. To achieve this purpose entails a contextualised understanding of the notion of sustainability and the core principles that it embodies.

6.3 Sustainability Matrix

The concept of sustainable development was originally defined as “development that meets the needs of the present without compromising the ability of future generations to meet their own needs”, and has frequently been applied within the context of climate change and environmental governance, evolved to incorporate every aspect of development. According to Mensah (2019:5), sustainability means “improving and sustaining a healthy economic, ecological and social system for human development”.

The term sustainability applies within the context of the Sustainable Development Goals as a process that envisages environmental protection and adherence to the principles of social justice and human rights (Transforming Our World 2015:para 2). With regard to African women, sustainable development embodies the right to have equitable access to land and to productively utilise same for improved wellbeing. Embedded in the sustainable development framework are the principles of intergenerational equity and spatial justice, explained below in relation to how they could be employed in women’s entitlement to land.

6.3.1 *Intergenerational Equity*

Sustainable development imposes an obligation to maintain balance between the human aspirations for the highest attainable standard of living and the rational utilisation of limited natural resources. Central to this is the core principle of intergenerational equity, based on the premise that each generation has a right to inherit the

same diversity in natural and cultural resources enjoyed by previous generations (Okukpon-Adesanya 2012:141–142). Golub et al. (2013:269) assert that intergenerational equity requires redressing the historical injustices that have a replicating impact on present as well as future generations.

Taylor submits that “the discussion of what is meant by present and future generations – and how we define our duties to them – is often missing” (Taylor 2013:2) in the sense that while the law broadly guarantees equality in landownership, the mechanisms to ensure substantive entitlements are not clearly established. Prejudices that exclude African women from landownership persist and are often guarded as societal values. For instance, the question of women’s right to own and transfer land is frequently contested much more than those of men, which in most cases is readily affirmed as an ordained practice in more or less all traditional African societies.

Intergenerational equity not only imposes an ethical duty of concern for the well-being of future generations, but also a duty on present generations to be mindful that future generations of African women do not remain dispossessed and impoverished. The legacies that would be bequeathed to future generations depend largely on the choices that the present generations make. Unfortunately, the choices of the past, which present generations in Africa have inherited, were largely influenced by the prejudices of colonialism in combination with local patriarchal privileges that remain heavily skewed in favour of male dominance in landownership.

With reference to South Africa, Agarwal (2003:190) explains that even where women happen to gain access to land, such land is registered in the husbands’ names, and thereafter inherited by the eldest son under the customary practice of primogeniture. Customary laws, as Rakodi (1996) further explains, deprive women even within the institution of marriage where they are often barred from community of ownership such that in the event of a divorce or widowhood, the man either exclusively claims everything or the matrimonial property is inherited by the man’s family. UN-Habitat (2019:2) affirms that “[i]n patriarchal societies, women may have weaker or no rights to land and property, or they may lose their rights if a husband or father dies”. Agarwal (2003:190) cautions that women have to avert the “risk of being evicted by their sons (male in-laws); enhance their freedom to take independent decisions on land use” and enjoy the right to bequeath land to their children, should they face abandonment by husbands.

According to Akinola (2018:2), evidence of African women’s exclusion from landownership has only evolved into a cultural practice that aims primarily at securing opportunities and benefits for men. Intergenerational equity becomes relevant in this context, with the purpose of righting the injustices of land dispossession, which if not corrected will impact adversely upon future generations of African women. Against the age-old practices that favour patrilineal lines in most African societies, the principle of intergenerational equity provides the basis for considering an institutionalised binary system, like in some communities in Malawi where land is equally bequeathed to future generations along matrilineal lines.

The vested interests of the actors involved almost always predominate in policy formulation, in recognition of which the Maputo Protocol emphasises women’s participation in decision-making and implementation and evaluation of development

policies and programmes, including in access to and control over land. Because women's urban landownership claims challenge male dominance and generate gender power struggles, the prevailing circumstances necessitate weighing development options on the scales of equity in determining the futures for all the peoples of Africa. If the choices of today overlook intergenerational equity, aspirations for sustainable development for the entire African continent would stagnate.

Laws and social phenomena are subject to change as are societal norms and customary practices. Equity demands fairness, by virtue of which African women deserve a reasonably just opportunity, especially where conflicting interests are at stake.

It requires acknowledging women as major stakeholders in decisions that have to do with their lives. The Maputo Protocol enshrines in article 19(b) the obligation to "ensure [the] participation of women at all levels in the conceptualisation, decision-making, implementation and evaluation of development policies and programmes". African women's contribution in spatial justice that guarantees to them access to urban spaces is important for the realisation of the right to sustainable development.

6.3.2 *Spatial Justice*

Urban land governance across most of Africa continues to replicate the colonial model that unjustly restricted access to urban spaces, as in apartheid South Africa, where black people were outlawed from urban areas unless permitted to come and work (Urban Landmark 2013:6). Although present day restrictions may not translate directly from enacted legislation, established systems and the pressures of urban life perpetuate similar spatial injustices that exclude the poor and the disadvantaged from a gainful place in urban Africa. African women's claim to equitable access to urban spaces and the right to own land therein is grounded upon the spatial justice theory. Spatial justice theorist, Soja (2009:1), explains that "the geographies in which we live can have negative as well as positive consequences on practically everything we do". This is particularly true for the women of Africa whose lived experiences are predominantly shaped by subjective societal norms. Soja defines spatial justice as "an intentional and focused emphasis on the spatial or geographical aspects of justice and injustice [necessitating] the fair and equitable distribution in space of socially valued resources and the opportunities to use them".

The socially valued resources referred to are understood to include not just land, but importantly urban land because of the advantages and proximity to opportunities that it offers. Spatial justice is concerned with questions of location and fairness in the distribution of geographical space, which De Villiers (2016:2) describes in simple terms as "better access to and use of land", requiring "mechanisms for putting into place processes to provide disadvantaged communities with access to land, as a process of redress". For Soja (2009:3), the normal workings of an urban system and the everyday activities of urban functioning have remained a primary source of inequality and injustice in terms of locational decision-making, primarily

influenced by dominant factors that typically privilege the rich over the poor. While landownership in urban Africa is largely regulated by statutory law, which in many instances favour women and, therefore, should not pose a problem, “urbanisation activates the full flare of its effects [on women] when statutory land acquisition processes, [...] come into conflict with customary land acquisition processes” (Chigbu et al. 2019:11).

The burden of poverty weighs disproportionately on African women, excluded from a place in the urban vicinities, even though legally entitled to access. In resuscitating Lefebvre’s seminar concept of the right to the city, Van Marle (2014:174) highlights the “importance of a theoretical engagement with the theme of spatiality and spatial justice”, imagining that things could be different by simply challenging the *status quo*. Spatial justice in this instance would concern how much of urban space across Africa could and should be reserved space to be accessed, acquired and utilised exclusively by women as redress for the collective disadvantage they have been subjected to. Encroachment into such reserved spaces would under the spatial justice principle amount to a contravention of women’s right to sustainable development under the Maputo Protocol.

The Declaration on the Right to Development provides in Article 8(1) that effective measures be undertaken to eradicate the injustices that obstruct women’s active participation in the development process. Article 1(2) of the Declaration, which guarantees the right to natural resource ownership, and the social injustices referred to in Article 8(1), do not exclude the societal norms and practices denying women urban landownership.

Article 19(c) of the Maputo Protocol not only entitles women to have access to and to control land, but delineates land as a productive resource. In Soja’s (2009:2) conception of spatial justice as the “fair and equitable distribution in space of socially valued resources and the opportunities to use them”, the entitlement to land must be accompanied by the capacity to put such land into productive use. The productive use of land entails equipping African women to actively participate in policy debates on urban land governance. The Maputo Protocol indeed enshrines in Article 19(d) the commitment by Africa’s political leadership to “promote women’s access to credit, training, skills development and extension services at rural and urban levels”. Unfortunately, in Africa, political promises do not readily translate into action.

African women’s restricted access to and ownership of urban land can to a large extent be attributed to their exclusion from the conversations in mainstream society, which eventually translate into policies and then executable plans. In the face of increasing spatial injustices manifested through land conflicts and growing land access problems all over Africa (Whitehead and Tsikata 2003:68), state parties to the Maputo Protocol should expand women’s participation in policy- and decision-making and in development planning. I borrow from Fraser’s (2003:7) notion of “parity of participation” based around three intertwined conditions:

First, the distribution of material resources must be such as to ensure participants’ equal capacity for social interaction. This condition precludes economic structures that institutionalise deprivation, exploitation and gross disparities in wealth, income, labour and leisure time, which prevent some people from

participating as on a par with others in social life. Second, the status order must express equal respect for all participants and ensure equal opportunity for achieving social esteem. This condition precludes institutionalised patterns of cultural value that systematically depreciate some categories of people and the qualities associated with them, thus denying them the status of full partners in social interaction. Finally, the political constitution of society must be such as to accord roughly equal political voice to all social actors. This condition rules out electoral decision rules and media structures that systematically deprive some people of their fair chance to influence decisions that affect them.

In spite of the progressive provisions of the Maputo Protocol, implementation is yet to be ascertained. Home (2011:25) asserts that claims for land redistribution by the “have-nots” is prone to, and indeed from experience, known to face resistance from the elite “haves” who generally control the lawmaking process. Besides anticipating to guarantee access to urban landownership for the women of Africa through redistributive measures, Home suggests that the demands of the have-nots might also be achieved through allocation from the “shrinking category of land unclaimed by anyone”. If urban spaces continue to expand into unclaimed land, spatial justice would entail prioritising ownership for women.

African state governments are accordingly obligated to take concrete positive measures and actions in making socio-economic, cultural and political conditions favourable for women. It necessitates a restructured urban dispensation as envisaged by the NUA, where municipal legislation, regulatory policies and implementation plans are designed to ensure that the urban landownership needs of present generations of African women are met and guarantee those of future generations. Despite the range of provisions in various domestic and most importantly African human rights instruments that envisage women’s equitable access to land, there is no record of any litigation so far, particularly at the level of the African Court or the African Commission on Human and Peoples’ Rights, exclusively involving women’s claim to land. Urban governance should accordingly consider special remedy mechanisms through which African women can have facilitated access in seeking land redistributive justice.

6.4 Conclusion

Local governance provides the institutionalised framework within which to effectively and judiciously redress concerns relating to land rights for women, particularly in Africa. Even though the Maputo Protocol enshrines the right to sustainable development, which incorporates African women’s entitlement to land ownership, implementation has not followed. Despite the advantages that urbanisation presents in driving the sustainable development agenda, access to and entitlement to urban landownership for the women of Africa is still largely aspirational. The absence of land rights renders African women vulnerable and incapable of developing the socio-economic capacity for autonomy, and, thus, subjects them to conditions that

make them perpetually subservient. Denied or deprived of land, an inestimable resource for economic, social and cultural advancement, African women will continue to live under the constant threat of poverty and the illusion of a better standard of living, unable to make sustainable plans or to self-reliantly exercise control over their own existence.

Besides customary norms and practices and the limitations of the law that militate against women in Africa, there are other major practical realities, including the increasing expansion of the frontiers of the market economy and the consequent need for gentrification of African urban spaces to attract foreign investments against which women's claim to urban land is set to be achieved. With many African countries like Ethiopia, Nigeria, Kenya, Rwanda, Mozambique, Ghana and a lot more rising to recognition as emerging economies and investment destinations of choice to foreign investors and multinational corporations, their encroachment multiplies the demand for urban land and consequently set African women against extremely tough competition. The good intentions of adopting progressive urban land governance policies notwithstanding the competition for urban land, which is driven by the market forces of demand and supply, tend to exclude women on account of the inability to afford.

In an information note on the right to development and gender, the UN Office of the High Commissioner for Human Rights recognizes that redressing the structural inequalities relating to landownership is central to expanding women's options and opportunities, not just through their integration into the development process but to also influence the broader sustainable development agenda. With regard to the SDG 11 requirement of inclusivity in human settlement, if sustainable development is to be achieved for the women of Africa, access to urban spaces, urban planning and matters relating to the (re)distribution of urban land require African women's active involvement as major stakeholders.

Comprehensive development cannot be achieved in Africa where over half of the population is deprived of land and consequently, denied equality of opportunities in urban Africa.

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Chapter 7

Effectiveness of Planning Law in Sub-Saharan Africa



Anne Amin, Robert Lewis-Lettington, and Samuel Njuguna

Abstract Physical planning policy and its wider parent field of urban development have evolved over 100–150 years. They are dynamic and creative fields with a plethora of theories and solutions on offer, as reflected in the objectives of the SDGs and the ways forward proposed by the NUA. In contrast, planning law, built on conservative models, has been mostly static in its basic approaches and appears to have a limited effect in translating urban development policy into tangible outcomes in sub-Saharan African cities. There is a perception that this is because planning law is “poorly implemented”, but there is often little or no questioning of the legal framework within the local and urban governance systems in SSA. This chapter explores the implementation of planning law in a sample of 18 African cities, and proposes a demonstrable need for fresh models of planning law that can be more effective in delivering the potential of planning and sustainable development policy in alleviating poverty.

Keywords Planning law · Law reform · Essential law · Urban planning · Sub-Saharan Africa · Urban governance

7.1 Introduction

Physical planning policy and its wider parent field of urban development have evolved over 100–150 years. They are dynamic and creative fields with a plethora of theories and solutions on offer, as reflected in the objectives of the SDGs and the ways forward proposed by the NUA. In contrast, planning law, built on conservative models, has been mostly static in its basic approaches and appears to be having a

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relatively limited effect in translating urban development policy into tangible outcomes in SSA cities (Berrisford 2013). There is a perception that this is because planning law is “poorly implemented”. Consequently, there is often little or no questioning of the legal framework.

Planning law refers to the body of laws (national statutes, ministerial proclamations, state/provincial laws and local bylaws or regulations) that govern both the making of spatial plans – at a city, town, village or district level – as well as the regulation of land use and land development. It determines the buildable and non-buildable areas as well as the legality of buildings. Planning law is complex, as it must balance the many competing interests of stakeholders and their existing legal rights. Urban planning laws can promote positive human rights outcomes by establishing minimum health, sanitation, safety and environmental protection standards. They also underpin effective local governance and political reforms related to decentralisation, rule of law, transparency and accountability, to foster inclusive and vibrant communities and create adequate spaces for social activities that are instrumental for the enjoyment of rights. Planning laws, however, can also contribute to the growth of informal settlements, as well as delegitimise and even criminalise the way of life of most poor urban residents, for example, by establishing locally inappropriate standards, fostering inequality and exclusion. The extent to which public planning-related interventions are considered an interference with individuals’ property rights depends on the definition and scope of the right to property within a legal framework. Therefore, planning law has the potential either to be redistributive or to consolidate existing privilege.

In SSA, the implementation of planning law is complicated by pre-existing insecure and unpredictable land ownership rights. This provides public administrations with a powerful legal mechanism for controlling urban land supply, which has contributed to the formation of slum areas and shanty constructions as the majority of the urban population cannot afford to own property in the formal market. Since these areas operate outside the legal, planned and regulated channels of city making and are usually accompanied by ambiguities of spatial ownership, they are referred to as informal settlements. In Africa, approximately 62–70% of the urban population live in informal settlements (UN-Habitat 2013). It is projected that by 2020, the population in African cities will have expanded by 150 million, and it is therefore likely that the number of informal settlers will increase (UN-Habitat 2013). Informal settlements and their inhabitants, the urban poor, continue to be geographically, economically, socially and politically disconnected from wider urban systems, and excluded from urban opportunities and decision-making. The quality of life in informal settlements is low, as they lack some or all basic public services such as a sewage network, electricity, safe running water, rainwater drainage, garbage removal, access to public transport or insect and disease control services. Even if these services are present, they are likely to be disorganised, unreliable and poorly maintained.

The marginalisation of informality has led to arbitrary evictions and demolitions, justified under the guise of infrastructure projects or urban redevelopment and “beautification” initiatives, attracting investment and creating “world-class” cities.

Most direct forced evictions, as well as many economic and regulatory pressures forcing the poor to move into cities, have their origins in formal planning decisions. This has serious human rights implications especially when forced evictions are undertaken without compensation or alternative housing (du Plessis 2005).

For instance, Section 44 of the repealed Land Act, 1979 of Lesotho gave the Minister responsible for the management of land rights and property the prerogative powers to gazette and declare certain areas as “Selected Development Areas”. This declaration served to abolish existing titles and rights on land as land was to be set aside for selected future developments. Section 7.2 defined selected development areas as an area set aside for:

- Development or reconstruction of existing built-up areas
- Construction or development of new residential, commercial or industrial areas
- Readjustment of boundaries for the purposes of town planning

The implementation of this law led to numerous eviction incidences within the boundaries of Maseru. In 1999, squatters living in the districts of Lepereng and Maqalika were evicted through court proceedings with assistance from the police task force (UN-Habitat 2017). Other recent cases of forced eviction from the implementation of planning law have taken place in Kenya in 2018, in the informal settlement of Kibera in Nairobi, where homes and schools were demolished to allow the construction of a public road that had been earmarked in a land-use plan. This left more than 30,000 people homeless and about 2000 children without schooling (OHCHR 2018). In 2017, over 35,000 people were forcibly evicted from settlements in Lagos state, Nigeria, in defiance of court orders as the government claimed that the irregular structures of the slums were potential hideouts for criminals (OHCHR 2016). These cases were not in compliance with human rights standards that require certain processes such as an adequate notice period, compensation and resettlement guarantees.

It is evident that current planning models in developing countries require a paradigm shift in the way urban space is allocated and utilised. It is also crucial that legal frameworks are assessed to determine their effect on human rights and inclusivity, in advancement of the NUA’s commitment to “leave no one behind”.¹ Laws designed to regulate urban development in the global north in the twentieth century are an inappropriate blueprint for contemporary Africa, not least because they tend to exclude the urban poor (UN-Habitat 2011). There are more specific reasons for the failure of planning law reforms.

One cause of failure is a widespread belief that legislation employed successfully elsewhere can be adopted with minimal amendment and with similar results (Berrisford and McAuslan 2017). This ignores the diverse law-making and planning practices of developing countries, which reflect their different histories and current economic, social and political realities. Employing a one-size-fits-all solution is

¹This concept is referred to in paragraphs 14 (a) and 27 of the UN Resolution adopted by the General Assembly on 23 December 2016–71/256 New Urban Agenda, A/RES/71/256 (25 January 2017).

inappropriate, as this will neglect, for instance, a country's varied and intricate land tenure arrangements. This does not mean drafters should ignore the lessons learnt in other countries, but they should ensure that planning law provisions are cautiously adapted to reflect local conditions and practices.

An important aspect of local circumstances in Africa is the context of colonialism, which has shaped the design of its planning laws and policies. In 2018, a study *Colonial legacies: Shaping African cities*, that includes 318 cities in 15 former British and 13 former French colonies in sub-Saharan Africa, excluding South Africa, indicates that the spatial structures of a large set of cities in sub-Saharan Africa are strongly influenced by the type of colonial rule experienced (Baruah et al. 2018). Francophone cities are more spatially "compact" as compared to Anglophone cities. The study also investigated the regularity and density of layout in older sections of the city, which is likely to be physically influenced by how cities were laid out in colonial times. New peripheral areas of cities built well after the colonial era were found not to follow the compactness of the physical layout influenced by colonialism. This appears to correlate with UN-Habitat's own findings that older urban cores are governed by long-standing planning regulations, tend to have higher land-use compliance than city averages, and are relatively compact. The effect of lower density and sometimes fragmented development outside urban cores can be profound. For example, areas of leapfrog development are less likely to receive connections to public utilities, such as electricity, phone landlines, piped water and city sewers (Baruah et al. 2018).

A further cause of failure in planning law reform is an assumption that it is easier and more susceptible to a simple technocratic approach to lawmaking in Africa than in more developed countries. Consequently, the basic principles of lawmaking are viewed as redundant and ignored (Berrisford 2011). This universal failure of planning law reform poses a fundamental question; what constitutes an effective planning law?

Legislative quality is assessed through its functional effectiveness, i.e. the capacity of a given law to fulfil its intended function (Mousmouti and Crispi 2015). Many urban laws, particularly around spatial planning, have the characteristics of what is colloquially referred to as "zombie" legislation: many of its processes are dysfunctional or non-functional – it is dead for most practical purposes – but because it is technically in force (and therefore enforceable), partial functionality or occasional manipulation can produce perverse outcomes or create opportunities for irregular rent seeking. UN-Habitat's experience highlights a widespread popular perception that this occurs because the law is "good", but the resources and capacity are not there to make it work (UN-Habitat 2016a). This perception is challenged by two basic arguments. First, how can the law be defined as "good" if it has no meaningful impact? Second, if the resources and capacity required to make the law work are not there, and the situation is not projected to change, why is the law designed on the assumption of their availability? For a law to achieve its desired impact, it must be appropriate to its context, and proportionate to its objectives and availability of resources.

UN-Habitat proposes an approach for legal reform that focusses on four main components of essential law (UN-Habitat 2018). First, planning laws need to be appropriate to the local contexts in which they operate. This is not compatible with the blind transplantation of models. The building codes in Mozambique present the perfect example of legislative detachment from local circumstances. The country adopted Portuguese codes that were influenced by a fatal earthquake more than two centuries ago. While Mozambique has had very few earthquakes, the codes adopted from Portugal continue to govern the country's building and construction sector. The effect of this has been socio-economic inequality in that only the wealthiest are able to comply with the codes. In the aftermath of Cyclone Idai, which destroyed 90% of the city of Beira, a large proportion of the buildings that withstood the storm were those in compliance with the codes. While this might seem to justify the strict approach of the code, it does not mean that building an earthquake proof building is the most appropriate flood resilience strategy. Neither does it provide a response to the challenge that these surviving buildings were not middle- to low-income residential properties because ordinary citizens cannot afford that type of construction.

Second, the compliance processes created by these laws should be simple, expeditious and affordable for most urban dwellers. The complexity and costs of the process should not discourage otherwise law-abiding residents from compliance. For instance, in Nigeria, the time required to obtain a building permit varies across states, with some states able to issue permits within a week and others requiring more than six months. The effect of this cumbersome process has been to discourage prospective developers from seeking building permits. As a result, there have been numerous illegal developments, and some consequent building collapses, in major cities (Adeniyi 2013).

Third, legal frameworks should be characterised by clear institutional and governmental setups, including horizontal and vertical coordination mechanisms. They need to specify the roles of each institution in order to eliminate gaps and overlaps, which often lead to confusion, and to eliminate lack of transparency, poor accountability and poor compliance. In Ghana, with respect to development control functions, there has been significant functional overlap between the Town and Country Planning Department and the District, Municipal and Metropolitan Assemblies which derive their mandates to execute these functions from the Planning Ordinance (1945) and the Local Government Act (1993), respectively. This has resulted in limited efficiency in public service delivery (Bugri 2012).

Fourth, the lawmaking process should include an adequate appraisal of the financial and human resources needed for implementation. Such an assessment ensures that proposed laws set realistic targets, have the necessary political support, and will be implementable. For example, a draft planning law in Uganda was designed in such a way that its enforcement and implementation would require 20,000 civil servants (UN-Habitat 2015). In the Arab Republic of Egypt, the law in force calls for detailed plans for cities and villages to be prepared by planning offices within local governments. However, because the central government does not provide the required financial and human resources to allow local authorities to establish these

offices and perform this mandate, only 10 of the 228 participating cities in Egypt have approved detailed plans to date (UN-Habitat 2015).

An essential legal framework approach – i.e. what is the minimum necessary framework to deliver the outcomes that UN-Habitat prioritises – will enable states to meet their legislative commitments in Paragraph 111 of the NUA to, “promote the development of adequate and enforceable regulations in the housing sector, including, as applicable, planning regulations.”

Recognising these challenges, UN-Habitat is conducting a global study of the actual implementation of planning law, SSA being the first regional component of this study to be completed, using a regionally representative sample of 18 African cities derived from the United Nations Global Sample of 200 cities (Angel et al. 2016). It focused on four dimensions of planning systems: urban growth, spatial planning, land management and administration, and institutional capacity. The aim of the study is to consider whether the law is being applied as written, which informs discussion of the effectiveness of legislative design, i.e. are laws being designed to be effective on the ground. In colloquial terms, the study seeks to ask “does the law do what it says on the packet”? The study was restricted to legislative effectiveness, and not the relative merits of the planning outcomes that the laws seek to achieve, the latter being a question of planning policy rather than one of law (UN-Habitat 2019). To provide a comparative analysis, the findings from a recently completed sister study of Land-Rich Developed Countries (LRDC)² have also been occasionally referenced. The subsequent sections of this chapter discuss the findings of this study by presenting the empirical data on growth boundaries, population density, compliance with spatial planning and zoning, land management and staffing capacity. This chapter also highlights the complexities of initiating planning law reforms in SSA, and contains a conclusions section, which underlines that Africa’s planning laws and urban governance systems are relatively weak, and there is a demonstrable need for fresh legal and governance models that can be more effective in delivering the potential of planning to alleviate poverty and contribute to the achievement of the SDGs.

7.2 Urban Growth

Well-planned and managed urbanisation can generate wealth, maximising the benefits of economies of scale and agglomeration, allowing for integrated territorial development and connecting rural and urban areas. On the other hand, indiscriminate growth of cities may result in adverse socio-economic effects such as growth of slums, pollution, urban sprawl, etc. To realise the benefits of urbanisation, cities normally adopt policy and regulatory measures that limit disorderly urban expansion.

²The cities sampled in this region are 18 (14 USA, 2 Canada, 1 Australia, 1 New Zealand).

An urban growth boundary is a regulatory tool designed to limit urban expansion, but not necessarily with the intent of densifying the entire urbanised area. As such, it provides an indicator of whether the law reflects a policy of compactness, even if not as a direct proxy. In the SSA region, two types of growth boundaries are in use: explicit boundaries and implicit boundaries.

An explicit boundary line is set by either a spatial plan or regulatory instrument, while an implicit boundary line is established by the accumulated boundaries of land-use zones in spatial plans. The study reveals that implicit boundary lines are the most common form in SSA with 10 cities³ having them (56%). Four cities⁴ have explicit boundary lines (22%), while four others⁵ did not have any type of boundary (22%) (Fig. 7.1).

The effectiveness of explicit growth boundaries is mixed. Two of the four cities with such boundaries, both in South Africa (Johannesburg and Port Elizabeth), appear to be effective. Explicit boundaries in the other two cities are ineffective, although it is noteworthy that the Kigali Master Plan (2013) is relatively new, meaning it has not been in force long enough to have begun showing its impact on the ground. Implicit boundaries are shown to be largely ineffective, as, in all the 10 cities with such boundaries, current development extends beyond the areas legally available for urbanisation. Accordingly, while the small sample size makes it difficult to make a conclusive determination on which of the two types of boundaries is more effective in limiting urban expansion, it can be argued that explicit ones exhibit more encouraging signs of success. Explicit growth boundaries are more prominent in LRDC than SSA, with 28% of cities having them, but it could not be ascertained which type of growth boundary is more effective in regulating urban expansion.

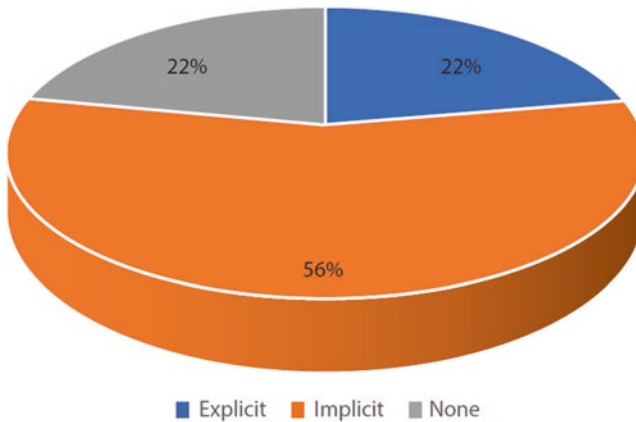


Fig. 7.1 Types of urban growth boundaries

³Addis Ababa, Arusha, Beira, Kampala, Kinshasa, Lagos, Nakuru, Luanda, Bamako and Lubumbashi.

⁴These include Gombe, Johannesburg, Port Elizabeth and Kigali.

⁵These include Accra, Ibadan, Ndola and Oyo.

Population density is an important metric that assists policymakers to understand how cities function, and is also used to assess the potential success of urban development initiatives such as transit-oriented development and compact growth (UN-Habitat 2012). Compactness is believed to lower the cost of providing public services and urban infrastructure (Baruah et al. 2018). Compact cities require less infrastructure per person in the form of roads and utilities, and the opportunity to operate mass transit systems more effectively, with the planning literature offering assessments of the savings from compactness (e.g. Trubka et al. 2010; Calderon et al. 2014). The economic literature also argues that sprawl lowers positive density externalities, increases pollution and commuting times, and enhances social isolation.

While functional compactness, linking density to other factors, is an important concept for sustainability, simple density is also an effective indicator. UN-Habitat has proposed a minimum of 15,000 people per km² as a foundation for a sustainable neighbourhood in a compact city (UN-Habitat 2014). The density of a city determines how close to urban activities most people can be, and high-density city centres mean that they can have effective and efficient public transport opportunities due to the concentration of people near stations, or most destinations can be reached with a short walk (UN-Habitat 2009). A gross density of 15,000 people per km² is suggested as a public transport sustainability benchmark (Institute for Transportation and Development Policy 2017). However, since densities vary greatly, the metric should be related to the local context, for transit-oriented policies to increase the densities along the corridors relative to the base densities in the area (Institute for Transportation and Development Policy 2017).

In SSA, the mean average population density in the built-up area of cities is 4815 people per km². It would take 16 of the 18 cities an average of 60 years to reach the UN-Habitat target density. Based on current population growth and existing

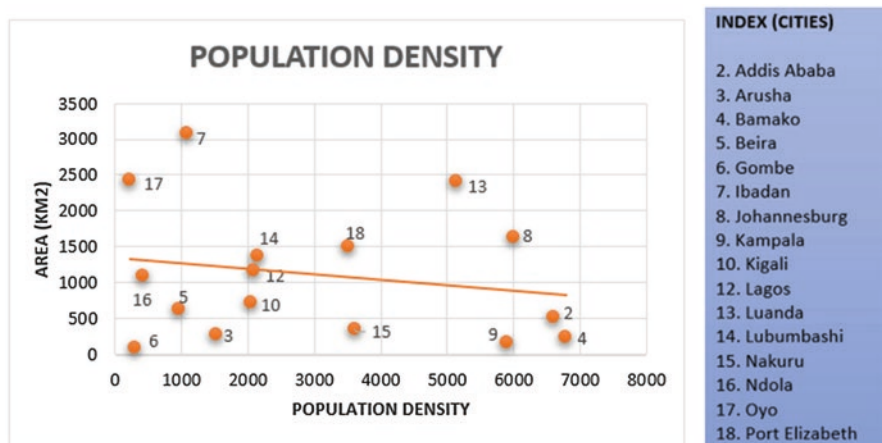


Fig. 7.2 Correlation between population density (p/km²) and land area (km²)

boundaries, Ndola will take the longest time (182 years) to reach 15,000 people per km², while Kampala will reach the target density in only 17 years (Fig. 7.2).

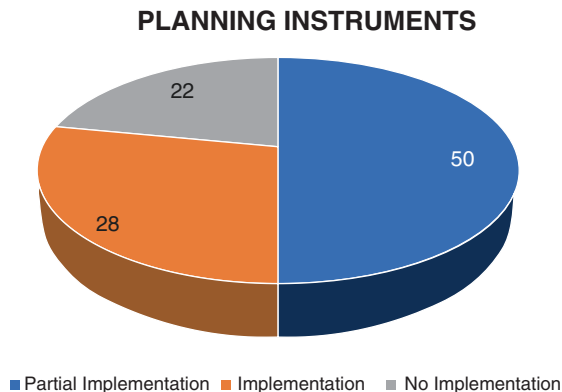
Accra and Kinshasa are the only exceptions, as both have surpassed the UN-Habitat target density of 15,000 people per km². The high density can, however, be explained by the fact that the research was conducted in what is administratively a city, but one that has become the urban core of a larger metropolitan area. For instance, in Accra the study could not cover the entire metropolitan area, because during the site visit in 2018, the relevant planning authority, the Metropolitan Assembly, had jurisdictional powers limited to 16% of the metro area. It is thus evident that most of the cities in SSA have sprawled beyond their urban development boundaries. In comparison, LRDC are promoting a much lower density of development, since the cities will take an average age of 261 years to reach the UN-Habitat density benchmark. This suggests a prevalent trend, where growth boundaries are relatively expansive as compared to need, with significant implications in several areas, including social inclusion, economic efficiency, environmental impact and public service delivery. Planning laws should bridge the gap to ensure that the objective of achieving compactness is reflected in the planning process and its outcomes.

7.3 Spatial Plans

Spatial plans create a path for urban growth that seeks to maximise the positive and minimise the negative effects of urbanisation. They are not simply images of what is desired, but also include a variety of regulatory tools for the management of the built environment. Their efficacy depends upon the coordination of the planning system hierarchy in place. This implies consistency of land-use planning policy objectives from the national to the local and neighbourhood scale, in a system that enables more detailed plans to remain in line with the upper level plans. The drafting of plans should incorporate public participation mechanisms to facilitate negotiations between the state and its citizens around the management of the urban and rural environment. This dialogue legitimises local political decision-making and enhances rule of law – when people feel included, they are more likely to own a process, as it was made with their contribution (Organisation for Economic Co-operation and Development 2001). Of central importance in all contexts, planning laws and systems should not require more plans and planning tools than can be produced and effectively implemented within the capacity of the implementing authority (UN-Habitat 2018).

The study reveals that planning laws in SSA have a mean average age of 14 years, which is relatively short and suggests that one should expect a high degree of contemporary relevance. Further research is required, but anecdotal evidence suggests that this is not the case, principally because legislative reform in the sector tends to be highly constrained by historical practice, and is often developed in the abstract rather than through evidence-based methods. The prevalent requirement in these

Fig. 7.3 Implementation rate of legally required spatial instruments



laws is for the preparation of two types of spatial instruments, as 14 of the 18 cities are required to produce 2 or more plans. These typically include a city-wide plan and detailed local plans. In the four cities where only one plan was required, the study shows that these plans exist. However, in the 14 where more than 2 or more plans were legally required, only Johannesburg has produced the various plans necessary to fulfil the relevant legal requirements.⁶ This puts the proportion of compliant cities at 28% (Fig. 7.3).⁷

These results indicate that planning laws in SSA are requiring more plans and tools than can be produced with the existing capacity of the planning authorities. On the other hand, planning laws in LRDC have a mean average age of 31 years, and thus are relatively older than those of SSA, but their design seems realistic to the needs and capacities of planning authorities, as the volume of required plans, especially detailed plans, is left to the discretion of the planning authorities. It also emerged that city-wide plans in SSA have a mean average age of 10 years, while detailed local plans have a mean average age of 8 years.⁸ Planning frameworks in LRDC have a mean average age of 9 years. This is well within rule of thumb estimates for the renewal of plans, and suggests that there is a legal or policy impetus for cities to frequently update their planning frameworks.

To assess land-use compliance, physical spot checks were conducted in two sites, which are each about one block or equivalent. One site that is near a district predominantly commercial in character, and the second site located closer to the growth boundary or edge of the built-up area. The spot check analysis for SSA indicates that land-use compliance is high (85%) in the urban commercial core (Central Business District) and low (38%) in the city peripheries (Fig. 7.4).

⁶In this city, there are 84 plans currently operational, but the year of approval could not be ascertained in 21% (18) of the plans.

⁷In addition to Johannesburg, the other cities which had the legally required number of plans in place are Bamako, Kampala, Kinshasa and Lubumbashi.

⁸The in-force city-wide plans analysed are 16, while the operational detailed local plans are 194.

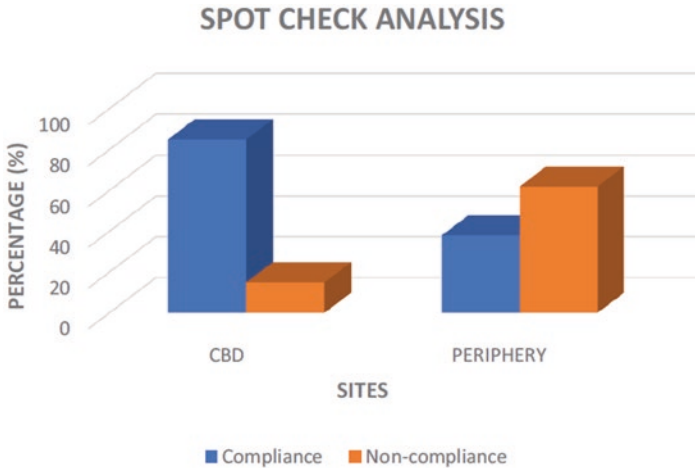


Fig. 7.4 The compliance rate with land-use zoning between commercial areas (CBD) and sites in the city periphery in SSA

Many of the commercial cores examined have been established for long periods, while the fringe of built-up areas is less established and sometimes still fluid, which likely explains this result. This quick analysis of land use did not consider other metrics, such as building volumes and setbacks, which might be more dynamic than simple land use in an urban core.

7.4 Land Administration and Management

Land administration is a general term for the processes of land rights’ recognition, land-use planning, land taxation and developing accurate land information. It is central to the effective management of land and, therefore, critical to development in Africa. Effective land administration systems provide security of tenure, a basis for land and property valuation and taxation, improved access to credit investments, sustainable land use and minimisation of land conflicts (Global Land Tool Network 2016). A proper system must be able to produce services to the general public at affordable costs, if improved land administration is to contribute to the eradication of poverty. UN-Habitat recommends the Fit-For-Purpose approach, which calls for land administration systems that meet the needs of people and their relationship to land and supports security of tenure for all. This approach calls for a flexible and pragmatic approach, rather than requirements imposed through rigid regulations, demands for spatial accuracy and systems that may be unsustainable for less developed countries. The advantages of implementing a flexible security of tenure system are vast: it helps to protect the rights of local communities, while reducing



Fig. 7.5 Plot sizes for residential use and population density in SSA

investment risks as well as integrating residents of informal settlements within the formal system (UN-Habitat 2018).

The size and permitted coverage area of plots, and to a large extent blocks, that may be built upon has a significant impact on the accessibility of land and on street dynamics and service demands. These elements should be effectively regulated and actively managed to fairly balance burdens and benefits. UN-Habitat proposes that regulatory regimes should explicitly advocate for the creation of small serviced plots (20–100 m²) to generate compact building forms as opposed to excessively large plots (+850 m²) that make density difficult to achieve (UN-Habitat 2016b). Minimum plot sizes in many developing countries are considerably higher than the size of plots regularly occupied in informal settlements, and cost more than what many households can afford. In SSA, the mean average plot size for residential use is 591 m², Addis Ababa having the smallest minimum plot size (75 m²) and Lubumbashi the largest (1600 m²). In LRDC, the mean average plot size for residential use is 444 m². Los Angeles has the smallest minimum plot size for residential uses (55.74 m²), while Chicago has the largest (1650 m²). These findings indicate that, in both regions, smaller plots that would support densification and flexible street networks that favour walkability and biking are being constrained (Fig. 7.5).

Dividing land into two or more plots is referred to as plot subdivision. The process could be a legal one carried out through conveyance, where the resulting plot is described and recorded in a land registry. For land subdivision to be a major lever of land-use management and planning at the national and, more importantly, city level, clear implementable regulatory frameworks must be enacted. This will require an appraisal of appropriate infrastructure, technology, capacity and a detailed analysis of the local society and economy (UN-Habitat 2018). In the study, the information was not reported extensively due to challenges facing city officials in accessing and compiling formal land subdivision records. Data on the annual volumes of

subdivision processes was unavailable in five cities (28%). In the remaining 72%, Arusha, Bamako and Oyo recorded zero subdivisions, while Johannesburg recorded the highest number, 10,936. Given the wide range of values and the uncertainty around the data provided, the median average, which is 40, does not represent a genuine average, but rather describes a tendency towards informality or somewhat *ad hoc* formal processes.

Public acquisition of land, often through expropriation, but sometimes through standard commercial transactions, is the most common way cities acquire land for streets, public spaces and infrastructure. Expropriation relies upon the exercise of the eminent domain or compulsory purchase power of the national or sub-national government, to acquire land from private owners for a purpose deemed in the public interest subject to a fair compensation. This can be a useful indicator of active land management by public agencies. As it involves issues of policy priorities, due process of law and financial compensation, expropriation is usually well documented, and the subject of common knowledge. In SSA, from 2013 to 2018, no records of public acquisition of land could be found in 11 cities⁹ (61%). The remaining seven cities (39%), averaged 1008 acres of public acquisition of land. However, in three of these cities¹⁰, the numerical figure of the land area acquired could not be ascertained. In comparison, no records of the public acquisition of land could be found in six LRDC cities (33%), which suggests that the process of land acquisition for public purposes is poorly recorded. This may create problems with accountability against planning and public service objectives, and suggests that governments are relatively passive in land management.

7.5 Institutional Capacity

Institutional structures and processes, which are mostly determined or at least shaped by law, are central to the delivery of technical planning standards on the ground. Planning law requirements have a higher chance of success if they are designed alongside realistic enforcement strategies that are within the capacity of those responsible for compliance. Further, the governmental level at which spatial and administration functions are managed (national, regional or local) affects the ability of citizens to adequately engage in decision-making as well as holding public institutions accountable. In SSA, nine cities¹¹ (53%) manage planning at the municipal level, while eight cities¹² (47%) do so at the regional level. In LRDC, planning is 100% decentralised to the municipal level. The median average of

⁹Accra, Bamako, Beira, Gombe, Ibadan, Kinshasa, Lagos, Luanda, Nakuru, Oyo and Port Elizabeth.

¹⁰Johannesburg, Kigali and Lubumbashi.

¹¹Accra, Addis Ababa, Arusha, Beira, Johannesburg, Port Elizabeth, Kampala, Kigali and Ndola.

¹²Gombe, Ibadan, Lagos, Oyo, Kinshasa, Lubumbashi, Nakuru and Luanda.

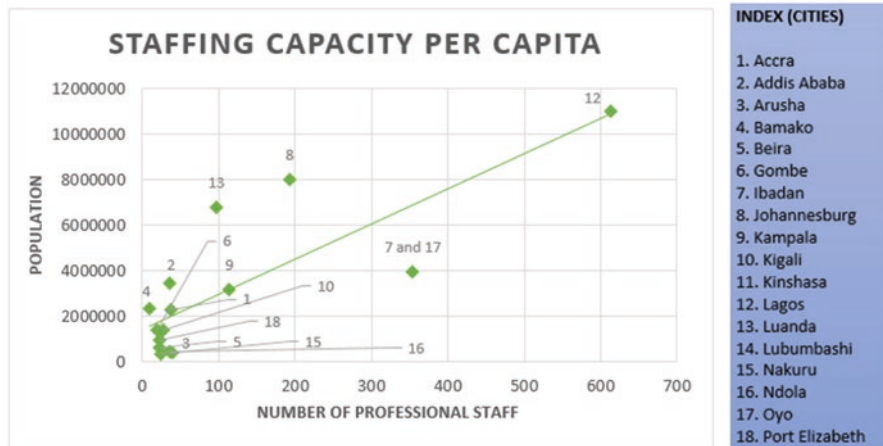


Fig. 7.6 Existing professional staff and the city population in SSA

professional staff in planning institutions in SSA is 36. This can be translated to 1.35 planners per 100,000 inhabitants¹³, whereas the ratio in LRDC is 1.92 planners per 100,000 (Fig. 7.6).

Given that these staff are expected to cover a range of tasks, it is likely to be difficult for city administrations to respond effectively and urgently to local needs and priorities. For most of these cities to manage staffing capacity constraints, UN-Habitat advocates that, before embarking on a process of legislative reform and drafting, they should carry out an appraisal of their resources using a set of performance indicators, which might include total expenditure, degree of self-sufficiency (i.e. proportion of own revenues to total), budget management performance (i.e. absence of deficits) and service delivery performance (i.e. client surveys). This would allow for the legal and regulatory frameworks to have differential approaches reflecting local capacity and resources. Moreover, the focus should be on managing developments that have significant environmental or social impact on the city as a whole or on priority areas within it.

Planning laws contain sanction provisions that mandate planning authorities to undertake various administrative actions to penalise breaches of planning control such as unauthorised construction or change of use. In SSA, records of administrative action to enforce development planning could be found in 15 cities¹⁴ (83%). With regard to volume, prosecution is the most commonly applied enforcement action. A total of 5138 enforcement actions have been undertaken annually in the

¹³In the 13 cities where the number of planners was available, the total population is 46,201,291, and the number of planners is 623.

¹⁴The three cities where records could not be ascertained include Luanda, Addis Ababa and Kinshasa.

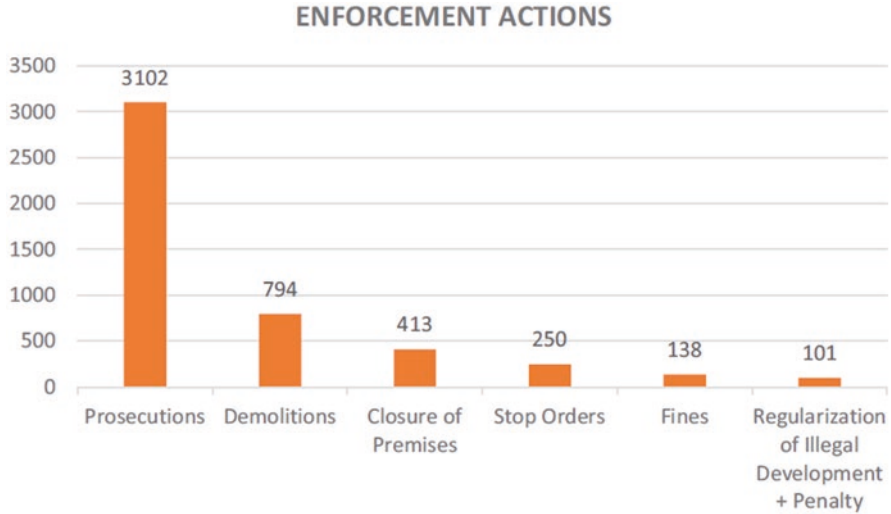


Fig. 7.7 Types of enforcement actions in SSA

region with a mean average of 343 per city. LRDC has a much higher volume of recorded enforcement actions, with a mean average of 102,314 per city (Fig. 7.7).

Without further comparative data and more local information, it is difficult to use these numbers to assess the effectiveness of planning enforcement. The volume of enforcement actions suggests a vibrant administrative life and political will in LRDC planning systems. In SSA, the situation is less clear. It is possible that administrative systems are dormant, or at least less active. It is also possible that administrative actions occur but are not recorded, which raises further questions regarding consistency and accountability.

7.6 Reforming Planning Laws

Law reform is a difficult, costly process that governments should only initiate when there is a compelling reason to do so, for example, if the law has failed to influence equitable spatial outcomes (Berrisford and McAuslan 2017). The aim is to promote stable and sustainable urban governance and build strong social contracts between state and non-state actors. Implementing legal and administrative reforms means changing entrenched practices, with resistance from powerful vested interests who benefit from the exclusionary planning practices.

The process of law reform is complex. A policy paper should initiate debate before legislation is drafted, identifying the problems and setting out options and the implications of each option – for the economy, the environment and households and implementation and enforcement agencies (Home 2013). The legislation needs

to be implementable, administratively open, fair and impartial and coherent. Publicity materials, training materials and the right forms need to be available in the right places and in the appropriate languages. It is important for ensuring that poor and marginalised communities receive the same level of administration as those who are better off. Legal drafting should provide certainty and predictability, and prevent future conflict arising from problems of interpretation. Regulatory impact assessments evaluate such matters as households' ability to comply with the requirements, and examine implementation capacity and issues of remedies, proportionality appropriate to the risk posed, accountability to public scrutiny and consistency of approach. A record should be kept of the concerns that stakeholders raise, and how the drafting team is dealing with them.

A case study in Zambia shows the difficulties of planning law reform. Zambia enacted the 1964 Town and Country Planning Act which was based largely on the UK's 1948 Town and Country Planning Act. In 1976, Zambia introduced a significant change in the legal framework by enacting the Housing (Statutory and Improvement Areas) Act. This Act allowed for parts of a town or city to be excised from the planning system created by the Planning Act, and for a more rudimentary form of planning to be introduced to accommodate low-income residential areas in the city. Since spatial planning did not apply to land under customary law (which forms the largest portion in the country), the application of the primary Act applied to urban areas. However, even in urban areas, it was becoming the exception rather than the rule because of the increase in the improvement areas. Given the declining ability and willingness of local governments to implement the Planning Act even in instances where it applied, coupled with the resistance of other stakeholders, resulted in a failed law reform (Berrisford 2013; Munshifwa 2019).

7.7 Conclusions

Planning laws play a fundamental role in the shape of a city, and should also have considerable influence on equity, directly through policy and indirectly, by giving local governments tools to generate public revenue from urban assets. UN-Habitat's research queried whether laws are being designed to be effective on the ground, and the findings suggest that SSA cities do not capture the potential benefits of planning systems, and African planning law systems are not well informed by policy and new thinking and poorly linked to the real needs of citizens, whether at the individual level, access to affordable and appropriate space for shelter and economic activity, and at the collective level, with inflexible and inappropriate standards creating barriers to achieving an appropriate urban fabric. Important parts of the planning system are simply non-functional in a majority of SSA cities, making it arguably one of the least effective areas of law – a case of isomorphic mimicry. Flawed legislative design and drafting add to political and economic inequality. To harness the redistributive potential of planning law, African legislators and policymakers need

fresh models of planning law that address the shortcomings; otherwise, attempts to update or transform planning laws will fail.

There is no blueprint for planning law reform in SSA. The countries' lawmaking systems are too different, their urban challenges unique, and their political contexts too varied to allow for a strictly procedural manual. Success is more likely through an "Essential Law Framework", where the emphasis is on the achievement of fundamental policy objectives through administratively realistic measures, and when all the actors appreciate the complexity and limitations of the process but can still identify and seize opportunities to bring about change. Of the various tools in local governance used to shape and govern cities, laws are the most difficult to change once they are in place. The costs of getting them wrong are high, and changing them can take decades. Therefore, close attention must be paid to how new planning laws are formulated.

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Chapter 8

Twenty Years of Building Capacity in Land Management, Land Tenure and Urban Land Governance



Walter Timo de Vries, Uchendu Eugene Chigbu, and Pamela Duran-Diaz

Abstract Being the basis of economy in most of African territory, land is subject of conflict in the increasing demand for food, fuel, dwellings and natural resources. In this continuous struggle, governance plays a major role in decision-making regarding the use of and access to land, for which capacity development is crucial among practitioners.

This chapter presents the 20-year based experience of the international master's programme in Land Management and Land Tenure from the Technical University of Munich and its transition to Land Management and Geospatial Science, together with the research model ADLAND "Advancing Collaborative Research in Responsible and Smart Land Management in and for Africa", a project designed to support academic training in selected African universities, committed in developing and sharing skills, tools, knowledge, data and resources across Africa based on the framework of Responsible Land Management.

Keywords Land Management and Land Tenure · Capacity development · Transitions · Urban governance

8.1 Introduction

Capacity development in any domain depends, on the one hand, upon the capabilities of the professionals and the organisations and institutions in which they operate and, on the other hand, upon the organic development processes, communities and

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contexts which support and facilitate (de Vries and Groenendijk 2015; de Vries et al. 2016). Capacity development in land management in the framework of local and urban governance in the African context is needed on how to deal with conflicting social and institutional aims and claims related to land and space, how to secure rights to land, how to allocate use of land, and how to align the interests of a wide variety of stakeholders, each with their own mandates and perspectives on what is considered good or bad. Land management is thus dynamic in terms of perspectives, human values and social and physical developments.

The chapter presents the story of 20 years of research and postgraduate educational experience in land management by the Technical University of Munich (TUM), through programmes implemented in and for the Global South and with a particular impact in sub-Saharan Africa. The study of the evolution of TUM's master programme in Land Management and Land Tenure (LMLT), and the links with recent developments in capacity-building on urban land governance in Africa, gives an answer to the following research question: what has changed over the years and what stayed the same?

By exploring why and how the capacity-building programmes evolved, and what was their impact on developing ideas on land management and land governance, this chapter contributes to highlight that the main challenges and lessons of capacity development in sub-Saharan Africa consist mainly of identifying accurately the prevailing capacity gaps, while keeping inclusive land policy engagement.

8.2 The Beginnings of Land Management and Land Tenure (LMLT) at TUM

By the mid-1990s, land management concerns were high on the agenda on institutional organisations. Agenda 21 drafted through the Rio Earth Summit, formally known as the UN Conference on Environment and Development, needed to be implemented, and multiple professional and scientific domains looked for proper solutions (Edwards et al. 2020). Within the geodetic community, land management, alongside spatial planning and rural development, had always been a key research and educational interest, which implied a high need for graduates in this particular field. Yet, at that time, globally there was already a decreasing trend of the number of students in the geodetic (and land focused) faculties in many universities in Europe. For instance, “the geodetic faculty of the Technical University in the Netherlands had to close due to the lack of students” (Triglav 2004). A similar fate was to befall some German universities until some professional interests groups intervened to ensure its avoidance (Triglav 2004).

As a way to improve the dwindling land sector education, the MSc Land Management and Land Tenure programme (LMLT) was set up by Prof. Holger Magel at the Chair of Land Management, at the Technical University of Munich (TUM), Germany. The philosophy of the programme was “to demonstrate and

illustrate the important role of land rights and land policy, land management and land administration for a sustainable urban and rural development in the broader context of good governance and to teach adequate approaches and tools for their implementation” (Magel and Triglav 2004: 489). It began with a first batch of students selected from around the world in 2001, with the goal of educating young professionals from the Global South. The LMLT programme, which was also known as “Land Management and Land Tenure in Urban and Rural Areas for Professionals”, focused on developing capacity in land management and land administration in an international context, through the support of experiences in Germany and the rest of the world (Magel 2009). Organisations which supported the establishment, and contributed to the execution of the LMLT programme throughout the years, included – among others – the German Academic Exchange Service (DAAD), who invested in the programme with financial support and through the provision of scholarships, the German Association for International Cooperation (GIZ), the Hanns-Seidel Foundation and the members of the Förderkreis Land Management Organisation of Munich (Magel 2009). Various agencies of the state government of Bavaria (in Germany) and the Federal Government of Germany provided financial and administrative supports to enable the successful implementation of the LMLT programme.

One of the unique goals of the LMLT programme was that it focused on capacitating and upgrading professionals with land management experience from the Global South, rather than developing new graduates by a consecutive undergraduate programme. At the time of its conception the programme was rather unique, although perhaps only comparable to some international postgraduate programmes at ITC in the Netherlands at that time. During the lifecycle of the LMLT programme (2001–2020), 18 groups of students (totalling 219 alumni) graduated from the programme, of which 94 (43%) were from 15 different African countries. This group of professionals constitutes a global network in the field of Land Management and Land Tenure. The alumni network of the LMLT programme has generated a force in the cooperation in land management projects and knowledge at both regional and global levels. Most of them work with different international and local institutions, particularly with international development agencies, and the public and private sector sectors in different countries. A survey carried out in January 2020 among 93 alumni revealed that 20.43% pursued a career in Education sector, 30.10% in the Government, 13.97% in international organisations, 3.22% in NGOs and 22.58% in the private sector, while 9.67% are still studying.

Over the 20-year existence of the LMLT programme, the host academic institution (TUM Chair of Land Management) has implemented several activities aimed at developing and strengthening the alumni network of the LMLT programme. These activities range from Alumni Summer Schools in 2006 and 2010 (in Munich) and 2014 (in Windhoek, Namibia). Other activities include Land Management Refresher Courses organised in 2016 (in Indonesia) and 2017 (in Ghana). Besides, the TUM Chair of Land Management – as part of the development of the LMLT programme – has participated in development cooperation tasks, cross-border education and capacity development in the field of land management. Among other activities, the Chair has participated in numerous summer schools organised by its partner

institutions in Chile, Mongolia, Spain, Georgia and Cambodia. All these have been great opportunities for strengthening the cooperation bonds with partner institutions, and have had positive outcomes in strengthening the programme. These events and activities have further developed the TUM Chair of Land Management's lifelong relationship with its alumni network, its partner institutions and other professionals around the world. Also, the close cooperation relations that the TUM Chair of Land Management has built up with university partners in different regions of the world – where Alumni are active, including Asia, Africa, Latin America and Europe – provide a strong basis grasping the development and outcomes of the programme.

The LMLT programme was designed as a combined taught and research-focused three-semester programme. It was meant to educate students in interdisciplinary approaches to land management and land tenure in an international context. It also aimed to place the role of land tenure and land management, in the broader context of good governance and sustainable development. Most importantly, it was designed to provide students with specialist knowledge on the crucial aspects of land tenure and land management in the rural as well as in the urban context. Students undertook full-time modular class lectures in the first and second semester at the Technical University of Munich. All courses combined theory and practice. Students carried out on-the-field research (culminating into a thesis) in the third semester. Overall, the LMLT programme ensured that students were trained in the application of practical methods and tools. Hence, case studies, field trips and lectures given by experts with practical international experience were critical components of the programme.

8.3 Balancing Professional and Academic Training

The LMLT programme's professional component required applicants to have at least 2 years of national and international experiences, and the curriculum was designed to include the application of students' experience in classwork geared towards real-life problem-solving learning. The LMLT programme also aimed to train responsible academics and professionals, who will take their expertise forward to tackle land-related problems in practice, or build the educational capacities of others seeking land management knowledge. The entire structure of the LMLT was designed with the vision of transferring knowledge and applying it to practical cases. It is also designed so that practical knowledge taught is based on theoretical approaches. Applicants were expected to hold a bachelor degree (and master's degree from some countries) in one of the following fields: geodesy, land administration, spatial planning, estate surveying, urban and rural development, land surveying, land valuation, land development and land economy (among other land-related foundational degrees).

The degree offered a professional master's degree for graduates preparing for land management practice with their governments or NGOs (including private sector and regional or global public sector organisations), and also an academic masters

as a stepping stone towards doctoral study in land management, international development and related research areas. Internationally a professional master degree lost part of its appeal for career development, because countries do not accept a professional master degree as being of equivalent value as MSc, or indeed a professional doctorate as equivalent of a PhD, hampering some of the alumni in their further careers. Gradually more emphasis was given to the scientific aspects and marketing the programme as MSc. The LMLT programme is structured for a transition from (post)graduate knowledge acquisition (including skills and tools) towards further studies, and it has undergone growth and development to an entirely new programme.

From the first cohort of 2006, 2 students were admitted into the doctoral programme in land management upon graduation, and a further 15 have subsequently completed PhDs, with another 16 who are undertaking PhDs in various areas of land management at the time of writing. Also more than 15 graduates of the LMLT programme have continued to PhD studies in universities in Canada, Australia, Sweden, Kenya, New Zealand, the Netherlands, China and other universities in Germany. The LMLT programme thus serves as a preparation for PhD studies candidature.

8.4 The LMLT Programme in Response to Changing International Educational Infrastructure

Two aspects are crucial for the changes in LMLT: system accreditation and internationalisation strategy. On the first, by agreement with the Bavarian State Ministry of Sciences, Research and the Arts (StMWFK), TUM formally committed itself to system accreditation in 2005, applied not to individual programmes but all TUM schools and associated educational programmes in entirety. The procedure consists of an internal self-evaluation followed by external appraisals conducted by an agency certified by the Accreditation Council. The benchmarks used include the “European Standards and Guidelines for Quality Assurance in Higher Education” (ESG) and criteria specified by the Standing Conference of Ministers of Education in Germany. A first round of accreditation relevant for LMLT was in 2006–2007, resulting in various conditions and further requirements, the most important being to elaborate on learning techniques, the thesis supervision process and the research part component. A second round of accreditation in 2012–2014 resulted in new study regulations and module descriptions, changes in coordination and resources, different styles of teaching and supervision, and greater involvement of alumni as teachers. A new round of accreditation scheduled for 2020 was challenging for the LMLT, as structures and requirements for master programmes in Engineering had changed. The length of such programmes had to be 2 years (4 semesters, representing 120 ECTS), with modules of 5 or 6 credits, elective module possibilities and mobility windows. The LMLT started a new study programme design, which led to the end of LMLT and the inception of a new programme called Land Management and Geospatial Science (LMGS).

During the past 20 years, various developments have affected the possibilities for the LMLT to sustain itself as an accredited master programme competing at international level, the most influential being the so-called Bologna process and Erasmus mobility funds. The Bologna Declaration (named after the University of Bologna, where in 1999 it was signed by 29 European education ministers) prescribes international standards for educational goals, profiles, competences, modules, length of programmes and quality management. These have gradually trickled down in educational administrations, including TUM. The impact has been guidance on practical choices on design, profile and execution of master programmes in Europe (Keeling 2006; Ravinet 2008; Brooks 2019). Adapting to these Bologna standards has become more complicated, resulting in a *de facto* admission restriction to professionals with at least 2 years of experience, losing some of the LMLT's appeal to European students, who with Erasmus mobility funds increasingly study at other European universities. For LMLT such mobility possibilities were not possible, although requested increasingly in recent years. Secondly, evaluations of master programmes now require standardised module lengths, more exchange and elective possibilities within programmes and new qualifications requirements or teachers. The original structure of the LMLT, where experts were contracted to execute portions of modules in block sequences, was difficult to fit with such requirements.

From the beginning, the LMLT was aligned with various international academic and NGO networks, particularly the International Federation of Surveyors (FIG), the Global Land Tool Network (GLTN) of UN-Habitat, and academic institutions promoting capacity development and research in land management. Globally the number of international graduate programmes in land management, land administration or land governance has grown in the past years (Groenendijk et al. 2013), partly with north-south collaboration.

Similar master programmes with a development or developing country focus as LMLT

Bahir Dar University	Ethiopia	MSc and PhD programmes in land administration
Technical University of Malaysia	Malaysia	MSc in land administration and development
Ardhi University	Tanzania	MSc in land management
Namibia University of Science and Technology (NUST)	Namibia	Master of spatial science (land administration)
Kathmandu University	Nepal	Master in land administration
University of Twente	Netherlands	Master of science in geoinformation management for land administration
IHS/Erasmus University	Netherlands	Master in urban land governance for sustainable development

Many of these programmes were modelled fully or partly on the LMLT programme developed by TUM, and learning from its experiences and reflecting the changing global needs for LMLT, financial sponsoring for the LMLT through DAAD with more in-country fellowships (e.g. in Tanzania, Bahir Dar and Namibia

University of Science and Technology). LMLT needed to reinvent itself after 20 years, with active networking leading to international spin-off projects (such as capacity development in Cambodia, Philippines, China), often involving TUM alumni. A successful ongoing project of the Chair of Land Management with focus in Africa, ADLAND (“Advancing collaborative research in responsible and smart land management in and for Africa”), relies upon the existing LMLT African alumni network and NELGA (the Network of Excellence on Land Governance in Africa) to reach professionals and researchers in land management through curricula reviews, refresher courses, research development and writing workshops, staff exchange, international conferences and publications. Since 2017, ADLAND project has counted 250 participants from 24 different African countries, with the aim of advancing the concept and praxis of responsible and smart land management to address African land policy needs, made possible through the networking of African and European Land Management research centres (Duran-Diaz et al. 2019).

The LMLT programme changed regularly over the past 20 years, with re-organisation of modules (e.g. emphasising outcome competencies, rather than content); the topics of master theses reflect how priorities of land issues have changed (Table 8.1).

The focus of land management topics has changed and broadened over time. Privatisation of land was regularly addressed at first but gradually declined in interest. The topics of gender and urban-rural interactions have gradually emerged, and topics such as corruption and transparency and decentralisation have both emerged and disappeared over time. Topics of continuing interest include registration of informal and/or customary land tenure, land conflicts, land use planning, tenure security, urban expansion and land-related aspects. Tsunamis became topical after the large tsunami in Southeast Asia, especially for Indonesian students. Students from Ghana have been interested in registration of customary tenure. Development of cadastral systems has developed into either pro-poor land administration or fit-for-purpose cadastres. Land use planning has evolved into tenure responsive land use planning and housing policy into affordable housing policy. Land conflicts are often associated with land acquisition for transportation planning and with spatial development, and recent topics are the role of land management in smart city development and the use of open data.

The Chair of Land Management at TUM has been an intellectual home for many alumni, who return regularly, contribute to teaching or supervision and help improve the programme. The conversion of the 18-month LMLT master’s towards a 2-year LMGS master’s, starting in 2020, deals with contemporary challenges and context. Capacity development never stops. It remains a continuous process, which requires new change-makers to handle the new challenges and contexts with new insights.

Table 8.1 Number of LMLT master theses by topic 2001–2020

Main topic/issue/aspect	2001–2005	2006–2010	2011–2015	2016–2020
Land tenure and natural resources policy, conservation management, forest, deforestation, (integrated land and water/river /coastal management	2	6	4	3
Land tenure and food security	1			
Land tenure instruments, (participatory) land use planning, tenure security		2	4	4
Land tenure regularisation, informal land registration, customary land registration, land titling, customary land rights	3	1		4
Development of cadastres and land registration systems, land administration, land information systems, parcel-based mapping	2	4	8	8
Land consolidation, land readjustment, land fragmentation, resettlement	2	2	5	3
Urban land development and management, transit-oriented development	4	1	3	2
Informal settlements planning, mitigation			1	1
Communal land management			1	
Monitoring and mapping land use (changes), with GIS and remote sensing, planning support systems	4	3	2	
Land suitability				2
Rural development, poverty reduction	1	1	2	2
Land valuation, taxation	2	2	2	2
Community participation, community based land management	1	2	1	2
Land law (reform), land policy reform		2	1	1
Land conflicts, conflict, dispute resolution		3	5	5
Land privatisation		4		
Disaster management, emergency mitigation, flood risk		2	1	6
Land management and decentralisation		1		
Corruption and transparency in land administration		1		
Public land management		1	1	
Urban-rural interaction, coordination			1	1
Environmental risk management			1	
Mitigating climate change			1	
Land acquisition, land mobilisation, large-scale land acquisition/land grabbing			4	5
Mining and land management			1	2
Housing market, affordable housing			1	5
Land investments, land market			1	2
Sustainable tourism			1	1

8.5 Land Management: Interaction Between Practice and Science

Land management as an emerging discipline is based upon understanding the characteristics and impacts of land from the level of land data through the land parcel to policy, governance and social transformations. This makes it a science, a practice, a multidisciplinary and a transdisciplinary field while not always understood this way. Land management has evolved over the decades related to geodesy, including land, estates and quantity surveying, to enable the training of high profile surveyors or geodesists to promote sustainable societies around the world (Enemark 2009; Chigbu et al. 2018; Duran-Diaz et al. 2019). Debates on the developing applicable theories and methodologies, and practical instruments, mean that the role of land management has always been changing (de Vries and Chigbu 2017). Expansion from narrow geodesy (or surveying) to wider land management (encompassing issues beyond surveying) raised the issue of how land management should contribute to societies. The expansion from geodesy (earth measurement to enable development) to land management (using earth measurements to effect politics, places and people) was an important transformation. Land management has come to be understood as “both a science and a practice, although it has often been primarily denominated as a collection of practices which can be described, categorized, conceptualised with some scientific concepts”:

A logical and subsequent implication of this contemporary convention is that land management tends to refer primarily to a normative and prescriptive set of ‘best’ practices, i.e. practices which have worked in one or more cases, and which, given the resemblance of other contexts, or the inertia of certain localised institutions, are assumed to work well in other contexts and circumstances as well. This is however a back engineering approach. This approach is not inappropriate per se, and it works in many circumstances, but it lacks a fundamental innovative character. It does not automatically and fundamentally lead to new insights and new constructions of concepts and conceptual relations, nor does it allow for an explanation or justification why one approach is normatively better or worse than another approach. (de Vries and Chigbu 2017)

They argue that land management should be viewed as a science (rather than just a practice) as it is “based on fundamental ontologies, concepts, constructs, relations between concepts, assumed cause-effect relations, epistemologies, methodologies and axiologies”. That is, land management evolves from multidisciplinary to transdisciplinary science.

Land management is distinctive because it has direct connections to the politics of decision-making, improving human settlements or places and living conditions of people. In theoretical and practical terms, it encompasses aspects of various disciplines and professions – e.g. governance, property, real estate, land law, social-spatial relations, economics, behavioural perceptions and belief systems (de Vries and Chigbu 2017). The implication is that one may not need to be a geodesist or surveyor to study or practice land management, needing a little knowledge from relevant land management fields and a specific field of specialisation. Hence, a planner, a lawyer, a development economist, a natural resource expert, a forester, an

agricultural economist, a valuation surveyor, a public administrator, a real estate surveyor and an engineer may all have spaces in the land management domain, cutting across, politics, policymaking, governance, sociology and anthropology. Thus it depends upon people from different disciplines working together to solve societal problems connected to land and natural resources.

Over the past decade, its disciplinary boundaries are dissolving, with some professions teaching or practising land management from their disciplinary lens. One finds land management disciplines situated in agrarian studies; the built environment; area studies; humanities, sociology, environment and engineering studies in different universities around the world and land management departments in ministries as diverse as youth, culture, economy, agriculture, manufacturing and industry. The multidisciplinary and transdisciplinary nature of land management is related to achieving global development agendas such as the defunct Millennium Development Goals (MDGs) and now the Sustainable Development Goals (SDGs).

8.6 Land Management Programmes as a Knowledge Base for Global Action

Many global challenges have made land management a sought after course of learning or programme (Mitchell et al. 2017; Duran-Diaz et al. 2019). Every part of the world is experiencing unprecedented challenges on land and natural resources at different levels. Some of the factors responsible for these challenges are known, but the strategies for improving them remain unknown. Dealing with these challenges demands efforts in the education of land professionals charged with the task of handling land-related problems. Building the knowledge and learning base (in terms of design good methods, tools and practices for sustainable land management) is a precondition to achieving the global development agendas beyond the SDGs. Among the challenges, the most critical include tenure security, women's land rights, spatial data for spatial enablement of societies and climate change.

Land tenure primarily concerns the manner in which land rights are held while land tenure security related to having legally (and socially) enforceable claims on land (Chigbu et al. 2016). The problem of land tenure security arises because the global landholding structure (particularly in the Global South) has a direct link to inequality between the rich (predominantly those with secure tenure) and the poor (mostly those with insecure tenure). Tackling the challenge posed by tenure security in many countries of the Global South has policy linkages, which can have direct impact on the food security of the population of a whole nation (Ntihinyurwa et al. 2019). This is one of the reasons why the LMLT programme of TUM addressed the training needs of mid-career professionals from the Global South (and around the world) so that they could work in national and international organisations dealing with land policies in their countries and around the world.

“A typical character of land tenure or property systems in developing countries is that the systems exclude women (implicitly and explicitly)” (Chigbu 2019). A study on how men and women’s land tenure issues can be amicably reconciled to ensure gender parity in resource distribution is mandatory for tackling global poverty issues. Programmes in land management, such as that LMLT programme, allow participants to gain the requisite knowledge needed to probe and resolve this challenge.

Developing effective and easy-to-use land information systems requires expert knowledge in geoinformation and geospatial sciences. It is a policy issue, but it has data-driven technological and informational perspective necessary for navigating decision-making in socioeconomic, political and natural resources governance. University-level education is unavoidable for those who want to acquire the knowledge and skills for practising spatial development.

Climate change is considered to be one of the most pressing challenges facing the world today. “Given the already high levels of exposure to natural hazards, limited capacity to respond, and significant geographical challenges ... climate change will act to intensify a range of natural challenges into the future” (Mitchell et al. 2016). A major aspect of vulnerability to changing climates is the exposure to hazard. Many environmental hazards (e.g. forest fires, flooding and excessive warming of many parts of the earth) are increasing linked to climate change (Davidson et al. 2019; Edwards et al. 2020). Further increase in global warming and climate-related hazard will have more serious risky consequences to the lives and people on earth. Therefore, mitigation and adaptation-based knowledge are necessary for addressing future exposure to climate change. The development and implementation of land management programmes at the university level provide knowledge building platforms for creating awareness, as well as tackling the situation. Together with tenure security, gender and spatial data issues to land (among many others), climate change is one of the grand challenges that draw people to land management through university-level education.

The significant changes in LMLT thesis topics reflect to a certain degree the changes of priorities and urgencies in research, although forgotten topics may return in a new form. Land consolidation still remains an issue as does expropriation or privatisation of land. Land management specialists need to be multi- and transdisciplinary, keeping an eye for the main sustainable goal while remaining flexible and adaptable. Such values remain core of the new educational programmes in land management. Land management is strongly affected by new technological developments, such as artificial intelligence, neural networks, blockchain and big data science (de Vries 2018; Wagner and De Vries 2019) and societal changes in public sector legitimacy, fake news and presence or absence collaborative neighbourhoodship.

8.7 Training for African Urban Land Governance

The challenges for land governance in Africa today require a re-envisioning of professional roles, especially a greater recognition of the importance of local CBOs and CSOs. The practicalities include building stakeholder relationships, dispute resolution methods and record-keeping systems. The traditional professional skills of surveyors, planners and lawyers need to be supplemented by more political skills of mediation, dispute resolution and local coalition-building. Such new approaches develop through reflective practice but also through education and capacity-building measures. The academic community has a responsibility for course review and revision and teaching materials designed for new approaches, such as the World Bank's Rule of Law in Africa publishing project. The continued growth of professional doctorate programmes as alternatives to the traditional PhD can offer a model linking academic to professional practice that is particularly relevant to development issues.

Cross-disciplinary collaborative research in universities can offer new perspectives. For instance, the inclusion of law within the social sciences in universities has stimulated new areas of academic investigation, and traditional legal scholarship (jurisprudence and “black letter law”) can be enriched by other approaches such as sociolegal studies, empirical legal studies, critical legal geography, legal history and legal anthropology. The networks of knowledge – academic and professional, national and international – are important arenas for new thinking to develop and circulate. Worth mentioning are the International Federation of Surveyors (FIG), the African Real Estate Society (with its own academic journal), the Association of African Planning Schools (AAPS) and various Commonwealth Associations.

Another important source of new approaches is the diaspora of academics and professionals, both within Africa and beyond, who can contribute new outside approaches within a shared professional perspective. Africa has lost many skilled professionals through the diaspora, but often they wish to contribute their knowledge and expertise, if facilitating mechanisms can be found. Examples include initiatives of the African Community Development Foundation and Voluntary Service Overseas in piloting a Diaspora Development Volunteer programme in Kenya, and the Malawi Women's Association seeking to connect diaspora professionals and entrepreneurs with their country of origin. Individual higher education institutions have created travel scholarships to allow visits by diaspora professionals.

Much of the LMLT work at TUM was related to food security and tenure security issues in more rural than urban contexts. Just in the last decade, that has changed fast, with the adoption in 2015 of the SDGs. Also, to ensure that the process of African development embraces the importance of land in the continent, the African Land Policy Centre (ALPC) (formerly called the Land Policy Initiative or LPI) was put in place. “The ALPC is a joint programme of the tripartite consortium consisting of the African Union Commission, the African Development Bank and United Nations Economic Commission for Africa” (Network of Excellence on Land Governance in Africa 2019).

The ALPC has established a continental Network of Excellence on Land Governance in Africa (NELGA), operating through five “regional nodes” (North, South, East, West and Central Africa) to enhance training, promote research, build academic networks and monitor and evaluate as on land governance, for which TUM has been key academic support through the aforementioned ADLAND project. As at 2019, 7 lead universities had been selected from some 70 partner institutions, universities and research institutions with proven leadership in academic training, education and research in one or more aspects of land governance:

1. Namibia University of Science and Technology (Windhoek) for Southern Africa (11 countries)
2. Ardhi University (Dar-es-Salaam, Tanzania) for East Africa
3. Kwame Nkrumah University of Science and Technology (Kumasi, Ghana) for Anglophone West Africa
4. Université Gaston Berger (Senegal) for Francophone West Africa
5. Institut Agronomique et Veterinaire Hassan II in Rabat, Morocco, for North Africa (also hosting the open-access *African Journal of Land Policy and Geospatial Sciences*)
6. Université Yaounde I (Cameroon) for Central Africa
7. University of Western Cape (Cape Town, South Africa) as Technical Node

The key functions of NELGA were identified as improving land-related curricula; providing and facilitating academic education and training; defining an agenda for research and conducting it; developing a repository for data, indicators and information; promoting knowledge management, dissemination and networking and designing monitoring and evaluation systems. Specific areas for curriculum improvement were identified (mostly political rather than scientific matters) which included legacy impacts of colonialism, state ownership and sovereignty over land, decentralisation of land administration, land administration in customary jurisdictions, corruption in land management and conflict resolution.

As an example of work by the NELGA regional node in NUST, Namibia is building a community of practice for land experts, policy-makers and practitioners. Its creation of an Integrated Land Management Institute within its Faculty of Natural Resources and Spatial Sciences (FNRSS) has allowed the development of reputable and multidisciplinary research and public outreach activities in land, administration, property, architecture and spatial planning. It conducts national and regional land governance policy dialogues between academia, government, research and civil society organisations. Germany funded a postgraduate scholarship and adjunct professor specifically on land governance. Relevant research reports have included on leasehold rights in Namibia and the value and importance of public consultations policy-making process.

8.8 Conclusions

After 20 years the Land Management Chair at TUM decided to continue the education in land management and design capacity development programmes at an international level. The new master's programme in Land Management and Geospatial Science (LMGS) continues the legacy of LMLT, offering new possibilities to potential students from all over the world interested in global issues of land management in the context of local and urban governance.

What has changed significantly in the 20 years of experience is, first of all, the availability of land management education worldwide. In Africa alone many universities are now offering master programmes in either land management or land administration. Local institutions are available in most parts of the world which have become gradually equipped with the human resources to deliver the programmes, partly due to the LMLT efforts, given the share of alumni working in organisations such as GLTN or FAO, developing tools to implement land interventions. Such capacity development in a domain such as land management has needed 20 years to grow and to sustain.

Secondly, the manner in which land management is carried out, and the tools we need to teach and learn to support land management activities, have grown and dramatically changed. Where LMLT at the beginning was just starting with the application of GIS, remote sensing and global positioning systems, currently there is a stronger need to adopt a larger variety of technologies and link these technologies to a larger variety of societal contexts. This is however an expertise which is typical of land management. With the emergence of new technologies, the tools to collect, share, present and distribute data have rapidly increased. Such tools do not just address purely technical or engineering problems as well as many of the methods, tools and instruments of the land management profession and science. In addition, political goals and narratives relevant for land management objectives have dramatically changed. For this reason the creation of networks of knowledge across Africa and the world, through FIG, GIZ, GLTN, NELGA and ADLAND, among others, has been crucial in the development of innovative approaches towards land management and land governance.

The changing TUM, German, European, African and international educational infrastructure provides new opportunities for networking and mobility. In such a fast-changing environment, the possibilities of knowledge transfer and exchange and the role of universities as knowledge holders and keepers are changing, in a transition from capacity development by knowledge transfer to capacity development by knowledge appropriation and customisation.

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Chapter 9

Stocktaking Participatory and Inclusive Land Readjustment in Africa



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Abstract The rapid growth of African cities has posed major challenges in the provision of adequate housing, public infrastructure and services as central and urban local governments have lacked the financial and institutional capacity to support urban expansion. Against the background of these challenges, in 2010 Participatory and Inclusive Land Readjustment was introduced as a tool for enhancing sustainable urban development through enabling stakeholder participation and inclusiveness in decision-making. About a decade later, this study assesses the progress of Participatory and Inclusive Land Readjustment in Africa so as to derive lessons from country experiences. A mixture of desk review and case study approaches was employed. The study found that Participatory and Inclusive Land Readjustment has potential in two respects. First, it is an appropriate land development tool for dealing with urban expansion and regeneration problems. Second, it can be used to narrow the gap between governments' centralised control approaches and the existing reality of people's needs and demands. Implementation in the African context has faced challenges that can be addressed through refinement of the tool to, among other things, consider community knowledge, expert opinion and city needs.

Keywords Land readjustment · Urban expansion · Participation · Inclusiveness · Urban governance

9.1 Introduction

Rapid urbanisation continues as a phenomenon of the twenty-first century, with developing countries the locus of much demographic and economic transformation (Cohen 2004). This process will see the world's urban population grow by an additional 2.5 billion people by 2050, with about 90% of that growth occurring in Africa

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and Asia (De Souza et al. 2018). The rapid rate of urbanisation has been accompanied by rising poverty, inequality, accelerating urban sprawl, infrastructure dilapidation and environmental degradation (Peng et al. 2011; De Souza et al. 2018).

Many cities in developing countries have been failing to respond to rapid, complex and dynamic urbanisation rates. Local governments have faced a challenge in their effort to provide housing, social services, infrastructure and safe public spaces, resulting in the marginalisation of many urban dwellers, a high incidence of poverty, unhygienic living conditions and informal economies (UN-Habitat 2016a, b). A key element of these challenges has been the lack of serviced land and infrastructure to support urban development (El-hadj et al. 2018). Local governments have limited financial resources and institutional capacity to support rapid urban development, and strategies that make cities competitive and relevant in the twenty-first century are needed. Among key strategies such as unlocking economic growth in cities, urban local governments are called upon to rethink the current urbanisation paradigm, and mainstream management and development interventions that might promote inclusive, liveable and sustainable urban development (Gong et al. 2016). How can urban local governments in developing countries undertake urban development processes that are self-sustaining? Could adoption of the Participatory and Inclusive Land Readjustment (PILaR) approach provide the answer?

This chapter reviews progress with the implementation of PILaR in Africa and examines how the tool can be further refined from experience. First, the background to sustainable urban development is provided. Second, a conceptual framework for PILaR is outlined. Third, the methodology that was followed in the study is explained. Fourth, the results of the study are presented and analysed. Fifth, the results are interpreted in the context of the goals of the PILaR technique and the broader African experience with land readjustment. Finally, key issues are summarised and recommendations put forward on how the PILaR technique can be further refined.

9.2 Comparing Histories of LR

There are basically three methods of development land assembly: voluntary cooperation between landowners, compulsory purchase by a public authority, or a mixture of the two with some form of land value capture between public and private stakeholders. Where private rights to property are generally protected by law (including human rights law), any state expropriation has to be justified as in the public interest and subject to due process, with compensation paid in accordance with an accepted valuation code. Land readjustment (LR), and variations of it, is the third method, having evolved out of rural land consolidation as a legal instrument to assist in urban growth situations. It seeks to facilitate development by combining the assembly and re-parcelling of land for better planning, and financial mechanisms to recover infrastructure costs and distribution of the financial benefits of

development (sometimes known as betterment) between landowners and the development agency (Home 2007). LR for urban development is more recent than rural land consolidation, and its historical application in different societies and cultures is instructive to understanding what can be achieved (or not).

Modern LR is usually considered to have started in Germany with the 1902 *Lex Adickes* of Frankfurt-am-Main (although the United States' federal capital, Washington, DC, was an early version of LR in the late eighteenth century). At the end of the nineteenth century, Frankfurt's physical expansion was being handicapped by ancient inheritance laws, which created long, narrow strips of land difficult to convert for development. German surveyors called for legislation to facilitate the voluntary "regroupment" and exchange of property, and a mayor of Frankfurt, Franz Adickes (1846–1915), became a champion of the concept, successfully steering legislation through. Initially applied on a modest scale, it made a large contribution to the reconstruction of Germany after the Second World War and remains a recognised procedure in areas of fragmented landholdings, although in recent years its use has declined in favour of planning agreements.

The application of LR in Japan offers a striking example of the international diffusion of legal instruments for land management and has been called the "mother of modern Japanese town planning". The modernising Meiji dynasty in the late nineteenth century adopted German (more particularly Prussian) legal regulations on rural land consolidation, building regulation and compulsory purchase. German-style LR following the Frankfurt example was applied to rebuild Tokyo after the earthquake of 1923, and many of Japan's cities after the destruction by Allied bombing in the Second World War. By 2000 some 30% of the urban area of Japan had been replanned with LR (in Japanese *kukaku seiri*), affecting some 360,000 ha on land and the biggest application of LR by any country. It remains in that country a standard function of municipal planning departments, the main way to ensure basic infrastructure at reasonable cost, with landowners bearing some of the burdens through their land contribution. A common explanation for its success was the long Japanese tradition of social hierarchy and deference to authority, allowing "consensus to be reached relatively quickly and easily, but in recent years opposition has forced the abandonment of many projects, as landowners increasingly claimed the reduction of their land area without compensation to violate their constitutional property rights".

Japan spread the LR method across much of Asia, introducing it to its then Korean colony, and the rapid post-war growth of South Korea was partly achieved through LR: its capital of Seoul by 2000 had completed 654 LR projects covering 43,814 ha. The active promotion of LR by Japan's international aid agency has contributed to its application in Indonesia, Nepal, Thailand and Malaysia.

The British introduced LR into India through the 1915 Bombay Town Planning Act, another borrowing of the *Lex Adickes* approach. The Presidencies of Bombay, Calcutta and Madras were the cornerstones of British imperial power in India, with a strong paternalist style of government, following a mixture of British-derived and Indian land law. The post-Bismarck German governance model of a strong state with social welfare powers, and strong municipal powers over land, suited the colonial Indian situation at the time, especially Bombay's tradition of interventionist

government, which was unpopular with private landowners who were receiving little or no compensation for loss of property taken by the government for urban development. The Bombay Act sought to improve land assembly arrangements for suburban housing development, where land values had quadrupled in 10 years around the stations serving the suburban light railway. The Madras Presidency also followed the Bombay example in its Town Planning Act of 1920, and after Indian independence in 1947, LR continued to be applied in the states of Maharashtra (successor to Bombay), Gujarat and Kerala. LR worked in British India, where private landownership was fragmented, private developers were unused to bearing costs of infrastructure and land values were being pushed up by rising population and land shortage.

The British colonies might apply LR in their colonies, but it was never incorporated into British town planning law (Home 2007). It is less suited to societies with a common law framework of property rights and strong traditions of concentrated private landownership. Urban development in Britain was often undertaken by aristocratic estates paying for much of the infrastructure themselves, although the local authority was empowered to undertake the work and recover costs from the landowner. In Britain, the land values which were needed to fuel LR were depressed in the years during and after the First World War, and compulsory purchase was preferred over LR for land assembly if voluntary arrangements could not be agreed.

Opportunities for LR also arose in the Middle East, especially British Mandate Palestine. There it had roots in the Ottoman Land Code, where *Matruki* land tenure allowed public authorities to claim a minimum of 40% of urban land without compensation for roads and other public infrastructure facilities). The British Mandate administration's Town Planning Ordinance of 1921 included LR provisions (called "parcellation") drawing upon Ottoman land traditions, the Bombay Act and German-Jewish immigrants' knowledge of *Lex Adickes*. A condition of building permit approval was prior approval of a parcellation scheme, and the local town planning commission could impose its own scheme. The post-1948 successor state of Israel carried forward provisions for "repartition" (now known as reparation, *reparcellatzia* or in Hebrew *halukah hadasha*) into its 1965 Planning and Building Law, article 7. Repartitioned land was revalued to recognise the added development value created by the scheme, according to its proportional area; schemes were registered at the land registry, and any mortgages and other charges were transferred to the new plots; landowners rejecting the scheme could require the public authority to acquire their interest (a provision similar to purchase notices in British planning law). These provisions for repartition were widely used in the close-settled coastal zone of Israel (including Tel Aviv, Netanha and Haifa), both for urban expansion and densification, allowing the replacement of family houses with apartment buildings at higher plot ratios. Private ownerships buried within state-owned land could be reallocated, the LR process being driven by rising land values, costs and delays of compulsory purchase were avoided, allowing land to be reserved for public purposes and a better road infrastructure achieved at little cost to the public authority.

In neighbouring Lebanon, the redevelopment of central Beirut after the civil war of 1975–1989 applied a version of LR (or land pooling). Speedy reconstruction was seen as a political necessity but complicated by extreme fragmentation of property rights, multi-generational family ownerships and complex tenancy structures, all compounded by absenteeism, abandonment and squatting during the war. The 160-hectare central area contained 1630 separate parcels, and, in one extreme case, 4700 claims were lodged for a single plot in the market area. The 1991 master plan required land assembly into large sites, demolition of 80% of the old city, increased densities (up to four times) and extinction of much of the ancient land ownership mosaic, and municipalities were empowered to create real estate companies for urban renewal, influenced in part by the British model of London docklands regeneration and urban development corporations. Beirut central area was handed over to such a company, *Solidere* (incorporated in 1994), underwritten by \$300bn in bonds from foreign investors (largely in Saudi Arabia and the Gulf). “Type A” shares, issued to existing property owners, represented 65% of the total shares, while “Type B” shares were sold on the open market. The enabling legislation locked property owners and occupants in a compulsory association with property investors, the former offering their rights as equity and the latter the equivalent in cash (after land valuation). The shares in effect replaced title deeds and extinguished any right of occupation or return. Small private property owners opposed the scheme as an unconstitutional interference with (and undervaluing of) their private property rights, but it went ahead.

These examples show LR’s potential in a number of possible situations:

- Town expansion into peri-urban areas of fragmented ownership which lack planning or infrastructure
- Redevelopment when previous buildings and land ownership patterns have been disrupted or extinguished by war or natural disaster
- Regeneration sites where land assembly may be complicated by pre-industrial ownership mosaics
- So-called antiquated subdivisions to allow smaller plot sizes or higher densities
- Environmental protection areas in coastal or waterfront situations to allow a rearrangement of frontage ownerships
- Multilevel or vertical replotting of urban areas to achieve higher densities

LR can thus secure serviced urban development with little direct public funding, avoiding costs of land expropriation. Historical land patterns can be replaced by planned development suitable for modern transport networks, and land for public purposes and physical infrastructure is paid for from the shared profits of the development. The landowners participate in the profits and may retain their land (readjusted), and meet their wider social obligations without the sometimes contentious mechanisms of planning agreements. Large projects can achieve economies of scale, and land speculation is reduced by discouraging “hold outs” (landowners withholding their land to get a higher price).

For LR to work certain prerequisites are necessary:

- A functioning land market with accepted valuation rules and rising land values (normally found in urban expansion situations)
- Legal recognition through enabling legislation
- Adequate cadastral records
- A development agency (public-, private- or community-based), enjoying public confidence, and with appropriate technical expertise
- Political acceptance and a willingness by landowners to share the development gain with a development agency

Procedures can be complex and slow (but then so is land assembly by other methods, especially compulsory purchase). Dissenting landowners are compelled to participate, and small owners may lose out. The method suits high-value plots in a rising market, while low-value plots may not generate enough uplift in value to justify the procedure. It is more suited to land that is generally undeveloped with structures, because participants may contest the distribution of costs of demolition and site preparation. In the past it best suited countries with social traditions of a strong state (e.g. Germany, Japan and the former Ottoman empire), where land ownership has become fragmented, perhaps by land redistribution programmes (as in post-war Japan), and sometimes where previous land patterns have been disrupted by human or natural disasters. The use of LR in recent years has declined, with private property rights becoming a human or constitutional right, and judicial interventions have tended to reinforce private against municipal rights. Landowners resist official rather than free market valuation and procedures and exercise rights of objection to schemes, while changes in ownership (or family disagreements) can delay the process.

It would be premature, however, to conclude that LR is an outdated relic of state control, superseded in an era of privatisation. Flexibly applied, it still offers advantages: a choice of development agency (whether public authority, urban corporation or private real estate company), an opportunity for local community involvement, a less drastic approach than complete expropriation and a stronger role for planning. It accords with current neoliberal philosophies of partnership between stakeholders. In a world of increased population upheaval and pressure upon scarce land resources, a management tool for reorganising land for urban development will remain relevant, especially one which allows some retention of existing property rights. Much depends, however, upon availability of the necessarily specialist expertise and implementation capability and the willingness of institutions to adapt and innovate.

9.3 Towards Participatory and Inclusive Land Readjustment

The global community is working towards the 2030 Agenda for Sustainable Development. Commonly referred to as the NUA, it highlights three development enablers: (1) rules and regulations, (2) urban planning and design and (3) municipal finance mechanisms (UN-Habitat 2016b). “Along with national urban

policies, these three development enablers underpin planned urbanization and they can generate sustainable urban development” (UN-Habitat 2016b, p. 180). The NUA lays out global standards and principles for the planning, construction, development, management and improvement of urban areas, with its five main pillars of implementation: national urban policies, urban legislation and regulations, urban planning and design, local economy and municipal finance and local implementation (UN-Habitat 2014). A correlation between good urbanisation and development is at the centre of the NUA. It makes provision for linkages between good urbanisation and job creation, livelihood opportunities and improved quality of life, which should be included in city policies. This highlights the connection between the NUA and the SDGs, particularly SDG 11 on making cities and human settlements inclusive, safe, resilient and sustainable.

The concept of sustainable urban development is dynamic and evolving. Reference has often been made to the Brundtland Report which defined sustainable urban development as one that should meet the needs of the present city citizens without compromising the ability of future generations of the city to meet their own needs (United Nations 1987). It has sometimes been defined in terms of economic sustainability to reach a new level of socio-economic, demographic and technological output. Social sustainability is another component centred on social principles of futurity, equity and participation, especially involvement of public citizens in the land development process. Environmental concerns are the third dimension of sustainable development which focuses on land development and nature preservation and the protection of natural systems (Hakimi and Firoozabadi 2018). When encompassing all components of sustainable development, urban development minimises environmental impact and improves the social and economic conditions of a city.

Developing cities that are safe and inclusive, self-sustaining, well planned, built and run and offer equality of opportunity and good services for all can aid in defining sustainable urban development (Cohen 2017). Human health, wellbeing, safety, security and opportunity will be influenced by the way urban settlements are planned. Sustainable urban development is achieved when every citizen is given the responsibility of managing where they live, play and work. It should also be noted that social development, environmental protection and economic productivity depend on citizens satisfying their needs and priorities. Equity is one aspect of sustainable urban development, but an impediment to achieving it has been the lack of affordable serviced land connected to the city (UN-Habitat 2016).

The LR tool has been used for many years in different parts of the world to facilitate urbanisation of rural land, optimise the use of existing land in urban areas and improve the supply of serviced land (Surveyors of Malaysia 2014). By allowing for planned and managed urban extension and densification, the tool has supported sustainable urban development (de Souza et al. 2018). Success of land readjustment has depended on factors such as strong and well-resourced local authorities, a supportive regulatory framework, quick and efficient dispute resolution mechanisms and a good land records system. In developing countries incentives for participation have often not been present, and transaction costs have been substantial, and this

could partly explain the tool's limited application in Africa (Lozano–Gracia et al. 2013). LR is, however, still at an early stage of development in Latin America and Africa (UN-Habitat 2016). Ethiopia has shown its potential for peri-urban development, but awareness of the method there is still limited.

In 2010 UN-Habitat sought more participatory and inclusive LR (PILaR). Conventional land readjustment had marginalised the poor when public authorities only worked with landowners and imposed decisions on local communities. In a developing country context, therefore, the conventional approach to LR needed to address issues of inclusion and sustainability (UN-Habitat 2014). The logic behind PILaR is that there is a lack of well-located serviced land for urban development, limited planning capacity and a lack of tools to deal with the more political and negotiated aspects of planning. PILaR was introduced as a tool for use by public authorities in tackling urbanisation challenges such as urban sprawl and slums development through a rights-based approach. PILaR thus adapts conventional LR to developing country contexts by being participatory in process and inclusive in its outcomes (UN-Habitat 2012). Figure 9.1 shows essential aspects of conventional land readjustment: enabling legislation, sustainable financial plan and cohesive urban design.

The PILaR methodology foregrounds governance and inclusion as key strategic objectives of urban management. It strengthens governance through a preliminary legal framework assessment for land readjustment and capacity development of public authorities. All stakeholders such as landowners, tenants, informal residents, municipal authorities, land professionals and community organisations are involved in planning and decision-making – thus emphasising the participatory, engaging and consensus building process. Inclusive outcomes are achieved through a variety of mechanisms such as mixed land-use planning and social integration. The poor

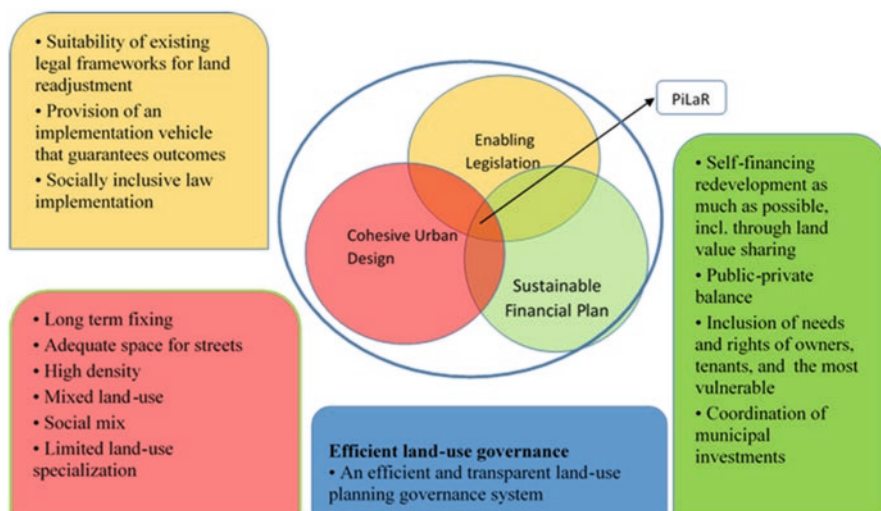


Fig. 9.1 PILaR methodology. (Reproduced from Padros 2014)

and other vulnerable groups such as women, youth, ethnic minorities, the old and disabled benefit from the process. This is achieved through the use of a financial framework that does not only benefit the landowners and public authority but also people who do not own land such as lodgers, tenants and occupiers. The costs and benefits are more equitably distributed among the private and public sectors through public-private partnerships, legal reforms and capacity building.

PILaR is expected to improve land management and planning processes that promote the optimal use of land and improve infrastructure and services leading to sustainable urban development. It is an effective method of urbanisation including urban regeneration, slum upgrading and post-conflict reconstruction that ensures a fair distribution of land value changes among landholders.

9.4 Case Studies of LR

This section reviews progress with PILaR through two case studies of pilot projects in Angola and Egypt (other pilot projects having been introduced in Kenya, Uganda, Ghana, Nigeria and Burkina Faso). Data was obtained from reports of international organisations (UN-Habitat 2012, 2013, 2014, 2016a, b), United Kingdom Department for International Development (UKaid 2015) and non-governmental organisations (Development Workshop 2012). Review of cases generated important evidence about the feasibility of PILaR for sustainable urban development in Africa.

PILaR programmes have adapted conventional land readjustment to improve outcomes for those who live in the project area, particularly the poor.

9.4.1 *Angola's Experience*

PILaR was introduced in Angola after four decades of conflict, involving substantial destruction of physical infrastructure, and rapid growth of urban population from displacement (Cain et al. 2018; Development Workshop 2012; UN-Habitat 2013). This situation created an informal land market with illegal land tenure and lack of access to basic services. Committed to improving urban planning and development management, the provincial government of Huambo invited the NGO Development Workshop to lead PILaR projects in the Fatima and Camussamba neighbourhoods.

9.4.2 *Lessons from the Fatima and Camussamba Cases*

The Fatima project (Fig. 9.1) was generally successful, and demonstrated the importance of a multifaceted stakeholder approach to land readjustment. Stakeholders included the provincial government, traditional leaders, local administration,

Box 9.1 Land Readjustment in Fatima

The project started in 2006 and ended in 2007. A multi-stakeholder management group comprised the provincial government, traditional leaders, local administration and NGOs. The second step was social mobilisation to sensitise local leaders and the general population about the project. A baseline study was undertaken, involving a household census and data collection on governance structures and existing infrastructure. Mapping of existing land-owners and boundaries was done with handheld GIS and GPS devices and a physical readjustment plan prepared reserving land for housing and utilities. The rights in the plan were defined and granted by the provincial government, followed by implementation of the layout plan. Licences were issued to old and new occupants and recorded in the land registry developed by the Huambo administration. Implementation entailed the demarcation of new boundaries with wooden pegs. Basic infrastructure such as roads, water points and electricity was provided with funds from the sale of some land parcels (Fig. 9.2).

Source: Adapted from Development Workshop (2012) and Cain et al. (2018)

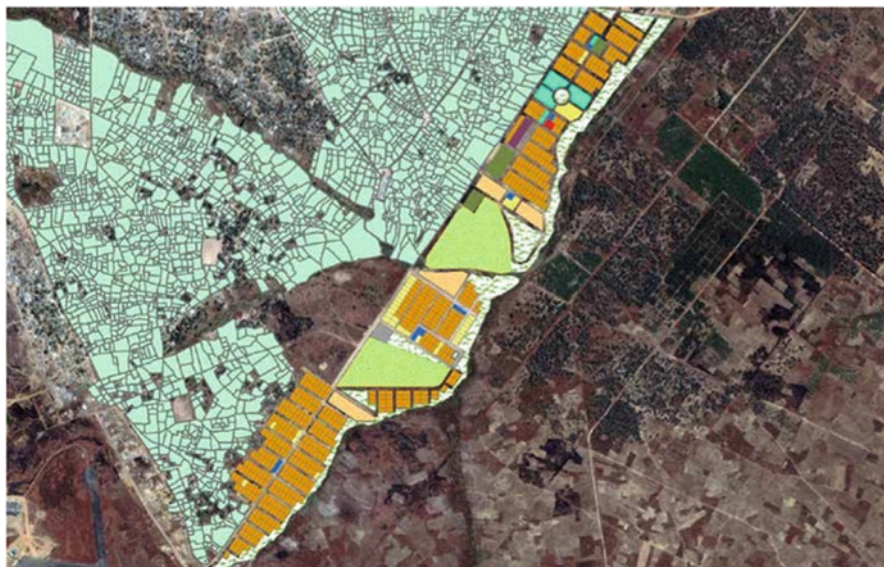


Fig. 9.2 Fatima land readjustment project. (Reproduced from Cain et al. 2018)

non-governmental organisation and the general population. This approach enabled stakeholder participation and cooperation, fostered inclusion and development within the framework of legislation and resonated well with needs and aspirations of the target population. The participating CSO, Development Workshop, advocated for the protection and promotion of women's land rights. Higher public awareness

of land rights and obligations was also promoted through a comprehensive public and education campaign on the land rights and duties of urban residents (Cain et al. 2013).

Development Workshop facilitated social mobilisation through sensitisation meetings that focused on explaining the benefits of the PILaR project (Development Workshop 2012). These, among other things, included the creation of inclusive communities, land compensation, accommodation of people on the housing waiting list and improving access to social services. The campaign revealed the losses associated with lack of participation, and using community members as enumerators deepened community mobilisation while providing a basis for the land readjustment plan.

Initial resistance by land occupiers was overcome eventually with warnings that existing occupants risked losing their land without compensation if the government were to take over and implement a traditional compulsory land acquisition process (Cain et al. 2018, p. 144).

The Fatima case was a socially diverse neighbourhood with a population made up of different income groups, ranging from the poor to the middle class which was created. Instead of monetary compensation, the poor were allocated redeveloped land parcels. The planning of informally settled areas availed land to sitting tenants, people on the waiting list and for infrastructure development. The sale of land parcels to people on the waiting list provided for the creation of an infrastructure fund which assisted in the development of basic infrastructure such as roads, water points and electricity supply. A remarkable outcome was the regularisation of the tenure status of land occupiers, reduction of land conflicts and incorporation of an informal settlement into the formally planned part of the city.

The Camussamba project (Fig. 9.2) was perceived as a failure, implemented after the enactment of a new decentralisation law shifting land management responsibility from provincial to local governments. While decentralisation of decision-making on land management was laudable, the municipal administrations were not granted fiscal autonomy, nor did they receive training and capacity building for land administration (Development Workshop 2012). Central government kept control over all public finance, and the municipal administration had no incentive to raise revenue from land, so it is not surprising that no infrastructure fund was formed.

9.4.3 *Egypt's Experience*

Land readjustment was introduced in Egypt as a mechanism to regularise land tenure in informal areas (Abd-Elkawy 2018; Soliman 2017; Ragheb et al. 2016). It sought to bring agricultural land into Egypt's urban development. The PILaR tool was employed to bridge the gap between the requirements of planning policy and regulations on the one hand and the existing "reality of people's interests, needs, and demands" on the other (Soliman 2017).

Box 9.2 Land Readjustment in Camussamba

The project was implemented after the new legislation on decentralisation was passed in 2007. The new law meant that land management authority was transferred from the provincial government to the municipal administration. The same overall project implementation approach used in Fatima was adopted but with some procedural and outcome divergences at some of the stages. At the stage of developing the physical plan, the Institute for Agricultural Research (Chianga) that occupied 80% of the project area was not involved, as getting hold of their staff and decision-makers proved time-consuming.

In layout implementation, concrete marks were used instead of wooden pegs in the demarcation of property boundaries as the latter had proved unreliable from the Fatima experience. In the redistribution and sale of land parcels, compared to the provincial administration, the municipal administration was weak and inexperienced for its new responsibilities. It distributed land parcels for free to individuals on the land and housing waiting list, which effectively affected the implementation of basic infrastructure as there were no funds to invest in infrastructure. The owner of bulldozers for new roads was paid with two land parcels, but otherwise no infrastructure was developed under the project.

Source: Adapted from Development Workshop (2012) and Cain et al. (2018) (Fig. 9.3)

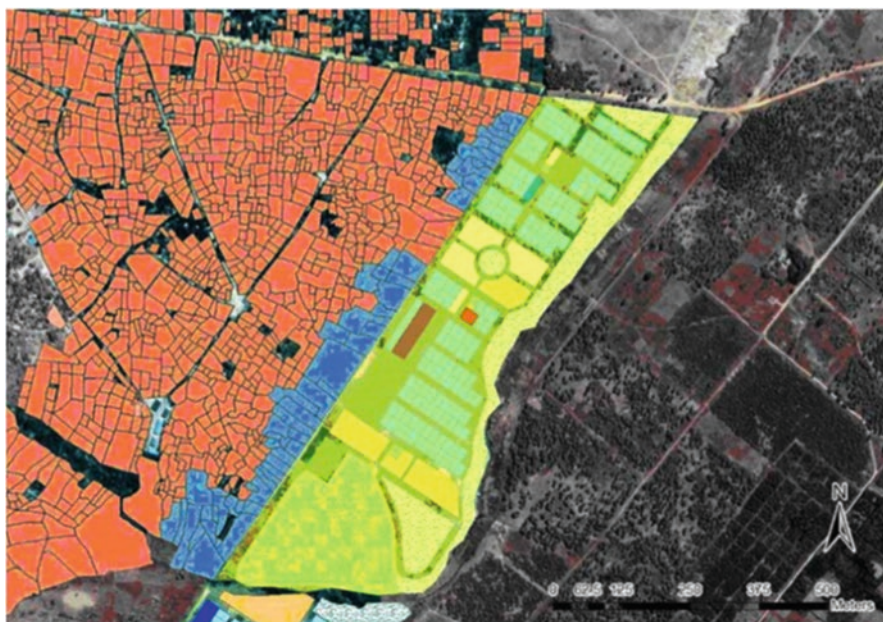


Fig. 9.3 Camussamba land readjustment project. (Reproduced from Cain et al. 2018)

Box 9.3: Land Readjustment in Benha City

Case summary

The PILaR project started in 2013 through cooperation between UN-Habitat and the General Organization of Physical Planning (GOPP) in the Ministry of Housing. These created a technical team that was tasked with driving the participatory and inclusive land readjustment project. The key objective of the project was to test PILaR as a possible methodology for implementing the Detailed Plan for New Urban Land Expansions (DPNULE) in Egyptian cities.

A field survey collected information on land ownership, number of land owners and current spatial status of the site. After the survey, the technical team developed a series of plans over a period of 6 months, with the participation of land owners and governorate. The logic of the participation was to create land parcels that matched landowners' number and land sizes. Landowners wanted to maximise profit through vertical development of buildings. This was at variance with town planning provisions and resulted in disputes which got resolved through several alterations to the plans, leading to the setting up of basic principles and choices to reach consensus among landowners. The principles were premised on the values of transparency, equity, trust, credibility and efficiency. Through these values, the technical team established social networks and bridges of trust to ensure participation and consensus among stakeholders.

After consultations, feedback and amendments, the PILaR plan was approved by the governor of the Qaloubia governorate in 2014, and the decree for the project was issued in the Egyptian Gazette in 2015 (Fig. 9.4).

9.4.4 Lessons from the Benha City Case

PILaR was introduced in late 2013 through efforts made by the UN-Habitat in cooperation with the General Organization of Physical Planning (GOPP) at the Ministry of Housing. These formed the technical team to implement the Benha project, responsible for drafting and redrafting of plans. The implementation of the PILaR project took 18 months, with 6 months of technical work and 12 months of evaluation, negotiations, review and official approval of stakeholders comprised the technical team, the General Organization of Physical Planning and the landowners, and participation was achieved through workshops and meetings, at which options were presented and negotiated. Comparative plan scrutiny sessions were conducted to make plans that were responsive to local needs and desires, with map proposals produced from GIS (Soliman 2017, p. 326). Landowners could draft land subdivisions, and their participation created a neighbourhood that respected local culture, local talent and local lifestyles, while they felt in control over their own environment and were convinced to set aside land for infrastructure and services.

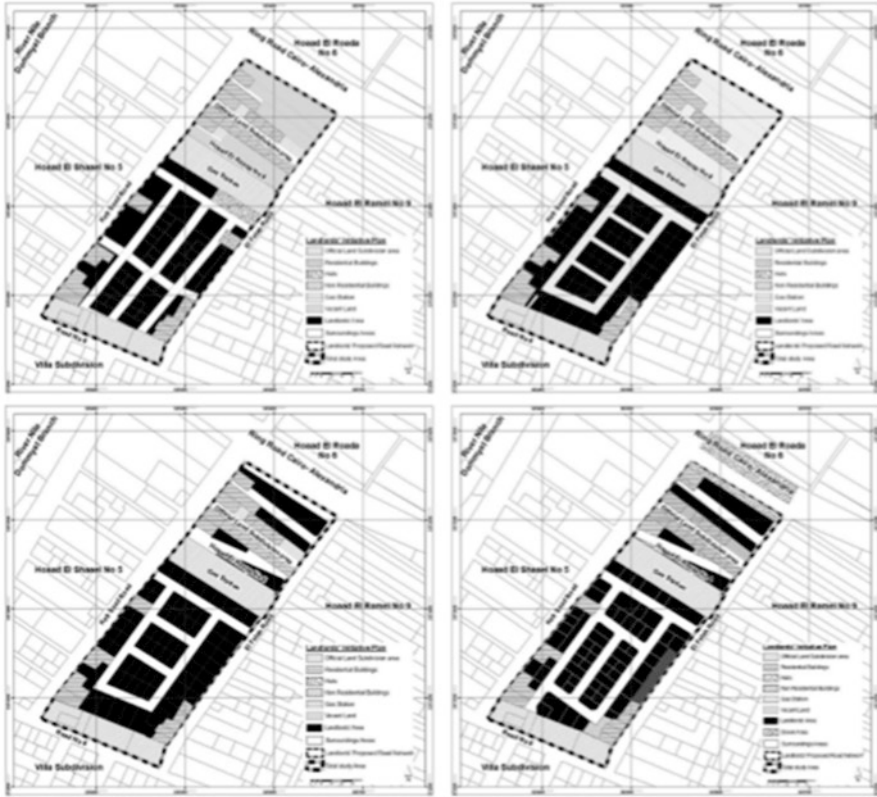


Fig. 9.4 Various options by the technical team to reach a land readjustment. (Reproduced from Soliman 2017)

Their participation presented an important entry point to the political decision-making needed for exploring differing viewpoints and initiating negotiations, and led to a positive coordination if not consolidated cooperation (Soliman 2017, p. 326).

Having been negotiated outside the planning regulations, the PILaR project in Benha city empowered landowners to create neighbourhoods that were sensitive to their needs. The series of engagements and positive negotiations among landowners generated a web of social networks. The PILaR project as well fostered the provision of basic services and created income generation possibilities for the landowners.

9.5 Conclusions

The experiences of Angola and Egypt with PILaR pilot projects showed both promise and problems for applying the method elsewhere in Africa. The cases highlighted shortage of technical expertise, institutional capacity and overdependence

on western models (Development Workshop 2012; Cain et al. 2013; Soliman 2017). Reasons for success of the Fatima project included incentives built into the project. Africa shows promise in growing land markets, using tenure regularisation to reduce conflicts and bringing private sector partners into land development (Cain et al. 2018; Chavunduka 2018). Given the active vibrant land market in the urban periphery, land parcels formed from readjustment found ready buyers, and proceeds from the sales helped with an infrastructure fund to invest in layout planning, installation of water points and electricity and road formation. These benefits accrued to former occupants, new owner-builders and the state, thereby providing incentives for collaborative work. Thus African cities can tap land values as rising demand has converted customary lands in peri-urban areas into a tradable commodity (Amanor 2008). Camussamba, however, lacked such incentives because decentralisation law required municipal administrations to remit all locally raised income to central government, upon whom they relied for any local investment funds allocated through their annual budgets.

An important achievement of the Fatima project was that families that had lived as informal occupiers had their land tenure regularised and incorporated into the formally planned city. The adjudication of boundaries that took place during regularisation immensely contributed to the reduction of land conflicts. Peri-urban customary land in Africa is characterised by conflict as its ownership is usually claimed and contested by traditional leaders, the state and clans, and, as has been shown in the Fatima case, PILaR offers promise towards the management of the problem. Studies on peri-urban land management in Botswana and Ethiopia have highlighted the potential of LR in addressing land conflicts in peri-urban areas (Fourie 2004; Adam 2015). The rising demand for land and housing in African cities creates opportunities in private sector land development, with development companies finding it viable to partner with landowners and possibly local governments in peri-urban areas for rationalising development (Chavunduka 2018).

These opportunities exist, however, in a context of institutional weaknesses. Angola, for example, inherited at independence in 1975 a weak local government system, but an efficient planning system is a prerequisite for land readjustment:

Participation of government institutions in terms of implementing activities has been weak. Underlying this weak participation is a lack of skilled staff and proper equipment in most institutions and in some cases a lack of clearly defined responsibilities. (Development Workshop 2012, p. 51)

Successful implementation of the Fatima project relied on the technical capacity of the leading agency, Development Workshop, drawing on its own personnel and resources. Even in Egypt, lack of technical capacity arose as in the case of Benha city, and it was concluded that PILaR can only be implemented with technical enablement (Soliman 2017). An evaluation of another project in Asia for GLTN concluded: “The PILaR land readjustment tool is considered to be expensive and excessively complex by UN–Habitat staff who supervised its piloting” (UN–Habitat 2018, p. 59). Challenges relating to the adaptation of land readjustment to Africa relate to the western conception of it as a top-down approach relying upon local governments well-resourced in finances, technical skills and political backing. For

PILaR to fit, the African context would require simplified procedures for planning, valuation and cost recovery and precautions against corruption.

Rapid informal urbanisation in African countries has given impetus to the pursuit of sustainable urban development, one priority being the provision of affordable serviced land for equitable development. PILaR was intended to contribute to this by distributing among stakeholders of land, costs and benefits. The Angola and Egypt pilot projects showed that PILaR can be self-financing and create secure tenure for informal land occupants but also institutional and technical weaknesses in the African context. As pilot testing of PILaR continues, the following improvements to the current version need to be considered:

Institutional capacity building of municipalities and the state. There is need for fiscal reform to enable municipalities to capture some of the land value increments as cities grow. The state needs capacity building for urban policy that provides enabling legislation for land readjustment. Both the state and local governments need capacity building in land administration and management.

Introduction of a land and property curriculum at African universities. This would supply skills needed for land readjustment and sustainable urban development in general such as planning, land surveying, valuation and real estate development.

Regulation of private land development companies. The private sector interest in land development needs to be nurtured and regulated as they are an important stakeholder in land readjustment.

The incorporation of the above recommendations in the PILaR tool would improve its utility, thereby increasing its scope for adoption by local government. PILaR should be implemented when preconditions exist of a robust and rising land market, an atmosphere of good will and trust, stakeholder buy-in and adaptation to specific environments (Development Workshop 2012).

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Chapter 10

Governance Challenges in African Urban Fantasies



Ismaila Rimi Abubakar

Abstract Satellite settlements are recently booming around major African cities, often as comprehensively planned and self-contained new towns. These large-scale projects are influenced by the visions of global, smart, and sustainable cities, and are funded largely through international real estate investments aimed at the middle- and upper-income markets. A research issue left largely unanswered is the lack of clarity about the place of such “African urban fantasies” within the governance structures of the countries where they are situated, including decision-making, public participation, accountability, transparency, environmental sustainability, and equity. This chapter reviews the governance structure for such megaprojects, and how it undermines the social inclusiveness goal of contemporary global development agendas. The chapter concludes with key lessons that we can take from these new towns towards a more appropriate and inclusive governance structure.

Keywords Africa, developing countries · New satellite towns · Modernist planning · Smart sustainable cities · Sustainable urbanisation · Urban governance

10.1 Introduction

Over the past three decades, developing countries have been witnessing a spate of building new towns around booming cities, most noticeably in Africa and Asia, which are the future of the world’s urbanisation (Abubakar and Dano 2018; Resnick 2014). Between 2015 and 2050, urban areas in Africa and Asia are anticipated to add about 2.5 billion people or 90% of the estimated growth in the worldwide urban population (World Bank 2019). African’s rapid urbanisation rate of an average of 4% annually will result in urban populations growing by about threefold to reach

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1.3 billion people or 60% of the total population by 2050 (World Bank 2019). The resulting surge in demographic pressure is increasingly placing a serious strain on already overwhelmed housing, infrastructure, and basic service delivery mechanisms, with significant implications for poverty, inequality reduction as well as environmental sustainability (Abubakar 2018a; Grant 2015; Muhammad and Abubakar 2019). More than two-thirds of the continent's urban residents live in poor housing and slums that lack safe and adequate basic services, according to the African Ministerial Conference on Housing and Urban Development (AMCHUD 2005). For example, Nigeria's housing deficit was over 17 million units in 2012 (Abubakar and Aina 2019). Similarly, 51% of the population in Sub-Saharan Africa (SSA) used unimproved sanitation facilities or practiced open defecation, and 43% used unimproved drinking water sources in 2017 (UNICEF/WHO 2019). Also, SSA is home to 42% of the global population living below the extreme poverty line of USD1.90, compared with only 6% in East Asia (World Bank 2019).

Several developing countries are building new satellite towns to address these challenges of rapid urbanisation, because of the availability of private investments, as well as employment creation opportunities, and elites' desire to flee from urban blights and live in modern buildings with enhanced security (Brill and Reboredo 2019; Cain 2014; Smit 2018; Van Leynseele and Bontje 2019; Watson 2014). In Asia, for instance, several new towns have been developed or are under construction, including about 100 in China, 29 in Iran, 10 in Indonesia, 5 around Seoul in South Korea, 2 around Phnom Penh in Cambodia and many others in Latin America and the Middle East (Abubakar and Doan 2017; Lee and Ahn 2005; Zamani and Arefi 2013).

In Africa, more than 40 new towns are currently being constructed (Cote-Roy and Moser 2019). They include Modderfontein, Waterfall and Cradle cities around Johannesburg, Sheikh Zayed City near Cairo, Eko Atlantic City to alleviate Lagos' problems of congestion and crumbling infrastructure, Appolonia and Hope City near Accra to lessen congestion and to foster private enterprise, Roma Park around Lusaka, Kigamboni close to Dar es Salaam, Kilamba town in Angola and 15 new towns in Kenya, including Tatu City to decongest Nairobi and Konza Techno City to serve as "Kenyan Silicon Valley" for spurring regional economic development (Herbert and Murray 2015; Keeton and Nijhuis 2019; van Noorloos and Kloosterboer 2018; Watson 2014).

The African new towns, referred to as "urban fantasies" (Watson 2014) or "privatized urbanism and laissez-faire approach to city building" (Herbert and Murray 2015), are mainly satellite towns around existing thriving cities, developed by global real estate companies and designed using the modernist master planning approach. They are largely self-contained towns built from scratch and are privately funded, even though there is state support in site and services provision, especially roads, water, and sewer networks (Cain 2014; Grant 2015). The projects are inspired by the globalised "world-class" and "smart city" thinking and their promoters "promise some impressive amenities and functioning systems that will enable the urban lifestyle most Western cities provide" (Abubakar and Doan 2017, p. 547). While a few of these new satellite towns have already been built and occupied, many are either at different stages of completion or their development is in the pipeline (Brill and Reboredo 2019; Cote-Roy and Moser 2019).

Several scholars argue that, notwithstanding their contribution to alleviating housing shortages and creating jobs, the new satellite towns face challenges that could undermine their long-term sustainability. According to Vanessa Watson (2014), most of these projects are unaffordable to most of the population who are poor and earn livelihoods in the informal sector, and often lead to evictions of vulnerable poor residents. Besides, the satellite towns lack adaptation to the local context (Benazeraf and Alves 2014) and could worsen inequalities and marginalisation (Kester 2014). A key research issue left largely unanswered is the lack of clarity about the place of such “African urban fantasies” within the governance structures of the countries where they are situated, including existing decision-making processes, public participation, accountability, transparency, environmental sustainability, and equity (Obeng-Odoom 2017; Watson 2014). The new satellite towns “often hope to exist outside existing democratic structures and within new, special, planning regulations”, which challenges the existing urban management structure (Brill and Reboredo 2019, p. 174).

Based on extensive analysis of secondary data, this chapter reviews the governance challenges in planning and managing new town megaprojects in Africa. The paper attempts to answer the question: what lessons can we take from these megaprojects for a more appropriate and inclusive local and urban governance? This study is important because good governance is a key goal of contemporary global development agendas and a vital instrument for socio-economic growth, poverty eradication and inclusive, equitable and participatory development.

10.2 New Towns: Urbanisation Strategy in Developing Countries

In several developing countries, building new towns has become the new urbanisation model, aimed at spurring economic development, reducing overcrowding in large cities, and addressing urban problems (Benazeraf and Alves 2014). A new town refers to a comprehensively planned settlement that is efficient and orderly with greenspaces between dwellings and “efficient transportation corridors, and land uses separated into mono-functional zones” (Abubakar and Doan 2017, p. 548). It is usually built from scratch, based upon the utopian visions of the Garden City that arose in the early twentieth century to respond to congested and dirty living and working conditions of the industrial cities (Percival and Waley 2012). Building a new town is a worldwide urbanisation policy, which according to its advocates can provide the solution to urban challenges through improved living conditions, including good housing, services, and transportation, and a healthy environment (Van Leynseele and Bontje 2019). A new town is an exemplary form of modernist planning that emphasises the separation of land uses into functional specialisation, using grand plans drawn by experts and implemented, using a rational, top-down approach, and scientific rationality rather than indigenous knowledge, values, and input (UN-Habitat 2009). To avoid the problem of dealing with decay in existing cities, vacant land provides modernist planners with a chance to regulate the size,

structure, and development of a new town, to “break with tradition and initiate social change” (Abubakar and Doan 2010). This modernist model has been critiqued as a centralised solution imposed on local communities without regard to consensus, reducing the diversity of cities and the vigour of social life and making cities more prone to cultural stagnation and social discontent. It is also seen as less appropriate for pluralistic societies, since it is founded on master narratives that enforce scientific and exclusionary viewpoints on socio-culturally heterogeneous people (Abubakar and Doan 2010).

In Africa, new towns were first created during the colonial era to serve as administrative and economic centres for the colonial establishment. This creates a colonial legacy of a dual city phenomenon, with planned, low-density residential and commercial areas adjacent to unplanned informal settlements (Home 2019; Moser 2015). After independence, new town development became a national development policy used to establish post-colonial new capital cities including Abuja, Lilongwe, Gaborone, and Dodoma (Abubakar and Doan 2010). These new cities were mostly built from scratch using modernist planning principles that discourage native urban morphology, expertise, and building materials, thereby creating what Moser (2015, p. 33) called “a visual hierarchy that positions global corporate culture as the modern future and the local and indigenous as the backward past”. Constructing new towns in former colonies was made the symbol of identity, nationalism, and political power inserted in modernist designs (Percival and Waley 2012). According to Grant (2015, p. 302), “colonial ordering and layering of social and economic space bears little resemblance to contemporary urban realities, but continuities and legacies of the colonial spatial framework prompt modern visionaries to start anew”. About three decades after the development of the post-colonial African new capital cities of the 1960s and 1970s, there is currently a new wave of building new towns largely as satellite cities or gated communities adjacent to or within existing cities. A satellite town is a settlement that develops within the vicinity of a major city, and share aspects in human life such as employment, socio-cultural services, and other purposes. The satellite new towns mostly contain villas and condominiums for wealthy and emerging middle-class citizens and expatriates, as well as shopping malls, office buildings, private schools and hospitals, recreational facilities, and other amenities (Keeton and Nijhuis 2019).

As in the case of post-independence new towns in Africa, several scholars have similarly criticised contemporary African new towns, which largely range from “functionalist Chinese grids to American gated communities” (Keeton and Nijhuis 2019, p. 218), for adopting Western-styled planning models with little regard for social values and local context, over-relying upon the technical expertise of foreign planning and architectural consultants, and exacerbating ecological challenges and inequality. The satellite new towns are also seen to serve the elites’ interest in detaching themselves from chaotic cities to live in safer, greener enclaves with the latest amenities and modern buildings. An important and often overlooked research issue is the local governance challenges faced by these new towns.

10.3 Urban Governance Models

Governance means the processes through which local agencies collaborate with the private sector and civil society to regulate, coordinate and control a social system such as a state, city, or an organisation to enhance collective goals (Smit 2018). According to Abubakar (2018b, p. 86), “urban governance is concerned with political, administrative, and socioeconomic decision-making processes through which societies manage and govern their cities”. It is influenced by socioeconomic and political systems and values from which the legitimacy of the urban regime stems (Grant 2015), and succeeds by coordinating and juggling the competing public and private interests, involving various stakeholders in positions of responsibility (Pierre 1999).

Good urban governance is contingent upon having strong institutions, which are key societal systems of norms, practices, traditions, and values that shape or inhibit political conduct (Pierre 1999). Institutions in urban policy-making stemmed largely from a state institution, although organisations and civil societies are catalysts for democratic accountability. Pierre (1999) classified urban governance into four models: the managerial, corporatist, pro-growth, and welfare models (Table 10.1). He argued that cities often exhibit conflicts between different governance models, backed by various sections of the city administration. Likewise, cities might move from one model to another alongside modifications in state and urban regimes over time. Table 10.1 summarises each model according to its key participants, objectives that distinguish it from others, the instruments utilised to meet its objectives, and its common outcomes.

(a) Managerial governance

Under managerial governance, public agencies meet the diverse interests of urban residents by producing and delivering essential urban services, and use a democratic, participatory process as an instrument for managing political conflicts. The general objective is to generate a public-choice-style, market-like interaction between urban service producers and consumers, in which user choice, instead of

Table 10.1 Comparing the major models of urban governance

Model	Key participants	Main objectives	Key instruments	Common outcomes
Managerial governance	Professionals, citizens	Choices and service efficiency	Contracts	Efficiency
Corporatist governance	Civil leaders and city officials	Service distribution	Deliberations	Participation
Pro-growth governance	Elected officials, private sector	Economic growth	Partnerships	Growth
Welfare governance	Local and state officials, citizens	Secure state funding, redistribution	Networking with senior state officials	Equity

Adapted from Pierre (1999)

that of elected officials, determines whatever service to be provided and by whom. This model emphasises professional participation over elite political involvement with customers as essential participants. It empowers citizens to have direct and influential input on urban service delivery, and stresses the necessity for competition among various service suppliers. Thus, it can help increase efficiency in service provision by bringing private-sector expertise into the public sector. The emphasis is on expenditures, efficiency, and professional management. Its instruments include contracting the provision of some public services, expanding internal markets, and competition within the public sector and between the private and public sectors. Challenges to implementing this model include reliance on expertise inside and outside the city, giving only a minimum role to elected officers. Customer choice also presents an element of considerable uncertainty to service delivery planning and budgeting. Also, the effects of local markets and customer choice efficiency are uncertain (Pierre 1999).

(b) Corporatist governance

Corporatist governance consists of a large public sector, with complete state provision of services based on redistributive policies, a high level of political participation, proportional representation, and robust voluntary associations. It occurs principally in the distributive sectors of local governments, and is typical of industrial, advanced, small democratic countries in Western Europe. The emphasis is on getting each major actor and interest group into the urban political process, which produces a high-level acceptance of urban political choice. It fosters great dedication to inclusive democracy with the participation of diverse social groups in the urban political process. Deliberating policies is a bargaining process between these interest groups, and local government is instrumental in creating consensus and joint public-private actions. Policy implementation regularly becomes easier, compared to other governance models, as the main community actors participate in policy development. Significant challenges in corporatist governance are fiscal discipline and budget, arriving at collective political choice, and the deliberation process can be tedious and slow. Moreover, corporatist governance often leads to disparities between various social groups (Pierre 1999).

(c) Pro-growth governance

The pro-growth governance involves close public-private interaction, enhancing the local economy by depending mainly on private capital for investments, taxes, and revenues, while the private sector enjoys substantial operational discretion. This governance model is elitist, and deals with promoting economic development and the type of the broader urban political economy. It deals with choosing what urban development strategy to follow, and what private partners to be involved. Typical participants in this governance model include the business elites and senior elected officials with a direct or indirect interest in growth, including real estate development, manufacturing, services, and knowledge-intensive businesses. The instruments for enhancing the local economy include resource mobilisation, infrastructural development, and creating a good city image to attract investment. Restrictive

participation is required to avoid distributive objectives being introduced into governance. Growth could also be short-term and unsustainable. Because the model has economic growth as its primary goal, it often leads to social exclusion and inequality (Pierre 1999).

(d) Welfare governance

Welfare governance refers to an urban political and economic setting deep-rooted in passive policy, where urban management and the local economy relies on capital influx through the welfare system, putting these cities in high dependency on the government as a provider or enabler or both. The main participants are local government and federal bureaucrats, with a minimal exchange with the private sector. This governance model blends mass political involvement with unfriendly attitudes towards capitalists, which are considered as the reason for urban problems. The priority is getting close to the state and detaching the city from the local economy, which could lead to a declining economy, joblessness, and dissatisfaction with corporate strategies, and eventually becoming politically leftist. Even though government subsidies can offer a temporary solution to the city's economic problems, addiction to state funding acts as a disincentive to developing the local tax base. The short-term objective of welfare governance is to secure state funding for service delivery, but, as the central state experiences growing budget deficits, local government experiences financial cuts (Pierre 1999).

10.4 Governance Challenges in African Urban Fantasies

According to the World Cities Report 2016, “urban governance delivers sustainable development when it is environment-friendly, participatory, accountable, transparent, effective and efficient, equitable and inclusive, and abides by the rule of law” (UN-Habitat 2016, p. 107). This urban governance framework can serve as a tool for analysing public policies, such as new town development, service provision, or socioeconomic development programs at national, regional, or local levels. In this section, the governance structure of satellite new towns in Africa is analysed based on the six key indicators of governance: (1) participation; (2) decentralisation; (3) efficiency; (4) accountability and transparency; (5) environmental sustainability; and (6) equity and inclusiveness.

10.4.1 Stakeholder Participation

Stakeholder participation denotes involving all urban development actors in the decision-making process because they are concerned about, conversant with, or have pertinent experience and expertise on the matters at stake. Although effective

urban governance hinges on participatory planning, appraisal, managing, and monitoring service delivery, the main actors in the new satellite town projects in Africa are only the state and the private sector, with little regard to public involvement. The stakeholders usually consist of multinational investors, consulting firms, financial institutions, and the public sector. This governance structure represents a classical case of transfer of power and responsibilities from public administrators to large-scale real estate developers, where the pro-growth entrepreneurial mode of urban governance has substituted the conventional managerial governance model of public administration (Herbert and Murray 2015). Some of the new town projects have support from major non-profit associations and foundations, mainly in endorsing and promoting the projects, and providing networking platforms for investors and technology companies (Cote-Roy and Moser 2019). In the case of Kilamba, for instance, the partners are mainly international investors and the state, without consulting important stakeholders such as civil society, including religious organisations and opposition political parties, which could have opened the widest array of interests and opinions (Cain 2014). The project received high-level financial and political backing from Angolan government (Croese 2016), and a developer interviewee reported that new cities are the affair of the state, not of the citizen (Cote-Roy and Moser 2019).

In the case of Waterfall and Cradle towns in South Africa, the Johannesburg municipality has been described as an inactive partner and that even its role as a facilitator is minimal. Both towns seek administrative autonomy in the form of an extra-territorial status that enables property developers to undertake administrative duties and monitoring functions once set aside for exclusive control by the municipality (Herbert and Murray 2015). As stakeholders, property owners in both towns have the collective authority to hire a private contractor for basic services including electricity, water, security, infrastructure maintenance, solid and liquid waste management, street cleaning and landscaping and enforcing regulations governing the use of spaces (Herbert and Murray 2015).

Given the pluralistic nature of our communities, the people affected by projects should have a say in planning, executing, and managing them (Abram 2000). Without stakeholders contributing to public policies, it is doubtful if urban development or service delivery decisions will be efficient or just. Citizen involvement advances and consolidates the public interest and entrenches human rights to facilitate urban transformation and sustainable development (UN-Habitat 2016). Democratic participation should be an essential feature of any development project, and inclusive representation makes participation more legitimate. In some countries, cities develop online platforms where they publish urban management issues and get responses from the public, creating a situation where all voices are heard. Participatory governance fosters “inclusive and lively cities, which are platforms for democracy, diversity and cultural dialogue and where policies are formulated and implemented to drive more effectual resource management” (Abubakar 2018b).

10.4.2 Decentralisation

Decentralisation refers to transferring key services to sub-national authorities to improve service delivery by engendering efficiency, accommodating pluralism, and promoting democracy and improving intergovernmental fiscal transfers and capacities (AMCHUD 2005). However, in several African countries, designing and implementing decentralisation policies has regularly been inconsistent, with complex layers of agencies resulting in intersecting responsibilities and depriving local governments of adequate funds (Resnick 2014). The satellite towns in Africa, and elsewhere in developing countries, are characterised by the centralised top-down planning process, and their governance framework largely exists outside the control of city administration or regulatory arrangements, and is usually self-governing (Croese 2016; Zamani and Arefi 2013). For example, the development of Waterfall and Cradle towns in South Africa is based on a top-down regulatory system where private, profit-oriented corporations possess and manage everything: schools, hospitals, gravesites, landscaping, road maintenance, safety, and security, with minimal meddling or oversight by the government (Herbert and Murray 2015). The design of both towns adhere to strict standards and building regulations, and public safety and law enforcement are provided by private companies, not the state police department (Herbert and Murray 2015).

Also, the design and development of Kilamba town are financed and supervised by the office of the President of Angola, and designed by South African engineering firms, excluding the local municipal administration, and no system exists for collective decision-making (Cain 2014). Although it undermined local capacity building, the top-down planning, and implementation of the Kilamba project facilitated the speedy completion of Phase 1 of the town (Croese 2016). While a statute was established in 2015 that allows residents to handle the everyday management issues, the city administration is required to provide services that the community cannot deliver, such as garbage collection, maintaining the green spaces, and tackling the rising crimes. Incidents of residents breaking the rules and improper behaviours, such as inappropriate car parking, have been reported (Croese 2016).

Similarly, in Saudi Arabia, a new city (Neom) is currently being developed by the central government along the Red Sea through a public-private partnership, which will have different governance structure from other Saudi cities. Modderfontein town, however, is placed under Johannesburg City administration after the authority refused to grant the project exclusive status to allow it to operate outside the existing regulatory framework (Brill and Reboredo 2019).

10.4.3 Efficiency

Efficiency, which implies a performance level whereby a project utilises the lowest amount of inputs to achieve the largest amount of output, is a key element of good governance. While this governance indicator is difficult to measure, the level of completing the new town projects and housing, infrastructure, and services provided can be used as a proxy for efficiency. In the Eko Atlantic City, a joint venture between Lagos State and private investors would reduce Lagos' housing problem by accommodating 450,000 people, albeit the houses are affordable to only a few elites (Dano et al. 2020). Similarly, the Waterfall new town, costing USD5.5 billion, is expected to house over 100,000 residents in various housing types, including 5500 units of affordable housing and about 20,000 condominiums for middle-income homebuyers (Herbert and Murray 2015). The Modderfontein project lacks local expertise and has a slow rate of home sales (Brill and Reboredo 2019).

Kilamba, currently 97% inhabited, with Phase 2 being built, is considered among the few areas in Angola with reliable electricity, water, and sewerage system (Keeton and Nijhuis 2019). A 2014 survey of Kilamba residents indicated that 75% of the respondents considered the size and quality of their homes better than their previous ones, and they felt proud of their own homes. However, residents default in monthly instalments and do not pay property taxes, thus not much investment recovery. The public transport system is inefficient and inaccessible with around 2 hours' commuting time (Croese 2016). There is a lack of housing diversity, and the large public spaces are low quality, poorly managed, and underused. Most residents commute to Luanda for employment (Keeton and Nijhuis 2019).

Unlike the typical modernist model, Cradle and Waterfall towns are self-sufficient communities of mixed-use developments with adequate amenities, and security using high perimeter concrete walls, gates, CCTV, mobile armed patrols, and access control using biometric identification (Herbert and Murray 2015). Although Africa's new satellite towns have increased the supply of shelter, the use of foreign contractors and construction material inhibits the growth of local construction industries and technologies.

10.4.4 Accountability and Transparency

Accountability refers to a multi-level system, with division of powers and functions, and democratic means of mediating decision-making among local/state government, private sector, international funders, and other stakeholders, especially around disputed issues. However, in several new town projects in Africa, there is low accountability, as well as the unclear status of the stakeholders: whether the projects are privately owned or are under a partnership. Other reported challenges include corruption, financial mismanagement, weak legal frameworks, and unresolved land tenure issues (Cote-Roy and Moser 2019). For example, several Kilamba residents

are yet to obtain their property deeds, and there was no debate on the project plans, and adequate preliminary assessment to determine land and housing affordability and urban management capability (Cain 2014). Although the city administration collects revenue locally through space rental fees, there is no accountability on how these monies are spent. Other issues include political favouritism in allocating houses, and weak local institutions that are incapable of effectively holding private actors to account (Croese 2016).

Several satellite towns have private administrators who may not efficiently manage the delivered infrastructure or adequately respond to citizens' needs (Brill and Reboredo 2019). The private management firms are responsible for urban governance but not accountable to the public (Herbert and Murray 2015). However, the case of Modderfontein suggests that some African institutions are strong enough to ensure accountability on the part of developers. Johannesburg city administration has kept the project under the prevailing planning and administration system and ensured public involvement (Grant 2015).

10.4.5 Environmental Sustainability

The satellite new towns are large-scale and prestige projects founded on modernist planning: low-density urban form “to enable capital, discipline, and order to reign simultaneously” (Bhan 2014, p. 233). However, the environmental sustainability principle of compact and low carbon development is neglected as the new towns are mostly planned with less focus on existing ecological conditions and potential threats, as environmental impacts assessment is hardly conducted. Grant (2015) contends that the designs of the satellite towns could increase urban sprawl and reliance on automobile transportation and undermine walkability. For instance, Waterfall and Cradle towns are characterised by “automobile-dependent horizontal sprawl” and “environmentally destructive land speculation” (Herbert and Murray 2015). Other challenges associated with low-lying coastline areas such as flooding are often not addressed by most project plans. Although Eko Atlantic City contains energy-efficient residential buildings, its location on land reclaimed from the Atlantic Ocean adjacent to Victoria Island could pose a threat of coastal flooding (Dano et al. 2020). Similarly, the development of Modderfontein on a nature reserve that is home to some exotic plants and animal species, including zebras, could undermine conservation efforts and worsen environmental problems. The site was an important ecological resource used by locals for recreation and nature trails. The town's closeness to an explosives factory could also pose public health risks (Brill and Reboredo 2019).

Both Kilamba and Sheikh Zayed City master plans lack provision for effective public transit, biking, or pedestrian walkways. Similarly, natural and green areas are not conserved, and climate change threats are not addressed. While the existing droughts and frequent floods issues are neglected in Kilamba, green areas within gated compounds in Sheikh Zayed City are heavily irrigated, albeit being in the

desert and relying on water piped from the Nile or delivered in tankers during shortages. While in Kilamba trash heaps near overflowing waste bins remain uncollected for days, in Sheikh Zayed City the massive undeveloped plots became garbage dumping grounds due to inadequate waste management (Keeton and Nijhuis 2019).

Even though Cradle and Waterfall cities consist of eco-friendly surroundings, energy-efficient buildings, renewable materials, water, and waste recycling, and sustainable infrastructural systems, both towns are regarded as peripheral urbanisation with low-density development and poorly planned landscapes that focus mainly on glamour and luxury (Herbert and Murray 2015). The sustainability of the projects is uncertain because of the risk of inadequate maintenance and depreciation over time (Cote-Roy and Moser 2019).

10.4.6 Equity and Inclusiveness

Africa's new satellite towns are being developed around some rapidly growing cities, explicitly to serve elites and satisfy the aspirations of the leisure-consuming classes, with a real threat of neglecting the mother cities (Keeton and Nijhuis 2019; Watson 2014). Some scholars support addressing urban blights by upgrading slums and infrastructure in existing cities, instead of fleeing from urban blights and chaos to satellite towns that significantly consume public resources (Abubakar and Doan 2010; Grant 2015). These high-end, private, and luxury developments for the elite have little connection with the majority of citizens of African cities (Bhan 2014; Herbert and Murray 2015). They are generally exorbitant projects with concessionary loans: Kilamba new town costs USD3.5 billion using Chinese credit facilities (Cain 2014), and Eko Atlantic City costs around USD6 billion, part of which Lagos State provides from public funds. Except in a few cases, such as 5000 affordable homes provided in Modderfontein city and some hundreds units in Waterfall City, most satellite towns have no provision for affordable housing (Brill and Reboredo 2019; Grant 2015). In Eko Atlantic City, homes are exorbitant for even middle-income citizens (Dano et al. 2020). Investing in economic sectors such as extractive and processing industries is deemed to ensure more equity (Grant 2015).

Similarly, the projects often entail removing informal settlements and enforced land procurement by the state, and they function as gated communities or special economic enclaves, sealed off from the surroundings by high fences and security checkpoints (Abubakar and Doan 2017). An example is the “compulsory acquisition of land” for Kilamba project, justified on the legal principle that the state owns all land in Angola and was free to build houses costing USD120,000–USD200,000, unaffordable for even public officials until the state allocated the bulk of its housing budget to subsidise them (Cain 2014). There is also a strict prohibition of informal businesses, pushing the poor to live in peripheral areas that lack basic services (Keeton and Nijhuis 2019). Other issues include the disappearance of the public realm and automobile-dependent urban forms (Cote-Roy and Moser 2019). By way of contrast, the Johannesburg government demanded that the Modderfontein project provide public transport (Brill and Reboredo 2019).

10.5 Conclusion

The challenges of urbanisation are experienced more often and at a rapid rate in the least developed nations, that lack the material and human resources to tackle them (Abubakar and Dano 2018). In these countries, urban development actors such as public policymakers, business managers, citizens and civic societies are increasingly faced with the urbanisation challenges of providing employment, housing, infrastructure and essential public services, including education, healthcare, drinking water, sanitation and garbage collection services (Abubakar et al. 2019). In Africa, political elites are seeking opportunities in new satellite towns as an urbanisation model, and more than 40 new towns are currently being constructed under the image of “eco-cities” and “smart cities” motivated by the “Africa rising” narrative, being promoted by international real estate developers to spur economic growth and meet the demand for modern housing and infrastructure by the rising middle class (van Noorloos and Kloosterboer 2018).

The new satellite towns have been championed by politicians and elites to showcase the image of “Africa has come of age”, by building “world-class” cities to emulate Dubai, Shanghai, and Singapore (Cote-Roy and Mason 2019; Moser 2015). The developers used these buzz-words to advance these satellite town projects: Modderfontein as the “Manhattan of Africa” with “gleaming skyscrapers of high-end, luxury housing and offices catering to the service sector economy” and “all of the necessary amenities for urban life” (Brill and Reboredo 2019, p. 173). Lagos is to become “the first smart city in Africa” (Dano et al. 2020). These satellite new towns have certainly eased the housing crises being experienced in many large urban centres in Africa, and have supplemented the efforts of local authorities in providing basic infrastructure and services to their rapidly growing populations. By adjusting the current planning paradigm, new towns are helpful tools in Africa’s shift from largely rural to urban societies (Keeton and Nijhuis 2019).

Critics see new satellite towns as “escapist urbanism” and an unsuitable urbanisation model for Africa (Grant 2015; Watson 2014). They argue that such planned suburban enclaves do not address the continent’s urban challenges of poverty, informality, and environmental sustainability, and that existing state rules are suspended to serve global capitalism, promoting exclusionary and socially regressive urban development models. Instead of channelling public resources on such new towns, they argue that efforts should rather be geared toward fixing existing cities. SDG 11.1 calls on developing nations to “ensure access for all to adequate, safe and affordable housing and basic services and upgrade slums” (Abubakar and Aina 2019). In Iran, new towns have helped alleviate congestion in large cities and supplied affordable housing for low- and middle-income families (Zamani and Arefi 2013).

African cities should engage in innovative kinds of urban governance, not necessarily based upon Western models (Smit 2018). More inclusive urban governance that focuses on providing affordable housing while attending to slum urbanism. Retrofitting existing urban development and slum upgrading is key to tackling Africa’s urbanisation challenges (Abubakar and Doan 2017; Cote-Roy and Moser 2019). Inclusive governance, as an adaptive, community-centred, decentralised and

participatory approach, embraces socio-economic and environmental differences, and recognises the diversity of urban development actors, including citizens and grassroots organisations working together towards more sustainable urban space, often using online platforms (Abubakar 2018b; Keeton and Nijhuis 2019). Because inclusive governance emphasises the principles of compassion, hospitality, and generosity, it can help build and manage new satellite towns to be more inclusive and promote environmental sustainability. To revisit the initial research question, the governance structure for such new town mega-projects lacks the social inclusiveness goals of contemporary global development agendas, which will require a more responsive, decentralized, and participatory approach to meeting local needs. This study is important because good governance is a vital instrument for socio-economic growth, poverty eradication, and inclusive, equitable, and participatory development.

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Chapter 11

Land Conflicts and Alternative Dispute Resolution in Sub-Saharan Africa: The Case of Botswana



Faustin Tirwirukwa Kalabamu

Abstract Because of increasing population, rapid urban urbanisation, socio-economic transformations, changes in land values and other factors, most countries in sub-Saharan Africa experience land conflicts. Until a few years ago, litigation and, to a lesser extent, administrative interventions were the preferred ways of resolving land-related conflicts in urban and peri-urban areas. However, litigations and administrative interventions have been criticised as costly, time-consuming, inequitable and unjust to the poor, vulnerable and minority groups. To decrease pressure on legal systems as well as improve access and justice for all, some countries (including Botswana) have introduced Alternative Dispute Resolution (ADR) mechanisms to complement court processes. Taking Botswana as a case study, this chapter assesses how far ADR has reduced court cases, dispensed justice, improved urban governance and promoted or restored peaceful relationships in land-related conflicts. The chapter reveals critical flaws and limitations in trust and impartiality because the Land Tribunal is viewed as a state agent and a common law court. The chapter makes recommendations on principles for a just and effective alternative land dispute resolution system.

Keywords Land conflicts · Alternative dispute resolution · Land tribunal · Sub-Sahara Africa · Botswana · Urban governance

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11.1 Introduction

Land conflicts are defined by Wehrmann (2008:9, 2017:24) as contestations or disagreement over “the right to use the land, to manage the land, to generate an income from the land, to exclude others from the land, to transfer it and the right to compensation for it”. She divides land conflicts into three categories: micro-level conflicts which include inter-personal disputes (e.g. trespassing and fights over property boundaries, land ownership and inheritance claims among siblings, property sale and transfer disagreements); meso-level conflicts, that is, disputes between communities over tribal or village boundaries or access to land resources (such as water, minerals, forests, grazing and farm lands); and macro-level conflicts which involve the state against communities or individuals. To this may be added interstate land conflicts: disputes over national boundaries and access to trans-border resources such as mineral, oil, water and wildlife.

Although land conflicts have historically been common in sub-Saharan Africa (SSA), the problem appears to have drastically increased over the last 100 or so years. Conteh and Yeshanew (2016); Bourdreaux et al. (2017); Wehrmann (2017); and Kalabamu (2019) attribute the growing incidence of such conflicts to a number of factors: land shortages caused by growing populations and changes in life styles and livelihood strategies; globalisation, internal migration, urbanisation and population movements; the prevalence and co-existence of multiple land laws, tenure systems and land governance structures; and land grabbing by national governments, local elites, international and multinational companies. To these factors may be added attempts to reform customary or indigenous land tenure rules and practices; privatisation of communal land; dispossession by the state through compulsory land acquisition; and informal sale of customary land rights.

The pressure on access to and control over land, and the uses to which it is put, not only transcends nation-states, international and transnational engagement with trade and commerce in the global market place, but also forms a critical component at the micro-level of individual, family and household provisions for shelter, livelihoods and processes of capital formation. Griffiths (2018:176)

Land conflicts were historically common in SSA, but few escalated into violence, strife or civil wars, with most resolved amicably through traditional or indigenous dispute resolution mechanisms and processes. Traditional dispute resolution mechanisms were characterised by common features which have been discussed by Olowu (2018), Ajayi and Buhari (2014), Kasanga et al. (2018) and Boko (2000). They note that the primary aim of traditional dispute resolution processes was not just about settling conflicts and ending hostilities, but restoring harmonious relationships between disputants and promoting peaceful co-existence with neighbouring tribes or communities. Mediation was the most popular approach over adjudication and litigation, avoiding “explicit parade of power, win-lose mind-set, social blemishes, and acrimony” (Olowu 2018:11). Mediation processes were facilitated by credible, noble and respected elders, priests, chiefs and people who were known for their wisdom, negotiation skills and trustworthiness. The final verdict focused on

agreements supported by common society norms which do not cause shame to any of the disputants. Implementation and enforcement was readily achieved because the agreements were based on consensus or religious beliefs and framed by respected and trusted elders and so on. Anyone failing to abide by the final verdict was considered disrespectful and subject to punishment by the ancestors.

The advent of colonialism brought new laws, land tenure systems and conflict resolution processes and substantially altered the social, political, economic and legal environments under which dispute resolution mechanisms operated. At present, most SSA countries are characterised by the co-existence of multiple land tenure systems and dispute resolution mechanisms (customary, statutory and, in some countries, Islamic), which not only generate new forms of land conflicts, but also create overlapping and unclear dispute resolution processes. In addition traditional dispute resolution mechanisms appear to have no rules and procedures for addressing new types of conflicts from prevailing informal land sales and transactions, sharecropping, leaseholds and subleases. At the same time, common law courts have been criticised as overly legalistic, expensive, time-consuming, inaccessible to the poor and, above all, making judgements that leave behind open wounds and broken hearts to the extent that some losers have tended to seek revenge outside the judicial system (Torell 1993; Muigua 2015). Given contemporary weaknesses in both received and indigenous land dispute resolution systems, some countries and institutions are increasingly advocating Alternative Dispute Resolution (ADR) mechanisms that promote justice for all and leave no broken relationship behind. However, the extent to which ADR mechanisms have contributed to improved urban governance by providing better ways in which conflicting interests in land are resolved or reconciled has not been explored.

This chapter, therefore, aims to assess how far ADR may have reduced litigations, dispensed better justice, enhanced urban governance and promoted or restored peace and cordial relationships among parties seized with land-related claims, contests and conflicts. Botswana is an appropriate case study because it has over 20 years of ADR experience since it established the first Land Tribunal in 1995. The chapter draws from a study on informal land delivery processes undertaken by the author (2002–2005) and data recently secured from the Land Tribunal headquarters in Gaborone. This introduction is followed by a brief overview of the ADR mechanisms, ADR experiences within the region, ADR experiences in Botswana, and ending with key lessons and recommendations.

11.2 Alternative Dispute Resolution

Torell (1993:70) defines ADR as a “concept of dispute settlement which uses techniques other than litigation to reduce or resolve conflict”, while Sullivan and Solomou (2011:1035) define it as “any type of procedure or combination of procedures voluntarily used by parties in a dispute to resolve issues in controversy”. To Nyamasege et al. (2017), ADR includes all “mechanisms or techniques used to

settle disputes in a non-confrontational way and it usually operates outside the courtrooms". These definitions underline several key features. First, it should be outside normal/usual court system. Second, it must be voluntary, amicable and non-confrontational; no threats, no legal/technical arguments. Third, it should seek to resolve the issue(s) being contested. Fourth, the outcome aims for a win-win situation. ADR "favours joint decision making with control of the negotiation process in the hand of the parties in dispute" (Torell 1993:70).

ADR techniques, mechanisms or procedures range between reconciliation, negotiation, mediation and arbitration. Mediation has been defined as "process involving an independent third party, whose role is to help parties [in dispute] to identify the real issues between them, their concerns and needs, the options for resolving matters and, where possible, a solution acceptable to all concerned" (Sullivan and Solomou 2011:1052). The mediator is a facilitator who guides and enables parties in a dispute to reach an amicable solution. Similar to mediation, arbitration is managed by an independent third party, except that that person considers the evidence and issues a binding decision (Conteh and Yeshanew 2016). Conciliation or reconciliation processes lie somewhere between mediation and arbitration, being guided by a chosen third party, but the parties in dispute have to "decide in advance whether they will be bound by the Conciliator's recommendation for settlement" (Conteh and Yeshanew 2016:3). In negotiation, the third party role is to facilitate dialogue until the parties in dispute reach a compromise or settlement. In summary, parties start or enter the ADR process voluntarily, agree on the facilitator (third party) and the process, and undertake to abide by the outcome. Normally no attorneys are engaged to represent any party.

ADR may be formal or informal. Formal processes include courts, land tribunals or any other administrative arrangements facilitated by the state or supported by statutes, whereas informal processes include traditional mechanisms and those initiated by non-government organisations, civil societies and associations or religious institutions. Funding arrangements also differ quite considerably. They include mechanisms whereby each party (i) meets its own costs, (ii) pays costs equally or (iii) pays a fixed fee. In land-related disputes, the costs may be partly or entirely borne by the state, local planning authority, the developer or objector (Sullivan and Solomou 2011). The majority of informal ADRs are facilitated by volunteers or community leaders such as chiefs and headmen, who may charge a nominal fee. Although traditional systems may deal with disputes of a purely customary nature, they experience difficulties where disputes involve modern laws and values (Conteh and Yeshanew 2016).

Scholars have suggested numerous benefits of ADR over litigation in land-related conflicts (Torell 1993; Muigua 2015; Nyamasege et al. 2017). First, they argue that decisions, awards and agreements reached under ADR processes are more binding and respected by aggrieved parties than those given by courts, because court judges make "all-or-nothing decisions", while ADR is based on acceptable alternatives. Second, ADR mechanisms are reportedly more flexible, expeditious, accessible and cost-effective because they are closer to the people than court systems located in distant locations, and often characterised by backlog of cases. ADR

mechanisms are expeditious because, unlike litigation, they do not result in costly and time-consuming appeals. Third, ADR is considered to be a tool for understanding causes of land-related disputes, through tracing the problems of land acquisition, ownership and use even back to the precolonial era. According to Abdullah (2015), ADR helps to uncover potential disputes between land developers and communities at early stages when they are easier to resolve. Fourth, ADR has been lauded for its use in resolving land-use conflicts involving urban or rural communities with thousands of members “where a mediator or arbitrator [is] able to explore shared areas of concern and negotiate an agreement that is fair and beneficial to the interests of the majority of the parties” (Sullivan and Solomou 2011: 1036). Fifth, ADR serves as a tool of “peace building”, salvaging relationships because it is non-coercive and mutually satisfying and rejects power-based outcomes characteristic of court actions (Muigua 2015). Litigation often leaves broken relationships with a possibility of the conflict recurring in future or the dissatisfied parties seeking to personally administer “justice” as they think appropriate.

11.3 ADR in Sub-Saharan Africa

Although ADR for land-related conflicts operates in many countries, the concept has been embraced by only a few in SSA, of which four are discussed below.

In Tanzania the need for the introduction of ADR arose from the country’s judicial system failure to expeditiously resolve land resource conflicts that had become pervasive in many communities. According to Sanga (2019:88) the judicial system was “characterised by severe overlaps, long and everlasting cases, inaccessible justice and ... great dissatisfaction”. In view of these challenges, a National Land Policy in 1995 recommended establishing an alternative or non-judicial system to replace lower courts (United Republic of Tanzania 1995). Tanzania formally introduced ADR mechanisms in 2002 through the Courts (Land Disputes Settlement) Act. Before 2002, all land-related conflicts were dealt with by Primary, District and Magistrates courts at a local level, and the High Court or Court of Appeal at a national level. The 2002 Act introduced a three-tier non-judicial land dispute resolution system, comprising the Village Land Council, Ward Tribunal and the District Land and Housing Tribunal, intended to replace Primary, District and Magistrate courts in land conflict matters. Each Village Land Council and Ward Tribunal consists of up to eight elected members, of whom three must be women. No legal representation is allowed in the two structures allowed to deal with land cases whose value does not exceed USD 1300. The District Land and Housing Tribunal is composed of the Chairperson and seven members (of whom at least three must be women) appointed by the Minister. The Chairperson must be a qualified lawyer, and legal representation is allowed. Studies undertaken by Sanga (2019), Ngemera (2017) and Biddulph (2018) revealed that Village Land Council and Ward Tribunal have been less effective than envisaged, because of inadequate funding, limited awareness among local communities, corruption and a poorly defined mandate.

In Kenya more than 60% of all court cases are land-related. The need to introduce ADR stems from courts being flooded with unresolved cases, making people tired of going to court for redress and justice (Muigua 2015; Nyamasege et al. 2017). Given the high volumes of land-related conflicts and the long time taken to resolve them, the Government of Kenya mandated the National Land Commission (NLC) to establish ADR in 2013. NLC inherited 7000 cases in 2013 and registered 2000 new cases between 2013 and 2017. Of the 9000 cases, fewer than 1000 had been resolved by May 2017. Inability to resolve the cases has been attributed to the country's turbulent history "marked with human rights violation, inequality, curtailed freedom, autocracy, social injustice and, more often than not, lack of the rule of law" (Nyamasege et al. 2017:12). Other contributing factors are inadequate resources; lack of relevant data; reluctance by witnesses to volunteer information; and hostility from lawyers who view the NLC as taking away their business.

In Burundi ADR processes were initiated to address multiple land claims and disputes arising from the civil wars of the 1980–2000 period. During the wars millions of people were either internally displaced and accommodated in camps or sought refuge in neighbouring counties, while others stayed on. Following a return to peace, many returning refugees and displaced families found their properties occupied by families who stayed on or refugees who had returned earlier. Land disputes were further aggravated by land scarcity (high population densities), discriminatory customary rules on property inheritance, conflicting regulations on land rights, lack of alternative livelihood sources and sojourn absenteeism (van Leeuwen 2010). To address these claims peacefully, several religious groups and NGOs resolved to revitalise the customary institution called *Bashingantahe*. In the past, according to De Juan (2017:1842–1843), *Bashingantahe* "were the primary moral and judiciary authorities. They were local notables charged with preserving unity and harmony through counselling, mediation, and reconciliation pertaining to all kinds of local-level conflicts". *Bashingantahe* consisted of the most respected members in a community and functioned independently of the local chiefs (van Leeuwen 2010:755). Through an enhanced and revitalised *Bashingantahe*, most land disputes concerning returnees at a local level were amicably resolved except those involving the state. Solutions to land dispute settled through *Bashingantahe* mediation, and conciliation processes include division or sharing of property between claimants; returning land to the original owner; and land compensation.

In Sierra Leone land disputes are among the most common types of civil disputes, and include multiple land claims, fraudulent documentation, unilateral transfer of customary land rights and, of late, large-scale investment by local and international private companies (Conteh and Yeshanew 2016). Sierra Leone has numerous non-judicial land dispute structures and processes, involving local and national state organs and agencies; religious institutions, civil societies and non-government organisations; as well as chiefs and customary leaders. Chiefs and customary leadership remain the most popular non-judicial land dispute resolution method in Sierra Leone, because they are cheap, quick and accessible to the public

and provide justice *in situ* by employing language and processes that contesting parties easily understand and identify with.

11.4 ADR Mechanisms in Botswana

Botswana is one of the few countries in SSA that recognise and observe customary land tenure practices as well as modern or received land tenure systems, and apply multiple approaches (including litigation and traditional/contemporary ADR mechanisms) in resolving land-related conflicts.

During the precolonial period, most of the land in Botswana (like elsewhere in SSA) belonged to jural communities or tribes and was administered by chiefs, headmen and other traditional leaders. In Botswana, according to Schapera (1994), each chief was head of a civil-cum-military structure with religious, judicial, legislative and other powers for maintaining law and order. In executing their duties, chiefs were assisted by a number of headmen, each of whom represented the respective chief at “ward” or local level. In executing administrative and judicial duties, the chief was assisted by confidential advisors (the chief’s senior relatives) and a “council of headmen” consisting of all hereditary headmen of wards.

Justice or the judicial system consisted of three levels – the family, ward and the tribe. The family constituted the court of first instance and was attended by all adults in the family group. The aim was essentially to try and achieve a peaceful and amicable resolution of the dispute. Only where the family failed to resolve the matter would it be referred to the ward court, presided over by the headmen (Schapera 1994). The proceedings were characterised by openness and attended by all adult men within that community (Helle-Valle 2002). Everyone in attendance was free to participate by questioning litigants and witnesses as well as stating his opinion on the matter. Speaking last, the presiding headman would summarise the arguments and then announce the verdict (Helle-Valle 2002; Schapera 1994). If the court or assembly failed to resolve the matter, it would be referred to tribal court/assembly presided over by the chief and attended by all members of the council of headmen. All people were allowed to speak and express their views on the matter and examine the litigants and witnesses. The chief’s assessors would then discuss the merits and demerits of the arguments raised, and give their own verdicts. Following this, the chief would sum up the proceedings and give a final verdict, which had to be consistent with the majority opinion before his court/assembly. The chief could confirm, alter or reverse the verdict of the lower assembly (Schapera 1994).

Disputes related to land and its resources were addressed through these structures and processes. When disputes over trespass or encroachment on ploughing fields arose, any person who found his land encroached could complain directly to the trespasser/encroacher. If the latter refused to budge, the parties would call their neighbours, mostly their own family members or relatives, to come and attempt to trace the original boundary. If no settlement could be reached, the matter would be reported to the ward court, and perhaps carried further to the tribal court (Schapera

1994). If encroachment was found, the boundary would be marked afresh, and sometimes the offender ordered to plough another field belonging to the owner of the land trespassed upon as compensation for time wasting (Schapera 1994). In the case of damage to crops by livestock, the owner of the crops could be entitled to compensation (Schapera 1994).

The advent of colonialism did little to alter the traditional judicial systems in areas reserved for African populations, so Botswana had a dual legal system: customary law which was the preserve of traditional courts, and common law applied in the ordinary courts (Himsworth 1972). The common law was the Roman–Dutch law from the Colony of the Cape of Good Hope and introduced in Botswana in 1891. Customary law in land matters and conflicts was restricted to Africans, while common law applied to non-African populations.

Traditional mechanisms have been seriously affected by post-independence legislation, notably, the Tribal Land Act of 1968, the Customary Law Act (Cap.16:01) of 1969, and the Customary Courts Act (Cap.04:05). Both the Customary Courts Act and the Customary Law Act defined matters and issues for the traditional judicial system (Himsworth 1972; Boko 2000). Only customary courts recognised or established by the Minister have power to enforce their decisions or compel attendance. Under Section 10 of the Customary Courts Act, Customary Courts are empowered to hear any matters provided:

- (a) The matter is justiciable under either customary law or and any written law, which the court may be authorised to administer and all the parties are tribesmen or the defendant consents in writing to the jurisdiction of the court.
- (b) The defendant is resident within the area of jurisdiction of the court or the cause of action arose wholly within the jurisdiction of the court.
- (c) The claim or value of the property in dispute does not exceed the maximum amount set in the court's warrant.

Any charge brought before a Customary Court must relate to an offence committed wholly or partly within the geographical area over which the court has jurisdiction. No person may be charged with a criminal offence (e.g. murder or rape) before the customary court, which is not created by the penal code or some written law. In terms of Section 14 of the Customary Courts Act, Customary Courts may only apply customary law. Unlike in the past, Customary Courts established under the Customary Courts Act may neither deal with arbitration issues, nor do they entertain land-related disputes except in matters relating to trespass and intestate inheritance. Resolutions of land-related disputes have been assigned to new institutions – initially land boards and the Minister and, later, the Land Tribunal.

The Tribal Land Act introduced far-reaching changes with respect to land administration and alternative mechanisms for resolving land-related conflicts in Botswana. First, it established Tribal Land Boards and subordinate land boards (where necessary) in each tribal territory. Composed of elected members and functional officers, Tribal Land Boards are corporate bodies with powers to sue and be sued. Second, it vested all tribal or communal land in each territory to the newly established Land Boards. Third, it transferred powers previously vested in chiefs

under customary law in relation to access, occupation, use and cancellation of land rights to the said land boards. Fourth, and most important to this chapter, the Act transferred the responsibilities for resolving disputes related to land from chiefs and traditional courts to Land Boards and the Minister.

The Tribal Land Act made provision for a three-tier judicial structure consisting of Subordinate Land Boards, Tribal Land Boards and the Minister. Subordinate Land Boards were empowered to hear disputes concerning customary grants and other land rights matters arising in their respective areas of jurisdiction. The Tribal Land Boards presided over disputes pertaining to customary land grants, common law grants and other land rights in their respective areas of jurisdiction. Appeals in respect of decisions of Subordinate Land Boards would lie with the Tribal Land Boards while appeals against decisions of any Tribal Land Board were heard by the Minister who was deemed to be the final arbiter.

According to Regulation 16 of the Tribal Land (Subordinate Land Boards) Regulations, any person aggrieved by a decision made by a Subordinate Land Board had a right to appeal the decision to respective Tribal Land Board. The Tribal Land Board would consider the matter and either set aside, vary or modify the decision of the Subordinate Land Board.

Any person aggrieved by the decision of any main tribal land board had the right to appeal the decision to the Minister in terms of regulation 12 of the Tribal Land Board Regulations. The appeal had to be lodged within a period of 6 months from the time that the appellant became aware of the land board's decision (section 14 of the Tribal Land Act). The notice of appeal had to be lodged either verbally or in writing with several parties, namely, (a) the District Commissioner for transmission to the Minister; (b) the land board that had made the decision being appealed against; and (c) any interested person. On receiving the notice of appeal, the land board had to furnish the Minister and the appellant with a transcript of the reasons that motivated its decision. The appellant was entitled, within a period of 30 days of receipt of the land board's reasons, to supplement or amend his/her grounds of appeal. The Minister could vary or dismiss the decision made by the Tribal Land Board. The Minister's decision was said to be final. Once the matter was decided by the Minister, it was said to be closed, although it could be taken to a higher body if there was fraud or *mala fide* when the Minister handed down his decision.

Despite holding a structure similar to the traditional judicial system, the land dispute resolution mechanism introduced by the state under Tribal Land Act encountered several challenges and criticisms. First, there was a grey area between the land board and the chiefs on the question of jurisdiction over land disputes. While many people continued to seek assistance from the chiefs, others were advised to do so by land boards because they did not perceive their powers to include any judicial powers (Government of Botswana 1992; Mathuba 1989). Land disputes were said to be the exclusive domain of judicial bodies. In practice, though, it was found that some land boards did not draw a distinction between administrative and judicial disputes, thus often presiding over issues pertaining to rights and other legal matters which was said to be contrary to their authority (Mathuba 1989). Chiefs on the other hand were uncertain of their powers in view of Section 10 of the Tribal Land Act that

vested all rights in land boards. Second, it was argued that land boards have a direct interest over the land under their jurisdiction, and should, therefore, not be allowed to be judges in their own causes (Mathuba 1989). Third, the authority of the land boards as dispute resolution structures was undermined by the absence of enforcement rules and regulations, especially since they lacked the political clout of their tribal predecessors (Ngo'ng'ola 1992). Consequently, decisions of the land boards were seldom respected. Fourth, the process of referring appeals to the Minister proved to be lengthy – taking up to 5 years. In addition, since the Minister was not a judicial body, the Minister's decisions could not be enforced. In view of all the foregoing problems, the government decided to introduce a judicial body to specifically address land disputes outside the common courts.

The first Land Tribunal was established in 1995, following major amendments to the Tribal Land Act carried out in 1993. The Amendment Act made provision for the creation of land tribunals to replace the Minister as an appellate organ. The first Land Tribunal, although based in Gaborone, was a mobile court. As of January 2018, the Land Tribunal had four divisions based in Gaborone, Palapye, Francistown and Maun. Following the revision of the Town and Country Planning Act (Cap.39:02) in 2013 and the introduction of the Land Tribunal Act of 2014, Land Tribunals are mandated to hear and determine appeals against town planning decisions made by the Minister or any Planning Authority (i.e. a district, rural, municipal or city council). This chapter shall, however, confine itself to disputes related to land management and exclude town planning related disputes.

The Land Tribunal is composed of the Chief Land Tribunal President and several Land Tribunal Presidents. In terms of Section 4(2) of Land Tribunal Act, all tribunal presidents must be people qualified advocates or attorneys (i.e. lawyers) with not less than 10 years' experience. Land Tribunal Presidents are assisted by members appointed on contracts of 2–3 years duration and must hold qualifications in land management, real estate management, physical planning or any cognate field. Before 2014 non-legal members of the Land Tribunal were ordinary persons selected in order to assist in any particular matter that involves localised, cultural or traditional aspects and values. The Chief Land Tribunal President is the head of the Land Tribunal, while each division is headed by the Land Tribunal President. According to Section 5 of the Land Tribunal Act, the Chief Land Tribunal President, any Land Tribunal President and members may sit at any division of the Land Tribunal – that is, any “President” can preside over proceedings in Gaborone, Palapye, Francistown or Maun depending on workload or need.

In accordance with Section 7 of the Act, a Land Tribunal has jurisdiction to (a) hear and determine any land dispute; (b) hear appeals and review decisions concerning land made by any land board or planning authority; and (c) entertain any written application from any land board or planning authority wishing to enforce any of its decisions. The sitting of any Land Tribunal must comprise of the “President” and at least two members of the tribunal. Only the “President” of the land tribunal decides on any matter involving questions of law, while the majority of members decide on matters involving questions of fact. Any member of the Tribunal who has any interest in the matter before it must recuse himself from the hearing, and another

appointee shall replace him. Proceedings of the Land Tribunal are open to the public (unless the Tribunal decides otherwise) and highly flexible – that is, not bound by the rules of evidence or procedures applicable in a common court. In addition, the Land Tribunal is allowed to regulate its own procedures and disregard any technical irregularity which does not or is unlikely to result in the miscarriage of justice.

Any party wishing to lodge any matter or appeal to a Land Tribunal shall do so in writing and is required to pay a prescribed fee. Any party interested in a matter before the tribunal may appear by advocate/attorney or may be represented by any other authorised person or party. The Tribunal pays transport and subsistence costs for witnesses if such witnesses are called by the Tribunal. After giving all parties to the dispute an opportunity to present their arguments and/or evidences, a Land Tribunal may:

- (a) Uphold the decision of the Land Board or Planning Authority
- (b) Reject or amend the decision of Land Board or Planning Authority
- (c) Refer the matter to an arbitrator where parties have so agreed
- (d) Award costs

Any decision, order or judgement made by a Land Tribunal – and the reasons thereof – is recorded in writing and signed by the President and the two members, read in court and subsequently sent to the parties concerned. Any party or parties aggrieved by the decision or decisions of a Land Tribunal has a right to appeal to the High Court within 8 weeks. Decisions and order handed down by the Land Tribunal are enforceable in the same manner as decisions of a Magistrate court.

Although established in 1995, the Land Tribunal only started receiving cases in 1997. Between December 1997 and November 2002, the tribunal registered¹ 1014 or an average of 20 new cases per month. Most cases received by the Land Tribunal related to appeals from persons and institutions aggrieved by land boards' decisions including rejection of applications for new land rights, change of land uses and transfer of land rights, as well as appeals against cancellation of land rights and eviction orders. As shown in Table 11.1, the majority of the cases originated from Kweneng Land Board (275) and Ngwato Land Board (273) – the two land boards accounted for about 54% of all the cases. In view of the large numbers of appeals originating from Ngwato Land Board area, the government was forced to establish a second tribunal in Palapye to serve the area.

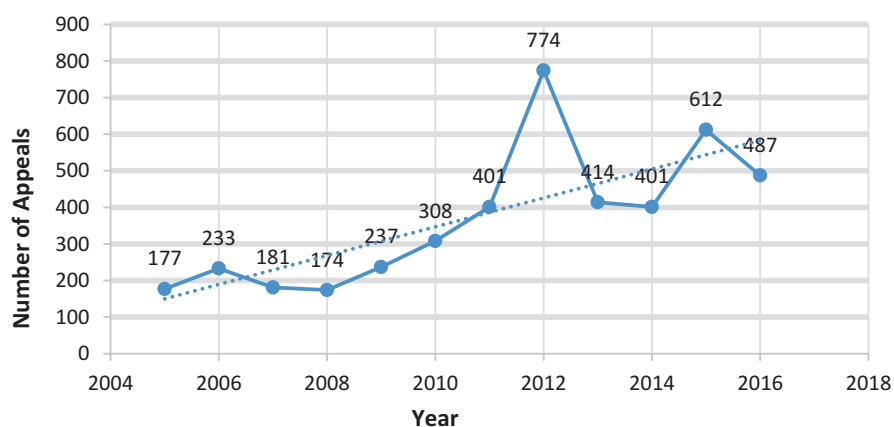
Further analysis reveals zones where appeals originated from: the biggest zone was around the city of Gaborone (Kweneng, Tlokweng, Ngwaketse and Maletse Land Board areas); second zone, Ngwato Land Board area; and third, Tawana Land Board area. The highest number of appeals emanated from land boards surrounding the city of Gaborone where the demand for land, land values and dynamics are high. Ngwato Land Board covers one of the largest land areas with several townships – Francistown, Selibe-Phikwe, Orapa and Sowa. Tawana Land Board also covers

¹A case is registered before the land tribunal when it is received at the registry and entered in the register of the Land Tribunal.

Table 11.1 Appeals recorded by Land Tribunal (1998–2002)

Rank	Area	1998	1999	2000	2001	2002	Total
1	Kweneng Land Board	44	45	44	81	61	275 (27%)
2	Ngwato Land Board	44	42	43	58	86	273 (27%)
3	Tawana Land Board	14	8	14	40	25	101 (10%)
4	Tlokweneng Land Board	12	12	16	21	19	80 (8%)
5	Ngwaketsi Land Board	25	19	14	8	14	80 (8%)
6	Katleng Land Board	6	11	16	16	12	61 (6%)
7	Maletse Land Board	11	4	11	10	5	41 (4%)
8	Kgalagadi Land Board	3	3	4	5	14	29 (3%)
9	Tati Land Board	7	8	3	4	2	24 (2%)
10	Rolong Land Board	3	5	5	1	4	18 (2%)
11	Ghanzi Land Board	3	1	3	5	5	17 (2%)
12	Chobe Land Board	2	3	2	2	6	15 (1%)
Total		174	161	175	251	253	1014 (100%)

Source: Gaborone Land Tribunal



Source: Land Tribunal, Gaborone & Palapye Divisions

Fig. 11.1 Appeals recorded by Land Tribunal (2005–2016)

highly valued and sought-after land in the Okavango Delta with many numerous tourist and foreign investment attractions.

According to the Gaborone Land Tribunal, on average it took at least 12 months for a case to be heard and concluded. The Land Tribunal generally adopted mediation and reconciliatory positions in making its decisions (Kalabamu and Morolong 2004).

The number of appeals before the Land Tribunal has more than doubled in recent years, from 177 in 2005 to 487 in 2016 (Fig. 11.1). The average number of cases

registered was 367 a year compared to an average of 203 recorded between 1997 and 2002. The high volume of cases in 2012 is attributable to eviction cases registered by Tawana Land Board, while the high volume in 2015 was caused by non-acceptance of the “raffle system” deployed by Malete and Tlokweng Land Boards to sieve applications for residential plots.

Most of the 443 cases completed by the Gaborone and Palapye divisions during the 2017–2018 financial year originated from Kweneng, Ngwato, Ngwaketsi, Malete and Tlokweng Land Boards (Table 11.2), reflecting a pattern similar to that recorded in 1997–2002. Kweneng, Malete and Tlokweng Land Boards cover peri-urban settlements where the demand for land is high (Kalabamu 2012).

The overwhelming majority (85.3%) of the 443 appellants were aggrieved individuals as indicated in Table 11.3. Only in a handful of cases (9 or 2.0% of 443) were lodged by land boards requesting the Land Tribunal to order enforcement of their decisions.

Most of the 443 cases related to appellants (i) aggrieved by land boards’ rejection of their applications for residential land (20.5%); (ii) contested ownership of land rights (18.7%); or (iii) dissatisfied by land boards’ decision to reject their applications for farming plots (12.0%), as shown in Table 11.4. Other notable reasons included disputes over land boundaries; rejection of applications for permission to construct a borehole/water facility; disputes of administrative nature; and refusal of applications for business plots. Dispute over applications for residential plots, compensation and ownership of land originated largely from land boards abutting Gaborone (e.g. Kweneng, Malete and Tlokweng), while disputes over farm land, boreholes, dams, etc. originated from land boards with livestock ranches including Kgalagadi, Ngwaketsi and Katleng. The major subjects of contention in Ngwato Land Board area were land ownership and application to erect borehole/water facilities.

Table 11.2 Origin of appeals at Gaborone and Palapye Divisions (2017/18)

Local authority	Number of cases	Percent
Kweneng Land Board	119	26.9
Ngwato Land Board	102	23.0
Ngwaketsi Land Board	56	12.6
Malete Land Board	55	12.4
Tlokweng Land Board	50	11.3
Katleng Land Board	31	7.0
Rolong Land Board	20	4.5
Kgalagadi Land Board	10	2.3
Total (all land boards)	443	100.0

No data for Ghanzi, Tawana, Tati and Chobe Land Boards

Source: Land Tribunal, Gaborone & Palapye Divisions

Table 11.3 Appellants at Gaborone and Palapye Divisions (2017/18)

Appellant	Cases	Percent
Individual(s)	378	85.3
Company/syndicate	33	7.4
Family members	14	3.2
Land board	9	2.0
Community group	7	1.6
Land board and other(s)	2	0.5
Total	443	100.0

Source: Land Tribunal, Gaborone and Palapye Divisions

Table 11.4 Subject of appeal at Gaborone and Palapye Divisions (2017/2018)

Subject of appeal	Cases	Percent
Rejection of application for residential plot	91	20.5
Contested ownership of land rights	83	18.7
Rejection of application for farming plot	53	12.0
Contested boundaries	41	9.3
Rejection of application for borehole/ water facility	36	8.1
Administrative issues	34	7.7
Rejection of application for business plot	33	7.4
Rejection of application for land transfer	22	5.0
Inadequate monetary compensation	20	4.5
Rejection of application for land-use changes	15	3.4
Rejection of application for community plot	5	1.1
Rejection of application for “ <i>mokgoro</i> ” ^a	3	0.7
Other	7	1.6
Total	443	100.0

Source: Land Tribunal, Gaborone and Palapye Divisions

^a “*Mokgoro*” is a vernacular word which means a temporary shelter at a farm. Of late, however, people have tended to build large and permanent structures (instead of *Mokgoro*) probably as a strategy for substantiating their land claims and deterring public acquisition of their farms for conversion to urban uses as noted by Kalabamu (2014)

The success rate for appeals lodged with the Land Tribunal is low, as shown in Table 11.5. Over half (55.1%) of the appeals completed by the Land Tribunal divisions in Gaborone and Palapye were dismissed. Only 6.5% or 29 out of 443 appeals were successful, while a quarter (25.5%) were remitted – that is, returned to the parties because the matter or issues under dispute were not clearly defined to enable the Land Tribunal to hear and determine them. Appeals and matters brought before the Land Tribunal by land boards are more successful than appeals against the land

Table 11.5 Outcome of appeals at Gaborone and Palapye Divisions (2017/2018)

Outcome	Dismissed	Remitted	Withdrawn	Succeeded	Others	Total
Number of cases	244	113	54	29	3	443
<i>Percent</i>	<i>55.1</i>	<i>25.5</i>	<i>12.2</i>	<i>6.5</i>	<i>0.7</i>	<i>100</i>

Source: Land Tribunal, Gaborone and Palapye Divisions

Table 11.6 Time taken for appeals completed in 2017/2018 at Gaborone and Palapye Divisions

Duration	Cases completed	Percent	Cumulative percent
1–6 months	68	15.3	15.3
7–12 months	92	20.8	36.1
13–18 months	99	22.3	58.5
19–24 months	105	23.7	82.2
25–30 months	55	12.4	87.5
31–36 months	15	3.4	98.0
Over 36 months	9	2.0	100.0
Total	443	100.0	–

Source: Land Tribunal, Gaborone and Palapye Divisions

boards. For example, of the nine cases brought by land boards (Table 11.5), four were successful, two withdrawn, two remitted and only one dismissed.

Although, according to the Land Tribunal Chief President, the target is to complete the appeals within a year (12 months), only 160 (36.1%) of the 443 cases were determined within the target period (see Table 11.6), the average being 16 months to complete.

11.5 Conclusion and Recommendations

Despite the enthusiasm and high expectations over the establishment of ADR structures in a number of SSA countries, few have performed satisfactorily because of inadequate funding, poorly defined mandate, corruption or lack of legitimacy. Successful ADR structures (e.g. *Bashingantahe*) appear to have been modelled along the traditional lines, which sought to restore and promote peaceful co-existence and focused on agreements that supported prevailing societal norms and values.

Botswana's experience reveals that the current ADR (as represented by the Land Tribunal) is more satisfactory in resolving peri-urban land conflicts and promoting land governance than the administrative processes that existed between 1970 and 1995. Although the Land Tribunals were ostensibly modelled along indigenous customary courts, they currently resemble and function as common law courts. First, Land Tribunals are composed of attorneys, surveyors, town planners and other land-related professionals instead of ordinary citizens. Second, their proceedings are similar to litigations in common law courts, with distinguished attorneys representing

plaintiffs and deponents. Third, conflicts are largely determined using provisions of the Tribal Land Act, the Town and Country Planning Act and other statutes or regulations, instead of customary rules, norms and practices. Fourth, the verdicts made by the Land Tribunals are based on a win–lose mind-set instead of win–win or lose–lose settlements. Probably because Botswana’s alternative land dispute resolution mechanisms resemble and operate like normal courts, they are generally viewed as state organs and not trusted by communities that they serve.

There is a need for laws that facilitate the establishment of community-based ADR for land-related and other micro societal level conflicts. In Botswana such structures should be established at ward, village and district levels. The structures should be manned by ordinary but respected citizens guided by living law instead of customary and statutory laws which may neither be aligned to nor relevant to people’s everyday life and prevailing societal values. The new structures should strive to promote improved land governance, reconciliation and peaceful co-existence with win–win/lose–lose settlements rather than winners-and-losers, characteristic of ordinary courts. The present Land Tribunals should only entertain matters brought by community-based ADR, be run by respected ordinary citizens and seek to promote better land governance and amicable settlements, rather than court- like rulings and judgements.

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Chapter 12

Post-apartheid Housing Delivery as a (Failed) Project of Remediation



Zachary Levenson

Abstract Apartheid was a regime of socio-spatial relegation: racialised populations were banished to South Africa's urban peripheries and rural hinterlands. In the post-apartheid period, the ruling ANC framed its democratisation project as remedial, a corrective to centuries of dispossession. This entailed government providing the physical infrastructure required for black South Africans to return to cities, not as precarious squatters on the urban fringe, but as residents with an equal right to the city. Yet, more than a quarter century later, little progress has been made in any substantive sense. While South Africa has delivered more free, formal housing units than any other modern democracy, it has consistently failed to coordinate this programme with employment, transportation, and food security initiatives. This has left residents with homes to be sure, but typically delivered to locations where residents already live, rendering the geography of apartheid permanent. This chapter also accounts for the substandard quality of the units delivered; the slow pace of delivery; and the fact that the housing backlog continues to grow despite the ongoing provision of homes. It concludes with an analysis of the exclusionary effects of the government's equation of housing delivery with democratisation *tout court*.

Keywords Housing · Dispossession · Delivery · Urban space · Post-apartheid South Africa · Post-colonial Africa · African National Congress

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12.1 Introduction

Apartheid was a regime of socio-spatial relegation: racialised populations were banished to South Africa's urban peripheries and rural hinterlands. The ascent of the National Party to power in 1948 was the culmination of three centuries of settler colonial rule, characterised by some variant of either the expulsion of black populations from urban space altogether, or else their temporary inclusion in a hyper-regulated migrant labour regime. We can think of rural areas as sites to which these expelled black urbanites were banished, and peri-urban areas as precariously legal sites where black labourers found shelter after completing authorised work in white cities. It should therefore be no surprise that apartheid is collectively remembered by black South Africans today as a struggle over the (dis)possession of land or, more precisely, over access to urban space: the right to the city.

This is why the country's ruling party, the ANC, framed democratisation as a remediation project, attempting to reverse centuries of dispossession and apartheid-era forced removals, so that black South Africans could return to cities, not as precarious squatters on the urban fringe, but as residents with a right to the city and formal housing. Access to decent housing was not a new demand: it occupied a central place in the ANC's 1955 programme called the Freedom Charter. All South Africans should have the right "to be decently housed" and "[u]nused space [should] be made available to the people". The Freedom Charter's most famous line – "The people shall govern!" – is inextricable from the redistributive demands that followed. The ANC articulated a conception of democracy as *distributive*: formal political rights only become meaningful when citizens have access to the material means necessary for exercising their citizenship.

This formulation of democracy, central to the Freedom Charter, was incorporated into the post-apartheid Constitution, ratified in 1996. In contrast to late eighteenth- and early nineteenth-century constitutions, which tended to grant political rights, various late twentieth-century post-colonial constitutions explicitly protected socio-economic rights as well (Sunstein 2001). The South African Constitution guaranteed "the right to have access to adequate housing" and insisted that the state "take reasonable legislative and other measures, within its available resources, to achieve the progressive realisation of this right". It also prohibited arbitrary evictions, associated in the collective memory with the forced removals of apartheid. Within 3 years of coming to power, the National Party had passed the Prevention of Illegal Squatting Act, which effectively authorised the forced relocation of any black residents the state deemed "illegal". Playing on this name, the post-apartheid Parliament passed the Prevention of Illegal Eviction (PIE) Act in 1998, which, in conjunction with a series of subsequent Constitutional Court cases, required the government to provide alternative accommodation when eviction was unavoidable.

The very legitimacy of the post-apartheid government was bound up with its success in realising democracy, which it articulated in distributive terms. In practice, this took two forms: delivery and dispossession. On the one hand, the post-apartheid state used housing delivery as a technology of managing the rapid urbanisation of

un(der)employed South Africans. Whether coming to cities from rural hinterlands or peri-urban settlements, delivery facilitated the relocation of these surplus populations to formal neighbourhoods typically located on the outskirts of cities, in effect augmenting the racial geography of apartheid, but in a way that allowed the government to proclaim the achievement of distributive democracy. The government simultaneously pursued a strategy of dispossession as a means of managing rapid informal urbanisation after this took off in earnest. Given that municipalities could not possibly deliver fast enough, new land occupations were inevitable, and the proliferation of shacks after apartheid was a visible symbol of the state's failure to realise material democracy (Levenson 2018, 2019). For that reason, governments tended to disperse new occupations, either incorporating them into the delivery process, or else further peripheralising them in urban space.

Before discussing delivery, however, I will analyse the context in which the post-apartheid delivery apparatus emerged. In the first section, I explain how South Africa's settler colonial and apartheid projects of shifting surplus populations set in motion the post-apartheid urbanisation crisis. I read the colonial state as a racialised iteration of what James Scott (1998) termed the high modernist state. In the second section, I trace how this trajectory played out, with informal urbanisation reaching its peak at the moment of democratisation, necessitating the twin strategies of delivery and dispossession. I focus in particular on the development of delivery policy during the transition. It is here that I explore the central research question of this chapter: how should we characterise the socio-spatial effects of post-apartheid housing policy, and what role did local government play in its implementation? Then, in the third and final section, I argue that, coupled with dispossession, housing delivery constitutes a strategy for managing surplus populations after apartheid. I conclude by noting some of the failures of post-apartheid housing delivery, explaining why this matters in ongoing debates about land reform in South Africa today and indeed issues of land governance elsewhere in SSA.

My approach does not separate *post*-apartheid policymaking from its *post-apartheid* context. I treat housing delivery as an active process with novel effects, but a process that only emerges after centuries of settler colonialism. In this sense, it accords nicely with Ann Stoler's (2013: 11; 2016: 350) concept of ruination: "Ruination is an *act* perpetrated, a *condition* to which one is subject, and a *cause* of loss". Delivery and dispossession are active forces effected by contemporary agents, but not enacted in an historical vacuum. In the analysis that follows, I explore the linkages, both forward and backward, between post-apartheid policy's unintended consequences on the one hand and the persistent effects of colonialism and apartheid on the other. To paraphrase Stuart Hall (1996: 247–8), thinking about post-colonial legacies does not entail a clean break with a formal colonial past, though this is of course part of the story. But just as significantly, it necessitates an analysis of the enduring effects of colonial violence. For this reason, the analysis that follows is based upon interviews with post-apartheid housing officials, policymakers and consultants, as well as archival materials and a careful reading of secondary sources. I think about "failure" (as in my title) not simply as a cause of loss, but as the collective experience of that loss. While this chapter is not particularly ethnographic,

this research was carried out while I was conducting ethnographic fieldwork (2011–2019) among subjects of the dispossession and delivery described here. Thinking about the post-apartheid moment then requires that new effects and enduring legacies be related to people's experiences – what Stoler calls the conditions to which people are subject.

12.2 Apartheid Trajectories

Like most iterations of colonial rule, apartheid entailed the violent shifting of racialised, ethnicised and tribalised populations to fit the high modernist designs of the colonial imagination (Scott 1998). Settler colonialism in South Africa was particularly extreme, with the National Party – the party of apartheid – passing the Group Areas Act within 2 years of its election in 1948. That law defined the most developed areas of cities as white spaces, or “group areas”, relegating other racialised populations to peripherally located townships and less desirable areas of the city. Within a few years, these forced removals would entail the formal expulsion of black residents from cities altogether, relegating them to rural reserves called “Bantustans”, sometimes euphemised as “homelands” – as if these far-flung areas were the authentic *patria* of South Africa's black ethnic groups. According to the most conservative estimates, 3.5 million people were forcibly relocated under apartheid, with the overwhelming majority expelled to Bantustans (Platzky and Walker 1985). The National Party attempted to engineer the realisation and augmentation of the 1913 Natives Land Act, which nearly four decades earlier had prohibited black South Africans from owning land in 93% of the country. The so-called native reserves, the 7% of the country where they could obtain title deeds, roughly correspond to the location of the Bantustans created by the apartheid regime. On the occasion of the passage of the Natives Land Act, Sol Plaatje, a founding member of the ANC, famously proclaimed, “Awaking on Friday morning, June 20th, 1913, the South African Native found himself, not actually a slave, but a pariah in the land of his birth” (Plaatje 1996 [1916]: 21).

The case of Cape Town was particularly egregious, with the city defined as a Coloured Labor Preference Area. In other words, with the exception of a couple of smaller black townships constructed in the 1920s, black people could be expelled from the city altogether; Coloured residents would comprise this urban economy's cheap labour force and work the farms just beyond the city limits. In a city like Durban on South Africa's east coast, black residents were removed to Bantustans about a half-day's walk from the central business district; but in Cape Town, they were forced more than 1000 km eastward to two large Bantustans then called the Ciskei – “this side of the Kei River” – and the Transkei, “that side”. Both are substantially closer to Durban than Cape Town (see Fig. 12.1) but were defined as the independent homeland of the amaXhosa population, the predominant black ethnic group in both the Western Cape, where Cape Town is located, and the Eastern Cape, where both Bantustans existed until the end of apartheid in 1994. Forced removal

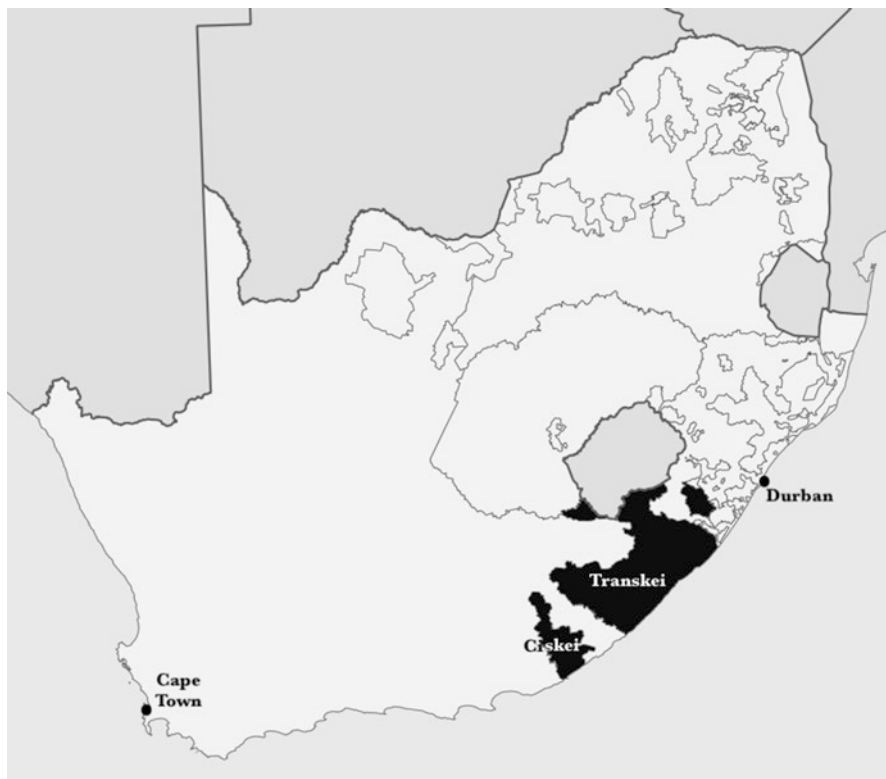


Fig. 12.1 Map of Ciskei and Transkei Bantustans in Relation to Cape Town

was framed by the apartheid state as the return of a people to its rightful homeland, rather than as the expulsion of all black Capetonians against their will to underdeveloped rural areas that they might have never actually known.

As with any high modernist project, however, the state failed to realise its designs fully. Lack of livelihood opportunities in the Eastern Cape, for example, led a number of black Capetonians to return to the city following their expulsion in search of employment. As the government came to realise it could not block urban “influx” altogether, it developed alternative strategies of managing surplus populations. The state also lacked the capacity to evict everyone, and besides, a conflict within the National Party was simmering just below the surface (O’Meara 1996). While its racist wing wanted to banish racialised populations as far away as possible, its industrial and agrarian capitalist employers, gaining power as apartheid developed, needed cheap unskilled and semi-skilled labour, and did not want dogmatic racists cutting into their profits. By the 1970s, this pitted proponents of liberalisation – people we might broadly describe today as “neoliberals” – against racists and defenders of “racial Fordism” (Gelb 1987), those who wanted to reserve all decent

employment opportunities for whites. A welfare state for the best, spatial relegation for the rest, they insisted. But there were plenty of jobs that whites would not do, and so from the very beginning the apartheid state tolerated black workers living in peri-urban space. As South African cities began to industrialise in earnest following the Second World War, black residents constructed shantytowns on urban fringes around the country (Bonner 1990, 1995; Stadler 1979). In order to access spaces defined as white, they had to possess a *dompas* – an internal passport really – approved by authorised white employers. While the passbook system dates back to the late eighteenth century, it was not formalised until a series of laws passed in 1923, 1945 and 1952 extended it to all black South Africans over the age of 16. As of 1952, they could no longer legally reside in a white group area for more than 72 continuous hours unless they had maintained the same job there for a decade, lived there continuously for a decade and a half, or were born there and had never left (Hindson 1987; Levy 1982). This was a classic case of being grandfathered out.

Things were easier for Cape Town's Coloured population, but not much. Cape Town's most celebrated Coloured neighbourhood, District Six, was razed and is today the site of the Cape Peninsula University of Technology. This neighbourhood, adjacent to the city centre, was redefined as a white group area, and all of its residents were forcibly relocated to newly constructed townships on the Cape Flats, the vast flatlands east of the city centre that became home to more than 60% of the city's population. Today a museum commemorates the neighbourhood and explains what happened to the 60,000 people who once lived there. In 2014 I visited the District Six Museum with Muhammad, whose family home was among those demolished. He immediately located two pictures of his father on the museum's second floor and began to reminisce. He was a small child when his parents were evicted from their home. "First they squatted in Belgravia for some years", he told me, referencing a largely Muslim area about halfway between the city centre and where they ended up. "But after waiting for those years, they got a house—a formal house in Mitchell's Plain". Today Mitchell's Plain is the second largest township on the Flats and the largest Coloured township in the country.

12.3 Delivery and Dispossession

By the mid-1980s, anti-apartheid struggles reached their peak, particularly on the Cape Flats. A neighbourhood in Mitchell's Plain (just up the road from Muhammad's shack) was home to the decade's most iconic struggle organisation, the United Democratic Front (UDF) (Seekings 2000; van Kessel 2000). While the UDF and other organisations campaigned against apartheid rule, other Cape Flats residents had to wage a more immediate sort of struggle: against evictions. Black urbanisation was ultimately legalised during this period, culminating in the abrogation of influx controls in 1986 (Smith 1992; Swilling et al. 1992). Apartheid urban policy often oscillated between extreme repression and bursts of toleration, but even during its more lenient moments, the repressive apparatus was still there, with black

squatters being criminalised and arrested, or their homes demolished, leaving them to fend for themselves. Making things even more difficult, these struggles were often refracted through competing factions on the ground. In one of the larger black townships of the time, for example, the UDF-affiliated settlement leadership became embroiled in a civil war with a black vigilante group called the *witdoeke* [“white cloths”], named for the strips of white cloth they used to identify themselves (Cole 1987), who were informally aligned with the apartheid police and helped facilitate the demolition of UDF-aligned shacks.

Despite the potential violence faced by squatters, both from the government and from contending factions, the final years of apartheid saw black residents returning to cities in large numbers. This trend continued into the post-apartheid period, with the proliferation of new shack settlements at an unprecedented rate (Harrison et al. 2008; Hunter and Posel 2012). Judging by population growth (see Fig. 12.2), Johannesburg more than doubled in size between the first post-apartheid census (1996) and the most recent social survey (2016), and two nearby cities (Pretoria and Ekurhuleni) came close to doing so. Cape Town, which was roughly the size of Johannesburg at the time of the transition, is today South Africa’s second largest city with a population of four million, having overtaken Durban.

A similar trend occurred for those living in informal housing over the same period. The government’s official count¹ for shacks nationwide has nearly doubled since the transition, now two million, with 1.3 million of these living in informal settlements, and another 700,000 in the backyards of formal houses – a practice

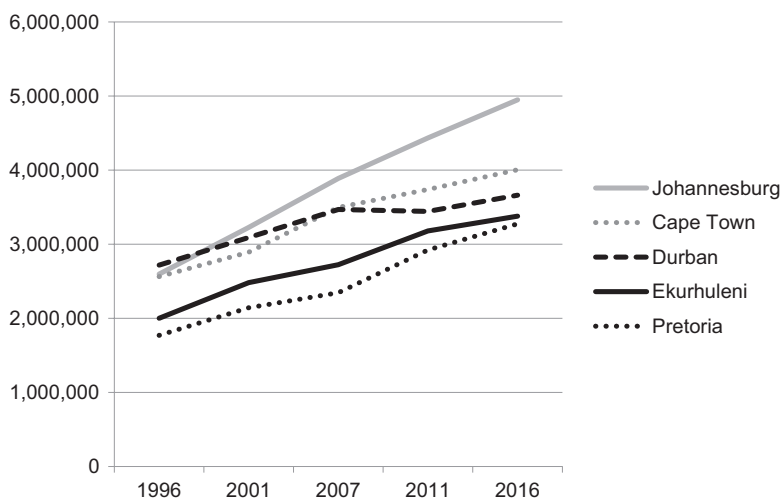


Fig. 12.2 Urban populations in South Africa, 1996–2016

¹ These figures come from the Department of Human Settlements, thanks to Steve Topham, at the time the Technical Team Leader for the National Upgrading Support Program (NUSP).

colloquially known as “backyarding”. By one measure, this is still an improvement, as informal housing as a percentage of total households declined from 16% in the 1996 census to 13% in the most recent social survey (2016), despite a brief uptick in the early 2000s. On the other hand, when we use a different measure, these results are not as clear. In addition to debates about substantial undercounting in the 2011 census (Tempelhoff 2014; Wilkinson 2014), we can examine figures on what the Department of Human Settlements – South Africa’s housing ministry – calls the housing backlog: those officially in need of formal housing. The national backlog stood at 1.4 million at the time of the transition and within 7 years had risen to nearly 2.5 million (Tissington 2011). It dipped below two million in the early 2000s, but by 2005 it was back to 2.5 million, and today it hovers between 2.1 and 2.7 million (Tomlinson 2015). In the Western Cape, where Cape Town makes up the bulk of the backlog, an even more pronounced trend is observable over the first decade of democratisation: just over 165,000 in 1996, up to 230,000 the following year, and levelling off in the low 200,000s until about 2005 (Tissington 2011). Then in 2006, the figure nearly doubles to more than 400,000 as new Capetonians are formally included in the housing programme (Wilkinson 2015). Today it fluctuates between 300,000 and 400,000 – more than a doubling of the backlog since the moment of transition.

This is particularly surprising given the scale of housing distribution after apartheid. South Africa has long had a large-scale formal housing delivery programme, with the construction of new peripherally located townships in the 1970s and 1980s underpinning its forced relocations. In the period following the Durban strikes (1973) and the Soweto Uprising (1976), after which point popular opposition to the apartheid regime would never again subside, the government began to use housing distribution as a technology of pacification, so to speak. Representatives of industrial and financial capital in the ruling coalition gained an upper hand over its more straightforwardly racist wing, with a newly formed free-market think tank called the Urban Foundation spearheading new urban policies (Barchiesi 2011; Bond 2000), most notably a housing delivery programme in peri-urban townships, often in the form of rent-to-own homes. The idea was to encourage black and Coloured homeownership, creating a nascent property-owning class against a background of racialised dispossession (O’Meara 1996: 184–6). The government sought to undermine black and Coloured unity, with the hope that new homeowners would be more interested in defending their property than risk losing it by participating in anti-state activities. There was also the hope that this would stratify and therefore polarise black and Coloured neighbourhoods, in which homeowners would resent informal settlements as threats to their property value and squatters would begrudge those in formal houses.

The strategy failed. As we have already seen, rapid urban influx accompanied the liberalisation of apartheid mobility controls in the 1980s, and debates over how to manage the sudden urbanisation of racialised surplus populations occupied a central place in transitional talks (Mabin 1996; Turok 1994a, b). In 1992, the ANC worked with apartheid-era opposition leaders, policy analysts and private sector consultants

to form the National Housing Forum (NHF)² to discuss policy options for addressing this emergent crisis of informal urbanisation (Rust and Rubenstein 1996; Bond 2014 [2000]). But the NHF was quickly dominated by the Urban Foundation, the neoliberal think tank discussed above, which effectively kept public housing off the table. The group produced the Housing White Paper in 1994, which contains the post-apartheid government's plan to build one million formal houses within the first 5 years of democracy, in line with its inaugural social spending programme, the Reconstruction and Development Program (RDP),³ although in the first 7 years of democracy most housing was actually constructed by private developers (Tissington et al. 2013: 13).

After 2001, however, new housing projects were primarily public sector driven, and now over four million subsidies have been released for RDP houses (Tomlinson 2015). According to official data on how many homes have been distributed, at the end of fiscal year 2016–2017, nearly 3.1 million formal (“RDP”) houses had been delivered since 1994 and more than a million additional “housing opportunities”. A “housing opportunity,” language popularised in DHS documents in the early 2000s, describes the provision of a partial top structure and a plot on a greenfield site, although how much these structures resemble housing has been progressively reduced over time, with the current iteration of “housing opportunity” closer to the old site-and-services approach – accent on the “opportunity” rather than the housing itself. The annual figures

reveal a few major trends (Fig. 12.3). First, if the ANC promised a million houses in its first 5 years, we see it scrambling to meet this promise in 1998–1999, followed by a drop-off and levelling out to between 130,000 and 170,000 formal homes annually. Second, an increased reliance on site-and-services from the early 2000s led the government to combine total figures (RDP houses and “housing opportunities”) to exceed all but the exceptional period 1997–1999. Third, a steady decline began in 2010–2011, with recent drop-offs marking a downward trend, or potentially scepticism about the financial sustainability of the government's housing delivery programme. Human Settlements Minister Lindiwe Sisulu notoriously associated housing delivery with freeloading, insisting, “I don't know of a country that gives free houses to young people. Free housing in a few years will be something of the past” (Msimang 2014). She thus distinguished between those dispossessed under apartheid, whose socio-spatial relegation the RDP housing programme was designed

²The NHF was the multi-stakeholder body in charge of devising new housing policies during the transition. Patrick Bond characterizes the NHF's dominant bloc as advocating a “warmed-over neoliberalism”, blaming them for limiting post-apartheid housing delivery to individually owned sites rather than public rental stock.

³To this day, most South Africans continue to refer to state-delivered homes as “RDP houses”, despite the closure of the RDP office within 2 years. After a major housing policy shift in 2006 called Breaking New Ground (BNG), the Department of Human Settlements began officially referring to government-provisioned homes as “BNG houses”, but the term never caught on. All of my contacts on the Cape Flats continued to refer to these structures as “RDP houses” – more than 20 years after the demise of the RDP itself!

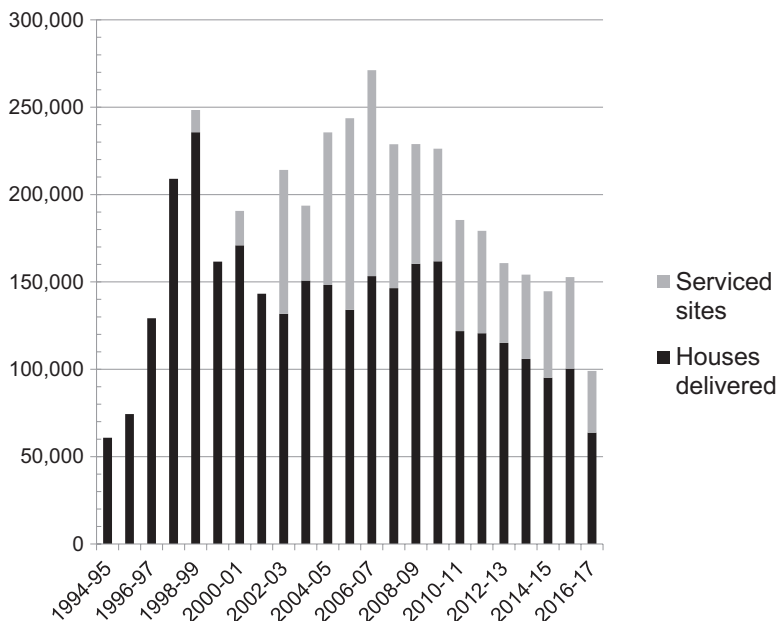


Fig. 12.3 Number of housing opportunities provided annually in South Africa, 1994–2017

to aid; and those born after 1994, who, she insisted, do not qualify as victims of apartheid.

Tokyo Sexwale, who succeeded Sisulu as Minister of Human Settlements, made a similar statement in 2011: “The solution will come not from free housing. There has to be a cut-off date for discussing that”. Of course, he added the qualifier, “But we can’t cut off the poor right now, particularly in the current national economic environment”, suggesting a hesitance to wind down the housing programme. When confronted about remarks Sisulu made at the Habitat III conference in Quito in 2016 about the limits of housing delivery, she responded, “The Department of Human Settlements will continue creating housing opportunities for all needy South Africans as part of living up to our ethos of respecting human rights and our people’s dignity”. Whether these scattered remarks represent an impending phase-out of the housing programme remains to be seen, but, according to my interviews with provincial and municipal officials in Cape Town, Durban and Johannesburg, this is not currently being discussed.

In any case, the figures show that South Africa has distributed more free, formal homes than any other democratic governments in the modern period. Yet despite the scale of delivery, supply is continuously outstripped by demand. Municipalities cannot reduce their housing backlogs, most of which have grown since 1994. The number of shacks in the country has doubled since the transition, with informal settlements proliferating widely after the end of apartheid. While municipalities reluctantly recognise this fact, the national government refuses to acknowledge it

and recalibrate policies accordingly. As Sisulu proudly declared at the ANC's Policy Conference in 2017, "We've done exceedingly well, when you look at the latest stats from Stats SA in the delivery of formal housing whether by the government or the individuals themselves... We stand at something like 79% of people in this country are in formal housing", she beamed. But this represents no improvement from 1994!

12.4 Managing Surplus Populations

When the government first conceived of housing distribution in its 1994 Housing White paper, it emphasised the impartiality of its programme. Against the backdrop of "the specter of Zimbabwe" (Hart 2002: 305; 2006: 984) just next door, a case of redistribution rife with nepotism, not to mention the contentious debates over land reform during the transition at home (Hall 2004; Walker 2003), the transitional team tried to reduce the risk of local politicians using free homes as a means of securing political loyalty. While such cases are not unknown (Rubin 2011), control over distribution was centralised in provincial and municipal governments through the development of what is popularly known as the "waiting list". In its current iteration, registering on the waiting list requires the completion of a form at a local branch office of the DHS. Residents can typically find these offices in their own neighbourhoods. Applicants must produce a government-issued identification card and provide basic personal information. The receipt they receive, called a "C-Form", contains the date of registration, the key datum for ordering registrants. When a registrant is selected, the DHS releases a subsidy in their name to the contractor assigned to the given RDP housing project. The municipality advertises tenders in local newspapers, and through a public procurement process, applicants (both public and private sector) are selected to construct RDP developments with municipal subsidies.

But this programme is far from seamless. My fieldwork revealed numerous residents in Cape Flats townships with documentation proving to me that they had been on the waiting list for over 30 years, meaning that they registered under the old apartheid system.⁴ Some would wait for decades, while others would receive homes in a few years, contributing to perceptions of corruption, or that no waiting list actually exists (Tissington et al. 2013). Stuart Wilson, co-founder and director of the Socio-Economic Rights Institute, told a group of squatters in Cape Town that he estimates the current waiting period there at about 60 years (Maregele 2017) – assuming no one else registers for housing. In addition to these interminable

⁴Apartheid era waiting lists were typically consolidated into unified municipal lists. As the Cape Town municipality expanded to incorporate previously independent jurisdictions, these previously autonomous municipalities' waiting lists were amalgamated with Cape Town's to create a master "demand database" for the newly expanded municipality (interview with Brian Shelton, September 2013). So even those on apartheid-era lists were incorporated into the post-apartheid system.

waiting periods, municipalities sometimes make exceptions, incorporating squatters they view as potentially problematic into new housing developments – even when they are not next in line (Levenson 2017). While DHS officials tend to balk at these exceptions, they are typically requested by elected politicians for reasons of political expediency. Perhaps they made a direct promise to squatter constituents from another party and hope to win them over, or else a group of formally housed residents or a private developer saw an adjacent informal settlement as a threat; or maybe a new occupation impedes a government development project, and transferring residents to state-provisioned housing is the most expedient route to getting them out of the way.

All of this produces scepticism about the waiting list. Even those residents who are confident that it both exists and functions impartially rarely wait the decades required for a home. Some are relatively recent returnees from the Eastern Cape, having been expelled to Bantustans as “Africans” under apartheid; others grew up in houses delivered by the apartheid state, but without anywhere to expand their families. Housing delivery was an initial attempt to manage these migrants, both rural–urban and intra-urban, though of course it was hardly sufficient. As demand overwhelmed supply, self-provisioning became residents’ only viable alternative in the meantime. And this took the form of land occupations: the typically collective (though occasionally individual) auto-construction of housing on a plot of land to which the residents do not have legal title.

A large literature characterises the post-apartheid state as “neoliberal”, whether in terms of social policy retrenchment, liberalising capital controls, indiscriminate privatisation, industrial restructuring or some combination (e.g. Bond 2014 [2000]; Marais 2011). But if the South African state were truly neoliberal, it would tolerate (and even encourage) self-provisioning when this did not impede ongoing development projects, affect labour force dynamics or lead to the depreciation of nearby real estate values. In the cases I observed in Cape Town between 2011 and 2017, a different dynamic was in play. In the case of Rivenland, for example, a thousand residents built homes on municipally owned land that was out of sight, uncontested by neighbours and conformed to the general racial and political demographics of the vicinity. In short, it seemed an ideal solution for a neoliberal state shifting from formal housing distribution to provision of serviced greenfield sites (“housing opportunities”). But the city government still used its Anti-Land Invasion Unit (ALIU) to monitor the occupation, issue legal threats and encourage the squatters to leave, while the South African Police Service (SAPS) regularly confiscated building materials and threatened arrest of residents pending a court interdict allowing them to do so. After a year of legal battles, all residents were evicted and the occupation was eradicated – but why?

If we think about the clearance of land occupations as an instance of managing surplus populations in the context of a crisis of rapid urbanisation, we need to ask why a government might devote so much in the way of energy and resources to regulating the social geography of poverty on the Cape Flats. If the first technology of spatial regulation is housing delivery, this always functions in tandem with a second: dispossession. I understand dispossession to be the physical separation of

residents from their homes, land and social networks. Eviction and relocation constitutes a moment of dispossession insofar as residents' new homes are divorced from established networks, lack access to expected services, and are further from employment opportunities. In its classical Marxian iteration, dispossession was theorised as coerced separation from the means of production (Glassman 2006; Perelman 2000). But this limited definition does not do much for us here, as its analytic power is trained upon the creation or reproduction of a formally free wage labour force. But all of the participants in the occupations I studied were already formally free. In the neighbourhood in which Rivenland was located, the real unemployment rate approached 60%. A functionalist conception of evictions as necessary for continual proletarianisation is patently ridiculous in a context in which an enormous percentage of the population is actively searching for work.

Another rationale for dispossession does not so much concern the people removed from the land as the land itself. Residents are removed so that land can be "developed" in order for its potential capitalisation to be realised. This is what sociologist Michael Levien (2012, 2018) describes in an Indian context as dispossession driven by land speculation. And while certainly this is in line with what much of what the recent "land grab" literature identifies as a shift in development strategy from labour to land (e.g. Borras Jr. et al. 2011; Li 2011), it does not accurately capture dynamics in post-apartheid cities. The Holfield occupation was officially tolerated even though it was highly visible, clearly growing and across the road from a well-organised middle-class neighbourhood that wanted the squatters removed. And Rivenland, which unlike Holfield was not located on private property, was evicted in 2012, but nothing has been done with the land since, and no plans are in place for its private use. Far from an anomalous case, this is a fairly regular outcome. An occupation four times the size of Rivenland was organised just a kilometre down the road in the same week. It too was located on public land and did not threaten any neighbours. After all 4000 occupiers were evicted in 2012, it lay vacant for years – and remains so today.

These evictions then were not sanctioned to recover valuable real estate, nor to create more labour power in an oversaturated labour market. Instead they were part of a larger pattern of state-driven dispossession that involved managing the rapid urbanisation of surplus populations following the demise of apartheid. Rapid urbanisation since the waning of authoritarian rule occurs in many (if not most) post-colonial contexts. In South Africa, the envisioned solution of market liberalisation came with a corollary: the liberalisation of labour and therefore of movement. And so the post-apartheid state needed to deal with this crisis of sudden urbanisation, but it could no longer simply shift them around at will. It was a democratic state, after all.

Without any economic resolution of the question of unemployment, dispossession is the post-apartheid state's primary strategy of containment – a holding pattern so to speak. This does not mean we need to adopt a formulation in which state actors are involved in some strategy of counterinsurgency. Wishful characterisations of South Africa's surplus populations notwithstanding (e.g. Gibson 2011; Pithouse 2008), they do not currently pose a credible threat to the ruling party. If anything,

their frustration with the ANC (and in Cape Town, with the DA) manifests in declining electoral support, but evicting these populations would make them even less likely to support the ruling party in their respective municipalities. Clearing land occupations is less a conscious strategy on the part of an instrumental state, and more of an attempt to implement stopgap measures. In South Africa, this means dispersing disorganised squatters, who are viewed by housing officials as impediments to realising the goals of social policy. Whether this is the distribution of free or affordable housing, the provision of healthcare or the coordination of labour markets, state projects of distribution require order. The local state demands formal rationality, but disorganised residents remain illegible to the delivery apparatus. It cannot see them as its potential beneficiaries, for only organised populations qualify for this status. Instead, disorganised squatters are perceived as a threat to the very functioning of this apparatus, and they are dealt with accordingly. Eviction then is a means of dispersing these potential threats in the only way local states know how: legally justified coercion.

12.5 Conclusion

In this chapter, I tried to make sense of how South Africa's post-apartheid housing delivery programme impacted its racialised, working class population. In particular, I asked what sort of socio-spatial effects resulted from housing delivery, and what role local governments played in its implementation. Now, more than a quarter century into the ANC's housing delivery programme, little substantive progress has been made in reversing the spatial inequality resulting from centuries of colonialism, segregation and apartheid. Despite the scale of delivery, South Africa's post-apartheid government has failed to align this programme with employment, transport and food security initiatives, leaving residents with homes in locations where residents already live and rendering the geography of apartheid permanent. A straightforward count of the number of units delivered is fairly meaningless when these are far from schools and employment. What appears as a blessing can actually be a curse, driving up each household's transport costs. Without coupling housing delivery with adequate employment, new homeowners cannot afford these increased costs, and tend to sell off their homes as a result, often moving back to the very informal settlements from which they were relocated. Since it remains illegal to sell an RDP house before its occupant has possessed the structure for a decade, residents typically sell them off for a fraction of their market value. Once residents move back to their shacks, they are perceived by housing officials as threats to the realisation of democracy.

But of course the fact of squatting hardly impedes democracy. The primary obstacle to reducing the housing backlog at this point is the government's consistent refusal to redistribute land. The ANC rejected radical land reform, explicitly prohibiting expropriation in the same 1996 Constitution that guarantees adequate housing for all. Since 1994 there has been minimal land restitution, with the government's

“willing buyer, willing seller” programme limiting redistribution efforts to voluntary market exchange (Kepe and Hall 2018; Lahiff 2007). After more than two decades of democracy, less than 6% of white owned land has been redistributed to black South Africans (Hendricks 2013: 48–49).

Even when municipalities do possess better located land, they often hold it for investment purposes, deeming the land too valuable for RDP houses. Some analysts do remain hopeful, pointing to President Cyril Ramaphosa’s promise to carry out “expropriation without compensation”, backed by more than three-fourths of the South African Parliament. In the popular imaginary, land reform remains an agrarian question; but South Africa is now an overwhelmingly urban country, and thus the question of land reform is primarily an urban one. Will the ANC and the Economic Freedom Fighters (EFF) form an unlikely alliance and pass substantive land reform measures for the first time in South African history? Given Ramaphosa’s status as the darling of the international business press, we should not hold our breath. Besides, even if such legislation were to miraculously pass, it would surely be overturned by the Constitutional Court (ibid. 2013). Yet without such a volte-face in South Africa’s approach to land redistribution, housing delivery’s prospects appear dim at best.

On the international scene, policymakers and employees of multilateral institutions would do well to heed the chorus of long-standing critiques of UN-Habitat’s one-size-fits-all approach to “slum” eradication. As this chapter makes clear, housing insecurity cannot be ascribed to some naturalised conception of poverty, with policy implementation its singular remedy. Such policies have unintended consequences as evidenced by the fate of housing delivery in post-apartheid South Africa. We could just as easily trace the ways that the technocratic refrain of creating “cities without slums”, following from the UN’s Sustainable Development Goal 11, has served as a pretext for local governments evicting residents en masse without providing any adequate alternative housing (e.g. Huchzermeyer 2011). Likewise, the publication of the NUA following Habitat III demonstrates the extent to which these sorts of technocratic solutions continue to be viewed as universally applicable, with no reference to the histories of colonial land dispossession that inscribed (and continue to inscribe) racial subjugation into urban space, let alone the concentration of well-located urban land *qua* real estate in the hands of elites. Instead, this document appropriates a Marxist mantra, calling for a “right to the city” (UN-Habitat 2017: 5), while naturalising poverty as the sole cause of socio-spatial exclusion. If we know why post-colonial cities are riven by extreme forms of urban inequality, grounded in specific racialised and class-based histories of expropriation, tinkering with housing delivery while leaving the structure of landownership untouched will lead to a Habitat IV in which the same technocratic proposals are repackaged in seemingly novel conceptual garb.

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Chapter 13

Women, Land and Urban Governance in Colonial and Post-colonial Zimbabwe



Sandra Bhatasara

Abstract The urban landscape in Zimbabwe is a site for continuous gender and political struggles. Since the time of British imperial conquest, laws and policies to govern territories were crafted to conform to particular notions of modernity on one hand, and certain notions of patriarchal traditions on the other, intended to produce and reproduce particular urban orders (or disorders). In that regard, access to urban land, its ownership and land-use patterns have sidelined different categories of women. Seemingly progressive socialist urban agendas by the post-colonial state around the 1980s did little to open urban land ownership to women. The neoliberal reforms of the 1990s, though at times accompanied by some equity concerns, did not stretch much beyond tokenism; hence most low-income black women found themselves in worse predicaments. The fast track land reform opened peri-urban landscapes to black people, but did not shape the urban land discourse in terms of intersectional gender struggles and needs. The present-day Zimbabwean urban landscapes, though accommodative to various social groups, are mostly corrupted by land barons, administered by gender blind urban planners and, centrally, governed by an intersection of political, neo-liberal and patriarchal interests. In such a context, women's access to and ownership of land remain problematic.

Keywords Land · Land governance · Urban governance · Women · Zimbabwe

13.1 Introduction

This chapter undertakes an analysis of colonial and post-colonial urban land governance in Zimbabwe, using various intersectionality approaches. Whereas urban women generally enjoy some advantages over their rural counterparts, a range of gender inequalities and social exclusion persist. Social exclusion relates not only to

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lack of opportunities, but also of access to the places where those opportunities are located (Preston and Raje 2007). Poor women's limited access to land and property in cities, whether owned, leased or rented, and lack of ownership or control of dwellings means that the scope for their entrepreneurial activity is limited (Chant 2013). Urban design and land-use regulations also generate disparities. While there are many studies on rural black women and land rights in SSA and Zimbabwe, there is limited literature on women's rights to urban land and related spaces, this is perhaps understandable given the country's agrarian economy with most people (about 66%) living in rural areas. Potts (2011) noted that much academic study of Rhodesia and Zimbabwe tended to focus on rural areas and broad political and national issues. Yet urban women's and other subaltern differentiated experiences are important in the uneven processes of past and contemporary urban governance and development in the country, an unhelpful intellectual trajectory given that land continues to shape the overall development (or lack of it) in Zimbabwe.

This chapter therefore takes both a historical and contemporary approach to past and current plans and policies and their exclusions (or inclusions) of women and land-related experiences in urban spaces. It aims to show how such exclusions are embedded in urban land governance, exposing continuities and discontinuities in women's land rights and belonging in urban spaces. The chapter develops a new feminist thesis on how historical and contemporary urban governance has affected various categories of women. The main question pursued in this chapter is: to what extent have women's land struggles and related interests been accommodated in colonial and post-colonial urban governance in Zimbabwe?. Specific questions are related to: what specific urban land governance approaches have been pursued at different historical epochs, and what underpinned them; how have these approaches affected women, given their multiple identities and experiences; what opportunities have been created for women; and what are the recurring challenges especially in present-day Zimbabwe. To respond to these questions, the chapter draws from feminist intersectionality analysis, outlined in Sect. 13.2. Following this section is a discussion that locates women in urban governance in Africa. Because of the significance of colonial intrusion, the chapter moves on to explicate how women were treated (or mistreated) in Rhodesian urban governance agendas and strategies. A broader section on urban governance and the post-colonial state uses a timeline approach identifies the Marxist–Leninist phase, neo-liberal reforms of the 1990s, the period of Millennium Development Goals and the post-2015 development era which includes the re-emergence of neo-liberalism.

13.2 Theoretical and Conceptual Frameworks

The available feminist scholarship on urbanism was initially divided between that which focused on how cities constrain and oppress women, and that on how cities liberate women (Bondi and Rose 2003). Urban forms were regarded as particularly exclusionary, homogenising, masculinist and hetero-patriarchal acts (McLean 2017), and the separation of land-use, private and public domains influenced urban design that neglected women's experiences and needs (Day 2011). Feminist geographers and historians demonstrated how the notion of separate spheres for women and men has been a powerful influence within urban land-use planning (Bondi 1998). Later, urban geographies of women of colour challenged the privileges of middle class white women in urban spaces, showing the plight of lower-income women (including women of colour, single women, working mothers, single working mothers). The recognition of "intersectionality" revealed the complexity of gendered experiences in tension with race, ethnicity, class, age or sexuality (Crenshaw 1991). Feminist scholarship concerned with cities as oppressive instead of liberating was criticised for perpetuating anti-urbanism (Wilson 1990). The agency and practices of everyday life by women in cities became a focus of scholarship, with postmodern feminists emphasising the economic, social and sexual freedoms and opportunities arising from urbanisation (Peake 2009). The middle ground addresses a need to understand how the urban constructs gender, and how gender constructs the urban, allowing one to analyse how women's access to urban land, how their use of it is restricted/contained, and to imagine how women organise, disorganise and re-organise urban spaces.

13.3 Locating Women in Urban Land Governance in Africa

With most of the world's population today living in cities, urban challenges in SSA continue to threaten the realisation of the SDGs. In the debate on urban governance, how different groups such as women differentially experience urbanism, particularly in relation to land and land-use patterns, becomes relevant. Urban land governance in Africa happens in the context of the socio-spatial transformation that followed imperial capitalist development (Mabogunje 1990). Most SSA cities were a result of imperialism (Patel 1988), and were centres of European residence and colonial administration, while their construction and maintenance and servicing of the European population required an African workforce (Jones 2011). In British colonies, the nineteenth-century rules and practices devised for British municipal government, especially public health, building regulations and property rating, were adapted for colonial ports and cities (Home 2015). East and Southern African cities became laboratories for highly controlled experiments in racial separation (Bryceson 2006), while town planning was employed to foster the colonial social objective of racial spatial segregation (Njoh 2008).

In British colonial Africa, colonial land laws, underlined by the concept of exclusive private property rights for Europeans, led to segregationist urban governance. For instance in Kenya, land grabbing led to the alienation of seven million acres to white and Indian settlers by the time of independence. In South Africa Africans were prohibited from owning landed property outside their reserves under the Natives (Urban Areas) Act 1923, and the Group Areas Act of 1948 consolidated a distinctive racially defined urban form, what became known as the *apartheid city* (Home 2015). Through the colonial period access for Africans to urban land was through temporary housing for mostly male “bachelors”, who were expected to ultimately return to their respective rural homelands. When Lusaka became the capital of Northern Rhodesia, it was designed, planned and built on the European model of a garden city (Myers 2011). In the Lusophone colonies, for example, in Maputo and Luanda, racial zoning was less by physical design, and more by Africans’ inferior legal status which largely precluded the possibility of them accessing land in more affluent neighbourhoods (Bryceson 2006). Thus, unplanned and unregulated informal settlements in Lusophone colonies contrasted with the orderly and planned cities and towns in British settler colonies.

Local women lived in many urban settlements in colonial Africa from the early years of colonialism, but their presence was questioned, and the controlling and surveillance apparatus was directed at them. In Southern Rhodesia, Jeater (2000) noted that African women from local communities were present in Bulawayo as long-term residents from the 1890s, but colonialism helped the construction of urban space in masculine terms, and intertwined with African patriarchy to define and contain African women’s mobility and access to urban spaces. These two patriarchies, while unequal in terms of the colonial dispensations of power, were in agreement about where African women belonged, and when they strayed from that place (Schmidt 1991). Travel and urban residence restrictions were common for women, especially in central and southern Africa where women were finally forced into the pass control system in the late 1950s (Barnes 1997).

13.4 “No Place for a Woman”: Urban Governance in Rhodesia

From 1890 to 1979 Zimbabwe was under British colonial rule, which shaped access to urban land and spaces on a racist and masculine basis. Urban planning legislation was introduced in 1933 and 1945, ostensibly modelled upon the British planning system (Brown 2001). From the Municipal and Town Management ordinances of 1894, when local authorities were first given powers to set aside urban land for African residence, to the 1969 Land Tenure Act, which reduced the civic status of Africans, the city was conceived as a site of control and restriction. City governance was thus about (denying) belonging and citizenship, and defining *who* could actually become “urban” (Potts 2011). This created urban insiders and outsiders.

Africans were not allowed to own, lease or occupy land or houses, with the exception of domestic workers and rental accommodation for waged workers in municipal townships (Rakodi 1990).

A brief legal historical analysis of colonial laws is illuminating to understand colonial urban land strategies and their discontents. The Lippert Concession of 1889 was introduced even before the occupation of the country in 1890, to allow would-be white settlers to acquire land rights from then-African territory. The 1894 Order-in-Council paved the way for land occupation by the Company (BSAC) and evictions of the Ndebele people. The 1898 Native Reserves Order in Council Act created Native reserves for Africans. At the recommendation of the Morris Carter Commission of 1925, the Land Apportionment Act (LAA) of 1930 formalised permanent racial separation between blacks and whites, further consolidating a dual structure of land settlement and agrarian development in the colonial period. The Native Land Husbandry Act of 1951 promoted standards of animal husbandry and modernist agricultural methodologies (Duggan 1980), and the Land Tenure Act of 1969 replaced the LAA to divide the land equally between minority Europeans and majority Africans on a permanent segregatory basis.

Colonial urban land governance and urban planning legislation can be traced back to health regulations and bylaws by Sanitary Boards. These were introduced in Salisbury in 1881, and control over physical development was added by the 1933 (Southern Rhodesian) Town Planning Act, based on 1932 British legislation (Rakodi 1996). The Township Management Ordinance of 1894 prohibited housing for Blacks in urban areas unless employed by white settlers. The system of local governance was formalised by the Municipal Law of 1897, and in 1906 the Native Urban Locations Ordinance provided urban locations for black Africans, defined as special areas under control of local authorities, under which housing was tied to employment. Sanitary Boards were replaced by municipal or city councils in 1930, with reforms in the 1960s including establishment of Township Boards, and in 1973 the Urban Councils Act replaced previous legislation to provide the legal basis for urban local government (Rakodi 1996).

Until the 1940s cities such as Salisbury were officially designated for white residents and black migrant workers (Barnes and Win 1992). A policy of influx control allowed limited numbers of African male labourers in urban areas, but not their wives or families, and black male workers were generally paid bachelor wages and given single bachelor housing that reduced the cost of providing their accommodation (Hungwe 2006). Mbare township in the then Salisbury was established in 1907 for “single” men, accommodated in four large hostels. African urban residency was limited to municipal or government-built townships, and then only for male workers who could prove employment, and to African women who could prove marriage and/or employment (Scarnecchia 2008). The dominant idea was that while Africans could come into the city as workers, they should never become residents, which encouraged a turnover of cheap labour, and avoided detribalisation, unionisation and family life becoming established in urban areas (Home 2015).

From a feminist analysis, the content and rationale of colonial urban governmentality was unreceptive to African women in towns. Both colonial urban planners and African men did not find the presence of African women in towns desirable (Jeater 2000). Ambiguities emerged over time regarding the perception by colonial administrators and planners of certain types of women's presence in colonial towns. Pass laws through the Native Registration Act of 1936 were strictly enforced, and marriage was promoted among the African working classes by subsidising rents for married housing (Scarnecchia 2008). The Natives Registration Act of 1936 prohibited single women from living in the African settlements, so that housing regulations gave women access to housing only through men by marriage (Barnes 1999). The 1950s saw an official emphasis on "properly married" nuclear families in African residential areas. This led to Western-style ritualising of marital and domestic arrangements, as married women sought to consolidate and reify their domestic position as wives and mothers (Hungwe 2006). Frequent raids in the townships by the municipal police to evict women without proof of marriage were conducted (Scarnecchia 2008). Unmarried women, or at least those whose unions were not recognised under the Native Marriages Ordinance, could be forced to return to the rural areas, and in 1947 thousands of women unable to provide proof of marriage were driven out by police raids in Salisbury (Ranger 2007; Schimdt 1991).

Colonial urban control policies and strategies were not uniform across time and space. Urban government policy allowed black workers, male and female, into the major towns as long as the white residents, manufacturers and industrialists needed their services (Barnes and Win 1992). At the same time women on their own initiative defied colonial restrictions and moved into urban centres, where they engaged in survival tactics such as beer brewing, prostitution and co-habiting with men in the bachelor hostels, thereby contravening colonial land zoning laws. Their presence invoked differential responses from the state. In Salisbury, for example, female hostels such as Carter House were later developed to accommodate women, mostly domestic workers, and the colonial state also condoned single women who lodged with male workers, either singly or in a group, giving rise to a form of domestic arrangement known in the vernacular as *mapoto* (cooking pot) relationships (Barnes 1992). A group of female landowners in the Bulawayo location in the years before 1930 owned their own houses, evidence that some women got access to land and were allowed to register for rented accommodation in their own names.

13.5 Women, Urban Governance and the Post-colonial State

13.5.1 *From Marxist–Leninist Politics to the Neoliberal Assault*

In the early years of independence, the state's ideology undergirded urban land-use planning and development strategies (Wekwete 1989). These were years of socialist pronouncements that saw the state assume a central role in urban and rural development, accompanied by de-racialisation of towns and cities to allow Africans unrestricted access to urban areas. The Lancaster House Constitution of 1979 gave the franchise to everyone, officially giving women the right to the city and to stand for office, yet the post-colonial state kept intact colonial legislation and patriarchal attitudes.

With its socialist agenda the post-colonial Zimbabwean government introduced reforms of urban landownership and housing. It wanted to provide adequate and affordable housing for all and to eliminate the urban backlog by the end of the 1980s. A policy of encouraging house ownership was adopted (Rakodi 1990), for instance, through transferring the freehold of most municipally owned rental housing to tenants based on new development of the existing formal system of land tenure (Rakodi 1996). The Home Ownership Programme of 1982 resulted in the sale of 90% of all housing units in African townships to sitting tenants. Urban low-income groups benefited from various institutions concerned with housing delivery, local government authorities' funds supported by international donors and rent-to buy schemes and private sector initiatives (Kamete 2001). Most local authorities embarked on large site and services programmes (Chitekwe-Biti 2009), and the government offered various subsidies to building societies for low-income mortgage schemes, such that in 1986/1987, 3147 mortgages were issued to low-income groups, and increased to 5500 between 1988/1989 and 1990/1991 (UN-HABITAT 2009).

The post-colonial state did not entirely move away from the command and control strategies inherited from the Rhodesian government. Writing in the 1980s, political scientist Masipula Sithole argued that ZANU PF (the ruling party) had a socialist ideology, and it was in practice more eclectic with dominant emphasis on nationalism; however, first priorities were necessarily to consolidate power, to lay a basis for facilitating accumulation by local and small-scale capital (1984). Despite the socialist rhetoric in 1980, nationalisation of urban land was never on the agenda (Rakodi 1996). Physical planning remained very regulatory (Wekwete 1989), and the Regional, Town and Country Planning Act of 1976 (amended 1980 and 1982) remained the centrepiece of the system of town and country planning. Thus despite the removal of the racial aspects, there were no essential changes in terms of property relations because of the emphasis on private ownership. The Lancaster House Constitution also impeded redistributive and radical land reform in both rural and urban areas. Despite the removal of influx controls which dramatically altered the nature of urbanisation, periodic government sweeps of people considered "undesirable" in the cities occurred (Potts 2011).

The bifurcation between ideology and practice was clear, in that the new black government was determined to retain control over access to urban land and the location of housing. Kamete (1999) observed that order was realised in the urban planning and management process through control of urban high-density housing. Violations of restrictions were dealt with through strict enforcement. For instance, Chitekwe-Biti (2009) noted that in 1992, just before a meeting of the Commonwealth heads of State in Harare, 1500 families were forcibly removed from informal settlements in Epworth and Mbare, and relocated to Porta Farm. In November 1993, riot police ordered residents to pack belongings, demolish their homes and vacate Churu farm. This reflected the colonial tendencies, for instance, during the late 1920s and 1930s in Mkokoba (Bulawayo), the Council acquired and demolished African-built houses in the location, replacing them with straight rows of brick cottages (Ranger 2007). Specifically for women, through the deployment of the colonial Vagrancy Act, clean-up campaigns also targeted women in the streets, cinemas and hotels. For instance, in 1983 thousands of women were imprisoned (and released only after producing a marriage certificate of employment) (Seidman 1984).

While access to and ownership of urban land was seemingly de-racialised, this was not accompanied by class and gender considerations. At independence, access to urban land and housing development policies remained largely closed to certain categories of women. Until the promulgation of the Legal Age of Majority Act (LAMA) in 1982, women remained minors under customary law. Even so, under customary law, all marriages were assumed to be out of community of property (Rakodi 1996), hence upon divorce or widowhood property passed to the husband or his family. Although legislation was introduced in 1982 (LAMA) and 1985 (Matrimonial Causes Act) to deal with gender injustices in access to property, local authorities continued to issue urban land titles in the name of the husband. Section 23(3) of the Lancaster House Constitution legalised discrimination of women based on African customary law (uncodified legal system derived from local customs and traditions practised by indigenous Africans), and Section 23 (b) permitted the practice of allocating land to men, not women.

Gender, class and marriage status continued to be major axes of discrimination in access to land for women in urban spaces. The lack of a coherent urban land and housing policy directed at single women, or more specifically women outside of the nuclear family, continued a legacy of dependence and violence against certain groups of women and their children (Scarnecchia 1996). Only household heads in formal employment or licensed self-employment were eligible for housing, while before 1985 only formally married couples were eligible (Rakodi 1990). By 1990 single men and women could apply for land if they had dependents, but there was no priority set by date of application or by a point system, but according to length of employment with the current employer. The policy to make all municipality-owned housing in the high density areas (open to home ownership by sitting tenants) offered an immediate solution to demands for access to land for home ownership; however, the low percentage of female beneficiaries reflected the historical preference for “single” male labour in the urban economy (Scarnecchia

2008). Poorer women with children continued to depend upon the predatory private lodger system.

Observations around the early 1990s pointed to further entrenchment of male dominance in access to urban land and urban housing. The local authority often required women to prove that they were married, or produce birth certificates for their children to join a list for housing land (Chitekwe-Biti 2009). Women with unregistered customary marriages or lacking divorce papers could not prove they were household heads, and therefore did not qualify to be on the waiting list for serviced land on which to build a house (Vakil 1994). Women employed in the informal sector and as domestic workers were routinely excluded from land access because these types of jobs were not recognised as legitimate employment. The self-help core housing type which necessitated individual capital meant that new houses were predominantly built and occupied by male workers who could get capital through their employers or extended family (Scarnecchia 2008). Men who received “family wages” became land “owners” responsible for regular mortgage payments, while their wives became home “managers” taking care of the spouse and children (Chant 2013).

The country experienced a neo-liberal assault from the early 1990s with the introduction of the Economic Structural Adjustment Programme (ESAP), signalling an end to socialist economic policies. Neoliberalism transforms land and property rights through emphasis on the market system, and disregards the needs of less profitable but socially desirable users of land, maintaining and strengthening inequalities because of the “monopolistic” nature of landownership (Rakodi 1996). The logic of the market is to promote maximum efficiency through competition, indifferent to issues of equity (Izumi 1999). House-building by government was largely replaced by cheaper sites-and-services schemes, promoted by the World Bank and aid agencies, with colonial precedents in aided self-help (Harris 1998). In Harare, for instance, one of the results of the ESAP era was a property boom in the city centre between 1991 and 1997, with the development of more than 30 high-quality new office blocks, and an increase of 60% in space for rent (Brown 2001). A powerful lobby emerged among vested interests in continuing control of the urban land in the city centre, retention of high levels of parking and restriction of informal land-use activities.

The government made occasional attempts to help the urban poor cope with the impacts of ESAP (Potts 2011). For instance, in the 1990s some conciliatory changes were made in practices relating to housing standards, the development of backyard shacks and on-plot enterprises. A ban was introduced on repossession by building societies, and at times the central government intervened to push urban governments to retreat from restrictive policies (Potts 2007). Statutory Instrument 216 of 1994 of the Regional Town and Country Planning Act partially deregulated industrial activities in residential areas (Kamete 1999), leading to a growth of home-based industries. Access to land for urban alternative housing was promoted through the allocation of un-serviced land and housing cooperatives. Some provisions were made for urban agriculture: the Harare Combination Master Plan of 1992 provided

for intensive agricultural smallholdings within the city and peri-urban areas (Marongwe 2003). In Bulawayo garden allotments for vegetable production were given to destitute women.

Neo-liberalism further marginalised the majority of urban poor, especially women, from accessing and owning urban land. Renting households faced enormous rent rises during 1991 and 1992, mainly as a result of attempts by landlords (house owners) to buffer themselves from the increased cost of living, including local council rate rises for basic services (Kanji 1995). Poor women, mostly dependent upon the informal economy as petty traders, were severely impacted. The difficulty of raising capital to buy their own land was the most pressing problem (Brown 2001), and many women could not own a piece of land in the sites-and-service projects because they could not afford the downpayment and/or the monthly repayments (Kanji 1995). By the end of the decade, urban development had generally deepened polarisation more broadly, and entrenched gender inequities in access to and ownership of urban land. The types of landownership in urban areas continued largely delinked from the context of affordability by the different segments of society.

13.5.2 Urban Governance in the MDGs Era: The Fate of Women from 2000 to 2015

This period required nation states to commit to the MDGs to tackle national development challenges. MDG3 sought to promote gender equality and empower women (through reducing disparity in primary and secondary education). Besides the fact that the MDG on gender equality did not speak to women's limited control over property and assets, the Zimbabwean political economy was decisive in shaping and reshaping women's access to and ownership of urban land. Land occupations and the fast track land reform are critical in understanding women's access to land during this period. The land reform could have provided an opportunity to improve women's access to land, including urban women. In February 2000, countrywide occupations of white commercial farms took place, and the response of the state through the fast track land reform programme largely constructed the land question as a rural challenge to resettle "land hungry peasants". However, studies on land occupations (Sadomba 2008) show that urban and peri-urban land was also occupied, as the low-income, landless, unemployed or self-employed took the opportunity to access land for housing and urban agriculture (Marongwe 2003). However, so far there is no consolidated empirical data showing how many women occupied the land, which types of women, and how many were initially allocated land in their own right by war veterans who led the occupations. What is however evident is that party politics was dominant as war veterans demanded ZANU PF cards for one to be allocated land. Another critical aspect to note was that fast track disorganised

urban land settlement patterns were permitted, in direct contradiction with land-use plans that guided development in urban areas.

Significant urban development related to the fast land reform and housing delivery policies were later introduced, but still do not reflect how women benefited, if at all. In his study Marongwe cited the neighbourhoods Retreat, Saturday Retreat, Aspindale and Whitecliffe as part of the peri-urban farms selected for urban housing land allocation and development. In Circular Number 70 of 2004, “New National Housing Standards” were introduced for low-income areas (from between 150 and 300 to between 70 and 200, with reduced infrastructure standards in order to reduce costs) (PricewaterhouseCoopers LLP 2012). The 2012 Housing Policy and later the Implementation Guide to the National Housing Development Programme of 2014 further reduced housing standards to lower costs, and the policy encouraged cooperatives, employers, financial institutions, landowners, the diaspora, the private sector or any entity with resources and expertise to participate in the provision of housing and urban infrastructure. In Harare city 18 co-operatives were dotted across the peri-urban areas (Marongwe 2003). While some women such as war veterans could have benefited, these policy interventions did not consider social differentiation of the urban population, which could have resulted in targeted urban land access schemes for women.

In contradiction to the above policy interventions, Operation Murambatsvina (clean up the rubbish) launched in June 2005 reflected continuities with the old colonial restrictions. A total of 92,460 dwelling units were demolished, leading to around 570,000 people, or 133,534 households, losing their homes; and a further 98,000 were reported to have lost their informal sector livelihoods (Potts 2006). Among these, 76% were headed by women or even children. Housing demolitions resumed in 2014 to rid occupations and constructions on wetlands and state land. Cooperative houses in parts of Budirio, High Glen, Glen Norah and Arlington in Harare and parts of Chitungwiza were destroyed between 2014 and 2016, leaving many women and children homeless.

To make matters worse especially for women, urban corruption became more entrenched during the 15-year administration of Ignatius Chombo, then Minister of Local Government, especially in urban land governance (Mutondoro et al. 2017; Muchadenyika 2015). Changing political dynamics from 2000 and increased demand for urban land made corruption in the management of urban land inevitable, as rural and urban land became the main tool used by the ZANU PF party to bolster its waning support. Muchadenyika’s study of Chitungwiza municipality found that 15,604 housing stands were illegally allocated by ZANU-PF-linked land barons, youths, housing cooperatives, council officials and councillors, without any development plans. In Caledonia, all 23,000 plots were allocated by cooperatives and land barons, many with approval from government and ruling party elites, while only 30% were on land with formally approved land-use plans (Government of Zimbabwe 2015).

From an intersectionality feminist perspective, all these acts of corruption and mis-governance had severe gendered consequences. Looking at the social costs,

corrupt officials deny the poor access to land, houses and other opportunities in urban development. Demolition of houses in cities and towns mostly affected impoverished home-seekers and rendered women and children homeless. A study in 2017 in Harare, Masvingo, Bulawayo and Mutare, by the We Pay You Deliver Consortium, noted that 53% of respondents attributed corrupt land allocation as a barrier to accessing land for housing (Chiweshe 2017). Women suffered corruption in two ways, firstly as victims of bribes demanded by urban land officials, and secondly sexual extortion to get access to either housing land or related services.

There are some pointers that work-based and self-help housing cooperatives have improved access to urban land by low-income groups. According to Harare City Council's monthly report on cooperatives (2006), 83 cooperatives in the city had accumulated savings of ZWD 260 billion dollars (UN-HABITAT 2009), and in a few cases women have benefited from initiatives with civil society support. Practical Action, under the joint initiative programme, got built 372 housing units, benefiting over 4000 people. A tenure clarification process was carried out, and a total of 1115 households got their tenure status clarified, 64% of the houses being for widows in the urban centres.

In 2013, the government of Zimbabwe adopted a new Constitution. Section 71 [2] noted that every person has the right, in any part of Zimbabwe, to acquire, hold, occupy, use, transfer, hypothecate, lease or dispose of all forms of property, either individually or in association with others. Section 71 [3a and b] states that no person may be compulsorily deprived of their property except in stated circumstances. Ownership of land in an urban area is evidenced by a title deed that is not easily obtainable. Looking at urban land registration, Marongwe et al. (2011) found that formal property rights as they currently exist cannot be afforded by the urban poor. Many land registration and housing programmes, as well as wider land and planning policies, are not gender sensitive (Rakodi 2014). The registration system is operationalised by registered private conveyancers who are not affordable by the urban poor. Institutional barriers are also found in offices of the Surveyor General and the Registrar of Deeds. The Deeds Registry Act is discriminatory (Section 15 of the Deeds Registry Act [Chapter 20:05] requires married women to be assisted by their husbands when registering land title). Hence not only are women left at the mercy of "benevolent spouses", but also without title deeds, most women are at risk of losing the land. There is also no law that enforces joint land title deed registration by married people, making it easier for women's property rights to be interpreted by custom and traditions within predominantly patriarchal Zimbabwean societies.

The application of the Constitutional provisions is full of contradictions and complexities. The Constitution's provision for equality between spouses in sharing property at dissolution of marriage are contravened by the Matrimonial Causes Act which remains unaligned to the Constitution. Section 7 of the Act gives courts a wide discretion to decide on distribution of assets such as a house. Women have

generally limited access to formal employment (only 14% of women were formally employed in 2014 Labor Survey by Zimbabwe Statistical Office); hence their contributions may be unjustly undermined, especially without proof of their earnings from the informal economy. Their contributions to matrimonial land acquisition and property through unpaid care work are also not quantified and monetised. Reality also shows that no one can ever fully protect himself or herself from losing land, with urban dwellers, including women and children, still facing risks of evictions, displacement and homelessness (Bhatasara 2019).

13.5.3 Women, the Post-2015 Development Agenda and the “2nd Republic”

Urban governance has remained critical in broader contestations around control of the state in Zimbabwe, despite the adoption of a new international development framework of SDGs. The gender equality SDG5 advocates reforms to give women equal rights to economic resources, as well as access to ownership and control over land and other forms of property, financial services, inheritance and natural resources (in accordance with national laws). In the Zimbabwean context, the 2017 Zimbabwe Voluntary National Review (VNR) of SDGs for the High Level Political Forum offered no progress towards women’s access to resources such as urban land. Instead, a political coup created another problematic trajectory. In November 2017, the long-serving president Robert Mugabe rendered a resignation letter after a joint session of Parliament and Senate had been convened to impeach him, and Emmerson Mnangagwa was sworn in as President. In August 2018 Mnangagwa was again sworn in as president of the so-called Second Republic. Since then, the country has been in severe socio-economic turmoil, experiencing growing political polarisation and discontent, and the state has become even more authoritarian, especially towards urban citizens.

A cabal of neo-liberal imperatives and political interests currently control Zimbabwe’s urban landscapes. The government has been attempting to re-engage the international community with its mantra, “Zimbabwe is open for business”, which officially signalled the return of a neo-liberal economic strategy. This approach involves stabilising the macro-economy and the financial sector, introducing policy and institutional reforms that translate into a private sector-led economy and launching quick-wins to stimulate growth. For instance, urban citizens have been subject to various repressive tendencies for re-inscribing order on the urban landscape that echoes the colonial times. One example is of the persistent clean-up campaigns to restrict unauthorised access to land, housing construction and other land-use patterns. In October 2018 Harare City Council dispatched earthmovers to

demolish 108 illegal structures in Budiriro near High Glen Mall, following a court order to bring down the 500 illegal structures.¹

In January 2018, the Minister of Local Government gave “illegal” vendors and taxis 48 h to leave Harare’s streets, as the president sought to restore order in cities. The disorder and chaos in cities were blamed for curtailing foreign investors. In a move dubbed operation restore order, Harare city Council descended on transporters accused of causing chaos in the city, and in May 2018, the Government deployed task forces consisting of the police, army and council police to all provinces to remove vendors and other small businesses operating illegally within the central business districts. The Mayor of the City of Gweru stated: “We are supposed to attract investors, but instead we are pushing them away because there is no investor who is willing to invest in a dirty and disorganised city”.²

Corruption continues to shape urban governance in the Second Republic, as formal urban governance structures continue to be threatened by abuses of power and rampant corruption. While the current President has made several public announcements to curb corruption and reconstituted institutions to deal with it, the situation on the ground is appalling. Access to urban land and use of urban spaces continue to be politicised and marred by corruption. The Special Investigations Committee’s Report on the City of Harare Land Sales, Leases and Exchange evidenced land swaps between the City of Harare and some political elites, and un-procedural sale of public land violating section 152 of the Urban Councils Act (Chiweshe 2017). Women are caught up in the crossfire when the housing structures they have invested in are demolished.

While the declaration of a neo-liberal dispensation is itself dangerous for women’s land rights, the intersectionality of a militarised state, patriarchal interests and local and international capital is even more threatening. The role of the government in the urban land market continues to be minimal and gender blind, and the possibility of broad-based policies to ensure improved access to land and housing is jeopardised by the mantra of “austerity for prosperity”. What this means is that women’s access to urban land continues to be largely mediated by the market, marital and employment status but sometimes political affiliation. The market is not gender-neutral and excludes poor women by discriminating against them because of their lesser power and resources (Izumi 1999). Currently, there are no substantial and substantive programmes catering for low-income urban communities especially women. What continues, and is in line with the new neoliberal order, has been substantial urban construction and housing by private developers and individual households. Other formal players in urban land development are pensions funds such as Old Mutual, Fidelity Life, NASSA (the National Social Security Authority), the Local Government Pension Fund, the Mining Industry Pension Fund, Railways Pension Fund, employers and Building Societies (PricewaterhouseCoopers LLP 2012). These actors are engaged in housing, office development and industrial parks

¹ <https://allafrica.com/stories/201810250747.html>

² <https://www.herald.co.zw/gweru-operation-restore-order-starts-today/>

which are targeted to more middle and upper class communities, thus sidelining low-income groups including those in the female dominated urban informal sector.

Besides the promulgation of a neoliberal economic trajectory, women remain on the fringes of formal urban land governance, not only in terms of limited access to urban land and services but also participation in urban land governance. Historically and to this day, cities have been planned, designed and governed without the equal engagement of women as decision-makers (UN Habitat 2012). The exclusion of women means women's land struggles do not shape policies on urban form and function. Many urban planners are men, and they lack an understanding of gender and intersectionality issues in urban governance. For instance, while Zimbabwean women have lived with the fact that there have been no female city mayors or Ministers of local government since independence, hopes for women have even been seriously shattered with not only a more militarised state but the open disregard of the Constitution which calls for equal representation at all levels of decision-making. An analysis of the post-July 2018 governance architecture shows that the gains made, for instance, in women's presence in local rural and urban Councils in 2013 were eroded in 2018.

Improvements could have evolved that could possibly improve women's access to land and other spaces, but the current ruling party is largely operating outside the Constitution by not implementing devolution. The 2013 constitution provides for local government and promotes a devolved governance framework. Section 3 (2) (i) of the constitution recognises devolution and decentralisation of governmental power and functions as one of the principles of good governance. The Second Republic has however not departed from some of the colonial legislation that governs urban areas (Urban Councils Act, 29:15 and sector and allied legislation as well as other relevant legislation including the Regional, Town and Country Planning Act). Clearly, since independence, the state routinely disregards the law and operates outside written rules and regulations. Such tendencies, indicative of a problematic historical and contemporary Zimbabwean political economy, continue to reproduce disadvantages and exclusions women face in accessing and owning urban land.

13.6 Conclusion

Urban land governance in Zimbabwe is politicised, corrupted and masculinised, and has largely remained unreformed; hence women's land related struggles and needs remain marginalised. Since the time of colonisation, several attempts have been made to inscribe particular urban orders. Various laws and policies that shaped colonial urbanism in Rhodesia, although racially segregatory, also restricted women's access to and belonging in urban spaces in general, laying the foundations for gender-based exclusions that women continue to confront in present-day Zimbabwe. The post-colonial state has vacillated between different policies to promote access to urban land and broaden urban land use patterns. This has yielded mixed results at

particular historical epochs such as increasing access to urban housing and service delivery for the low-income urban groups. At the same time, it has not only propagated various forms of urban order reminiscent of the colonial days, but also inscribed certain forms of disorder and used urban land for political patronage. Currently, urban areas in the country are generally perceived using dissidents' notions as sites of indiscipline, insurgency and resistance; at the same time, there is a cautious stance to pacify the urban population through various counter-interventions.

The position of women in relation to land rights has ranged from tokenist accommodation, adverse incorporation to outright marginalisation or inconsideration of their gender-specific struggles. The evidence in this chapter justifies a conclusion that, unlike their rural counterparts, who have somehow been grudgingly prioritised and benefited under various land reforms since independence, women's land rights in urban areas are fragile, and they have largely been left at the mercy of the urban land market. Redistributive tendencies during the fast track occupations of peri-urban land in 2000 thus far do not adequately show how gendered land access, and rights were taken into consideration. Even within the urban land market, allegedly open to everyone, women's access to and ownership of land as well as security of tenure are not always guaranteed. The chapter has also shown women and children mostly emerge as victims in various interventions, to foster narrow-minded notions of orderly urban modernism and political discipline. Critical rethinking is needed of what urban development means for women, and specifically what access to and ownership of urban land entails. Both the Constitution of Zimbabwe and the New Urban Agenda should allow for the construction of a new narrative on urban inclusion and just urban development pathways across a broad spectrum of aspects including land and livelihoods.

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Chapter 14

Urban Land Governance and Corruption in Africa



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Abstract Urban land provides spaces for understanding the intersection of politics, money and corruption in post-colonial Africa. This chapter traces the political economy of accumulation in which political power is used by various actors to claim a stake in lucrative urban land markets. Urban land in Africa is a lucrative economic and thus political asset, and increased demand for urban land across the continent has been driven by multiple factors, including high rates of urbanisation, increased rural–urban migration, urban population growth and serious challenges in housing provision. This chapter uses desk research to map out the actors and contestations over land, using case studies from SSA to show how an intricate mix of political power and money creates multiple illicit land deals and often shadow land markets in which politicians and politically connected individuals use land as an economic and political asset. The political complexities involved in land corruption make difficult to combat the problem. Politicians and bureaucrats with responsibility to fight corruption are entangled in the web of corrupt dealings which make it difficult to end the problem. The chapter offers suggestions to improve urban land systems.

Keywords Urban land · Land corruption · Land governance · Urbanisation · Urban governance

14.1 Introduction

In 2014, SSA had an estimated total population of 925 million people, of which 37% or 346 million lived in urban areas. This figure is projected to increase to 2.04 billion inhabitants in 2050, of which an estimated 55%, or 1.137 billion, will be urbanized (Durand-Lasserve et al. 2018:4).

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It is estimated that by 2015, cities such as Johannesburg, Khartoum, Casablanca and Dar es Salaam will reach populations of ten million each (Sow 2015). Many cities such as Luanda, Angola, expect to have rapid rates of urban population growth, Addis Ababa, for example, estimated at 4.3% annually (Adam 2014; Gastrow 2017). This process has compounded the challenges around urban land governance. The increased demand for urban land is exposing a political economy of land corruption, in which various actors have emerged as land brokers across the urban landscape on the continent. This chapter analyses how political and economic power is mediating access to urban land in Africa, and how urban land governance has been subverted by extra-legal and political processes which have created shadow land markets away from state control. It explores the following research questions: What is the nature of urban land corruption in Africa? Who are the actors, institutions and processes involved in urban land governance? What is the impact of urban land corruption? What is the impact of urban land corruption on women in Africa?

Land governance in SSA has to be understood as negotiated complex circuits of predation, corruption and patronage. Political systems of corruption based upon multiple ethnic, class, regional, familial and other networks have emerged to control access to and over land in urban Africa. This chapter unpacks the concept of urban land corruption and its various mutations across SSA. Urban land corruption is defined as illicit acts and abuses of power by those in power (at different levels) when performing their duties relating to different land operations. Any understanding of land-related corruption needs to recognise how power is deployed to gain an unfair and often illegal advantage in land transactions. Corruption in land governance is often symptomatic of the breakdown of a country's overall governance, and poor governance increases the probability of corruption in land systems and land administration, and intensifies pressure on the use of land (Transparency International and FAO 2011).

Urban land corruption in Africa occurs when weak institutions are susceptible and unable to respond to complex challenges. Myers (2011) points towards the lack of capacity in planning units and institutions in most African countries as a source of systemic problems in urban land governance. This includes the lack of robust land information management systems that can allow policymakers, citizens and civil society to effectively monitor urban land systems. Weak institutions are at the heart of understanding how local urban governance in Africa retains a lack of transparency. Smit (2018) argues that local government weaknesses in Africa are a colonial legacy of centralised government control continuing in post-colonial contexts. Attempts at decentralisation across the continent have largely failed to deliver strong institutions: "weak, disorganized, inadequately trained and staffed, and often under resourced relative to the new range of responsibilities they are expected to take on" (Meagher 2011:51).

Land corruption in African urban spaces has to be understood as a process happening at multiple levels and spaces, encompassing petty bribes and also high crimes and grand corruption, and involving a variety of actors with different access to power and control. Across Africa, urban land corruption is largely an institutionalised and accepted everyday norm of doing business in the land sector. Transparency

International (2014) argues that in most countries, land services rank among the most corrupt sectors and institutions. Another Transparency International study of 69 countries in 2009 concluded that the land sector was ranked third most corrupt among public institutions, after police and judiciary, with 1 out of every 10 people who contacted a land authority paying a bribe. This chapter argues that urban land is highly susceptible to corruption because of increased demand for land. Africa's rapid urbanisation rates are also problematic, because the process is not aided by technological, planning or industrial development. The emergence of unplanned informal settlements provide a unique governance challenge due to the absence of the state in such spaces. Such a scenario opens way to informal land governance structures mainly based on political affiliation, as found in countries such as Zimbabwe, Kenya and Nigeria. The chapter begins with a background to urbanisation and urban land governance in Africa. It goes on to outline the political economy of land governance and how it drives urban land corruption. The discussion then turns towards analysis of actors, institutions and processes of urban land governance and corruption in Africa. It finally highlights how women intersect with land governance and corruption.

14.2 Background to Urbanisation and Urban Land Governance

Across parts of Africa, urban land governance is largely controlled by colonially initiated systems most of which are still in existence, while in some countries, customary tenure systems have continued even in urban areas. Urbanisation is itself a colonial process that changed the socio-economic and political systems of African society, leading to new forms community and complexities that have continued into the post-colonial period. Across Africa millions of urban dwellers, farmers and small-scale entrepreneurs do not have legal access to land (Toulmin 2009). Colonisation imposed a system of landownership and management without completely removing customary forms of tenure. The system based on freehold tenure in urban areas was imposed together with institutional formations to govern and protect landownership, such as the judiciary and land agencies. The public sector remained cast in the mould of colonial administrations (Pieterse 2018), and the challenge in the post-colonial state is that these bureaucratic practices now constitute serious impediments to urban planning in many countries. For example, the hierarchical power relations embedded in command-and-control decision-making have now entrenched a new post-colonial administrative elite, that is intimately entwined with the political party machines that overdetermine the economy, politics and administrative functioning. Another problem with colonially imposed structures is institutional fragmentation and flawed policies in many African states, the result of too many institutions mandated to manage land, and the lack of proper coordination between them.

In many parts of Africa (especially Southern Africa), urban land governance is “obliged to confront, namely the social and spatial legacy of colonial and apartheid cities” (Turok 2016:11). The historical context is at the heart of how post-colonial/apartheid land governance has evolved in ways that continuously exclude the poorest segments of our population. For example, Zimbabwe and South Africa have a legacy of parallel and unequal development of urban spaces based on race. This parallel development has morphed into one based on class in the post-colonial era, as the emergent political rich and black business class continues policies of parallel and undemocratic urban governance systems. In South Africa:

The establishment of bleak dormitory settlements and hostel compounds for migrant workers without any kind of economic base or amenities was a further problem. There was deliberate under-investment in housing, physical infrastructure and social facilities...townships and adjacent informal settlements became concentrations of poverty and exclusion, where miserable living conditions meant hardship, insecurity and crime. (Turok 2016:11)

Zimbabwean cities still reflect colonial planning traditions designed to promote racial segregation, and no longer meet the needs of their resident populations, which double in size every 10–15 years. Colonial vestiges of exclusion survive in overpopulated high-density areas built for black labour, creating serious problems of service provision, adequate housing and social services, and health problems such as typhoid and cholera.

Colonial patterns of urban governance thus continue to influence the complexities within post-colonial states. White colonial governments utilised institutional formations at both local and national government level, to protect and maintain their privileged positions especially in former settler colonies such as South Africa. Apartheid led to an unequal, incoherent and inefficient urban settlement pattern, with wide disparities in provision of infrastructure and services (Government of South Africa 2001).

In post-colonial contexts, Goodfellow (2017) has shown for Ethiopia and Rwanda that, unlike other parts of the world, urbanisation in Africa has occurred without industrial development, with real estate development outstripping economic development and industrialisation. He cites Lefebvre and Harvey for the concept of a “secondary circuit” of capital, to highlight how factors such as low taxation, speculation, remittances and government incentives drive an urban property boom. African urbanisation growth has not been met with a commensurate increase in formal employment, resulting in increased urban poverty and vulnerability. Various researchers (Goodfellow 2017; Smit 2018) have shown that the government structures meant to govern this urban growth are either weak or lack capacity to provide transparent and accountable urban development. Urban government structures across Africa are failing to cope with the demand for urban land and housing, leading to a myriad of opportunities for kleptocratic practices that exacerbate inequalities and entrench exclusion of the poor and vulnerable.

14.3 Conceptual Understanding of Land Governance and Land Corruption

Land governance in this chapter is broadly defined as the process by which decisions are made regarding the access to and use of land, the manner in which those decisions are implemented and the way that conflicting interests are reconciled. Land governance is thus a concept of power and control over land resources at different levels. It includes state structures such as land agencies, courts and ministries responsible for land, as well as non-statutory actors such as traditional bodies and informal agents. It is within these structures and actors that land corruption emerges, operates and impacts land access and control in urban areas. Kakai (2012:1) reflects that land corruption can be defined as “illicit acts and the abuses of power committed by those in power (at different levels) when performing their duties’ as this relates to different land operations”. Land corruption does not occur in a social vacuum, but it is rather an outcome of competing and contesting interests at local levels.

Corruption can be seen not so much as an objective practice existing in a vacuum but as a social act whose meaning needs to be understood with reference to social relationships. In such a scenario, corruption can be considered as essentially a problem of power. Those with power within urban governance structures use it to accrue control over use and access of urban land (Harrison 2006, 15).

The chapter places urban land corruption within the context of the NUA and the various rights around inclusive cities. The NUA is driven by “cities for all, referring to the equal use and enjoyment of cities, towns, and villages, seeking to promote inclusivity” (United Nations 2017, 5). The vision is complicated by opaque local governance processes, unchecked expenditure and poor service delivery for the poorest in the cities. African urban land has emerged as a place of contestation, with many cases of land corruption and negative effects upon the poor. Many people have lost money through illicit land deals, and this directly affects access to housing and shelter in the urban areas.

14.4 Land Corruption in Urban Africa

Across urban Africa corruption in the land sector has emerged as a common scourge on the poor. Writing on Uganda, Bhatt et al. (2017) argue that corruption pervades the whole land sector, including various actors such as brokers, administrators and surveyors, and is evident in all spaces, including land dispute resolution institutions plagued by nepotism and favouritism, mainly by government officials (Mercy Corps 2011). In Tanzania, the process of accessing urban land is riddled with bureaucratic and petty corruption by officials bent on using their positions for gain (Nuhu and Mpambije 2017). In their research 96% (135) out of 140 respondents reported corruption as a serious problem in land accessibility in Dar es Salaam. A study of

Cameroon, Ghana, Kenya, Madagascar, Sierra Leone, Uganda, Zambia and Zimbabwe shows urban land corruption driven by unaccountable land management and urban land planning, in a situation of rapid urbanisation that deprives the public purse of essential revenues and makes tenure and shelter security for the urban poor unobtainable (Jaitner et al. 2017). Corruption is thus synonymous with urban land systems. Transparency International (2005) showed that the Kenya Bribery Index 2005 shows that 65.7% of the people visiting the Ministry of Lands might be asked for a bribe and 36.3% of declinations resulted in service denial.

Obala and Mattingly (2014) show how in Kenya urban land corruption is intertwined with ethnicity. Urban land conflict in low-income settlements in Nairobi is steeped in ethnic and historical contestations, bringing new complexities to urban land corruption. Various familial, ethnic, social and relational processes infiltrate urban land governance to circumvent procedures and create winners and losers. In Botswana the Directorate of Corruption and Economic Crime was by 2004 dealing with hundreds of cases of illegal land allocations associated with various forms of corruption involving land administrators (MMEGI 2004). Kakai (2012) shows how in Benin poor land governance systems have provided a fertile breeding ground for corruption. Politico-administrative institutions and powerful members within these institutions use their positions to accrue land at the expense of the poor, often displaced with little or no compensation. GAN Integrity report on Cameroon shows that:

Nearly half of businesses expect to give gifts in order to get a construction permit...Cameroonians frequently pay bribes to land administration officials for a variety of procedures.

Transparency International also reports that land administration officials embezzle expropriation compensation funds. In May 2016, 14 officials were arrested on charges of embezzling USD 9 million supposed to be paid as compensation to the owners of expropriated land for building a deep-sea port in Kribi, Cameroon (<https://www.ganintegrity.com/portal/country-profiles/cameroon>).

In Nigeria, “hierarchical and outdated organizational structures, bureaucratic processes, and high costs and fees for service [in the land sector] ensure[s] that...only 3 percent of land in Nigeria has formal property title” (Ghebru and Okumo 2016: 1). Land corruption is rife as the majority of the people do not have legal title to protect their claims to land. *Anti-Corruption Digest* (2019) reports that urban land corruption is a part of everyday land transactions in Nigeria. Between greedy landowners and corrupt government bureaucrats, buying land in Nigeria can be a precarious endeavour. The report notes that in the Ministry of Land and Housing, a syndicate of corrupt officials specialises in extortion of prospective land title seekers. In South Africa corruption exists at all strata of government in both rural and urban areas. Administrative entanglements, corruption, legal battles, legislative and administrative loopholes and misalignments in the different spheres of government work against coherent approaches to spatial management on the ground (Mkhize 2015). Access to urban land and housing on that land has become a hotly contested topic among political parties, vying for support during recent local government elections, and in certain cases has prompted illegal land invasions in and around the cities.

Another key aspect of urban land corruption is the complexity of land conflict resolution mechanisms in Africa. In urban Africa various legal and extra-legal mechanisms exist to resolve land conflicts and disputes, but are involved in the intricate webs of corrupt activities. Droy et al. (2010) note that in Madagascar, recourse to justice to settle land disputes is uncertain because of rampant corruption. Kakai (2012:11) also highlights how in Benin, “what is astonishing is the complicity of some individuals with court judges to hush up cases”. In Zimbabwe, Chiweshe (2017) has shown how the land dispute systems have been corrupted by individuals circumventing laid down procedures in exchange for payment. The poor record keeping and corruption of institutions poses further challenges for conflict resolution. A World Bank (2007) study indicated that 50% of companies in Angola, the Democratic Republic of Congo, Guinea and Swaziland had no trust that the courts can protect property rights. The 2011, 2012 and 2013, Land Governance Assessment Framework (LGAF) by the World Bank makes reference to a number of corruption incidences in the land sectors of Nigeria, Malawi and Gambia. Accessing urban land is mediated by rent-seeking behaviours which makes landownership difficult for poor and vulnerable groups.

14.5 Political Economy of Urban Land

Land is increasingly becoming the most important political commodity in African politics. Mutondoro (2018) argue that urban land governance in Zimbabwe is embedded within complex systems of political patronage and clientelism. Urban land is used by the ruling ZANU PF as an attractive political tool during elections. Land is parcelled out through parallel structures to manipulate especially youth voters and mobilise support for the party. In Kenya, Van Der Molen and Tuladhar (2007) quote the Minister of Lands stating that since independence land has been used as a pay-back system for political supporters through irregular processes. Urban land is a valuable commodity, tradeable and secure. Zinnbauer (2017) argues that public land is increasingly becoming an important political currency for patronage in times of severe urban housing shortages, with political allegiance the basis for land allocation. Mutondoro (2018) argues that urban land in Zimbabwe is a crucial tool and asset for political patronage, and Chavunduka (2018) identifies a land patronage system, used in peri-urban areas by the ruling ZANU PF party to ensure electoral compliance. Klopp (2000) highlights that in Kenya, public land and property are allotted to secure political allegiance, or land is confiscated and re-assigned for the same purpose.

Urban land corruption goes beyond the narrow focus on monetary transactions or bribes, as “dependencies and collusive interest alignments are being forged in much more diverse, subtle, and structural ways to nurture a nexus between political and economic powers for joint illicit enrichment” (Zinnbauer 2017:4). Belonging to the right political party, being related to the administrator and having a bribe are all viable capitals of exchange in these transactions. As far back as 1995, Gatabaki was

highlighting how Mathare, an informal settlement in Kenya, was a vital political asset for the late president Jomo Kenyatta and thus “protected” from destructions.

14.6 Actors, Institutions and Processes of Urban Land Governance

African governments both at national and local levels remain the most important actors in urban land governance. The government creates, controls, implements and monitors urban land policies, processes and systems. While there are many government actors in urban land governance across the continent, there are similar institutions which include the following: ministry responsible for land, local councils or government and land agencies. The government has the authority to plan, develop, acquire, distribute and take away land rights. The power of government is also contained in its ability to control building licensing and approval of plans and land sales. They retain the power to demand taxes on land and oversee all land transactions. The majority of the cases of corruption outlined in literature of urban land in Africa relate to the actions of the state, which is not a neutral actor in the process of land administration. Land in urban areas is both an economic and political asset, and involves multiple contestations, interests and agendas, mainly not in the interest of the poor urban dwellers. UN Habitat (2005b), for example, notes that in Mozambique, an application for land requires 103 administrative steps, and takes years leading to double allocations, land conflicts and poor record keeping. The state makes it difficult to own land, and chaos in land information management systems provides opportunities for corruption.

The private sector includes various capitalist interests in the urban land sector including real estate companies, banks, land developers and local and foreign investors. These actors form an intricate web of relationships with the state to form the urban governance infrastructure. Nuhu and Mpambije (2017) note that land investors, developers and related service providers (real estate agents, lawyers and land surveyors) are all part of corrupt networks within the land sector in Tanzania. Compared to other parts of the world, Africa lags behind in private financing in the land sector.

In UK, mortgage finance to GDP ratio is about 80%, in the US it is 77%. For Hong Kong, this ratio is 50%, across Europe the average is about 50%, and for Malaysia it is 32%. In Africa, South Africa, is the outlier with mortgage finance at 31% of GDP. For many 4 African countries, this ratio is low: it is only 2% for Botswana, 2% for Ghana, and only 0.5% for Nigeria. (Okonjo-Iweala 2014: 3)

The uncertainty and volatility of land issues across most parts of Africa affect private investment into land. In Nigeria, Okonjo-Iweala (2014) argues that the lack of a proper mortgage finance market makes illicit deals often the only way to access urban land.

Chiweshe (2017) argues that demand and shortages of land in Zimbabwe are not functions of land scarcity, but rather of poor urban planning and a stalled national housing project. This desperation for housing has led to the emergence of informal actors in urban land governance, politically connected and corrupt individuals known as “land barons”. Molotch (1993) uses the term “place entrepreneurs” to describe these shadowy actors operating in informalised urban institutional environments. Obeng-Odom (2015) argues that in late urbanising countries such as Ghana, there are many spaces for informal brokerage working in the shadow of laws and regulations as middle men. In many African cities, “it is now accepted that, due to a variety of factors, informality is the predominant characteristic of urban growth and that a majority of urban residents, especially the poor, access property rights through transactions occurring outside state regulation and formal land markets” (Rakodi & Leduka, 2003). While these informal arrangements leave urban land seekers vulnerable and unprotected, they are often socially accepted. In three informal settlements in Uganda, Nkurunziza (2007) shows that land agents (brokers) facilitate land sales even in the absence of registered certificates of the land, being a function of system failure and the state’s inability to provide land for housing. If people feel that they cannot access land or housing legally, they will resort to illegal alternatives (Payne 2001).

14.7 Women and Urban Land Corruption

Urban land systems across Africa are characterised by gender, class and generation inequalities (Kombe and Kreibich 2001). The urban poor and women do not have equal access to land especially under the customary tenure and formal land systems, and are vulnerable to urban land corruption (Nuhu 2019), with patriarchal and cultural systems deeply embedded in corruption networks. Land corruption is often experienced through gender-based violence and sexual abuse. Poor women with children suffer when homes are demolished by governments, and housing structures may offer little basic security, lack of police presence, lack of sanitation forcing women to access public toilets at night, and lack of street lighting. Meth (2017) highlights how in South Africa the building materials in informal settlements facilitate crime.

Informal settlements are largely a function of rapid urbanisation without complementary expansion in urban housing. Urbanisation on the continent is largely happening without the technological or industrial advances that improve lives. Informal settlements in many instances grow out the desperate need for housing and the governments’ inability to deliver serviced land.

Land sales in peri-urban areas are fraught with multiple contestations mainly because most of the land is held under customary law. The monetisation of peri-urban land distorts land prices, with peri-urban areas of Kigali experiencing a more than 1000-fold increase in land value (Kopanyi and Murray 2016). In Tanzania Ngware and Hosea (2010) observed an increase of bribes in the processing of plots

in the peri-urban areas of major cities, with a new land economy posing threats to people's access and control over land. The political economy of urban land is having a major impact on peri-urban land values, with rising insecurity for those living on and working such land (Toumlin 2009). Informal settlements are increasingly under threat of violent and forced evictions by the state. In July 2018, 30,000 people were rendered homeless in Kibera, an informal settlement in Nairobi, Kenya, to pave way for road construction. In Zimbabwe, Operation *Murambatsvina* in 2005 evicted 700,000 people from their homes (UN Habitat 2005a).

14.8 Conclusion and a Way Forward

The chapter has highlighted multiple complexities around urban land corruption and how it affects governance, access and control of land. The biggest challenge for Africa into the future is a rapidly growing urban population without adequate technological or industrial capacity. In December 2019, a Conference on Land Policy in Africa in Abidjan, Cote d'Ivoire, by the African Land Policy Centre, African Union Commission, United Nations Economic Commission for Africa and African Development Bank addressed the theme of fighting land corruption. Clarity on urban tenurial systems would allow for equity and protection of historical claims to land, especially in peri-urban areas, achieved through proper land registration using technological advances such as blockchain technology. Clear urban land governance policies can promote a functional land information system, land conflict resolution mechanisms and systems for accountability of actors in the land sector. Another measure is better public information about the costs and procedures in accessing land, as corruption happens partly because the costs or processes are hidden from the public. Civil society organisations need to build the capacity of citizens to demand and advocate for transparency and accountability in the land sector.

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Chapter 15

Partnerships for Successes in Slum Upgrading: Local Governance and Social Change in Kibera, Nairobi



Thomas Meredith, Melanie MacDonald, Harrison Kwach, Esther Waikuru, and Graham Alabaster

Abstract With global trends towards increased urbanisation, conditions in sub-Saharan Africa (SSA) present unique challenges. Kibera, in Nairobi, Kenya, is among the largest informal settlements in SSA, and has been part of ambitious programs to improve quality-of-life conditions for residents. This chapter explores one initiative involving a partnership of the Kenyan Government, UN-Habitat, a local NGO called *Maji na Ufanisi*, and community-based leadership groups. The program was part of a slum upgrading initiative called the Soweto East Project and relied heavily on community engagement to build trust, encourage active participation and define community concerns. Priorities included water supply, sanitation and waste management, but also an access road, a community resource centre and capacity building activities. We describe the mechanisms used to cultivate community engagement, the problems that emerged and the successes that followed. We conclude that environmentally sustainable and socially acceptable enhancements in informal settlements will require both a strong commitment from within the community and sustained support from outside institutions. The innovations that were a part of this program provide evidence of strategies that yield positive outcomes.

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Keywords Slum upgrading · Water and sanitation · Community development · Capacity building · Urban governance

15.1 Introduction

In July 2019, the Kenyan Government announced that Kibera, the largest slum in Nairobi and one of the largest in Africa, was to get over 3000 houses in a slum upgrading project (*Daily Nation*, July 21, 2019). The announcement might have been met with scepticism, given the record of slum upgrading projects that have ultimately proven to be eviction programs (Muraya 2006; Muraguri 2011), but instead it was enthusiastically received. There was one reason for this: the announcement was for Phase 2 of a Kenya Slum Upgrading Program (KENSUP) initiative, known as the “Soweto East Project”. Through strategic planning and management, Phase 1 had proven successful in meeting the expectations of the intended beneficiaries, and in early July 2019 822 families had moved into new, affordable housing units on land that they had vacated 6 years earlier, not as tenants but as property owners! The credibility of the government’s announcement for Phase 2 of the Soweto East Project was rooted in the proven success of Phase 1.

The pace of urbanisation in Sub-Saharan Africa, the high rates of urban poverty and the increasing proportion of urban population in slums are factors that present an explosive situation and an urgent challenge (World’s Cities 2018). Poverty, social and economic exclusion, and the challenges of meeting the basic needs of so many urban dwellers, have resulted in the growth and spread of informal settlements that are densely populated, poorly constructed and lacking in almost all formal services. A special report on “Rural-Urban Dynamics and the Millennium Development Goals” (World Bank 2013) noted that slums are growing fastest in SSA: “Urbanization is helping pull people out of poverty and advancing progress..., but, if not managed well, can also lead to burgeoning growth of slums, pollution, and crime”.¹ These conditions demand innovation in programs, policies and technologies, but these are only likely under innovative systems of governance. The research described in this chapter was undertaken to understand how community engagement can contribute to innovative urban governance. The guiding questions were: how are basic human needs met in informal settlements, what are the greatest challenges faced in the community, and how can conditions be improved without jeopardising what is functional? The chapter explores these questions by examining the governance aspects of Phase 1 of the Soweto East Project that made it successful; it also

¹Quoted in Bank press release at <http://www.worldbank.org/en/news/feature/2013/04/16/urbanization-is-helping-power-people-out-of-extreme-poverty-and-assist-delivering-on-the-MDGs-says-report>

addresses some of the complexities that came with its success. The chapter begins with a review of the background of slum upgrading in Nairobi and then focuses on the Soweto East Project and, particularly, the role of the Kibera Water and Sanitation (K-Watsan) Project as a catalytic component. It concludes with a summary of “lessons learned” from the analysis.

15.2 The Challenges of Urban Migration, Urban Poverty and Improving the Lives of People Living in Slums

Kibera occupies over 250 hectares and is less than 7 Km southwest of the Nairobi city centre. Its population has been reported to be as high as “almost a million”, but the 2019 census reports controversially reports it to be around 250,000 (World Population Review 2019). The policy adopted towards Kibera in the past was based on the assumption that it would disappear in a relatively short time, and so neither water supplies, sanitation, education or other facilities were provided (Cronin and Guthrie 2011; Meredith and Macdonald 2014). Historically ignored, hidden, undermined or, at best, merely tolerated, slums are now seen to play an important role in the economy of states, the cultural and social dynamics of nations and the human ecology of expansive rural hinterlands (Buckley et al. 2015; Farha 2016; Sticzay and Koch 2015), particularly in rapidly urbanising developing countries, including SSA (Croese et al. 2016; Ochieng 2013). Ecologically, economically, socially, politically and culturally—as well as ethically and morally—it is important to find and replicate pathways to success (Andreasen and Møller-Jensen 2016), but innovation requires records of success (Das and Takahashi 2009). The success of Phase 1 of the Soweto East Project in Kibera thus warrants analysis and wider recognition.

As the record of failed low-cost housing projects suggests, if community dynamics are not accounted for in the design, results can be disastrous (Hossain 2007; Muraya 2006; Pal 2006; Rigon 2014). Engagement is not easily attained in “top-down” approaches (Andreasen and Møller-Jensen 2016; Croese et al. 2016; Das and Takahashi 2009; Pal 2006; Mutisya and Yarime 2011), and mechanisms for effective public participation can be complicated and time-consuming (Dupont et al. 2014; Rigon 2014; Samad 2006), and so are often neglected (Croese et al. 2016). Phase 1 of the Soweto East Project undertook to find best practices for engaging the community. It was the first stage of an ongoing large-scale, ambitious and controversial project, and involved land clearance, construction of new housing and temporary resettlement of over 5000 residents (Fernandez and Calas 2011).

In Nairobi, previous slum upgrading projects left damaging legacies of mistrust and suspicion. They were large, centralised projects led by institutions with power and resources, but failed to generate community engagement. The Pumwani-Majengo Project, initiated in 1983 (National Housing Corporation 2004), and the Kibera High Rise Project, initiated in the 1990s, both displaced local residents; the Mathare 4A project, started in March 1997, failed because it alienated local people

(Kamau and Ngari 2002; Otiso 2003). This legacy posed conspicuous challenges for building community engagement: innovations in governance were needed if the Soweto East Project was to succeed.

15.3 Assessing the Best and Worst of Living in Kibera

Despite their material shortcomings, viable socio-ecological systems operate within slums—systems that make slums not only viable but the best available choice for at least some of the inhabitants. When assessing the prospects for slum upgrading, the attributes of the communities that account for their viability, vitality and even vibrancy must be considered, and an effort made to understand how these are generated, regulated and sustained. In any planned community transformation, it is incumbent upon project managers to know how essential attributes can be protected, replaced or enhanced; conditions must not be made worse. Three specific questions follow:

1. How are basic human needs met within a slum, and why are people drawn to them; what is functional (or “good”) about life in these communities, and what is challenging (or “bad”)?
2. If outside support is to be provided, what are the most important challenges to address, and how can these be addressed without collateral damage to elements that are functional?
3. What governance structures and practices are most likely to enhance the functional without exacerbating the challenges?

The success of a project is ultimately determined, not only by whether living conditions are made better, but also by whether the original inhabitants benefit from improvements. Phase 1 of the Soweto East Project met both of these conditions, and the processes leading to this success are addressed in relation to each of the three questions above.

15.3.1 *Addressing Questions One and Two: Benefits and Challenges*

To address these we draw upon data from a field survey undertaken during Phase 1 (Meredith and Macdonald, 2014), which investigated factors seen as positive aspects of the community and factors seen as challenges. Factors that make Kibera a good place to live are the low cost of living, the secure social network, the simplicity of arrangements, and ease of access to employment and services (downtown Nairobi and the Industrial Area) (Fig. 15.1). The age-specific assessment (Fig. 15.2) makes it clear that young people are drawn into the area primarily because of affordability

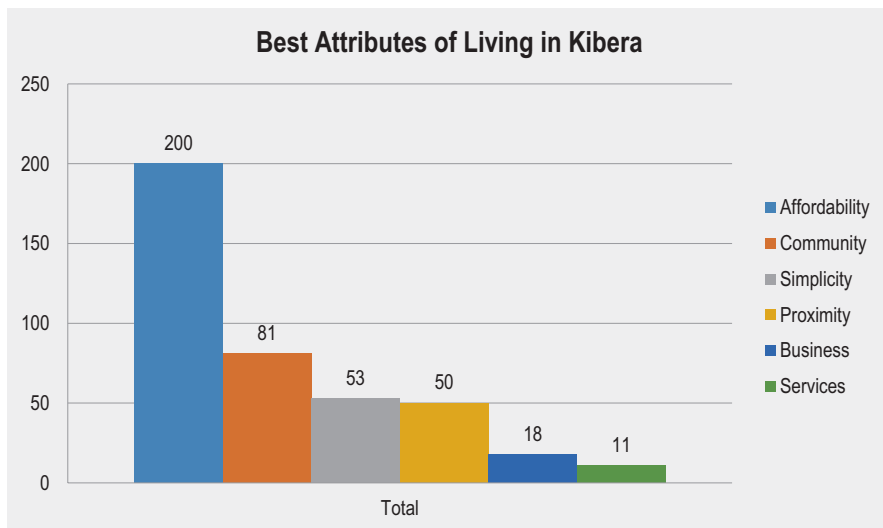


Fig. 15.1 Best attributes of living in Kibera (Source: Meredith and MacDonald 2014)

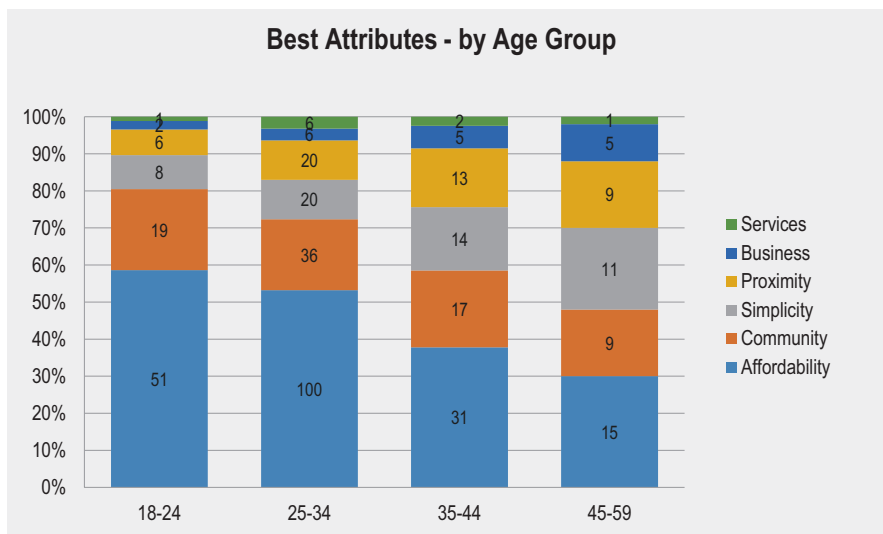


Fig. 15.2 Best attributes by age group—plotted as percentages with actual numbers shown. N = 407 respondents of known age (Source: Meredith and MacDonald 2014)

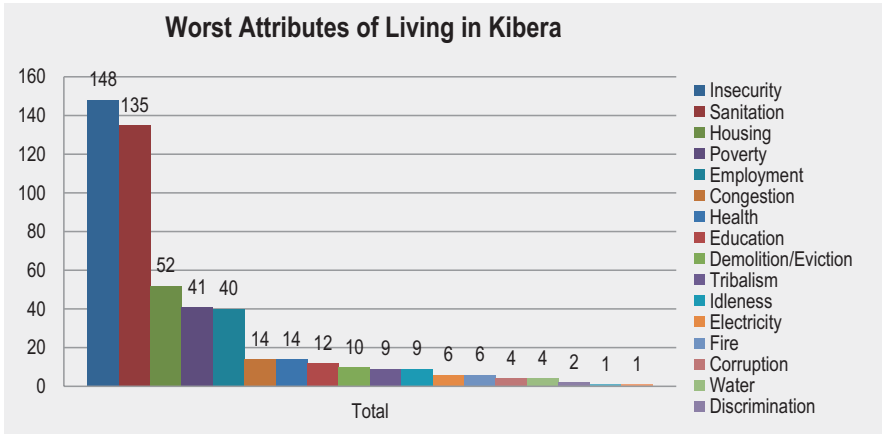


Fig. 15.3 Worst attributes of living in Kibera (Source: Meredith and MacDonald 2014)

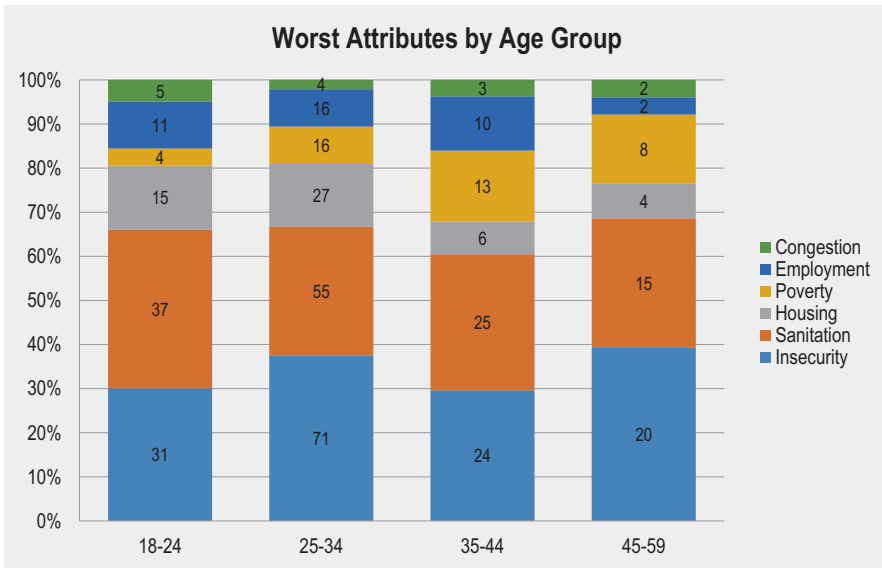


Fig. 15.4 Six most cited worst attributes by age group—plotted as percentages with actual numbers shown. *N* = 424 respondents of known age (Source: Meredith and MacDonald 2014)

and community, while older demographics are more concerned about proximity (typically to employment) and business opportunities (typically because they operate kiosks). Top-ranked challenges include insecurity, sanitation and housing (Fig. 15.3). Age differences are less conspicuous, although young people are more concerned about access to housing, and older people about the impacts of poverty (Fig. 15.4).

This suggests that priorities should address insecurity, sanitation and housing, while ensuring that affordability and sense of community are not compromised. The sense of insecurity in Kibera arose from frequent experiences of theft and crime, concerns about personal safety, and memories of post-election violence in 2008. Sanitation concerns included garbage disposal, available/affordable/clean toilets, effective drainage, and clean drinking water. Rather than eviction being a common concern, the *state* of the housing was the most worrying. While displacement and demolition were concerns—based on the legacy noted above—larger concerns are about affordability, size, permanence, ownership and construction materials.

15.3.2 Addressing Question Three: Enhancing the Functional Without Exacerbating the Challenges—The Kenya Slum Upgrading Program and the Soweto East Project

KENSUP was formally launched on World Habitat Day, October 4, 2004 (KENSUP, UN-Habitat 2004b), Phase 1 of the Soweto East Project following soon after. It was founded on the recognition that a new approach to slum upgrading was needed, and published goals were: “to improve the livelihoods of people living and working in slums and informal settlements in the urban areas of Kenya through housing improvement, income generation, and the provision of security of tenure and physical and social infrastructure. Promote and facilitate broad-based partnerships utilising consensus building and consultation among all the stakeholders” (Government of Kenya 2004). The ideals of inclusion were further emphasised in the assertion that “slum upgrading is a social programme requiring broader and well-coordinated participation of all stakeholders. For this to be achieved a social scenario is desirable that offers an enhanced democratic space for citizen participation, capacity building and enabling environment for participation and engagement, sufficient and clear communication linkages and strategies” (Government of Kenya 2004).

This focus on “global best practices” complements the concern for built environment with a concern for those inhabiting the area. KENSUP was committed to break away from a top-down approach to slum upgrading, and promote decentralisation or “delegated decision-making”. If the guiding principles (Table 15.1) are grouped by whether they focus on the community or on the built environment, eight refer to community attributes, only two to infrastructure. This suggests a recognition of the need to approach slum upgrading through an informed, engaged, motivated and supportive community.

The development approach adopted led to important assessment initiatives, including the Nairobi Situation Analysis, the Participatory Urban Assessment, and the formation of a Multi-Stakeholder Support Group, all reflecting governance initiatives that supported community engagement (Meredith and Macdonald 2017).

Table 15.1 Guiding principles abridged from “Kenya Slum Upgrading Strategy”**Focus on the community**

Inclusive participation—The participation of community members in slum upgrading is their basic right, as they must have a say in the urban processes that shape their lives. The ultimate goals are empowerment, capacity building and sustainability.

Capacity building for (a) the local communities; (b) the local authorities; and (c) the central government slum upgrading processes.

Subsidiarity—Focusing decision-making on the lowest appropriate level.

Partnerships among all the key urban stakeholders.

Communication—UN-Habitat ensures the constructive exchange of ideas and information within the organisation and promotes efficient and effective communication with partners.

Good governance—Characterised by participation, consensus, accountability, transparency, responsiveness, effectiveness, efficiency, equitability and inclusiveness.

Gender awareness—Permeate all programme activity and not be dealt with as a separate “women’s category”.

Affordable housing finance—Most of the urban poor are excluded from access to conventional housing finance; UN-Habitat recognises that there are several advantages to saving communally.

Focus on the built environment

Sustainability—should start at the neighbourhood level and ensure that poverty reduction activities are integrated with shelter programmes.

Provision of basic infrastructure as an entry point to slum upgrading.

15.3.3 *KENSUP’s Focus on Communication and Capacity Building*

As part of its commitment to effective communication and outreach, KENSUP commissioned four critical studies: identifying instrumental actors within the community, building awareness in the community, determining how best to communicate with the community, and capacity building for effective participation (Meredith and Macdonald 2017). The first noted that there was enough “goodwill among the slum dwellers across the whole spectrum of actors for participation in the process”, but rules of engagement with the different actors needed to be defined, and KENSUP needed to coordinate and communicate the intent of their intervention (Acacia Consultants and *Maji na Ufanisi* 2004). The second identified specific objectives: create awareness, develop consensus among stakeholders, and ensure full community participation in planning, implementation, monitoring and evaluation (KENSUP, UN-Habitat 2004a). The third study described the challenge KENSUP faced in communicating the shift in upgrading philosophy, from eviction and demolition to development and working with the community (KENSUP 2005). The report offered a detailed communication plan between the KENSUP managers and other stakeholders. The final report argued that slum upgrading is a human rights process that requires developing skills and channels for democratic community participation (Handa 2006). The four studies discuss the importance of effective communication to build community engagement but recognised that part of the problem was not having proven “best practices” from previous successful pilot studies to draw on. The KENSUP commitment in Soweto East became a pilot project, so that its communication and engagement successes could be applied elsewhere.

Consequently, while the ultimate goal of the project was affordable housing provision for the residents, the first objective was to find ways to engage the community and build trust. This began by consulting with the community to identify priority concerns, not only to motivate the community, but also to define optimal “entry points” for working relationships with the community. A participatory needs assessment produced the following top four priorities (in order): water and sanitation, drainage, waste management, and an access road. Housing was ranked tenth. The project therefore used water and sanitation as the entry point to the slum upgrading in Soweto East, Zone A, and the Kibera Integrated Water Sanitation and Waste Management Project (K-WATSAN) was initiated.

15.4 The Kibera Integrated Water Sanitation and Waste Management Project

A proposal for the Kibera Integrated Water Sanitation and Waste Management (K-WATSAN) project was drafted with a planned start date of November 2005 and a proposed budget of US\$ 318,000, with UN-Habitat contributing US\$ 278,000 and the Government of Kenya US\$ 40,000 in cash and kind. This was later increased to US\$ 579,684, with partners including the Government of Kenya under KENSUP and the implementing partner, an NGO called *Maji na Ufanisi* (Water and Development). The start date was January 2006 with expected completion by 2008. The proposal spelled out the “integrated” nature of the project: while water and sanitation were the core elements, a broader range of activities would reflect the priorities that emerged from consultations and communication strategies.

A sensitisation workshop on the K-WATSAN project was held in February 2006. While the K-WATSAN focused on community needs and building trust, the Soweto East Project entailed relocating people temporarily to a “Decanting Site” while new and improved structures were built in the community. In May 2008 the Decanting Site (600 housing units in 17 blocks) was 98% complete, and a strategy for identifying and relocating persons from Soweto East was finalised and ready for implementation by a relocation committee. On September 15, 2009, a GOK press release announced that “Kibera-Soweto East Zone A residents will be relocating to the Lang’ata Decanting”. Site clearance was delayed by legal action initiated by structure owners, until a court decision on January 12, 2012 allowed clearance to begin. On March 6, 2012, President Kibaki launched what the Daily Nation reported as “the Sh3 billion Kibera People Settlement Development project that will result in the construction of 900 housing units...230 business stalls, a nursery school, a social hall, a youth centre, three solid waste handling sheds, three toilet blocks and a boundary wall”. Only in 2019 did people finally move into new accommodation. The K-WATSAN partnership initiated the governance and management structures to maintain community engagement, a key element in the partnership being the Settlement Executive Committee.

15.4.1 Soweto East and the Settlement Executive Committee

The Settlement Executive Committee (SEC) is “a committee formed by project beneficiaries through democratic elections to represent relevant stakeholders and the community members in the Kenya Slum Upgrading Programme (KENSUP)” (Ministry of Lands and Housing 2004). According to the report, the “most significant and innovative aspect of the Kenya Slum Upgrading Programme is the enabling of the slum dwellers and other stakeholders to be fully and actively involved in improving their own livelihoods and neighbourhoods. ...In order to solicit the desired full and active involvement of slum dwellers, the Programme will establish Settlement Executive Committees (SEC) in every project area as part of its institutional arrangement”.

The original/official terms of reference were:

- (a) *Mobilizing and facilitating community and settlement stakeholders for active participation in decision making, planning and implementation process to ensure ownership of the project.*
- (b) *Sensitizing the community, disseminating information and soliciting views and perspectives of the community on the Programme and project-related issues through holding of regular meetings and sessions with settlement representatives and residents.*
- (c) *Working with the community and the [City of Nairobi Settlement project implementation Unit (SPIU)] in determining and prioritizing the needs of the community.*
- (d) *Marshaling community support for the programme and facilitating the mobilization of community and stakeholder resources for investment in the upgrading process.*
- (e) *Representing interests of the community and providing linkage between the community on the one part and Programme Secretariat, and SPIU on the other part, including facilitating smooth, efficient and adequate flow of information.*
- (f) *Providing the SPIU and the Programme Secretariat with accurate and timely reports on the situation on the ground at all times.*
- (g) *Creating unity among slum dwellers and stakeholders and ensuring that valid and reasonable views and interest of the slum dwellers are well taken care of throughout the project phases.*

“The SEC consists of representatives from all the stakeholders. Each project area will have an SEC elected by members living and/or working within the settlement. As a starting point, and using the results of the Actors Study, all existing and active local organizations and groupings within the project area are identified and sensitized on the objectives and operations of the project, and the need to elect representatives. Each stakeholder group elects a representative to the committee. Committee members are sensitized and finally guided to elect office bearers of the SEC from among themselves”.

The SEC in Soweto East reflected the need to improve communication and coordination of the project at the community level and with external partners. Its membership was drawn from the various interest groups in Zone A of Soweto East: tenants, structure owners, youth groups, faith-based groups, widows, disabled people, CBOs and *ex-officio* the area chief and the councillor representing provincial administration and the political class. SEC therefore not only championed the rights and safeguarded the various interest groups, but also became the focal point for all negotiations with the government and other stakeholders in the project. Some of the roles played by SEC included:

- Participatory development of the project implementation roadmap
- Development and coordination of sub-committees to champion project implementation, e.g. K-WATSAN Committee to identify and coordinate appropriate sites, construction and management of water and sanitation facilities and a Structure Relocation Committee to facilitate voluntary relocation of structures for the construction of access road, storm water drains and sanitation facilities, community resource centre, etc.
- Participatory housing design and approvals, operating with technical engineering support from the government and UN-HABITAT
- Negotiation with the government on behalf of the Zone A community to develop strategies to relocate people and to determine the amounts that would be payable by households to the government to acquire new housing and the terms of those payments
- Resource mobilisation by Zone A community through the creation and support of local housing cooperatives intended to help members raise the initial 10% payable to the government as deposit for the purchase of new housing units
- Development and coordination of the planned management structure for the new settlement Zone A slum upgraded housing units, to be known as “Canaan Estate”

SEC eventually succeeded, but had to withstand many challenges. The main concerns expressed by members of the SEC were:

- Changing political regimes: the project was launched initially in 2004, and over the years, two political regimes came to power each with different approaches to and ideologies on slums. Although unit costs for acquiring the new houses had been negotiated and agreed upon between SEC and the government, and witnessed by UN-HABITAT, these had to be renegotiated with members of the new administration, some of whom believed housing units should be sold to Zone A residents and/or to any other interested parties at prevailing market rates, and an evaluation was ordered to that effect. The outcome of successful negotiation by SEC resulted in Government offering the housing units at these rates: 3 rooms Kshs 1.35 m, 2 rooms Kshs 1 m and a bed sitter Kshs 600,000, payable over a maximum 20 years.
- Civil court case by a group calling themselves structure owners, seeking compensation from the government before the Zone A site could be cleared of struc-

tures for reconstruction. The case lasted over 2 years but eventually decided in favour of the project.

- Keeping Zone A community together and focused on the project: residents were required to save and make contributions into the housing cooperatives for Zone A Soweto East. The coop was established in 2004, but members had to wait until 2019 for the project to be concluded.
- Balancing between serving as a volunteer in SEC (almost full time) and livelihood chores: almost all the SEC members had no formal employment and depended on casual labour skilled and/or non-skilled. The many hours they invested in community work were uncompensated, and often other personal or employment demands limited flexibility for full participation in SEC work.

15.4.2 Maji na Ufanisi and Community Development Officers within K-WATSAN

Maji na Ufanisi (MnU) was the NGO implementing partner working in and with the community to ensure the KENSUP/K-WATSAN objective of community mobilisation. MnU's initial mandate was to contribute to improving livelihoods for the urban poor in Soweto East by mobilising and supporting residents to form small-scale community-based initiatives in water, sanitation and waste management. Community Development Officers (CDO) from MnU worked in the community throughout the project, and closely with SEC at each stage. The CDO, SEC and leaders from the community—working in consultation with representatives of K-WATSAN and KENSUP—constituted a community development team whose work is described below.

The community was involved throughout the project cycle from inception to commissioning. This enhanced community ownership and project sustainability. For reasons outlined above, the project took longer than anticipated, but throughout this time period, it was essential to ensure that the community continued to embrace the project as its own. The CDO undertook the following:

Community Participation and Enthusiasm Community members were actively recruited and engaged in a community needs assessment, mobilisation activities, group meetings and community trainings. A unique innovation was to employ community members in project-related construction activities. The construction work as a method of mobilising new members served as tangible evidence that K-WATSAN Project could provide real and immediate benefits.

Community Needs Assessment Public meetings were set up by the community development team and SEC members from respective zones. The community was given a chance to map out their own environmental strategies, and identify areas needing improvement. The meetings were often held in open spaces. Though the project was intended to address affordable housing, the needs assessment revealed

water and sanitation as priority concerns, with housing last on the list. These provided a good entry point to mobilise residents. The community was sceptical during the meetings, as they had previously been promised development projects that yielded no results. Overcoming mistrust required openness and patience; community meetings took much longer than anticipated.

Mobilisation Activities Following the needs assessment, mobilisation was encouraged through door-to-door outreach, public meetings and clean-up activities. The public was informed and invited to participate in the planned activities, and in each zone, two areas were identified by the community for construction of sanitation facilities. The community involvement in planning, management and execution of the water and sanitation projects gave them a sense of self-esteem and recognition. The youth participated in clean-up exercises, spearheaded by Soweto Youth Group. The exercises created awareness of the project, built trust in the project partners, and helped to develop interim leadership capabilities.

Awareness Creation Each community group met once a week at an agreed time. The community groups formed interim leadership teams with the assistance of the community development team. To enhance ownership of the projects, each group was mandated to look for meeting areas—generally open spaces or churches within the community. Groups were taken through training on constitution-making, leadership and gender mainstreaming.

Ensuring Community Ownership The intention was that communities would organise and work independently, with minimal supervision. Each community became involved in their own implementation processes, and developed their own by-laws to govern them. Members were encouraged to ask questions about their group and the project during the training and meetings. In each meeting, both SEC officials and the community development team were available. As employment opportunities in the project were to be given to community members, the community group members had oversight of employment opportunities in the construction projects. In each group, the community development team assisted members to develop a duty roster for the construction work. Those unable to work for various reasons were permitted to recommend family members to work on their behalf. The community control resulted in 70% of the workforce being women. Work assignments included construction and ferrying materials where narrow paths prevented trucks from entering.

Providing Assurance MnU and SEC met every fortnight to review the project and emerging issues. This created room for any adjustments and community reporting mechanisms. One issue that emerged was concern about loss of business or loss of rights to business locations for kiosk owners during construction. The community development team together with SEC were able to coordinate temporary relocations to other identified open spaces, and to assure priority access to new spaces opening along the new road corridor. The issue of tenant relations with landlords also

emerged, but the engagement of community members in project activities increased their confidence in taking on more challenging roles, including dealing with structure owners as equals and claiming their stake in future management of the facilities.

Community organisation leads to empowerment, and is a major boost to successful project implementation. The sense of community control of and engagement with the elements of the project led to demonstrable advances that built enthusiasm and support. The CDO, working with the SEC and the K-WATSAN Committee, were very instrumental monitoring community participation and supporting MnU in averting external threats to this project.

15.5 The Project and the Outcome

The SEC, the partnership with MnU and the close work with UN-Habitat mentors and monitors ensured that the many challenges met through the project were overcome. The new housing units were completed in 2019, and 822 families from the Zone A community were allocated housing units in what was named Canaan Estate. The selection of families was done openly and transparently, through a balloting process in the National Stadium witnessed by the Cabinet Minister for Housing. Those eligible for the draw had savings, based on their participation in community cooperatives initiated and supported by the community development team. Phase 1 of the Soweto East Project succeeded largely because K-WATSAN and KENSUP met their target of winning community support. There was concern that a volatile situation would arise if expectations were not met, but in January 2020 site clearance work for Phase 2 began, paving the way for new houses. Site visits and discussions with current community leaders for Phase 2 suggested that smooth progress resulted from the trust and lessons learned during the successful pilot work in Phase 1 and the creation of new housing in Canaan Estate. The record of the planning, implementation and outcome of K-WATSAN component of the KENSUP Soweto East project thus has value for other actors in the field (Fig. 15.5).

15.6 Lessons Learned

Slum upgrading is a transformative process, and without the active support of those involved or, worse, with resistance from those involved, the prospects of success are greatly reduced. Inclusion builds confidence at community level, and can stimulate interest in a project and a sense of empowerment for the community. Moreover, effective communication can give a voice to the marginalised (e.g. tenants vs landlords), and reduce power imbalances that have corrosive effects. Ensuring a formal structure and assuring standing can help entrench the sense of inclusion and give



Fig. 15.5 Images from Kibera: (a) the new administration block for the Canaan Estate, (b) one of the new housing structures, (c) landscape of land to be cleared for Phase 2, (d) model of 4000 unit structures proposed for Phase 2. (Photos by H. Kwach)

more focus and motivation to engagement (as illustrated by the successful role of the SEC).

Naturally, formalising governance structures and giving voice to more stakeholders can increase the complexity of decision-making because of competing interests that may take time to formulate and articulate. This may expose conflicts with other groups' interests, and therefore require more time for compromise or mediation, but it reduces the risk of major conflicts emerging later in the process, or of groups being unfairly marginalised—as has so often happened in previous slum upgrading initiatives.

Seeing positive results builds trust and engagement that can lead to tangible results. An incremental approach is therefore a way of building trust and engagement, and as positive outcomes emerge—whether it is in seeing a physical change in the community (such as a sanitation block), or in the level of community coordination (as in finding that a community has a voice)—successes become

self-reinforcing and may open opportunities for other initiatives within the community, or the example in one community may inspire trust and openness in another community.

To achieve these successes, capacity building became an essential part of engagement. Engaging in democratic, decision-making or planning forums is not easy for all; effectiveness within these forums is often related to the skills of the participant. Assistance and training in some of the required skills are essential. Sustained capacity building programs offered to SEC over the course of the pilot project became instrumental to SEC effectiveness. Members acknowledged that capacity building programs and the link with the MnU community development team helped them lead the process to success.

Notwithstanding, counter-intuitive outcomes may arise: for example, the Decanting Site was intended to provide temporary housing to residents of Zone A (Phase 1) displaced by the clearance for construction of the Canaan Estate. However, because it provided stable high-quality housing, some households lost motivation to make required monthly contributions through the cooperatives and, in the end, could not raise the 10% deposit needed to be eligible for new units at Canaan Estate. Decanting Site housing was therefore not made available to those displaced for Zone B (Phase 2), but, rather, the government has made provision for issuing every household with money to facilitate relocation and payment of rent for a period of one and half years (Zone B is expected to be ready for occupation within 2 years).

Due to limitation of land, Canaan Estate could only provide 822 units, less than the number of families that were relocated to the Decanting Site. Zone B is therefore planned to offer enough space to accommodate the balance of households still at the Decanting Site and those at the Zone B. The Decanting Site will finally be vacated and the housing units donated to Kenya Prisons, as per the original plan.

15.7 Conclusions and Implications for Governance

The research described in this chapter was undertaken to explore how community engagement can contribute to innovation in urban governance. This final section lists seven observations made by those directly involved in Phase 1 of the Soweto East Project, when asked what aspects contributed most the outcome.

1. *The value of formal engagement through entities such as the Settlement Executive Committee:* Providing a formal, structured, institutional arrangement to give voice to a community—as the SEC in Soweto East has done—and treating that entity as a full and important partner helped ensure consistent, sustainable and effective links with the community.
2. *Volunteerism may impose unfair burdens on participants and therefore lead to suboptimal intervention outcomes:* Community members may have a strong interest in participating in a development processes, but may be limited by time, ability or other commitments. As a project begins to demand more time, or is

protracted over a longer period, the ability of volunteers to maintain effective engagement may be reduced. If this is recognised, compensation or incentives (such as the work rotation used by *Maji na Ufanisi*) may help.

3. *Equitable distribution of benefits*: In a community impacted by poverty and limited resources, having visible benefits or opportunities (financial or otherwise) go to some groups of volunteers or committee members may limit the willingness or eagerness of others to volunteer or participate, especially if there are limited opportunities for a position in the group or committee. The lack of access to a benefit that a neighbour is getting may seem to be a penalty that discourages engagement.
4. *The dangers of a non-transparent or nondemocratic group serving as the link between project proponents and the community*: If a formal and mandated liaison body cannot be maintained, and active volunteers cannot continue to be engaged, a vacuum could open that would attract individuals who might purport to speak for the community but fail to do so. This could build frustration and resentment, which will cause the intervention to suffer.
5. *The importance of an inclusive and respectful approach to public engagement*: A perfunctory, superficial or condescending approach will not have desired effects. Sincere outreach is time-consuming, and may open discussions that are difficult to resolve; however, without it, trust may be lost and, with it, willingness to engage.
6. *The value of continuity in relationships of trust*: Relationships of trust take time to develop. Continuity of contact, and/or a thorough process for introducing new members or member replacements, will allow the benefits of personal trust to persist. The enduring contacts among those we consulted in field were clearly important to the successes that were achieved.
7. *Personalities matter*: Closely related to the above, the personalities, interest and commitment of people forming the relationships are important. The patient and empathetic approach required for working effectively in a partnership does not come easily or naturally to all and may seem frustrating or inefficient to some. What appears to be the most efficient or effective path to a goal may not be achievable if progress is hampered by mistrust or hostility. It was clear in this study that the mutual respect, trust and good working relationships were essential to the success of the governance structures.

These factors, exercised in the context of the committed governance structure of KENSUP and the K-WATSAN initiative, succeeded in overcoming the inherent mistrust of outside interveners, and identified locally acceptable procedures that improved living conditions and allowed new structures for the site's original residents. The actions created a strong commitment from the community that was met with sustained, responsive and well-resourced support from outside institutions, notably the Government of Kenya, UN-Habitat and *Maji na Ufanisi*. Based on this success, Phase 2 of the Soweto East Project is underway and has strong community support. There is evidence that this model can be replicated and scaled up to address housing and sanitation for low-income urban settlements elsewhere.

Since the research was undertaken, COVID-19 has emerged and asserted itself globally. The paramount importance of access to safe water, effective sanitation and secure housing has been underscored by the pandemic. It is hard to imagine a more perilous environment than that targeted by the Soweto East Project, and yet in SSA the number of people in high-density, poorly serviced, informal urban settlements is projected to increase dramatically. As the evidence from this case study shows, there are pathways to solutions: international-, national- and community-based organisations working together, and drawing on the expertise of dedicated actors in key positions, can indeed be transformative. Skill, commitment and resources are the critical elements. Effective governance is the essential catalyst.

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Chapter 16

Urban Resilience as an Option for Achieving Urban Sustainability in Africa



Patrick Brandful Cobbinah

Abstract Global commitments reflected in the UN SDGs, the NUA and the Africa Urban Agenda 2063 bring to the fore the challenges facing twenty-first century cities in their sustainable development efforts, particularly in sub-Saharan Africa (SSA). Yet are African cities prepared to respond to global shocks and stresses? Do African cities consider resilience principles in their urban governance and planning efforts? What are the issues arising from urban governance? Using Ghana as a case study, this chapter examines changing approaches to urban resilience and the planning and management experience. Consideration of the resilience philosophy in Ghana's urban governance is limited as compared to developed and other developing countries because of: limited planning and management agency capacity in implementing resilience principles; rapid urbanisation contributing to unplanned and informal settlements; and severe impacts of climate change. The forces of rapid urbanisation and climate change constitute the main threat to urban sustainability in Ghana, magnified by the weak urban planning and management regimes within the fragile and evolving local urban governance system. Policy considerations are discussed concerning urban resilience in twenty-first century SSA.

Keywords Urban resilience · Sustainability · African cities · Urban planning · Urban management · Urban governance

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16.1 Introduction

Demographic projections by the UN-Habitat (2010) indicate that by 2050, the population of Africa will reach 2 billion with 60% living in urban areas. Such urban growth projections offer opportunities for economic growth but also intensify the risk of disasters. Most countries in sub-Saharan Africa (SSA) may be exposed to one or more natural hazards (World Bank and Global Facility for Disaster Reduction and Recovery [GFDRR] 2010), and as the population grows, the occurrence of so-called natural disasters has increased. Over 2000 disasters have been reported in Africa since the 1970s, with almost half occurring within the last decade (Statistics by the GFDRR and World Bank 2018: 5), with the rising number of extreme weather-related disasters partly attributed to climate change (UN-Habitat 2019). While some parts of the continent face persistent drought, others experience floods and landslides, events compounded by human activities including pollution, resource extraction, infrastructure construction and land reclamation altering ecological processes and systems (United Nations International Strategy for Disaster Reduction [UNISDR] 2012). Without appropriate actions, rapid urbanisation and climate change will continue to predispose African cities to vulnerabilities, shocks and stresses, as well as threaten sustainable development of their urban governance regimes and resilient futures.

Within the context of the SDGs, the NUA, the Africa Urban Agenda 2063 (AU agenda 2063) and the Sendai Framework for Disaster Risk Reduction, African countries are increasingly recognising the need to build resilient futures. While some countries (e.g. Angola and Mozambique) focus on designing policies and restructuring capacities to address issues of disaster risk and resilience, others (including Ghana) draw upon the support of different planning instruments and strategies. Scholarly opinion (Anguelovski et al. 2016) suggests that urban resilience is not merely the provision, availability or development of planning interventions, but rather the trade-offs associated with the costs and benefits of such interventions. In some documented cases (e.g. Schipper and Pelling 2006), interventions aimed at disaster risk mitigation – including those claiming to be inclusive and participatory – have only exacerbated urban vulnerability and risks, so that the pursuit of urban resilience through development interventions, if not well managed, can lead to greater risk accumulation for the urban population. More needs to be understood about changing approaches to urban resilience, and the planning and management regimes required to reduce risk, as part of ongoing efforts to build resilient futures in a region highly prone to climate change and rapid urbanisation impacts.

This chapter addresses three key research questions: Are African cities prepared to respond to global shocks and stresses? Do African cities consider resilience principles in their urban governance and planning efforts? What are the issues arising from urban governance? The chapter asks whether the resilience philosophy provides a potential pathway for achieving sustainable development in African cities, since there remains limited engagement with the process of building resilient

futures. It further evaluates the Ghanaian case, the outcomes and barriers to embedding resilience in urban planning and transformation, and recommendations for policy interventions.

In this chapter Sect. 16.1 provides the background and context of urban resilience in Africa's urban governance. Section 16.2 analyses the different approaches to urban resilience. Section 16.3 discusses planning practice and management implications of resilient African futures. In Sect. 16.4, an analysis of the challenges in building urban resilience in Africa is presented. Section 16.5 presents a Ghanaian case study on urban resilience. Concluding remarks are in Sect. 16.6.

16.2 Changing Approaches to Urban Resilience

A resilient city assesses, plans and acts to prepare for and respond to hazards – natural and human-made, sudden and slow-onset, expected and unexpected. The major resilience challenges of our era, such as poverty reduction, natural hazards, climate change and social inclusion, will be won or lost in cities, where the numbers and densities of people make them especially vulnerable. Resilience in cities relies upon investment decisions to support activities that perform well in different scenarios, addressing how individuals, communities and businesses cope when faced with multiple shocks and stresses, and how to exploit opportunities for transformational development.

Thinking about urban resilience is changing from an emphasis upon three particular threats – natural disasters, terrorism and climate change – to a more holistic framing. Genealogical approaches explore the evolution of urban resilience practices over time, including the values and power relations underpinning them. The notion, informed by network science, of cities as complex adaptive systems is also changing thinking on resilience. New transnational knowledge networks, fed by technological innovation coming from better internet connectivity and smart data, are emerging as contributors to SDG 11 and urban resilience, of which the three discussed below have particular relevance to urban land governance in Africa.

First is an initiative, primarily by the Rockefeller Foundation and launched in 2013 – 100 Resilient Cities and the City Resilience Index. This is dedicated to helping cities adopt and integrate resilience into their planning and development projects, in order to better prepare for disasters and extreme risks, and for social and environmental stresses. It defined urban resilience as “the capacity of individuals, communities, institutions, businesses, and systems within a city to survive, adapt, and grow no matter what kinds of chronic stresses and acute shocks they experience”. Its City Resilience Index, based upon stakeholder consultation across a range of cities globally, is intended to serve as a planning and decision-making tool to identify areas of improvement, systemic weaknesses and opportunities for mitigating risk, allowing cities to learn from each other. The index is premised on the finding of 12 universal factors or drivers, organised into four core dimensions: leadership and strategy, health and wellbeing, economy and society and infrastructure and

environment. A core factor enabling progress on all these dimensions is urban governance.

Dakar (Senegal) was the first African city to produce a resilience strategy in partnership with 100 Resilient Cities (Ville De Dakar and 100 Resilient Cities 2016). It established five priority goals: an inclusive resilience agenda by and for Dakar citizens, providing a healthy living environment to Dakar's citizens, positioning the private sector as a resilience partner, leveraging energy efficient technologies to support the city's resilience, and promoting inclusive and efficient governance. Among the 23 supporting activities were: teaching the concept of resilience in basic education, developing green spaces, making users aware of the rational and efficient use of energy, a competition to find innovative solutions, and strengthening dialogue between the central government and the municipality on resilience.

A second international knowledge network has been developed by UN-Habitat in the form of an urban resilience "hub", (<http://urbanresiliencehub.org>). Based in Barcelona, this involves technical cooperation with partner cities (in Africa Maputo and Dakar), developing a knowledge base and library, as well as advocacy and partnership activities. Its City Resilience Profiling Tool goes beyond conventional understandings of disaster risk reduction towards a multi-stakeholder and holistic diagnosis, and provides a framework for local governments to collect the right data from their city. To be effective, data must be gathered from across the entire urban system, engaging with all stakeholders and taking into account all potential hazards (UN-Habitat 2019).

A third knowledge production initiative is Urban ARK (standing for Urban Africa: Risk Knowledge), a research and capacity-building programme funded by the UK Department for International Development, and the Economic and Social Research Council. This aims to open an applied research and policy agenda for risk management in urban SSA by breaking cycles of risk accumulation (UN-Habitat 2020). It builds a community of practice including SSA and international researchers, focusing on those at risk, especially in low-income informal settlements in four cities with different development and hazard contexts: Ibadan (Nigeria), Karonga (Malawi), Nairobi (Kenya) and Niamey (Niger). It organised four work projects, all relevant to urban land governance: vulnerability assessment, hazards assessment, risk root cause analysis and historical urban trajectories and governance and planning. Of these, the fourth (governance and planning) focused on a range of governance spaces and actor types that together mark out the emerging structural forces shaping urban futures in Africa. Key questions include: (1) What are the underlying power dynamics between stakeholders that guide urban development in African cities? (2) How do these dynamics inhibit or facilitate dealing with issues of risk? Area-based case studies in small localities explored (1) where small-scale private sector interest is the driving force of development in the area; (2) where collective action by informal settlers is the driving force; and (3) where large infrastructure project is changing the local dynamics. Participatory mapping and video can develop local capacities to apprehend and monitor episodic and everyday risks, who is affected, and how this changes over time and why, and to assess what actions and

investments devoted to mitigate, reduce or prevent risk work, why and how these could be enhanced.

16.3 Planning Practice and Management Implications of Resilient African Futures

Urban planning researchers and academics worldwide are appreciating the complex interactions of processes that produce urban vulnerability – i.e. “the state of susceptibility to harm from exposure to stresses associated with environmental and social change, and from the absence of capacity to adapt” (Adger 2006: 268). Urban resilience is the main approach to understanding and building sustainable futures, a concept characterised by the capability and preparedness of cities to withstand and respond to severe shocks, and makes required changes for continuing functioning irrespective of the seriousness and degree of the shocks. Urban development in these changing times should address the vulnerability of cities and residents, in order to manage the rise in economic and environmental burdens and volatilities linked to rapid urbanisation, climate change, poverty, globalisation and resource depletion. This resilience approach has influenced understandings of urban environmental problems, conceptualisation of solutions, and production of intervening ideas especially in the Global North (see for example Schmitt 2013).

SSA lags behind in building resilient urban futures, with the continent characterised as harbouring the world’s most vulnerable urban communities, yet the most ill-prepared in disaster management. Critics argue that the omission of local city authorities in the design and implementation of urban resilience strategies and plans is a major hurdle in Africa’s quest to promote resilient futures (Archer et al. 2014). The role of governments is important for integrating resilience thinking into development planning, but often policies and programmes for integrating resilience are prepared at the national level under international organisations’ influence, while local authorities and other sub-national agencies act as enforcers. As a consequence, urban resilience in Africa reflects expert-driven ideas and externally defined development pathways rather than a locally initiated response, yet local city authorities have the fundamental obligation to deliver urban resilience initiatives (UN-Habitat 2019). Unfortunately, this top-down planning process characterising urban Africa limits opportunities for integrating local actors, fostering community partnerships, and resolving social structures, administrative practices and legal regimes, leaving individuals and households at risk to cope with disaster risk. It is however worth acknowledging that a more robust local level engagement is growing across the continent (see, for example, UN-Habitat 2020).

City authorities have significant influence on urban development plans, and engaging, identifying and embracing city level priorities can engender local support for urban resilience initiatives. This also reflects SDG 11 and the AU agenda 2063, which call for an integrated and inclusive approach of engaging all relevant

stakeholders. Resilient framing in urban Africa has recently focused on community empowerment, with some examples in particular municipalities. In Mozambique Quelimane municipality collaborated with communities and CSOs to prioritise medium- and short-term actions in its Local Plan for Adaptation to Climate Change (ICLEI 2016: 9). The eThekweni Municipality in South Africa has led in climate change adaptation and mitigation, mainstreaming it into the planning and operation of the city of Durban. The Buffelsdraai Community Reforestation Project in Durban (South Africa) engaged local households as “treepreneurs” to replant native seedlings, in exchange for credit notes reinvested into local livelihoods (Archer et al. 2014: 349).

While community empowerment is critical to achieving urban resilience (and there seems to be an increasing recognition of local level engagement), there is growing discontent among communities and urban population about omission of critical issues of social justice and spatial equity. Urban transformations for building resilience may expose the marginalised and vulnerable to stresses and hardships, and requires that issues of spatial equity and social justice get integrated into resilience initiatives. In many African cities, the urban poor are evicted for development projects such as roads, dams and other infrastructure, and in some cases for supposed safety and security reasons. Such projects create an illusion of short-term benefits for urban resilience, yet undermine ability to achieve resilience by creating systemic issues such as loss of livelihoods, displacement of population and property, and increase in social vices and poverty.

Slum-dwellers represent about 881 billion people globally, and are especially vulnerable to natural disasters and effects of climate change, augmented by problems of precarious livelihoods, lack of adequate infrastructure and services, insanitary conditions, tenure insecurity and poverty (UN-Habitat 2019). Some African cities are increasing representation of the urban poor in resilience decision-making and implementation. In Cameroon, planning officials have engaged slum-dwellers in disaster risk reduction through the Participatory Slum Upgrading Programme, with slum-dwellers in Yaounde, Kribi and Bamenda trained to identify, map and analyse slum problems and propose indigenous solutions and coping mechanisms (ICLEI 2016). Such initiatives reduce negative perceptions of urban informality and slums, and capture useful local knowledge and inventions for risk reduction and resilience building.

Indigenous technologies are not only applied in slum upgrading, but also to community-based adaptation mechanisms to support city level planning, as local people largely rely on indigenous knowledge for survival against hazards. In Tsholotsho District (Zimbabwe), communities prone to perennial flooding employed post-disaster recovery measures such as relocation to temporary safer land, rezoning livestock shelters and constructing *amazibuko* (temporary footbridges) over flooded rivers to protect lives and properties. But practitioners may be reluctant to include such indigenous practices due to, *inter alia*, the dominance of international organisations in resilience planning (Spaliviero et al. 2019). Similar findings on local indigenous adaptation to climate change were reported in Niger, Kenya, Sierra

Leone and Nigeria (UN-Habitat 2020). Thus, indigenous solutions do not feature in most urban resilience and disaster policies, although they should.

16.4 Challenges of Building Urban Resilience in African Cities

Between 2000 and 2008 Africa accounted for over 20% of all weather and climate-related disasters globally and 0.6% of global economic losses (UNISDR 2012). In the last 30 years, the 10 worst drought disasters in the world occurred in SSA. The number of people exposed to flood disaster in the region grew from 500,000 per year in 1970 to about 2 million per year in 2010, and flood-related mortality still accelerates in SSA despite its reduction globally. Unplanned urbanisation and attendant persistent poverty remains a major challenge in African cities. As discussed in Sect. 16.2, Africa is starting to show commitment to increasing resilience in its cities, through strengthened institutions, governance, better human capital, and safe and secure environments the focus of SDG 11, the NUA and the AU agenda 2063.

Building productive capacity and expanding economic opportunities are important in promoting resilience in African cities (United States Agency for International Development [USAID] 2016). Economic growth levels are still below the average growth rate of 7% needed to achieve the SDGs and the aspirations of AU agenda 2063. The urgency for increased manufacturing through investments in education, skill development and energy, as well as infrastructure development cannot be overstated. With Africa's urban population expected to triple in the next 50 years, the process of urbanisation and population growth present both potential and risks, hence the need for innovative and adapted technology to harness the demographic dividend in African cities, strengthen resilience and consolidate sustainable development gains.

Another challenge relates to the dominance of international organisations in planning for resilience and risk reduction in African countries. The World Bank developed a framework for Disaster Risk Reduction in SSA, with pilot projects in Malawi, Senegal, Mozambique, Ethiopia, Ghana, Burkina Faso, Madagascar, Seychelles and Swaziland (World Bank and GFDRR 2010). Other projects include ActionAid's resilience framework (ActionAid 2016); City Resilience Action Planning (CityRAP) by UN-Habitat (Spaliviero et al. 2019); and Resilient Cities Campaign by UNISDR. Such foreign-led frameworks and guidelines may hinder implementation if local city authorities cannot assume ownership of the planning process. Successful institutionalisation of urban resilience policies and programmes requires national and local government to establish legitimacy, political commitment and resource dedication.

Africa's ability to recover and reconstruct from disasters is impeded by poverty, limiting resilience building – a cycle referred to as the disaster risk–poverty nexus (World Bank and GFDRR 2010: 3). The World Bank estimated that the share of

African population living in extreme poverty in 2012 was 43%, representing an increase of more than 100 million people from 1990 (Beegle et al. 2016). The poor's exposure to risk is exacerbated by inadequate basic services, overcrowded living conditions, substandard housing, inadequate nourishment and poor health. Investment in city resilience competes with other public spending, and governments cannot cover the high cost of disaster mitigation, relief, and reconstruction, while cities continue to accumulate risks which reinforce their vulnerabilities and limit their resilience.

An overall risk reduction strategy should include measures to strengthen weak infrastructure and develop adaptation capacities. In Kampala, Uganda, for instance, measures against flooding include the development and upgrading of drainage systems, culverts/bridges, roads and sewerage networks, yet, despite longstanding experiences of flash floods, city authorities have failed to develop such critical infrastructure (Lwasa 2010). Violent conflicts over control of natural resources and political power – recent cases in Kenya and South Sudan – also affect disaster vulnerability and undermine city authorities' resilience (USAID 2016), making standardised resilient approaches inadequate. Context-specific policies and strategies should be considered, as processes of risk accumulation and that community perception and responses may differ (UN-Habitat 2020).

Unfortunately, many African countries are characterised by weak governance. The World Bank and GFDRR (2010) describe Africa's governance landscape as fragmented institutions, inadequate qualified staff, weak enforcement capacity and limited partnerships with key stakeholders. Weak governance means increased risk accumulation, and weak adaptive capacities and resilience. In Tanzania, for example, although regulations exist to guide building, zoning and land use, poor enforcement and weak coordination allow development in hazard-prone areas. Across the continent, few countries have legislation to integrate city resilience into broader development planning. Investment in early warning systems, communication and other critical infrastructure remains low, due to limited local funding and overdependence upon central government.

Governments and legislation alone cannot create resilient cities. Local communities, who have firsthand experience of the risks, can be important dominant allies in promoting pro-resilient behaviours and better governance. Many resilience initiatives focus on emergency responses instead of strategies for disaster risk reduction, making resilience interventions an *ex post* response to disasters rather than *ex ante* strategies for risk reduction (World Bank and GFDRR 2010). Experiences from the 2011 drought crisis across Ethiopia, Djibouti, Kenya and Somalia suggest that, in spite of early warning predictions of the crisis, local humanitarian responses only occurred after the death of thousands (Oxfam International and Save the Children 2012). Despite the history of recurring disasters, city planning and management regimes remain disconnected from disaster mitigation and resilience building.

16.5 The Urban Resilience Experience in Ghana

In Ghana, there is evidence of commitment from government via policy and legislation to ensuring that urban areas are resilient (Poku-Boansi and Cobbinah 2018), but operationalising resilient efforts via urban planning and policy remains a distant reality. Korah and Cobbinah (2019) argue that the National Urban Policy Framework 2012 and the Land Use and Spatial Planning Act 2016 (Act 925) contain the language of urban resilience, yet the practice of urban planning in Ghana is actually reversing efforts towards resilience. Despite the existence of a National Climate Change Policy and National Climate Change Adaptation Strategy, climate change continues to threaten Ghana's progress towards sustainable development, with inadequate funding and lack of political will, inhibited by traditional institutions' allocating land for development without involving official planning, and a proliferation of informal settlements, poor housing and unauthorised development in hazardous locations, particularly Accra (Ghana's capital) and Kumasi (second largest city in Ghana).

This challenge is becoming more chronic as population increases and resources become limited. For instance, relevant disaster prevention and management as well as infrastructure and services necessary for adapting are deficient. Unpreparedness and ineffective urban planning are largely blamed for floods, fire outbreaks and slum proliferation in Ghanaian cities. Despite a 2018 report by the 100 Resilient Cities indicating that Accra is one of the safest cities in Africa, it continues to face serious and sustained water pollution which threatens its economic stability and growth. Extreme water pollution from human and industrial waste have obstructed private sector investment in waterfront development and left the city's two lagoons uninhabitable for local species. The city is threatened with cholera, driven by polluted floodwaters during every rainy season, and waste is illegally dumped in drainage channels and other sites (Accra Metropolitan Assembly and 100 Resilient Cities 2019).

Greening urban spaces is a frequently mentioned strategy to address heat effects by increasing natural cover, made up of grasses, bushes, trees, rock gardens and indeed any natural material. Trees are among the most effective greening tool within urban environments because of their coverage/footprint ratio; they require a very small physical area for planting, but when mature, they provide wider coverage, and their shade greatly reduces the perceived temperature and comfort of those seeking their refuge. Unfortunately, progress with urban green infrastructure is limited in Ghana. The high rate of urbanisation in Ghana is causing massive reduction in important green spaces, while urban development projects have little regard for green infrastructure and ecological and aesthetic components. Available recreational green spaces, such as the children's parks in Accra (e.g. Efua Sutherland Park) and Kumasi (e.g. Children's Park), are deteriorating and abandoned by the public, because of encroachment, lack of maintenance, and safety concerns.

In 2007, floods affected more than 300,000 people in Ghana, and required more than \$25 million for emergency response, with over \$130 million worth of direct

damage. The UNDP sponsored state agencies through long-term strategies to deal with climate change under the Africa Adaptation Programme (AAP), which delivered training to Aowin Suaman District Assembly (Western Region) to mainstream climate change and disaster risk reduction into district development plans, and build a new market to relocate business owners from flood-prone areas. Flood and drought vulnerability maps have been created for communities using GPS and GIS, identifying safe areas and preparing evacuation plans for flood-prone areas. A Climate Change Community of Practice (CoP) used experienced young professionals and researchers to collect and analyse local climate data and model future climate conditions, in collaboration with the University of Cape Town Climate Systems Analysis Group. The Government of Ghana and the UNDP have developed a project that continues AAP's efforts in early warning systems establishment for the next 3 years, referred to as the Community Resilience through Early Warning (CREW). Also, city officials are incorporating resilience into land-use schemes to ensure controlled development. The Physical Planning Department of Kumasi Metropolitan Assembly has instituted permits on the need to carry out physical development in locations approved by the department. The Regional Lands Commission uses its land titling process to ensure that land in the metropolis is litigation free and is meant for the intended development, educating the public on processes of land registration and development.

Ongoing efforts to expand credit, upgrade water and sanitation systems, and improve housing conditions for slum residents in Accra and Sekondi-Takoradi need to be replicated across all major cities in Ghana. Participation of slum-dwellers in governance are perceived as critical for building resilience and improving the living conditions (see Accra Metropolitan Assembly and 100 Resilient Cities 2019). Caution should, however, be exercised in the engagement process, as undue over politicisation of recent social development interventions (e.g. flood management efforts, education programmes) are reported to be hampering real progress (Korah and Cobbinah 2019).

16.6 Conclusion

This chapter sets out to address unanswered questions relating to resilience and urban governance in African cities, and has demonstrated that they are at the forefront in terms of global shocks and stresses, yet remain poorly prepared. The analysis shows evolving approaches towards urban resilience in African cities amid generally weak urban governance systems. The colluding forces of rapid urbanisation and climate change remain the core risk to urban sustainability in African cities, particularly Ghana, magnified by weak urban planning and management.

Recent urban development and climate change experiences in Africa call for renewed efforts towards resilient governance and sustainable development, a call gradually gaining currency among international organisations through SDG 11 and the NUA. African cities, with Ghana as a case study, are responding via

transformations in planning and governance regimes. Policy documents, strategies and institutional frameworks exist (examples include the Ghana National Urban Policy, the National Climate Change Policy and National Climate Change Adaptation Strategy), and some municipalities (examples include Kumasi and Accra Metropolitan regions) are using land-use planning and local community participation to achieve some level of resilience. Yet, the fundamental barriers of limited planning capacity, rapid and unplanned urbanisation and climate change remain. Voices of urban residents are largely absent from resilience documents, strategies and initiatives, contributing to social exclusion, growing vulnerability and increasing poverty. For SSA cities to become resilient and sustain socio-economic growth requires citizen and community participation in the planning process, better local planning capacities, training in geospatial analysis and simulation tools such as GIS, enforcement of planning regimes and less international organisations' dominance and dictation. More attention ought to be given to local city level institutions in terms of capacity to lead resilience initiatives, as well as engage adequately with the most vulnerable urban population.

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Chapter 17

Food Security, Urban Governance and Multilevel Government in Africa



Jaap de Visser

Abstract Realising the right to food requires more than an increase in food production. Increasing access to food is equally important, so this contribution adopts a “food systems approach”. Against the backdrop of a growing number of countries on the continent that are decentralising powers to cities and regions, this chapter assesses the role of local governments in South Africa with respect to food security. It argues that food security is not just a national and/or provincial government concern, but that the Constitution demands of municipalities to contribute to realising the right to food. Against the backdrop of a general introduction into the division of responsibilities between national, provincial and local government, it deploys two arguments to make this assertion. The first is located in the jurisprudence of the South African Constitutional Court on socio-economic rights. The second is located in the division of powers between national, provincial and local government. This contribution explores various linkages between a municipality’s constitutional powers and food security. Specific emphasis is placed on the municipality’s responsibility to regulate trade and markets as well as its responsibility to conduct spatial planning and land-use management. The argument made in this chapter is also relevant in other countries on the continent that combine socio-economic rights with multilevel government arrangements.

Keywords Food security · Local government · Provincial government · Multilevel government · Food-sensitive planning · Right to food · Spatial planning · Land-use management · Urban governance

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17.1 Introduction

South Africa produces enough food to feed its people, yet household food insecurity and malnutrition are unacceptably high (Oxfam 2014). It is commonly argued that addressing food insecurity is primarily the responsibility of the national and provincial governments and that local government's role is limited (Steytler 2009). Food security is typically associated with food production and thus with agriculture, and, since the Constitution allocates agriculture to the national and provincial governments, local government bears little responsibility, so the argument goes (S 44(1) & 104(1): Constitution). This chapter argues that this is a wrong proposition for various reasons, and its argument is also relevant in other countries with constitutional arrangements similar to South Africa's.

First, food security is as much about access and quality as it is about production. South Africa's food insecurity challenge is linked to poverty and inequality, which constrains people's access to, and ability to make food choices. Most South Africans are too poor to make healthy food choices and are thus food insecure. A 2016 survey revealed that 19.9% of households had run out of money to buy food in 12 months prior to the survey (Statssa 2016), a situation not addressed by increasing production. Secondly, there are many structural and systemic problems in South Africa's food system that impedes food security. For example, the food value chain is dominated by large-scale farmers, major agri-processors and big retail stores, although diversity in the food value chain is essential for a sustainable food system (Oxfam 2014).

These two arguments may dispel the notion that food insecurity is agricultural, and therefore primarily a national and provincial issue. The right of access to sufficient food in the Constitution (S 27(1) (b)) suggests that it is a responsibility of national government, not municipalities, through increasing food production and ensuring a welfare safety net for the most vulnerable. The Constitutional Court, however, has interpreted the responsibilities of local government in other socio-economic rights differently, holding municipalities accountable for aspects of the right to housing despite the Constitution listing housing as a power of national and provincial governments (Schedule 4 Part A). In *City of Johannesburg Metropolitan Municipality v Blue Moonlight Properties 39 (Pty) Ltd and Another*, the City argued it could not be held accountable for the provision of shelter to a group of residents made destitute by eviction from private land, partly because the Constitution did not allocate housing as a power to local government (*Blue Moonlight*: Para 50). The Court disagreed and held the city responsible for providing shelter to communities rendered homeless, emanating from the Bill of Rights (*Blue Moonlight*: Para 67). This has consequences for the responsibility of local government to realise the right of access to food. Just as municipalities are responsible for critical aspects of the right to housing, despite it not being a constitutional local government function, so too are they responsible for critical aspects of the right to food, despite the fact that the Constitution does not allocate "agriculture" to municipalities. Where the realisation of the right intersects with municipal responsibilities, even where assigned by

statute, the municipality was responsible. The same should then apply to the right of access to food in section 27(1) (b) of the Constitution: municipalities are responsible for those parts of the fulfilment of the right of access to food that intersect with what is regularly done by municipalities.

To understand better this intersection between multilevel government and food security, this chapter first asks how food security intersects with the division of powers set out in the Constitution, and what points of leverage do sub-national governments, particularly municipalities, have. After tracing the constitutional division of powers between national and provincial governments in South Africa, case law reinforcing the role of municipalities in planning and management of land is explored as creating opportunities for a greater municipal role in food security matters. Finally, the relevance of South Africa's experience for the constitutions and multilevel governance in other African states is discussed.

17.2 The Constitutional Architecture

The Constitution relates to a federal state but with strong unitary elements, while allocating significant powers to local government. At the centre of this division of powers is a list of powers (Schedule 4A) allocated to national and provincial governments with authority to make and implement law on these matters. In case of conflict between a national and a provincial law, the Constitutional Court decides whose law prevails, using the criteria in section 146. The list of concurrent powers is extensive and includes matters such as environment, health, housing, welfare services and agriculture. This means that both national and provincial governments may regulate agriculture, a critical function related to food security, but provinces are unlikely to make agriculture laws that depart from national policy, because the criteria for national law prevailing over provincial weigh heavily towards the national government (De Visser 2017).

The Constitution also reserves some powers to provinces exclusively (Schedule 5A). The national government may not make law on those matters except in special circumstances (S 44 (2)). Schedule 5A includes matters such as provincial sport, provincial cultural services and veterinary services, which are hardly of fundamental importance to the state, and do not relate to food security, with two possible exceptions (abattoirs and provincial planning).

The Constitution also allocates powers exclusively to national government, any power not mentioned in Schedule 4 or Schedule 5, and includes major powers, such as the judiciary, mining and (most parts of) policing. This affects the powers around food security: land administration (i.e. rules of land tenure) is a national competency, meaning that neither provinces nor municipalities can make laws regulating farmland tenure (De Visser 2017).

The Constitution also contains specific and exclusive municipal powers subject to national and provincial minimum standards (Schedules 4B and 5B). For example, municipalities decide on rezoning and subdivision (part of "municipal planning",

Schedule 4B) but national and provincial governments may determine minimum standards. There are many powers in the schedules that intersect with food security as will be elaborated below.

The intergovernmental financing system has a centralising effect on relations between national and provincial governments. Provinces are almost exclusively funded by the national government, raising little revenue of their own (Khumalo et al. 2011), which discourages legislative innovation by provinces, particularly when a new provincial law would require significant funding. For example, no province is likely to pass legislation with “high-cost” experimentation concerning agricultural subsidies, because it does not have a revenue model outside the structures of existing national law (De Visser 2017).

The effect of the intergovernmental fiscal system varies. Metropolitan and local municipalities have important revenue-raising powers (mainly property taxation and fees for services such as electricity, water, sanitation and sewerage), and are largely self-reliant, raising significant own revenue, complemented by intergovernmental funding in the form of the equitable share and conditional grants. Metropolitan municipalities’ revenue model thus permits them to pursue distinct policy objectives, as can local municipalities with a significant urban base, but municipalities with no urban base and overwhelmingly indigent populations rely much more on intergovernmental funding (Steytler and Ayele 2018).

17.3 Local Government Powers and Food Security

Given the multidimensional nature of food security, many local government competencies are indirectly linked to realising the right of access to food, two in particular. Firstly, access to safe and healthy food is compromised without access to potable water, and the Constitution guarantees right of access to water (S 27(1) (b)), and municipalities are responsible for water services (S 156 (1)). Municipalities are also responsible for the reticulation of electricity, essential for cooking and cold storage (S 156 (1)). The Constitution not only empowers but also instructs municipalities to provide these services. Municipalities are compelled in the Bill of Rights to ensure access to water and electricity services to all, important deal for realising the right of access to food, by extending infrastructure to communities lacking a safe and sustainable source or connection. How municipalities structure their electricity and water tariffs, (S 74 Local Government: Municipal Systems Act) is also important since food insecurity is inextricably linked to poverty.

Another intersection between food security and local government powers relates to local food trade, where the Constitution Part B lists three local government powers: trading regulations (Schedule 4), markets (Schedule 5) and street trading (Schedule 5). Municipalities may adopt and enforce trading by-laws, best understood as a power to regulate the impact of trade on the local built environment and community (Steytler and De Visser 2007). Municipalities may also regulate and operate markets (S 156 (1)), including open air markets, food markets, fresh

produce markets, the term relating to an area, designated or managed by the municipality where stalls are set out for trading, often (but not always) limited to certain days of the week. Municipalities should realise the strategic importance of food markets in the food value chain, not to be treated as informal or the “deli” exception to the supermarket, but an indispensable part of the food value chain, improving access to healthy food, particularly for lower-income communities (Chonco 2015). Municipalities should use their regulatory competencies to influence trading practices in and around fresh produce markets, ensuring law and order, basic facilities and infrastructure, such as cold storage. The last municipal function is street trading, the operation of a small retail business in a regular public space with the permission of the municipality but not in a market, combining many similar businesses.

Municipal planning is an important local government power to plan and manage the use of land, and is distinct from the power to regulate forms of land tenure and ownership, which is a national power (Berrisford 2011). The Constitutional Court has many times determined that town planning is a municipal function, not to be interfered with by national and provincial governments (De Visser and Poswa 2019). They must limit their involvement to regulating frameworks for the effective performance by municipalities of this power, not to exercise or remove a municipality’s planning powers. The 2013 Spatial Planning and Land Use Management Act (SPLUMA) codifies and regulates this division of powers.

Municipal planning has two major components under SPLUMA. The first is the power of the municipality to adopt a Municipal Spatial Development Framework (MSDF) and smaller-scale spatial development frameworks (S 5(1) (a) & (b)). The MSDF is a spatial development vision for a municipal area, to inform future infrastructure investment and land-use decision-making (S 20 & 21). The MSDF does not grant land-use rights, but sets policy for land-use schemes and land-use management decisions (S 22 & 24 (1) (g)), important for a municipality’s role in realising food security, connecting initiatives and public investment of government institutions across the three spheres of government. The second component is the power to determine permitted land uses in the municipality through an adopted land-use (or zoning) scheme and determining applications from landowners and developers to change zoning, amend the permitted land use, subdivide, and change land-use restrictions in title deeds and consent uses. Municipal decision-making on land-use rights is important in improving food security.

Constitution establishes municipalities in South Africa (S 151 (1)), including all agricultural land. By using its power to rezone or subdivide, a municipality may rezone agricultural land for residential, commercial or other non-agricultural purposes, which affect agricultural production and food security (Steytler 2009). Subjecting the subdivision of agricultural land to approval of the national Minister of Agriculture (S 70: SALA) gives him/her a veto power over municipal planning decisions affecting agricultural land.

The history of SALA is important. The Act was adopted long before the introduction of the current local government regime. At the time, agricultural areas were largely excluded from the boundaries of local governments and SALA was applied there to control the conversion of agricultural land. SALA survived the introduction

of the new local government regime (*Wary Holdings (Pty) Ltd V Stalwo (Pty) Ltd*: 2009) and thus continues to apply and now subjects municipal planning decisions on agricultural land to a national veto.

The most important argument in its favour is that the incentive structure for municipalities fundamentally works against preserving agricultural land. The levying of property rates and the sale of municipal services (such as water, electricity, sanitation and refuse removal) are critical sources of revenue for municipalities. There is, thus, a clear incentive for municipalities to convert agricultural land into land for commercial and residential purposes and little, or no, incentive for them to retain agricultural land, so the argument goes (Steytler 2009). Secondly, it can be argued that the assessment of the agricultural potential of a piece of land requires specialised expertise. This expertise is not present in municipalities who are not geared towards regulating agriculture (which is not their function). It is present in provincial and national departments of agriculture (Steytler 2009).

One argument against SALA is that it is based on the assumption that farm size determines productivity, something on which agricultural experts disagree (Johnstone 2020). What constitutes a viable farm unit depends on matters such as soil conditions, rainfall and, most importantly, the type of agricultural model pursued on that farm. In fact, and this is the second argument against the current model, SALA was introduced and still functions to protect a powerful commercial agricultural industry, comprising of commercial farmers, the vast majority of whom are white. The Act has been singled out as a key obstacle to the transformation of the agricultural sector and the entrance of new, black agricultural entrepreneurs.

There are also legal arguments against SALA. Municipalities enjoy strong constitutional protection of their planning powers, confirmed and clarified in Constitutional Court judgments in Table 17.1. In *City of Johannesburg Metropolitan Municipality v Gauteng Development Tribunal* 2010 (9) BCLR 859 (CC), the City of Johannesburg asked the Constitutional Court to declare parts of the Development Facilitation Act (DFA) unconstitutional. The DFA empowered provincial planning tribunals to take land-use decisions, something that the Constitution reserves for municipalities, so the city argued. The Constitutional Court agreed with the city and declared parts of the DFA unconstitutional. This essentially located municipalities at the centre of the land-use management framework. In subsequent years, more constitutional litigation on this followed. Without fail, each judgement confirmed the approach taken in *Gauteng Development Tribunal*, namely, that national and provincial governments may not usurp the powers of municipalities with respect to “municipal planning”. The national government does not trump municipal land-use decisions by issuing mining licences (*Maccsands*). Provincial governments may not subject municipal land-use decisions to a veto, even if the development impacts on an entire region (*Lagoonbay*). Provincial governments may also not subject municipal land-use decisions or building approvals to provincial or national appeals (*Habitat Council, Pieterse, Tronox and Chairman of the National Building Regulations Appeal Board*). Five key judgments are summarised below, and, given that firm jurisprudential trend, SALA might not survive a constitutional challenge to its ministerial veto powers over municipal land-use management decisions.

Table 17.1 Constitutional Court judgments on municipal planning and building regulations

Judgement	<i>Gauteng Development Tribunal</i> (2010)	<i>Maccsands</i> (2012)	<i>Lagoonbay</i> (2013)	<i>Habitat Council</i> (2014)/ <i>Pieterse</i> (2016)/ <i>Chairman National Building Regs Council</i> (2018)	<i>Tronox</i> (2015)
Key question	Can province take “town planning” decisions?	Does having a national mining licence make municipal land-use approval unnecessary?	Can province overrule a municipality when the impact of the development straddles the municipal boundary?	Can a provincial or national body be the appeal authority for municipal planning or building regulations decisions?	What if the provincial appeal board is an independent expert body?
ConCourt’s answer	No, the municipality takes town planning decisions (rezoning and township development)	No, the municipality must still take its own decisions	No, the municipality must still take its own decisions	No, an appeal from a municipality to a provincial or national body is not constitutional	No, (confirming <i>Habitat Council</i>)

Source: author

The policy and constitutional flaws of SALA should not be read to imply that municipal power to change the permitted use of agricultural land must be unfettered. The challenges surrounding the orientation of municipalities towards development and the capacity *lacuna* in local government on agriculture are very real and serious. However, the current regime must be replaced by a more refined regime. SPLUMA, the new legislative regime for municipal planning, is an important start to that. It regulates how municipalities must conduct their spatial planning and land-use management. There are at least eight specific provisions in SPLUMA that relate to the agricultural potential of land under consideration for rezoning or subdivision:

1. The Preamble to the Act specifically mentions the right to food as one of the drivers for the adoption and implementation of SPLUMA.
2. Section 3(d) of SPLUMA includes “the sustainable and efficient use of land” as one of its objects.
3. Section 7(b)(ii) of SPLUMA instructs municipalities to “ensure that special consideration is given to the protection of prime and agricultural land”.
4. Section 8(2) of the Act empowers the national Minister to proclaim norms and standards on matters such as “desirable settlement patterns”, “rural revitalisation” and “sustainable development”.
5. Section 12(1)(n) of the Act stipulates that spatial development frameworks must “give effect to (...) the sustainable utilisation and protection of agricultural land”.

6. Section 21(j) of the Act specifies this for municipalities and insists that the MSDF must include “a strategic assessment of the environmental pressures and opportunities within the municipal area, including ... high potential agricultural land”.
7. Section 25(1) of the Act demands that municipal land-use schemes must have “minimal impact on ... natural resources”.
8. Section 52 (1) of the Act empowers the national Minister to decide land development applications “where such an application materially impacts on (...) food security (...) or land use for agriculture”. While this provision may sound similar to what is provided in SALA, it differs in two important respects. Firstly, while SALA provides for a veto on a municipal decision, SPLUMA provides for a procedure *alongside* the municipal procedure and resulting in a separate decision. Secondly, while SALA locates the veto power in the Minister responsible for agriculture, SPLUMA locates this national power in the Minister of Rural Development and Land Reform.

Proponents of SALA may argue that the above do not provide equivalent protection as the ministerial veto, but they do protect agricultural resources against harmful development less restrictively than the ministerial veto. The powers under section 52, in particular, empower the national government to stop development that may harm food security, ultimately with the same effect as the SALA veto.

As well as impacting the availability or production of healthy food, municipal planning powers also affect the municipality’s ability to facilitate access, particularly for disadvantaged communities. Take, for example, a municipality’s power over zoning, i.e. the adoption of a land-use (or zoning) scheme and the alteration of existing zonings. (S 24, 28 & 41: SPLUMA). Much of South Africa’s formal planning landscape for suburbs is characterised by “single-use zones”, i.e. the separation of residential, commercial, industrial and other uses. Commercial activity is generally discouraged in residential areas. While this approach serves a peaceful suburban lifestyle, separate from the hustle and bustle of commercial areas, it makes little sense in South Africa’s low-income and informal areas where residential and informal business activity flows into one another. Residential dwellings are used for commercial use, and it is not uncommon for informal retailers to reside in the places from which they trade. In that context, the dogged insistence on single-use zones as the norm, constricts and imposes a heavy regulatory burden on informal entrepreneurial activity. Deviation from the single-use zoning norm necessitates applications for departures, consent uses, rezoning and building permits and thus entails (oftentimes expensive) bureaucracy. Ultimately, it pushes small, informal businesses into illegality (Sustainable Livelihoods Foundation 2017). SPLUMA now expects municipalities to extend land-use schemes (or zoning schemes) into informal areas (S 24 (1): SPLUMA). However, it also instructs them to do so sensibly and incrementally, i.e. with due consideration of effects such as the above (S 24 (2): SPLUMA). For example, section 24(2)(c) of SPLUMA instructs municipalities to “include provisions that permit the incremental introduction of land use management and regulation in areas under traditional leadership, rural areas, informal

settlements, slums and areas not previously subject to a land use scheme”. Furthermore, SPLUMA envisages the adoption of municipal planning by-laws that deal with the enforcement of land-use schemes (De Visser and Poswa 2019).

The Constitutional Court has accepted that asymmetrical enforcement of municipal rules, such as municipal tariffs, is permissible if there is an underlying, rational policy that is formally expressed (City Council of Pretoria V Walker 1998). It can be argued that the extension of zoning rules into low-income and informal areas can be accompanied by low-intensity enforcement of those zoning rules in order not to chase microenterprises into illegality (De Visser and Poswa 2019). Small, informal food outlets play a critical role in local food system (Johnstone 2020). It follows, therefore that a municipality’s efforts to use its zoning powers to regularise (or not) microenterprises matters a great deal for local food systems.

Furthermore, the municipality can influence the regulatory and bureaucratic burden that is imposed on informal food traders in low-income and informal settlements. SPLUMA recognises the bureaucratic burden that the planning system imposes. It instructs municipalities to identify areas in its MSDP “where incremental approaches to development and regulation will be applicable” and where “shortened land use development procedures may be applicable and land use schemes may be so amended” (S 21 (k) & (i) (ii): SPLUMA). It is argued that municipalities should consider finding ways to ease the regulatory burden on informal food traders in low-income and informal settlements. This may relate also to the setting of tariffs for land-use applications: the municipality now controls the tariff structure and could consider adopting a progressive tariff structure that encourages informal traders to regularise their building and planning approval. In short, a progressive approach by the municipality to the regulatory burden surrounding planning and building regulations could enable more informal traders to formalise the planning approvals pertaining to their businesses. This adds stability to their operations and increases their chances of accessing capital and overall benefits for the accessibility of healthy food particularly in disadvantaged areas.

A third example of a point of leverage for a municipality that may be used to facilitate greater access to healthy food relates to the use of conditions to land-use approvals. A municipality that is considering a land-use application, such as an application for rezoning, subdivision, consent use, etc., has leverage over the applicant. Section 43(1) of SPLUMA provides that an application may be approved subject to such conditions as the municipality prescribes. This leverage can, and should, be used by the municipality to negotiate outcomes that go beyond the narrow interests of the applicant in a land-use right. This already happens. It is common for municipalities to impose condition that assist it to recoup the additional bulk expenditure (e.g. a new sewerage plant) required to make the development possible. More progressively, cities are starting to approve inner city commercial housing projects together with conditions that force developers to include low-cost housing units into the development (Ndifuna Ukwazi 2018). It is argued that municipalities should explore using this leverage to impose conditions that force developers into the behaviour that improves the food system, such as facilitating market access for small and informal traders. For example, why not add a condition to the approval of

a retail mall development that a certain percentage of the floor space is designated for small, emerging food retailers?

17.4 Relevance Elsewhere

How far are these arguments relevant for countries elsewhere on the continent? An increasing number of constitutions list sub-national powers, whether federations, such as Ethiopia and Nigeria or “semi-federations” such as Kenya. Others are countries setting out the powers of local government in their Constitutions include Uganda, Tunisia and Zambia. The arguments in this chapter interpreting sub-national powers, such as those related to planning, trade and markets, to link to food security could find resonance in those countries. Constitutions with enforceable socio-economic rights are scarcer, although countries such as Uganda and Nigeria list them as duties on the state but not as rights enforceable in court. Kenya is an exception, with a Constitution containing justiciable economic and social rights and devolution of powers to counties. Article 43 contains rights pertaining to healthcare, housing, sanitation, food, water, social security and education, and enforcement of these rights by the Kenyan courts will doubtless affect the devolution of functions and powers (De Visser 2015).

17.5 Conclusion

This chapter has argued that the duty to realise the right of access to food in South Africa is not exclusively to national and provincial governments, but many functions allocated to local government allow municipalities to make meaningful contributions on the right of access to food. Certain planning responsibilities ultimately impact food production and can improve the availability of food. The legal framework for controlling development of agricultural land is no longer appropriate, and a new approach should move away from focus on farm size as a proxy for productivity, to recognise the enhanced status of local government in the regulation and control of land use. Municipal planning responsibilities are equally important to better balance the role of large retailers and local food traders in the market. They can reduce the regulatory burden on food traders in low-income and informal settlements. Other municipal competencies that can improve access to healthy and nutritious food include regulating fresh produce markets to connect small-scale farmers and informal traders to consumers.

This chapter does not claim that the above suggestions as policy proposals and policy experts may disagree or have other proposals but argues rather that local government powers allow intervention to improve the right of access to food, which can benefit all South Africans. Returning to the original research question, there are many points where local government powers intersect with what is required to

realise the right of access to food. If municipalities use this leverage constructively and progressively, more progress can be made in the quest to ensure access to food.

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Chapter 18

Resilience of Informal Public Transport and Urban Land Governance in Ibadan, Nigeria



Dumiso Moyo and Adebola Olowosegun

Abstract Informal public transport (IPT) has emerged as an adaptive alternative to formal public transport in developing countries. Transport systems are an integral part of land allocation and urban governance in urban development, with positive and negative impacts upon the wellbeing of urban dwellers. A pragmatic theoretical approach to the role of informal transport in Ibadan, Nigeria, helps to position the significance of stakeholder perceptions to policies on land and urban governance in cities of the developing world. This approach has more significance given the diminishing public sector investment in public transport in developing countries that has led to the growth of informal transport. Pragmatism encourages the perceived negative role of informal transport becoming more positive, informed by the stakeholder views involved in IPT in Ibadan. This chapter argues that the stakeholder perceptions of IPT reflect the real world situation, to allow a shift towards seeing IPT as essential for achieving urban wellbeing for citizens of developing country cities.

Keywords Informality · Pragmatism · Informal transport · Urban growth · Urban governance

18.1 Introduction

Informalities in developing countries span most sectors of the economy, including IPT, which services public mobility needs in cities. Increasing urbanisation and population growth, against a backdrop of declining investments in public sector transport, has led to increased use of IPT in cities of the developing world, which over the years has become institutionalised regardless of its negative impacts (Cervero and Golub 2007). Such negative impacts include increased congestion and

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pollution, unregulated driving, poor travel conditions, and unsafe environments for commuters and neighbourhood residents (CDIA 2011; Pojani and Dominic 2015; Kamete 2018). IPT is established as a major resource for urban dwellers characterised by flexibility and responsiveness to user demands, affordability and source of local employment (Cervero and Golub 2007; Kassa 2014; Kumar et al. 2016). IPT is thus both a problem and a resource, and has proved resilient against restrictive regulatory regimes. The growth of urban cities in developing countries puts pressure on land demand and the IPT is key to servicing transport needs to the sprawling urban areas.

This chapter explores governance of IPT as a key challenge for cities of SSA, having dramatically transformed the urban fabric and yet being still perceived as a temporary solution or continuing problem. The chapter rather suggests that IPT is a resilient and significant urban activity that should be a key consideration for thinking about city futures. To enable this paradigm shift, a pragmatic governance approach should be sensitive and responsive to the existing troubles experienced by the IPT sector. An alternative governance system needs to recognise the “wicked” troubles experienced by IPTs in cities of developing countries, especially in SSA.

Using evidence from Ibadan, Nigeria, the chapter will explore how user perceptions of a range of “social dimensions of travel” show the worth of IPT as a common good benefiting the residents of the city (Fuller 2012). Adoption of the sector into the formal futures of city governance would constitute “intelligent policy making for a complex world” (Sanderson 2009). The research sought to understand the user and institutional perceptions of informal transport on its affordability, accessibility, comfort, safety and security, pollution, cleanliness and attitudes of its service providers. The two main questions applied to this study were, (1) What is the public’s perception of the quality of service of informal public transport in Ibadan? and (2) How do users and institutional actors attribute value to the the informal transport service in Ibadan? The responses to these questions demonstrates the contribution of IPT to the wellbeing of the urban population, hence its importance for urban governance of developing cities.

The chapter starts by setting a context for IPT in developing countries, followed by an analysis of the impact of urban growth on transport demand and supply, and upon public wellbeing. For the city of Ibadan, it highlights the role and influence of state governance on IPT, the significance of learning from public perceptions and the social dimensions of IPT mobility in Ibadan. The chapter concludes by applying pragmatism to IPT governance to allow tolerance of the perceived troubles of the sector.

18.2 The Context for Informal Public Transport

IPT is a market-based transport service with less regulation, or even unregulated in some countries (UITP 2010; UN-Habitat 2012), that remains the dominant means of transport in SSA and other developing countries. IPT represents 52% of all trips

in Cairo (Egypt) and 95% in Dakar (Senegal) (Godard 2006), and its dominance in African cities is driven by increasing population and the shortage and poor performance of government-provided public transport (Pucher and Korattyswaroopam 2004; Schalekamp and Behrens 2010; Venter 2013).

Other issues reported in the academic literature include the impact of particular urban forms and transport affordability for poorer sections of the population (Vasconcellos 2001; Pucher and Korattyswaroopam 2004), but the lack or dwindling of public infrastructure investment with its consequences for urban growth remains the major issue (Banister 2002; Iles 2005; Kassa 2014). The 2008 road infrastructure index on a scale 140 ranked Nigeria 112th, while the best in Africa was ranked 20th on the same scale (AfDB 2013). By 2016, Nigeria ranked 92nd on a scale of 160, and the best in Africa was 18 based on the logistics performance index (LPI). Figure 18.1 shows the 2016 infrastructure index of Nigeria relative to Africa for overall infrastructure, as evidence that the infrastructure is not keeping at pace with the growth of these cities (World Bank 2016).

The cities of developing countries continue to have dwindling public transport investment, evidenced in the overall decline in the proportion of infrastructure provision relative to population increase (Cervero 2000). Parallel to this is the dominance of public transport by informal sector operators (CDIA 2011) and the high cost of travel relative to personal income (Pucher et al. 2005). Debates continue on whether IPT is a resource or a problem (CDIA 2011), despite informality being the only option for many (Kamete 2018), as do debates around rationalising IPT within public transport policy (Cervero and Golub 2007; Ahmed 1999; Kamete 2013; Venter 2013; Kamete 2018). The imbalance between urban growth and economic development is reflected in transport infrastructure and services deficit (Asiyanbola 2007).

Overall Infrastusture index 2016 -Nigeria relative to Africa

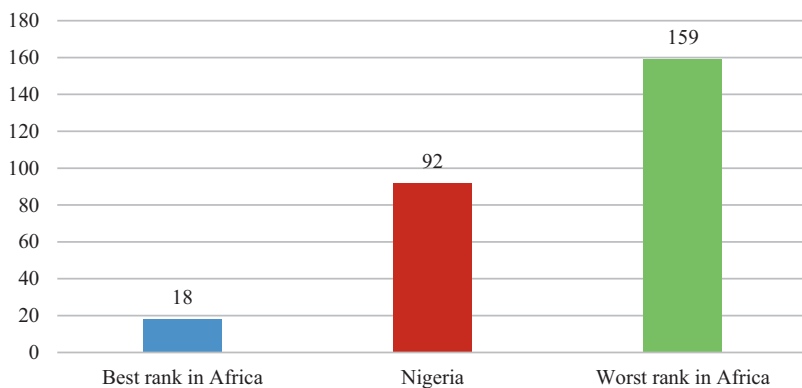


Fig. 18.1 Overall infrastructure index 2016 – Nigeria relative to Africa. (Source: Produced from the World Bank LPI Global Ranking Dataset 2016)

Urban growth has varying potential to generate and attract trips. Urban activities are connected through the available urban public transport network, and need is driven by both population growth and the physical expansion of urban areas (Cohen 2004), as urban growth means increased need for infrastructure and adds pressure on existing infrastructure and services. Such urban growth scenario creates opportunities for IPT to meet emerging demands, with a lack of institutional structures to accommodate informal operators (Cohen 2004, 2006).

Unregulated urban sprawl is considered undesirable by city planners and environmentalists (Bhatta 2010), and results in new residential, industrial and commercial developments, requiring transport infrastructure to service the population of the illegal peri-urban developments (Zhang 2004). The distances involved require use of automobiles rather than walking or even cycling. Sudhira et al. (2004) emphasise that in order to understand the escalating rate of urban sprawl, efforts should be made to understand its dynamics and devise appropriate management measures. This assertion is supported by Wang et al. (2010) in their submission for proper allocation of resources by policy-makers and transport planners for the overall transport system performance (Torrens and Alberti 2000; Barnes et al. 2001; Epstein et al. 2002; Sudhira et al. 2004). The development of sprawl in cities strains the capacity of transportation services of the city, and the physical security among other services (Bhatta 2010). In such unregulated settlements IPT can adapt, being more flexible than rather rigid formal transport schedules.

18.3 Urban Transport for Wellbeing

Cities are dynamic and are perceived as systems which can be organised and need to be planned for the wellbeing of the urban dwellers (Gatzweiler et al. 2017). In terms of the spatial growth of a city, it can occur vertically and horizontally (Fan 1999). These growth types happen in response to socio-economic demands visible in the change in spatial configuration. The functionality, viability and liveability of cities depend upon the components of the city structure, primarily land use activities and transportation which need to be “operationally optimised” (Gatzweiler et al. 2017). Better transportation links serving both legal and illegal settlements contribute to sustained wellbeing of a city’s population.

Developing countries have adapted IPT in response to low investment in formal public transport. The quality of service (QoS) is essential for users’ satisfaction. Public transport with high QoS contributes to enhance users’ wellbeing. Indeed, public transport has significant impacts on the health of the users as compared to the private car owners (Martin et al. 2014; Ettema et al. 2016). Public transport is grouped as an active mode due to the elements of walking/cycling that are normally combined or integrated with it. These elements of walking/cycling that are involved contribute to the physical activities that are frequently engaged in by public transport users. According to Rissel et al. (2012), between 8 and 33 min of walking is normally involved with the use of public transport, with positive effects on both

physical and mental wellbeing. Studies have shown that men who frequently make journeys with public transport to be less obese than men who make use of private cars (Wen and Rissel 2008), so switching from private cars to public transport helps people to lose weight and enhance their physical wellbeing (Ettema et al. 2016; Martin et al. 2014).

The attractiveness of a city may be enhanced by the quality of public transport. Leyden et al. (2011) stated that public transport and social connections enhance cities' liveability. Therefore, cities with good access to public transport enhance residents' wellbeing by creating opportunities for them to engage in their desired activities. It has been noted by Cao (2016) that urban dwellers living along corridors with high QoS of public transport ranked their quality of life higher than those urban dwellers in other transport corridors. In consideration of implications of QoS has on wellbeing, it is essential that the governance of transport for wellbeing incorporates the benefits.

Related to concern for wellbeing is the affordability of transport by the poor, which IPT offers. In most developing countries, which includes Nigeria, 68.0% of the citizens live below \$1.25PPP (the poverty line) per day (UNDP 2016), and fares are not fixed but have flexibility for negotiation (Cervero 2000; Cervero and Golub 2007), with passengers compromising comfort and safety for a reduced fare. IPT fills gaps and helps provide services to large areas of the city where there is no coverage by formal services, is flexible and available to the general public and niche markets such as students and the elderly (Chavis and Daganzo 2013). Varied costs and pressures exerted by customers demanding increased frequency and flexibility give rise to fragmentation in operators, which is reflected in the large number of small capacity vehicles (Sohail et al. 2006).

IPT creates jobs for people which translates into socio-economic benefits (Cervero and Golub 2007), and the drivers and conductors organise themselves into cooperative societies whose members contribute money and access loans as a form of welfare package. IPT as an aspect of the informal economy can provide a means of livelihood alternative to the people in developing countries (Kamete 2018).

18.4 A Case Study of Ibadan

Ibadan, the capital city of Oyo state, South West Nigeria (total land area of 3123 km²), is situated about 125 km inland from Lagos, and is a prominent transit point between the coastal region and the North (RUAFCFF 2007). The population density of the metropolitan area is some 586 persons per km² (RUAFCFF 2007). By the year 2006, Ibadan City had covered over 75,575.14 hectares, up from 101.23 hectares pre-1830. The spatial expansion naturally led to new roads and other transport facilities being constructed, but poor planning inhibited a commensurate increase in transport facilities.

Based on the national population census, the population of Ibadan was 2,550,593 in 2006 (NPC 2006). Figure 18.2 shows Ibadan's population trend from

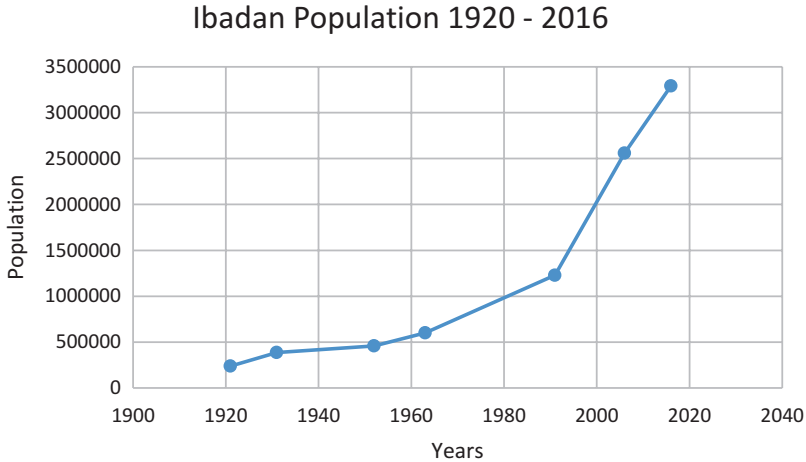


Fig. 18.2 Ibadan's population trend 1920–2016. (Source: Drawn from NPC Population Data (Extract Olowosegun 2018))

1920 to 2016, The growth of IPT in Ibadan is a result of high population growth rate since 1960s.

Over the years, the governance of transport systems in most countries of the world (Europe, Asia and Africa) has become divided among different organisations, both public and private, leaving the transport organisational landscape fragmented (Paulsson et al. 2017). IPT systems are typically managed by private individuals or groups, due to forces of demand and supply, and the impact of new public management from structural reforms (Cervero and Golub 2007; Van De Velde 2014). This rising fragmentation of responsibilities has fuelled a theoretical debate around the concept of governance (Paulsson et al. 2017). The relationships between public, private and civil society organisations are being rethought in governance theories (Hajer and Wagenaar 2003; Paulsson et al. 2017), calling for the strategic governance of public transport to respond to institutional reforms, accepting IPT as an effective service provision in developing countries.

The three tiers of government are Federal, State and Local Governments, all influencing the governance of transport in Ibadan.

The Ministry of Transport within the Ministry of Public Works, Infrastructure and Transportation is empowered to act on behalf of the state government, with the Ministry of Transport Law 2014 vesting it with statutory responsibilities of the transport governance in the state. MOT supervises any agency and parastatal that the state government deems appropriate, and may contract with any organisation for transport-related matters (Oyo state Government 2014). The MOT has six directorates (Oyo state Government 2014). At least two of these have responsibility of formulating road use policies overseeing the effective use of roads and road infrastructure. These include controlling the activities of bus stations, parks and registrations, coupled with the power to enforce compliance, and formulating

policies on and overseeing the transport unions' activities and automobile-related associations.

The Directorate of Vehicle Inspection is tasked with the duty of educating the drivers, road users, public transport users and the general public on safety in road use. In addition it is responsible for enforcement of registrations and the renewal of motor vehicles registration documents. These include permits for public vehicles (minibuses, motorcycles and tricycles) and private vehicles. It also has the duty to enforce the collection of statutory taxes, keeps the data on public vehicles and operators, and polices the roadworthiness of the vehicles. It also investigates road traffic accident fatalities, and partners with other agencies in the prevention of road accidents. There is, however, little evidence that the Directorate of Planning, Research and Statistics, while responsible for the collection and analysis of transport data in Oyo state and the formulation of state transport policies and strategies, has progressed policies on IPT in Ibadan, perhaps because IPT is still not considered as a key and future player in the transport industry and is perceived as troublesome.

The Vehicle Inspection Office is responsible for certifying roadworthiness of all vehicles plying the roads, including certification of vehicles and ensuring that only licenced drivers can drive vehicles on the highways. The Office is geared towards ensuring the overall safety of the road transport system and carries out educational awareness among the transport operators, auto mechanics and automobile spare parts dealers (Oyo State Government 2014). It works with the Ministry of Environment to protect the environment from automotive pollutions, as part of the overall institutional measures to improve quality of the transport system (Oyo State Government 2014).

The Federal Road Safety Commission (FRSC) is another important agency in road traffic management and administration in Nigeria, with responsibility for reducing road crashes and ensuring a safe motoring environment through enforcement, enlightenment, engineering and education (Omidiji 2010). FRSC uses enforcement as a punitive measure against the people that break the law and have committed road traffic offences. The Safety Engineering Department seeks to regulate and standardise the activities of fleet operators (both formal and informal operators), through a scheme known as Road Transport Safety Standardization Scheme (RTSSS). RTSSS sets out rules and guidelines for the activities of the operators and the users. FRSC equally uses education schemes, such as conducting public enlightenment rallies, TV and radio programmes, radio jingles, publications in newspapers, talk shows (Omidiji 2010).

The National Union of Road Transport Workers (NURTW) in Nigeria coordinates the activities of private operators. There is no legislation regulating operations of public transport in Ibadan and most of the cities in Nigeria. The regulatory body for IPT is NURTW because most government investment and collaboration priorities are placed on inter-state and inter-urban transport schemes, with little emphasis on intra-urban services. IPT is generally fragmented and weakly regulated by the private sector, managed by NURTW (the major transport union), and its adoption into mainstream transport governance would establish synergy with the public sector controlled transportation regulatory regimes.

This study adopted quantitative and qualitative approaches to seek an understanding of perceptions of the stakeholders on IPT in Ibadan. A total of four hundred and eighty-eight (488) questionnaires were administered to the users; semi-structured interviews were carried out with forty-four (44) participants, largely the representatives of state institutions, IPT operators, and experts in transport and urban planning. In addition focus group sessions were held with IPT operators, and data were processed and analysed using NVivo and SPSS packages (Olowosegun 2018).

18.5 Public Perceptions of IPT in Ibadan

The study in Ibadan sought to establish public perceptions on the growth of IPT in this rapidly growing city. Public perception help understand our environment, and can inform policymaking on urban governance, especially on the worth of IPT to public users. The governance of IPT needs the inclusion of such public voices in establishing needs and future direction.

There can be a multiplicity of perceptions from stakeholders on criteria for assessing quality of service, which include comfort, affordability and accessibility. Figure 18.3 demonstrates the interconnectedness of perceptions, values, beliefs and interpretation in formulation of informal public transport policy.

The need for recognition of public perceptions was highlighted in Agbibo (2018) study on informal transport workers, who expressed a view that urban planning practices infringed on their opportunities and rights to the city. In Ibadan, user perceptions were obtained on various social dimensions of IPT, including affordability, accessibility, comfort, safety and security, pollution, cleanliness attitude and design.

Contrary to findings that IPT is the preferred mode of transport for the urban poor (Pucher and Korattyswaroopam 2004; Cervero and Golub 2007), in Ibadan the study indicated that IPT bus services are not only for the poor, but offer the main mode of public transport service regardless of income or social status. The governance of IPT in developing cities like Ibadan should recognise that this is an affordable service with good customer support, so that pragmatic policies and practices support IPT services.

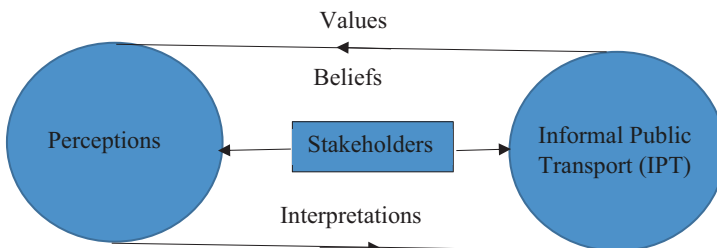


Fig. 18.3 The interconnectedness of stakeholders, perceptions and IPT. (Source: Olowosegun 2018)

18.5.1 Affordability

Over 30% of users affirmed that they can afford to pay the average transport fare, and another 43% can afford to pay more. These perceptions were supported by the narrative of institutional stakeholders. Exorbitant charging occurs at times of peak passenger demand as fares are not fixed, but users can negotiate reductions during periods of low travel demand. Such affordability contributes to user satisfaction and reduces transport poverty (World Bank 2002, 2005; Jones et al. 2013).

18.5.2 Accessibility

User perceptions indicate that IPT service is generally highly accessible. Almost 50% of users accessed it under 10 minutes, and 75% under 15, and they generally do not have to walk a long distance before they can board IPT. At least 50% female users of IPT access the service within 10 min walking distances from their homes. The significance of ease of accessibility for women is profound as they would generally have children in their company. As also noted by Martin et al. (2014), there are positive associations between the time taken to walk to access public transport and wellbeing. Such accessibility to travel and positive impact to wellbeing of all genders and age cohorts justifies the need for a pragmatic adoption of the IPT service as a resilient component of the urban system in developing countries, and not something to be outlawed. There is space for a more supportive policy and practice through accepting the IPT services as a pragmatically intelligent policy.

18.5.3 Comfort

Despite the user perception that the IPT service was highly affordable, at the price of low comfort: poor sitting conditions and overcrowding, buses in physically unattractive condition, untidy and perhaps unsafe. Figures 18.4a, 18.4b, and 18.4c shows the typical IPT buses.

User perceptions on the comfort of IPT service concurred with findings from Cervero and Golub (2007), that comfort of users is compromised in IPT service provision, and IPT facilities make the urban environment untidy and negatively impact upon social wellbeing of the city (Cervero and Golub 2007; Skinner and Masuda 2013).

Such lack of comfort experienced by users of IPT services despite it being affordable calls for an interventionist policy in governance of public transport through IPT services, but not getting rid of the certainly useful travel service. The intervention must seek to improve the comfort to the users.



Fig. 18.4a A loaded IPT bus (Danfo) ready for a trip. (Source: Olowosegun 2018)



Fig. 18.4b Unkempt seat of a typical Danfo bus. (Source: Olowosegun 2018)



Fig. 18.4c Interior of typical Danfo bus. (Source: Olowosegun 2018)

18.5.4 Safety and Security

The users' perceptions indicated a divergence of views on the safety and security of the IPT buses and its facilities. Nearly 40% of the users claimed that IPT bus services and their facilities are safe during the day, but not at night. IPT service and facilities are perceived as troublesome spots. While 13.0% indicated that it is always unsafe and 8.0% specified that it is unsafe on particular routes in the three LGAs of study.

Some institutional stakeholders (VIO, FRSC and MOT) stated that IPT are prone to accidents. These results reflect those of Trans-Africa Consortium (2010) and Gwilliam (2003), who found that there is a prevalence of overloading-related issues with IPT, the use of vehicles that are not road worthy, and violation of road traffic rules and signals – which make the IPT services mostly unsafe for the users (see Fig. 18.5).

On security, the stakeholders noted that IPT are used for criminal activities, such as kidnapping and stealing, alcoholism and drugs. Participatory mappings shows convergence of some spots identified as areas with high IPT accidents and areas with high levels of crime. Gwilliam (2003) identified that attacks by hoodlums, harassment, incidents of rape and violence resulting from conflicts in IPT services can occur in specific areas of IPT use. The general practice has been to outlaw the IPT services or ignore the criminalities associated with activities. A more



Fig. 18.5 An accident involving an IPT bus and IPT car. (Source: Olowosegun 2018)

pragmatic governance to such social issues would seek to target the anomalies and not outlawing the essential transportation service provided by IPT.

18.5.5 Pollution

The ITP buses are characterised by gas and noise pollution, also attributed to the trading and hawking activities that take place at the bus stops/interchanges. IPT contributes enormously to air and noise pollution in the urban areas of developing countries. The higher the capacity of the buses used for public transport, the lesser the hydrocarbons and the carbon monoxide (CO₂) per kilometre. The age and lack of proper maintenance of IPT is responsible for the noise and CO₂ emissions (Pucher and Korattyswaroopam 2004; Pucher et al. 2005). The lived experience of the users of such facilities would aid policy-making if a policy to reduce such negative impacts is practiced. The general practice has been for responsible authorities turning a blind eye on such places considered troublesome. The culture and practice of neglect has sustained poor environmental conditions as these transportation nodes.

18.5.6 Cleanliness

IPT activities are associated with uncleanness in both buses and terminal areas, confirming findings from similar studies in cities of the developing world (Pucher et al. (2005) and Badami (1998)). Resolving such challenges calls for a governance

Fig. 18.6 Danfo driver and a uniformed man fighting. (Source: Vanguard 2012)



approach receptive to the key role of IPT in urban transportation and promote programmes and activities that improve the cleanliness of these areas.

18.5.7 Attitude

The perception of user of IPT is that the drivers, conductors and touts are badly behaved, fight with users and are generally abusive and threatening in their behaviour (Fig. 18.6). Some areas are notorious for illegal activities by drivers and conductors. The intake of illegal substances, such as alcohols and cannabis, influenced their mannerisms and attitudes A pragmatic approach that recognises the worth of IPT in meeting travel needs in the city would adopt interventions to deal with such issues, but a culture of denial to stay with IPT consequences leads to neglect of such activities perceived as sources or centres of trouble.

18.6 Conclusions: Learning to Stay with IPT

This chapter has demonstrated the impact of urban sprawl resulting in increased uptake of land for urban purposes. The need for public transport is met by increased use of IPT.

The conclusion of the study is that, although the public had reservations regarding driver attitudes, cleanliness, pollution, safety and security, IPT is a key contributor to urban wellbeing, affordable and accessible particularly given that there is no significant alternative mode of public transport.

Given the evident mismatch between high demand for transport and low public sector investment for transport, urban policy needs to change direction for

developing country cities. Urban sprawl in Ibadan is dominated by IPT as its main form of public transport. As such, the urban land governance in developing countries has to recognize the need for land reserved for transport corridors dominated by such informal transport services. Evidence from Ibadan suggests that while the IPT has notable troubles of concern, nevertheless the service it provides is a positive contribution to wellbeing for its users. Utopian and idealistic wishes of future urban centres rid of IPT services are unreal, hence the need to embrace the positive contributions of this urban transport practice as a normal and pragmatic solution to meeting travel demand in growing cities. The policy and governance practices should seek to alleviate IPT negative aspects such as poor vehicle conditions, loss of comfort and a range of environmental concerns. Ignoring and seeking to eradicate this service has proved futile as the IPT has remained resilient in the face of anti-informal sector regulatory practices.

A pragmatic approach by institutional stakeholders would allow a policy and governance redirection in mitigating the effects of urban growth. Listening to user perceptions on the services of IPT would be a pragmatic initiative to establish a learning urban governance approach as incorporation of public perception provides intellectual integrity to policy formulation. Such pragmatic approaches exemplify inclusive governance to policy formulation and are a reflection of real world of developing countries. A denial of the real world IPT situation creates an unnecessary regulatory and policy burden and yet adaptation to learn to assimilate the goodness of the IPT sector would establish a platform for well-weighted intervention to deal with its troubles. Pragmatism allows for recalibration of the weight of troubles presented by the IPT in the light of positive attributes for wellbeing that it provides as well.

Experiences from users of IPT in Ibadan highlight the need to consider transport, beyond its physical constituents of roads and buses, to include social dimensions for travel as contribution to wellbeing. IPT in Ibadan is a major contributor to socio-economic wellbeing, it can be concluded that it is more an important resource than trouble to the city, hence the need for pragmatic solutions that embrace the IPT as a future to the cities of developing countries. A pragmatic approach would enable the adoption of an urban governance approach that recognises the worth of the IPT.

Such a pragmatic approach to the acceptance and incorporation of IPT would not only be relevant to Ibadan, but the rest of African cities whose public transport system is dominantly reliant on such mode of travel. The resiliency of such informal public transport in many African countries is testimony of its positive contribution in supporting wellbeing for citizens, and thus future urban governance approaches are to learn and be informed by this in future urban policy initiatives. An understanding of the dynamics of the informal sector in African cities is relevant for future urban planning as it is a dominant sector of urban activity, that has over decades remained resilient against unsupportive governance policy and regulatory regimes.

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Chapter 19

Urban Governance and Disease Outbreaks: Cholera in Harare and Ebola in Monrovia



Hillary Birch

Abstract Both the cholera outbreak in Harare (2008–2009) and the Ebola outbreak in Monrovia (2014–2016) spread rapidly through informal settlements that make up much of the urban fabric of these two cities. These outbreaks occurred in the context of increasing precarity of the urban poor, resulting from forced displacement, and provoked by contestation over economically and politically strategic urban spaces. Despite this, only in Harare has the disease outbreak been linked to urban governance, while the Ebola outbreak in Monrovia has yet to be conceptualised with reference to urban governance. This chapter argues that the origin of the disease itself, differences in local government structures, and the framing of the outbreak by the international community all shaped how urban governance has been considered in these two outbreaks. The chapter draws attention to how urban policies shape disease outbreaks, regardless of whether such outbreaks are explicitly politicised.

Keywords Urban governance · Disease outbreaks · Ebola · Cholera · Informal settlements

19.1 Introduction

This chapter investigates the role of governance in responding to disease outbreaks in two African cities: Harare, the capital of Zimbabwe, and Monrovia, the capital of Liberia. It considers how urban governance, and related contestation over urban space, was or was not taken to be a key determinant in the emergence of these disease outbreaks. Urban governance here is more than just the practise

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of implementing policies or programs, but also the relationship between those “inside” or “outside” the state tasked with governing. Drawing on McCarney et al. (1995), governance is broader than the actions of the government itself and involves all actors in a society. Through a comparison of these cases, this chapter seeks to address three related research questions. First, where was the city in the origin of the disease itself? Second, how was city-level politics and dynamics of contestation over urban land considered in efforts to understand the disease outbreak? And third, how did the international community come to frame the disease outbreak?

The urban governance of Harare and Monrovia are contrasted, as both cities experienced significant disease outbreaks within the last decade. The cholera outbreak in Harare from 2008 to 2009 and the Ebola outbreak in Monrovia from 2014 to 2016 each resulted in the deaths of thousands. Both cholera and Ebola are highly contagious in the context of poor health services and unsanitary living conditions in informal settlements. While the outbreaks were not confined to urban areas alone, the pathogens took on a particularly urban character, spreading rapidly through informal settlements that are a large part of the fabric of both cities. Both outbreaks took place in the context of increasing precarity of the urban poor, as those in informal settlements of Monrovia and Harare experienced various forms of displacement due to contestation over economically and politically strategic urban spaces, further contributing to poor living conditions conducive to the fast spread of disease.

The analysis presented in this chapter was conducted through a literature review of key academic texts and stakeholder reports, relating to the political economy and urban governance of these two cities in the years before their outbreaks. A brief review of relevant literatures is presented, followed by an overview of the two outbreaks and the recent histories of urban governance, contestation, and land management strategies in each city. Next, effort is made to answer the question how urban governance was or was not identified as a key determinate in disease outbreaks, before moving to open a discussion on the broader implications. While in Harare the governance of the city and its consequences on urban space has been seen as a key factor in the cholera outbreak, in Monrovia little attention has been given to key urban governance dynamics that shaped the spread and magnitude of the outbreak. The origin of the diseases, differences in local government structures, and the framing of the outbreak by the international community, within contexts of either political stability or instability in the city, have resulted in significantly different diagnoses of urban governance in Harare and Monrovia.

19.2 Health, Cities and Informal Settlements

Understanding outcomes of health in cities requires going beyond biomedical considerations of what makes an individual healthy or not. Health in cities is constituted by a host of complex determinants across sectors and scales, such things as the built environment, social relations and economic activities. Gatzweiler et al. (2017) argue that urban health outcomes emerge from multiple causal chains, given the complexity of interactions between various determinants, and as such, poor health outcomes in an urban environment are a failure, not only of the health system to deliver services, but also of urban governance to address the various causes of health within an urban system. The governance of health thus requires engaging with urban design and planning, as these tools have great potential to impact the health outcomes of individuals (Giles-Corti et al. 2016).

Such an understanding of how the city shapes health is not new. Cities have long been recognised as potential vectors of infectious diseases, and the implications of disease outbreaks for the governance of urban space have been subject to many studies (Chalhoub 1993; Peterson 1979; Swanson 1977). During the nineteenth and twentieth centuries, the improvement in health and survival of urban residents in European and North American cities was attributed to changes to the built environment, including sanitary reform such as paved streets, construction of sewers, disinfection of water and the surveillance and quarantine of sick individuals (Rydin et al. 2012). Over the past 150 years, an expanding body of research shows that well-planned and managed cities have not only made a substantial difference to the health of residents, but that the governance of cities today would be impossible without the “managerial processes of a technological, engineering and scientific nature to guarantee public health” in the wake of earlier urban disease outbreaks (Ali and Keil 2008).

However, this trajectory was embedded in broader historical, political and economic factors no longer present today. “[T]he core dynamic of urban reconstruction rested on the facilitation of a more rationalized urban structure for the political control of space and the enhanced role of modern cities as arenas for capital accumulation” (Gandy 2004: 367). This stands in contrast to experiences of rapid urbanisation in much of the world today. Boadi et al. (2005) suggest that African cities are experiencing “urbanization without development,” resulting in low spending on urban infrastructures and services. Rapid urbanisation in the Global South often outpaces the development of essential infrastructures, such as sewage, electricity and proper housing, resulting in the expansion of high-density, poorly serviced informal spaces. These informal settlements, sometimes called slums, are spaces with inadequate access to clean water and sanitation in a context of poor housing quality, overcrowding and insecure land tenure (Snyder et al. 2014: 685). The most recent SDGs report (2019) from the United Nations estimates that, by the year 2030, the population of people living in such spaces around the world will reach two billion.

Residents of such communities “suffer disproportionately from ill-health throughout their life-course. These households are more likely to experience disease, injury and premature death, and ill-health may combine with poverty to entrench disadvantages over time” (Sverdlik 2011: 123). While cities possess higher density and quality of medical services than rural areas, delivery of care to the urban poor is often highly fragmented and inefficient (Satterthwaite et al. 2019). As such, these crowded areas of entrenched poverty are most often out of reach of national health systems, which make infectious disease surveillance and management challenging (Sclar et al. 2005). Such cities are at risk of illness not only because of the built environment in which they live, but also because of the interconnectedness of populations across rural and urban spaces and international borders, allowing disease to move quickly to new populations (Balcan et al. 2009).

While urbanisation in the African continent has largely occurred without industrialisation, this does not mean that these spaces are devoid of efforts to control or profit from the value such spaces acquire. Governments, private actors and others employ various means of control and coercion in order to capitalise on a city’s rapid growth. Goodfellow (2017) argues that urbanisation and urban property development have gathered pace in African cities, which are the “final frontiers of global urbanization,” citing the rapid growth of developments in Kigali, Kampala and Addis Ababa that occur in parallel with growing informality. Not only are cities sites of accumulation, but these spaces are also the “spatial-physical manifestations of the interaction between power relations, formal institutions and informal norms”, serving as sites of contestation and control that manifest across multiple scale, not simply at the urban level (Goodfellow 2018). As the following sections will show, this complexity of urban governance and contestation over urban space relates to the nature of disease outbreaks within them. Disease outbreaks are not simply the bad luck of one particularly community, but ill-health in these cities is shaped by decisions that determine the conditions of urban spaces where diseases can find a fertile home.

19.3 The Ebola Outbreak in Monrovia and Cholera in Harare

The disease outbreaks of cholera and Ebola, in Harare and Monrovia, respectively, offer an important opportunity for comparison. Cholera is caused by the bacterium *Vibrio cholerae*, resulting in symptoms such as diarrhoea, fever and vomiting, all of which can lead to severe dehydration. If left untreated, it can cause death, with fatality rates reaching as high as 50% (Chimusoro et al. 2018). The disease is highly contagious, transmitted through the ingestion of food or water contaminated by human faeces which has the cholera bacterium. Africa has experienced multiple recent outbreaks of cholera, almost all in refugee camps or during economic crisis and conflict which result in poor sanitary conditions. Zimbabwe has had a number

of cholera outbreaks over the past decades, but prior to the 2008–2009 outbreak, most occurred in communities along the border with Mozambique where refugee camps are situated (Chigudu 2017).

The first cases of cholera in Harare were reported in August 2008 in its informal settlements. According to Youde (2010), by December 2008, the World Health Organization (WHO) reported over 11,000 people infected with cholera, and 484 deaths had occurred. The outbreak was largely concentrated in the informal settlement of Budiro in the southwestern area of Harare, home to over 50% of all reported cases. After the WHO released these alarming statistics, Zimbabwe's government declared a national emergency, and funding and technical support from international donors began to arrive. Even with these new resources, the outbreak continued to spread in the following months, and by the end of May 2009, the total number of reported cases was a staggering 98,424. After much effort, including the creation of 365 new cholera treatment centres throughout the country, the outbreak was officially declared over in June of 2009. 4282 people died from the disease during the crisis, making it the deadliest cholera epidemic in the African continent to date.

Ebola is a virus caused by zoonotic infection, meaning that outbreaks begin in humans following a spillover event from an animal to human, often bats or non-human primates. Symptoms of the virus include vomiting, diarrhoea and, in some cases, internal and external bleeding, with the average fatality being 50% (Coltart et al. 2017). Ebola is highly contagious, spread by direct contact with the blood or bodily fluids of an infected person. The first documented outbreaks of Ebola were in 1976 in the northern region of the Democratic Republic of the Congo, and in the south of what is now South Sudan (Coltart et al. 2017). Since then, there have been a number of outbreaks in Africa, but before the West African Ebola outbreak, most cases were smaller outbreaks in more remote communities. At the time of the 2014 outbreak under discussion here, there had been no reported Ebola cases in West Africa (Schoepp et al. 2014).

The first cases of Ebola in Liberia were confirmed in the border town of Lofa, near Guinea, on March 30, 2014 (The Ebola Outbreak in Liberia Is Over 2015). Just a week later, the first case was reported in Monrovia on April 7, 2014. While the disease appeared to be under control for several months, by June of that year, there was an exponential spread of the virus through hospitals, communities and eventually entire informal settlements in the city (The Ebola Outbreak in Liberia is Over 2015). On August 6, 2014, President Ellen Johnson Sirleaf declared a 90-day state of emergency, and went as far as to attempt to quarantine the largest informal settlement in the city, West Point, home to over 70,000 people (Mulbah 2016). In the following weeks, there was significant rallying of resources and support from international governments and organisations. In October 2014, after increases in available treatment centres as well as significant community mobilisation, the outbreak began to subside, and by March 2015 had stopped (Mulbah 2016). After a few smaller flare-ups of the virus, in 2016 the outbreak was officially declared over. The WHO estimated that 10,675 people have been infected with Ebola in Liberia, resulting in the death of 4809 people (Ebola Outbreak 2014-2016 2019).

There are two important distinctions between these two diseases. The first is the type of infection. Ebola is a virus that occurs in humans after a transfer from animal to human, and it is spread through different types of bodily fluids of a person infected, such as blood, faeces and vomit. Cholera is a bacterium that occurs in humans after the ingestion of food or water contaminated by the cholera bacterium. This distinction will be brought forwards later in this discussion.

The second difference is that cholera is considered easily treatable through prompt oral rehydration, and an effective vaccine exists that has already been distributed in areas experiencing outbreaks or where there is heightened vulnerability (Cholera 2019). This is very different from Ebola, where there is no treatment available except to manage the loss of bodily fluids once symptoms have emerged. During previous Ebola outbreaks, there was no vaccine available, although at the time of writing various vaccines are being developed and tested in the Democratic Republic of Congo (Prevention Ebola 2019).

In spite of these differences, both diseases have proven to be highly contagious in informal settlements, where overcrowding coupled with poor water and sanitation make it difficult to avoid contracting the disease (Fallah et al. 2015; Mengel et al. 2014). The built environment in informal settlements acts as a vector to amplify their spread, and both Monrovia and Harare become epicentres of disease, experiencing both the greatest caseload and the greatest mortality. How and why the urban space and its governance were understood, or discounted, as a determinant in the outbreak are examined in the subsequent sections.

19.4 Political Competition, Informality and the Decline of Harare

At the start of the 1990s, Harare's population was considered more prosperous than most African cities, as, according to Potts (2006), during the previous decade urban poverty had been on the decline, and urban infrastructure functioned well enough for the majority of the population to have access to potable water and electricity. This changed rapidly in the early 2000s as the number of people in the "high-density areas" (hereafter called informal settlements) living below the poverty line tripled in just over 12 years to 2003 (Potts 2006). Urban water and electricity supplies were increasingly sporadic, and urban health and education services more expensive, resulting in an extraordinarily rapid decline of urban living standards.

This rapid decline stands in contrast to the promise of the earlier years following Zimbabwe's independence in 1980, which saw impressive gains to social sectors such as health and education. In the 1990s the government was unable to sustain these programs because of declining economic performance, with economic gains based on redistribution rather than growth. This decline was exacerbated by the structural adjustment programs of the World Bank and International Monetary Fund, involvement in the conflict in the Democratic Republic of the Congo and

fall-out from a land reform program that included farm invasions and widespread violence (Mlambo 2008).

In this context then President Mugabe turned his attention to Harare as a key site of opposition to his Zimbabwe African National Union-Patriotic Front (ZANU-PF) political party. ZANU-PF had suffered a string of political losses in the country's capital city, beginning in 2000 with parliamentary elections where the opposition party, the Movement for Democratic Change (MDC), won all electoral seats from the city. The 2002 municipal election in Harare continued this trend, as the office of the Mayor and all but one council seat were won by the MDC, cementing the ruling party's removal from the capital and placing the city firmly in opposition control (Youde 2010). This loss of urban territory was coupled with a severe economic crisis, as the country lacked foreign reserves and faced hyper-inflation and rising unemployment. In 2005 the official inflation rate passed 585%, and the official exchange rate that year was Z\$84,587.57 for US\$1 (Youde 2010: 692). Civil unrest was common, and government officials harassed and arrested opposition political figures.

The rejection of ZANU-PF by the urban populace provoked two important responses that affected the cholera outbreak shortly afterwards. The first was Operation *Murambatsvina* from May to July in 2005, often translated as "Operation Drive Out the Trash" in the local Shona language (Muchadenyika 2015). This ZANU-PF initiative displaced more than 700,000 Zimbabweans by destroying homes that were considered "illegal", mostly targeting urban areas and informal settlements that were opposition strongholds, done in part to stifle opposition political activity and regain control over lucrative urban spaces that were being inhabited informally. In the same year, the Zimbabwe National Water Authority (ZINWA), controlled by Mugabe's ZANU-PF party, took over administration of Harare's water and sanitation systems, the revenue from which no longer went to the opposition MDC at the helm of the local government but instead to the national government and the ZANU-PF (Youde 2010). Given the ongoing economic crisis, ZINWA was ineffective at procuring sufficient amounts of water purification chemicals, and the water authority failed to improve the sanitation infrastructure, leading to a rapid decay of Harare's sewage systems.

Due to this triple burden of economic crisis, massive displacement of people, and deteriorating essential urban infrastructure, Harare's informal settlements experienced rapidly increasing precarity in the years immediately before the 2008 cholera outbreak. At that time, Harare's population was approximately 1.4 million people, and perhaps only half had access to proper sanitation, as a useful indication of the size of informality in the city (Chirisa et al. 2015: 121). Chigudu (2017: 189) states that uncertainty was embedded "...into all quotidian activities from travelling into town to grocery shopping, from looking for work to caring for the sick". Operation *Murambatsvina* had destroyed good-quality housing, replaced by temporary structures that in previous years had been rare in Harare's informal settlements. ZINWA's failure to improve water supplies greatly impacted the urban poor, who were disadvantaged by both economic crisis and forced displacement. In the months before the

cholera outbreak, taps often ran dry or produced water of a pungent odour with traces of human faeces (Chigudu 2017).

19.5 Political Stability, Reintegration and New Forms of Displacement in Monrovia

While in the years before the cholera outbreak Harare's urban poor experienced growing political instability and increasing precarity, Monrovia before the Ebola outbreak experienced the opposite trend to the same effect: a rise in political stability but increasing precarity for its poorest residents. This political stability in Liberia came with the end of the country's devastating civil wars (1989–2003) as Ellen Johnson Sirleaf was elected president in 2005, inheriting a highly centralised governance system originating from the country's founding constitution. This configuration was reinforced in the early 1900s, as local charters of cities and towns were revoked and local administrations transformed into commonwealth districts, managed by a board appointed by the President (Nyei 2014). The resulting governmental configuration saw the failure of the central state to adequately deliver services to its population, particularly in the hinterland, provoking political and social tensions that led to the 1980 military coup by Samuel K. Doe, who sought to end the domination of the Americo-Liberian elite, ultimately leading to years of civil war (Kaufmann 2016).

Before the civil wars, Monrovia's population was some 600,000 people, which swelled to 1.5 million as refugees from the conflict moved to the relative safety of urban areas (Williams 2011: 6). At the end of the war, a resettlement program sought to relocate internally displaced people (IDPs) back to their home communities by the United Nations Commission on Human Rights and other humanitarian agencies. The program, which ended in 2006, was considered a success, relocating over 300,000 people away Monrovia back to their rural communities. These resettlements, however, were only of individuals registered with the World Food Programme in formal refugee camps in and around Monrovia, as this group were considered to be IDPs eligible for resettlement support. Such a restrictive definition "left a residual group ... who still perceived themselves as IDPs who have been somehow disenfranchised and wrongfully excluded from return assistance" (Wright et al. 2007: 2). Crucially, "[t]he decision by the government to classify only those who were camp-based as IDPs led to a lack of information on the profile and needs of urban IDPs. This resulted in a significant ongoing protection gap and a lack of durable solutions for this group" (Wright et al. 2007: 4). Consequently, hundreds of thousands of IDPs settled in informal settlements in Monrovia were left invisible to humanitarian actors and the new Liberian government. A decade after the conflict and immediately before the 2014 Ebola outbreak, Monrovia's population was approximately one million people, of which 70% lived in these informal spaces (Hoffman 2017: 12).

In Liberia, according to the United Nations Capital Development Fund (Shotton 2013), local administrations are staffed by central appointees and public expenditure for services centralised under the control of national ministries. The Monrovia City Corporation (MCC), which at the time of the Ebola outbreak included the appointed mayor and city council, is primarily responsible for waste management and upgrading informal settlements in the city, but its budget was almost entirely dependent on donor funding and state budget transfers (Shotton 2013). In the post-war period, the Sirleaf administration sought to encourage the return of wealthy and educated Liberian elites who had fled (Hoffman 2017). The MCC and the Ministry of Public Works demolished various informal settlements to make way for new developments, so that poor urban residents already displaced by war now experienced a new “development-induced displacement” (Williams 2011: 6). For example, in the years just prior to the emergence of Ebola in the city, the long-established informal settlement of West Point was threatened with eviction for “clearing the slums and improving the overall quality of living in the area” (Fagen 2011: 60). This community of over 70,000 people, one-third of whom were IDPs from the war, occupy publicly owned recovered waterfront land, a strategic although precarious location near Capitol Hill where many government ministries and international organisations are housed. Another nearby settlement, Coconut Plantation, was demolished in 2012 with 1000s of homes bulldozed. Then Mayor Mary Broh was an avid supporter of these types of demolitions, justifying such interventions as required for rapid development in the post-conflict country (Lupick 2012).

In the years before the Ebola outbreak in West Africa, “as the politics of Monrovia was becoming more stable, the physical space of city became more unstable for its inhabitants” (Hoffman 2017: 13). In this context of unpredictable urban life, connections with rural areas become more important, with people in informal settlements maintaining relationships across multiple spaces to cope with unstable environments (Campbell 2017). This rural–urban mobility, coupled with the overcrowded and unsanitary living conditions in the city, offered fertile ground for the Ebola virus to spread.

19.6 Where Is the City in Origin of the Disease?

To understand how each outbreak was, or was not, diagnosed as a public health emergency rooted in the city and its governance, three variables must be considered. The first is the location in which the outbreak itself originated. Poor sanitary conditions are the biggest risk factor for a cholera outbreak. It has been documented that Zimbabwe’s 2008–2009 outbreak began in Harare’s informal settlement of Chitungwiza, an MNC stronghold targeted by the ZANU-PF led Operation Murambatsvina (Cuneo et al. 2017: 255). While cases were reported in 55 of 62 districts across the country and in neighbouring countries, it was widely accepted that the outbreak started *within* Harare’s informal settlements through its failing water infrastructure, and risk factors enabling rapid spread were well documented

by civil society organisations in the years before the outbreak. In 2006 they warned of a “cholera time bomb” in the city if ZINWA did not repair the water system, and in 2007 reported that raw sewage was being pumped directly into Lake Chivero, the city’s water reservoir, a clear hazard to public health (Cuneo et al. 2017). Such documentation showed the incompetence of the ZINWA and consequent risk to the urban population.

The Ebola outbreak had a different origin outside of the city. Ebola is a zoonotic infection, with the virus moving from animal to human through a spillover event, typically in rural settings. The origins of the 2014–2015 outbreak have been traced to a young boy in a village in southeast Guinea suspected to have contracted the virus from a bat (Leach 2015), spreading through his family members to health clinics, mobile trading networks and the rest of Guinea and then into Liberia and Sierra Leone. Unlike with cholera, where the outbreak begins with conditions of the built environment, Ebola’s emergence in a rural community far from urban settings turned the focus towards the link between people hunting for bushmeat and interacting with wild animals in their daily lives (Leach 2015). Attention then focuses on animal–human encounters rather than human–human interactions, although human-to-human transmission caused the spread from the first village in Guinea and fed the entire West African outbreak. When such human interactions have been considered, explanations have largely been concerned with cultural practices assisting transmission of the virus, such as burial practices or poor hygiene (Kobayashi et al. 2015; Niederberger et al. 2016). This turns attention away from the physical conditions in the informal settlements of Monrovia, blurring the role the city and its built environment played in the Ebola outbreak and its deadly impact.

19.7 Was the Disease Politicised at the City Level?

The role of the local political structure must also be considered to understand how a city is implicated in the manifestation of an urban disease outbreak. In Harare the political opposition was crucial in the politicisation of the outbreak. The leader of the national MDC at the time, Morgan Tsvangirai, publicly stated that “cholera in Zimbabwe is a man-made crisis. The problem we have here is coupled with the fact of negligence on the part of the government to provide the necessary facilities” (Masakure 2018: 67). This was not simply a natural disaster, but one brought about by the political decisions of the country’s leadership. The MDC at both the national and local level repeated this throughout the outbreak, linking the disease directly to the actions of national government, insisting that the ZANU-PF had prioritised their own system of patronage over the health of citizens. The former Mayor of Harare, Elias Mudzuri, stated publicly that the transfer of responsibility for water from local to central government was partly responsible for the cholera outbreak. With this, “the internecine struggle to understand and explain the outbreak... became inextricably intertwined with political struggles in the country” (Masakure 2018: 68).

In the highly centralised Liberian state, at the time of its outbreak, there was no elected authority in Monrovia; mayor and city council are extensions of the national political structure, and the city's budget came from state coffers or international aid. The city did not represent a significant site for political competition between parties, and policies that resulted in precarious living conditions for those in informal settlements were not met with formal political opposition at city level. Many informal settlements did advocate for their rights during the Ebola outbreak, for example, the people of West Point reacting against the imposition of a quarantine on their neighbourhood by the Liberian government in an attempt to curtail the spread of the virus in the city, but such opposition was expressed in violence, as the people in these communities "had no logical and effective way to formulate a call for reconsideration or redress and no one to whom such a call might be addressed" (Hoffman 2016: 260). The lack of local political opposition in Monrovia contributed to a failure to understand that the manifestation of the disease was shaped in part by policies at the urban level since the end of the country's civil war.

19.8 How Did International Actors Frame the Disease Outbreak?

Another variable in the role of the city and its politics in disease outbreaks is the response of international actors, and the framing these actors invoked. While such frames might not have placed the city at the centre, the recognition (or not) of the political origin of the outbreak was crucial. For Harare, the international community quickly placed politics in their frame for how and why the crisis was occurring. The then British Prime Minister Gordon Brown had long been highly critical of Mugabe, and publicly stated his belief that the system of governance in Zimbabwe had broken down, and that the cholera outbreak should be considered an international emergency given that Mugabe's government could not uphold international standards of human rights and democracy (Masakure 2018). Reputable international organisations such as the International Crisis Group and Physicians for Human Rights made similar arguments, arguing that the situation in Zimbabwe was akin to state failure, and that governance was at the heart of the disease outbreak (Chigudu 2017). This politicisation of the outbreak at the international level would in turn support a concentrated focus on the already politicised issues of local urban conditions as a determinant in the spread of the virus.

In Liberia the response was very different. While Mugabe was something of a pariah to the international community, Sirleaf was highly regarded on the international scene, particularly for her role in ending the country's civil war, winning the Nobel Peace Prize in 2011 for her efforts. During the Ebola crisis, the European Union praised her "exemplary leadership", and President Obama of the United States pledged assistance with troops and advisers in part because of Sirleaf's personal relationship with him (Moran 2015). Accordingly, her administration's role in

perpetuating precarity that left the city vulnerable to Ebola was less mentioned. The Ebola outbreak also became an international media spectacle, lending itself to narratives of securitisation as Western countries sought to prevent its spread to their borders (Monson 2017). This framing mobilised significant resources to stem the spread of the virus, manifested as a large-scale militarised intervention, and moved attention away from the governance failures behind the rapid spread of the virus in the country and in its capital city. “[T]he regions, populations and individuals that were mostly affected by the disease were merely the background, or secondary characters, in a narrative about the West and its travails” (Nunes 2016: 550). The conditions in the city that allowed the virus to spread with force remained obscured, particularly with regard to how contestations over urban space and land management had made so many urban dwellers vulnerable to the rapid spread of infectious disease in the first place.

19.9 Discussion and Conclusion

Monrovia and Harare offer an important comparison, as their respective disease outbreaks manifested in similar urban conditions of informality, but the attention paid to urban governance, contestation, and land management differed greatly. In Harare, the origin of the disease within urban infrastructures, decentralised local government structures, and the perspective of the international community all enabled the cholera outbreak to be linked to failures of governance at the urban level. In Monrovia these variables had the opposite effect. The origin of the virus in a distant village, the lack of formal political competition within the city itself, and the international community’s framing of the crisis, converged to hide how urban governance made Monrovia so vulnerable to the Ebola outbreak. However, as has been demonstrated here, political decisions and land management strategies were behind the increasing precarity and vulnerability of informal settlements in both cities, as such spaces were sites of contestation and accumulation by national economic or political forces.

While the city of Monrovia has so far been lost in efforts to understand the Ebola outbreak, urban policy decisions before the disease reached the city (e.g. resettling people away from the city or demolishing settlements to attract new investments) increased the precarity of the urban poor and limited trust in local governments. Not only this, but informal settlements in Monrovia also offered a perfect vector through which Ebola could spread, as these precarious populations were highly mobile between urban and rural settings, increasing the likelihood of diseases of zoonotic origin making their way to a densely populated urban area. This mobility, coupled with the poor, dense living conditions in the settlements, and the relative invisibility of the population to the government, helps explain the urban character of Monrovia’s Ebola outbreak, and acknowledges the role of governance in the manifestation of the disease.

What is less clear is how far an understanding of urban governance influences outcomes after an epidemic has ended, and how such an understanding might make cities more resilient. In Harare, the politicisation of the outbreak made a clear link made between health, built infrastructure and urban politics, but the city did not avoid cholera afterwards. Harare reported a new cholera case in September 2018, followed within weeks by a reported 55 deaths (UNICEF 2018). This outbreak started in Glen View, an informal peripheral area with high levels of informal employment and inadequate safe piped water, and became the second biggest cholera outbreak in the country's history, rapidly spreading from the suburbs of Harare and resulting in over 10,000 cases and 65 deaths across the country. The newly elected President Emmerson Mnangagwa promised financial assistance to the Harare City Council to repair the pipes that supply potable water to the capital city and its suburbs. City governance was once again drawn into the critique as, according to Makoni (2018: e8), urbanisation in Harare still requires better planning, as people continue "building on undesignated land, thus increasing pressure on water and sewer systems. Infrastructure collapse or its inexistence in some developing informal suburbs, posed a challenge to contain the outbreak".

Monrovia has not experienced another Ebola outbreak, but recovery has largely focused on attention by the international community to health service reforms considered crucial to prevent another outbreak. The high-level *Independent Panel on the Global Response to Ebola* (Moon et al. 2015) made ten recommendations, ranging from better disease surveillance, improved technical capacity and human resources and better coordination between humanitarian actors. Importantly, the major failings of national governments in West Africa regarding the outbreak were described as "inadequate national investment and donor support for building national health systems capable of detecting and responding to disease outbreaks" and "inadequate arrangements to monitor country commitments to [respond]" (Moon et al. 2015: 2208). The urban character of this outbreak is not discussed in any of the ten recommendations.

However, tellingly, President Sirleaf herself called for greater attention to improved water and sanitation. In an op-ed published in *Foreign Policy* around the same time as the abovementioned independent report, entitled "Want to Fight Ebola? Help Liberia Invest in Toilets", she directly linked dirty water and poor sanitation with the spread of Ebola. Highlighting how medical clinics could not stop the spread of disease without running water, and how schools needed better hygiene to contain the spread of disease, the article implored the international community to support Liberia's efforts to improve water and sanitation after the Ebola crisis. She does not speak about informality in this op-ed, instead referring to "unhygienic environments" where "children succumb to chronic diarrhea from the fecal matter contaminating their food and water [and] mothers lose newborn babies to terrible, preventable infections" (Sirleaf 2015). However, it is reasonable to assume that these unhygienic conditions occur in informal settlements that are home to most of the city's residents. With this plea, it is easy to see that the dynamics of urban poverty and informality remain relevant to other conditions that more easily fit within issues considered important by bilateral donors and international organisations.

This chapter has attempted to ascertain how urban governance and related land management strategies should be included in efforts to understand the manifestation of Ebola and cholera in Monrovia and Harare, respectively. Three research questions were explored. First, where was the city in the origin of the disease itself? Second, how was city-level politics and dynamics of contestation over urban space considered in efforts to understand the disease outbreak? And third, how did the international community come to frame the disease outbreak and its politics? What can be concluded is that, while urban governance and contestations over urban space were key determinants in the emergence of disease outbreaks in these two cities, the role of the city and the governance of its urban spaces has been given greater consideration in Harare than in Monrovia. Both cities are sites of political and economic contestation over urban space. While in Harare urban governance and contestation over land has been conceptualised as a key determinant in the cholera outbreak, in Monrovia little attention was given to the urban governance dynamics and related land management decisions that shaped the spread and magnitude of the outbreak. In Harare, the deterioration of urban infrastructures and the political competition over the city shows clearly how politics and decisions made at the urban level contributed to the public health crisis. The framing of the international community implicated President Mugabe in a “man-made” crisis, and the city and the urban scale emerged clearly as a determinant of the disease.

Monrovia stands in stark contrast. The spillover event in a remote rural community did not lead to a discussion of unsanitary, high-density living conditions that made Ebola deadly in the city itself. No formal political opposition at the city level contested the actions of the national government. The framing by the international community, through both its own interest to securitise the outbreak and its own affinity for President Sirleaf, served to hide the city and its governance as a determinant in the outbreak. It is not possible here to make larger claims on how (or if at all) such a politicisation of a disease in a city might bring greater opportunities for urban resilience, through such things as new investment in urban water and sanitation infrastructure or the creation of preparedness plans better responding to needs of the urban poor. However, as has been shown in this chapter, by placing urban governance and land management strategies squarely at the heart of a diagnosis of urban disease outbreaks, it becomes possible to more clearly assess how the city itself affects the health and wellbeing of its residents.

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Chapter 20

African Urban History, Place-Naming and Place-Making



Robert Home

Abstract African urban history can contribute towards understanding present-day land governance issues of SSA cities, through a post-disciplinary approach across disciplinary and sub-disciplinary boundaries. The chapter explores precolonial and colonial building forms, and the impact of colonial policies towards towns or townships, which discouraged Africans from urban living. Banished to peri-urban settlements, they lived in temporary structures, often under threat of demolition and displacement. A sense of place identity and attachment is difficult in such circumstances, but place-naming and community histories can help build local civil society so that better rules for land governance, both formal and informal, can be negotiated.

Keywords African urban history · Colonial housing policy · Place attachment · Critical toponymy

20.1 Introduction

This chapter explores how African urban history can contribute towards present-day issues of land governance in SSA cities. The approach can be called post-disciplinary, going beyond disciplinary boundaries in order to tackle problems that are complex and difficult to resolve (sometimes called “wicked problems” – Conklin 2005). It draws from sources scattered across various disciplines and subdisciplines: history, geography, law, architecture, urban planning, critical toponymy and environmental psychology (to name the main ones). The chapter briefly explores precolonial building forms and the impact of colonial building processes and urban policies. Such

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policies discouraged Africans and their families from living in towns and often banished them to a “septic fringe” of peri-urban settlements where they lived in temporary structures often under threat of forced displacement. The critical study of place names within broader socio-spatial politics can help understand how communities can develop a sense of place identity and attachment, helped by oral and community histories. Such place attachment can strengthen local civil society, and lead to negotiating better rules for land governance, both formal and informal. The chapter focuses on former British African colonies, but much of the analysis can be applied to other former colonies and elsewhere (Demissie 2007, 2012; Home 2013; Njoh 2007).

20.2 The Building of African Towns

African urbanism has an ancient history, and in the twentieth century expanded in both population and physical extent, especially in the long half century since most of its countries became independent (Freund 2007; Hopkins 2019). The present urban built environment, therefore, mostly dates back less than a hundred years, a relatively recent encounter between indigenous and imported building traditions and materials. After independence, urban growth often took the form of unplanned peri-urban housing, officially called slums but in recent years more likely to be tolerated as informal settlements (Rakodi 1997). Research and scholarship has tended to focus upon social aspects of urbanisation, rather than how towns and cities were physically built (Jackson and Uduku 2016).

While urban building in the coastal zones particularly reflected a mix of cultures and building types before the transformative impact of colonialism, most buildings in SSA’s vast interior were either lightweight wood-framed structures, with roofs and cladding of woven thatch or palm frond to cool airflow, or they were mud, perhaps wattle-and-daub construction. The single-storey round hut or rondavel, built of mud walls with thatch roof, was the typical form of traditional African housing, although more complex structures were built for palaces and religious purposes (Schwertfeger 1982; Uduku 2012). Across much of the interior the basic form of homestead or settlement was called a kraal or boma, comprising huts and enclosures for humans and livestock, surrounded by a palisade, mud wall or thorn-bush fence (Oliver 1997).¹ Figure 20.1a, b shows a family homestead from the Lake Victoria Region (Luo ethnic group of Kenya). As long as tsetse flies limited the use of draught livestock, dependence upon human portage and labour meant reliance upon locally available building materials, often of limited life because of insect attack and fire risk.

¹ Boma was a Swahili word, perhaps originating from the Persian word for a garrison place of shelter and was incorporated into African languages; in south-central Africa the equivalent word, kraal (also spelled *craal* or *kraul*) was of Dutch and Portuguese origin.



Fig. 20.1 (a) Luo family compound in Kitwe Museum, Zambia. (Source: the author 2009). (b) Morphological change in traditional Luo homestead. (Source: Kitwe Museum guide 2009)

As European colonialism penetrated the African interior to exploit mineral and other resources, building materials imported by railway and road became available for more permanent structures, although the volumes of such imports were limited by rail capacity, high freight costs and balance of payments imbalances. Important early imports were corrugated iron or zinc-alloy sheets, which were relatively light-weight, adaptable and easily erected. Another key imported material was cement, with reinforced concrete technology developed in Europe in the late nineteenth century (Chisholm 1911). Cement made the fortune of Africa's richest living businessman, the billionaire Nigerian Aliko Dangote, accounts for about 80% of his conglomerate's revenue, and produces over 40 million metric tons annually, distributed all over the continent. Concrete blocks, sometimes cement mixed with local earth and sun-dried, are now prominently displayed in many urban areas (see Fig. 20.2).

European colonialists largely disdained vernacular building forms and distinguished between what they called "temporary" structures of local origin and "permanent" or modern buildings using imported designs and materials, although some public works engineers acknowledged the sophistication of local mud-building traditions (Daldry 1945). Early colonial structures tended to be temporary and movable, using local materials as the practical choice, and were followed by commercial buildings, corporate offices and public and private housing, usually for Europeans (Immerwahr 2007; Godwin 2003). Private hotels offered spaces of welcome, association and entertainment for a transient population, and were important in colonial landscapes of racial exclusion (Craggs 2012).

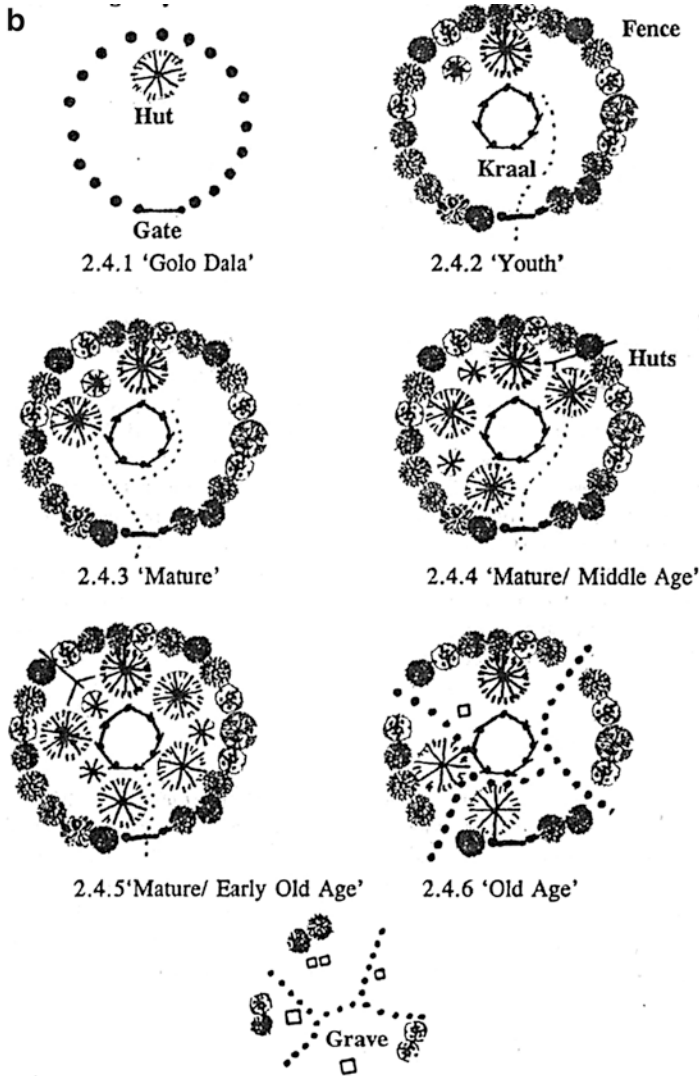


Fig. 20.1 (continued)

Nigeria (the largest British African colony) was particularly active in public works, drawing upon the experience of British India, and the public works department of Southern Nigeria published various model books for public buildings (1907–1946), while building research institutes were created in Lagos and Kumasi, supported by the Overseas Building Institute in England (Jackson and Uduku 2016; Salami 2015; Scriver 2007). Table 20.1 shows the infrastructure projects by type budgeted in Nigeria between the two world wars, the largest being transport (harbours, wharfage and aviation), staff housing, water and electricity, health, barracks



Fig. 20.2 Sun-dried mud brick for sale in Tanzania. (Source: the author 2003)

Table 20.1 Major urban projects (over £40,000 estimated value) in Nigeria 1914–1938

Project	Estimated cost (£000 s)	Percentage
Harbours, wharfage, aviation	1341	27.64
European staff housing	1367	28.19
Water/drainage	677	13.99
Electricity	641	13.22
Hospital/medical	296	6.10
Barracks (police/army)	296	6.10
Offices	232	4.78
African staff housing	211	4.35
<i>Total</i>	4850	100 (rounded)

Source: Home 1974, derived from Government Blue Books

Note: Excludes roads and railways and expenditure by native authorities

and offices. These projects were overwhelmingly in Lagos, followed by the administrative centres of Kaduna, Enugu, Ibadan, Kano and Zaria.

20.3 Colonial Housing Legacy

The legacy of colonialism is etched on the landscape and practices of many towns and cities in SSA, showing the divisive effects of indirect rule or dual mandate policies (Home 2013: 135–147). After the First World War, the League of Nations placed a general trusteeship duty upon colonial administrations towards those they governed, which it justified because of indigenous peoples' perceived vulnerability

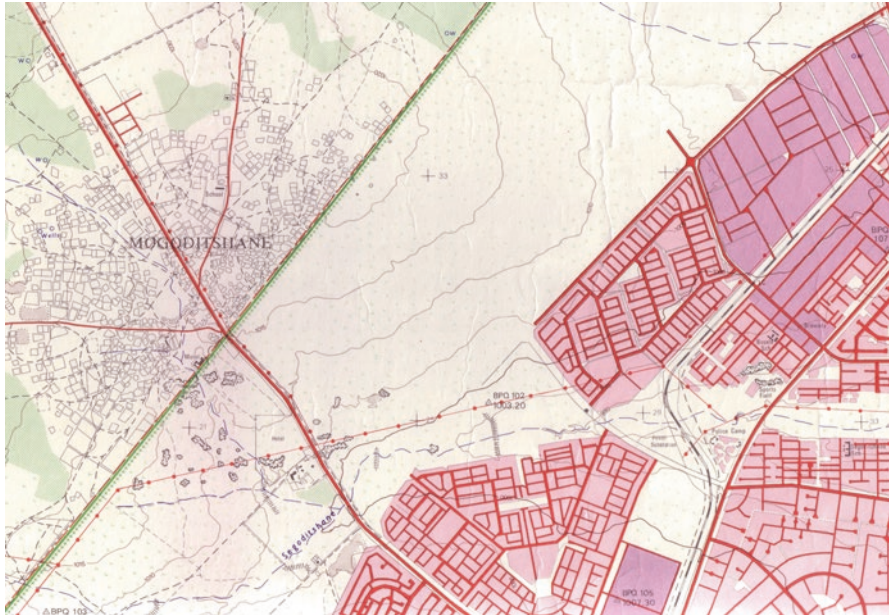


Fig. 20.3 Map of Gaborone urban edge, Botswana. (Source: the author 2003). Note: railway runs diagonally, planned urban area and building-free zone to the right and below; traditional and peri-urban area of Mogoditshane to left and top

under the disruptive influences of modernisation. This approach as applied in “dual mandate” policy regarded towns as essentially European creations representing Western civilisation, with spacious and racially exclusive residential areas, while Africans were basically allowed to live in towns only while their labour was needed. The racialisation of urban space allowed townships to evade responsibility for their “natives”, since just beyond their boundaries were the reserves or trust lands where most of the urban Africans could live – and indeed usually preferred to. Two kinds of urban area resulted (as illustrated in Fig. 20.3 for Gaborone, Botswana): townships made by white settlers and planned by a local authority (whether military, civil, or mining), and informal peri-urban areas, the so-called septic fringe, absorbing rural-urban migrants (Baker 2002; Onyango and Home 2012).

The term township in a colonial setting probably derived from the railway townships of Canada. In East Africa regulations for new townships along the line of the Uganda Railway followed Indian precedents under an 1896 Order in Council made in London (Home 2012). Lugard as Governor of Nigeria followed another Indian precedent, the military cantonment, and in his 1917 Townships Ordinance provided for “the creation, constitution and administration of all towns and municipalities in Nigeria with the exception of those native towns where the population is sufficiently homogeneous for it to be administered by a Native Authority”. His definition of a township was a cantonment in all but name:



Fig. 20.4 City of Kano in 1966. (Source: Urquhart 1977). Note: complex morphology created by railway alignment and colonial policy – Kano walled city, government residential areas (Nassarawa and Bompai), stranger quarters (Sabon Gari, Fagge, Tudun Wada and Gwagarwa) and business districts

An enclave outside the jurisdiction of the native authority and native courts, which are thus relieved of the difficult task (which is foreign to their functions) of controlling alien natives and employees of the government and Europeans. (quoted in Home 2019)

West Africa’s strong precolonial urban tradition created political problems for such a policy of separating western (“modern”) and indigenous (“traditional”) urban forms, as shown in Fig. 20.4. In South Africa the term “township” also acquired a distinctive meaning during the apartheid era; such a township accommodated non-whites (both African and Asian) but outside the boundaries of municipalities serving whites-only communities (Robinson 1996). In Botswana (previously Bechuanaland) the colonial reluctance to acknowledge Tswana settlements as towns

resulted in the curious term of “urban villages” to distinguish them from planned towns for white settlement (Molebatsi 2012).

The settler colonies of South and Central Africa prohibited Africans from owning landed property outside their reserves, while in West Africa the central administration held all land “in trust” for the people. Municipalities in settler colonies were empowered to build and run so-called locations to accommodate those Africans not housed by their employers, while African lodging houses were regulated by colonial officials, derived from nineteenth century British public health controls. Private rental tenement blocks were built later, usually operating at significantly higher densities than in the industrialised cities of Europe (Huchzermeyer 2011).²

A common form of colonial African worker housing was the barrack. Early ones might house 40 or more workers in one room, but later practice was to accommodate about 6 workers on bunks in cramped rooms about 10 × 12 feet square. Mining companies organised barracks in close-fenced compounds, supervised by a white compound manager under special regulations, and preferred a turnover of cheap African labour, avoiding detribalisation, unionisation and the establishment of family life. The gradual official recognition that African families had become a permanent feature of colonial society resulted in a conscious redesign of housing to provide for their families, informed and prompted by developments in British town planning practice (Moroney 1982; Home 2000).

After the Second World War, thousands of family housing units on separate plots were built by both employers and local authorities (Harris and Hay 2007; Hay and Harris 2007). Figure 20.5 shows an African family house on its own plot, built by Kitwe council in the Zambian Copperbelt in the 1950s; Fig. 20.6 shows government-built middle-income housing in Zimbabwe from the 1980s. Most of South Africa’s 700,000 migrant workers were housed in single-sex hostels (the term hostel was, seen as a more neutral term to replace the discredited barrack), and African cultural practices and housing preferences were largely ignored. Numerous academic studies have examined the housing types for different social groups: racial groups in Nairobi (Nevanlinna 1996) and Kisumu (Anyumba 1995a), women in Lusaka (Hansen 1997), Copperbelt mining towns (Mutale 2004) and individual squatter settlements (Munshifwa 2019; Schlyter 1979). Urban planning history research has been undertaken for Kampala (Omolo-Okalebo 2011) and Kisumu (Anyumba 1995b). During the period of decolonisation African housing became a reduced priority, and a policy of “aided self-help” meant lower income groups being left to build for themselves, often in squatter areas officially disapproved but tolerated (Harris 1998; Tipple 1981).

African urban history also involved demolitions and forcible displacement, especially in apartheid South Africa (Murray and O’Regan 1990; Platzky and Walker 1985). District Six in Cape Town became an iconic example of a multiracial community erased by government intervention: comprising almost a tenth of the city of

²Berlin was considered the densest tenement city in Europe in 1900 at an estimated 1350 people per hectare, with New York at 1300, but Huchzermeyer claims 5000 for the Huruma district of Nairobi based upon her own field work in 2008.

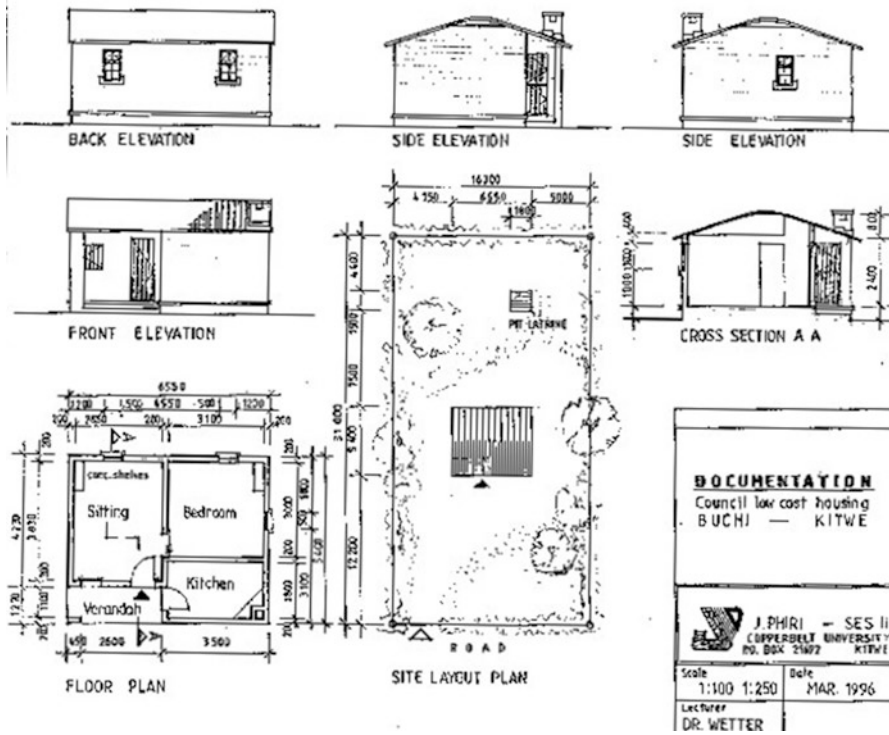


Fig. 20.5 Plan of 1950s council low-cost housing (20 sq.m. floorspace) on family plot Buchi, Kitwe, Zambia. (Source: Copperbelt University 1996 and the author)



Fig. 20.6 Government-built family housing in Zimbabwe. (Source: the author 2004)

Cape Town's population, it was declared in 1966 a whites-only area, and by 1982 the government had demolished the homes and relocated over 60,000 people to the sandy, bleak Cape flats miles away, leaving the vacated area mostly undeveloped (Bezzoli et al. 2002). In Zimbabwe the post-colonial government of President Mugabe displaced an estimated 700,000 people in 2005 in Operation Murambatsvina ("move the rubbish", also officially known as Operation Restore Order) (Dorman 2016). Other post-independence governments undertook mass dispossession for redevelopment, justified by using the precedent of European and American urban renewal projects (Byerley 2013; Mbiba 2017). Even when physical structures survive, closure of mining operations can remove a town's economic purpose, leaving behind a situation of post-colonial ruination (Stoler 2013; Straube 2016).

The period after independence saw the state in SSA countries withdrawing from providing housing for its rapidly growing urban populations, largely in response to structural adjustment externally imposed; social housing was not seen as an investment priority or a legitimate part of "gross fixed capital formation". A recent review of African infrastructure projects barely mentioned housing, which was included within real estate projects of the kind discussed by Abubakar in Chap. 10 as "urban fantasies".³

20.4 Place Attachment and Place-Naming

Place attachment is the emotional bond between person and place, and has been researched by environmental psychologists. A key element is the home, a place of security, privacy and emotional attachment, associated with tenure security and control over the domestic space. A wider attachment is to the neighbourhood, a geographic community in a larger urban area, who may be linked by ethnicity and/or faith. Place attachment is about basic food and shelter but also cultural significance, and length of residence increases place attachment and rootedness, especially when connected with an ancestral past (Low and Altman 1992; Smith 2017).

Place name can be an important element in place attachment, a source of community pride, often with political resonance. The academic study of critical toponymy in recent years views place names within the broader politics of space. Name changes, and different names for the same place by different social groups, involve complementary or competing narratives and memories, which reveal power relationships and interactions (Rose-Redwood et al. 2010). Africa, with its multiple linguistic traditions and colonial interactions enmeshed in socio-spatial processes, is now seen as a rich site for critical toponymy (Bigon 2016; Njoh 2016).

³The 300 projects (each over US\$30 million in value) were grouped into sectors (energy and power, transport, real estate, water, mining, oil and gas, shipping and ports). Projects in the real estate sector with a housing component (for mostly high-income groups) were Kigali's Investment City, South Africa's Modderfontein City, Lagos' Eko Atlantic City, and Kenya's Konza Technopolis.

One aspect of the critical toponymic approach is that places, communities and neighbourhoods exist within larger entities that may be reconfigured and renamed for political purposes. In South Africa, after the achievement of majority rule in 1994, municipal boundaries were enlarged beyond the well-resourced whites-only areas, with names chosen by whites, and were given African names (Guyot and Seethal 2007). The name of the former Transvaal province, associated with its apartheid and Afrikaner history, disappeared, and the most urbanised part, comprising some 15 million people, was renamed, first as Pretoria-Witwatersrand-Vereeniging (PWV), and then within a matter of months as Gauteng province (“place of gold” in the Sotho-Tswana language, and formerly the Sesotho name for Johannesburg). Tshwane metropolitan municipality was formed in 2000 from 13 former city and town councils, including the capital Pretoria.⁴ Ekurhuleni (“place of peace” in Tsonga), another metropolitan municipality newly formed in 2000 with a population of over 3 million, has generated scholarship concerned to build a new place identity (Bonner and Niefertgodien 2012).⁵ Natal province was renamed KwaZulu-Natal, and the city of Durban was incorporated in 2000 with tribal trust lands and other authorities into a new larger municipality called eThekweni. (This was the traditional African name given to the shape of Durban bay, but its meaning (“bull’s testicle”) proved embarrassing for the new African mayor to explain in international meetings.) The process of renaming, usually after various anti-colonial struggle figures but sometimes to gratify local politicians, may, however, have contributed little to building community symbolic capital (Duminy 2014; Manatsha 2014).

Sometimes more than one name applied to the same place, or dual names reflected dual functions. Lagos, Africa’s largest city, takes its name from the period of Portuguese trade over four centuries ago, but its indigenes still use the Yoruba name Eko, predating European colonisation, and that name is being revived in Eko Atlantic City, an ambitious development on land reclaimed from the sea and planned for 250,000 residents (Adama 2017). Zambian Copperbelt mining towns took local names (Ndola, Mufulira, Luanshya, Chingola) but a twin township policy in the 1930s, which separated public from mining townships, resulted in separate names for the mining township of Nkana and the public township of Kitwe: Nkana-Kitwe still appears on the railway station board, but Kitwe is the generally accepted name (Mutale 2004).

Urban areas in SSA have generally kept their indigenous names, often derived from African cultural processes, events, rituals or stories. In Maputo (Mozambique) multi-linguistic informal naming neutralised official boundaries, and dissolved socio-economic and ethnic stratification in parts of the city. The Swahili name of Bagamoyo (a jumping-off point on the East African coast for portage into the

⁴The origins of the name Tshwane have been disputed [https://africanlanguages.com/south_africa/place_names.html]

⁵Ekurhuleni superseded the Eastern Gauteng Services Council, the Khayalami Metropolitan Council, and the previous administrations of Alberton, Benoni, Boksburg, Brakpan, Edenvale/Lethabong, Germiston, Kempton Park/Tembisa, Nigel and Springs.

African interior before the coming of railways) has alternative possible meanings: “the way to the heart” (of Africa) or “where the heart can rest” (referring to the porters’ relief at laying down their burden after safe return from their ordeals) (Bigon 2016). Indigenous place names sometimes referred to a local chief: Nairobi, Lusaka, Kaduna and Gaborone. Political sensitivities around tribal reserves or trust lands meant that indigenous place names were not changed: Mthatha (or Umtata), Ulundi, Mafeking (or Mafikeng), Mmabatho and Maseru. Cape Town’s Langa (“sun” in Xhosa) remembers a nineteenth century rebel against the Natal government, and, when it became overcrowded, overspill settlements were established in the 1950s, at Nyanga (“moon”) and Gugulethu (a contraction of *igugu lethu*, Xhosa for “our pride”).⁶ The name of the African township of Umlazi in Durban supposedly comes from the Zulu word for fermented milk, which legend says Zulu king Shaka refused to drink from a local river claiming it tasted of *umlaza*.

As colonialism was usually established by violence, settlements with the prefix fort were understandably changed after independence to African names. Fort Jameson, named for Rhodes’ lieutenant and perpetrator of the Jameson raid (not someone newly independent Zambia wanted to remember) was renamed Chipata. In Malawi (formerly Nyasaland), Fort Manning was renamed Mchinji, and Fort Rosebery became Mansa (after a local chief), while Fort Lugard in Kampala (Uganda) after independence was demolished and replaced by a mosque. Southern Rhodesia after a bitter independence struggle was renamed Zimbabwe, recalling the precolonial glories of Old Zimbabwe, and its capital of Salisbury became Harare; Zambia was formerly Northern Rhodesia, named for imperialist Cecil Rhodes.

Some European place names in Africa, however, survived with little post-independence pressure for change. In Nigeria Port Harcourt (“Po-ta-Kot” in pidgin) was named in 1912 for Colonial Secretary Lord Harcourt by Governor Lugard, who when asking permission claimed that there was no convenient local name (thus ignoring Diobu, which was the local Igbo place name). Planned extensions to Port Harcourt kept their original functional names of Mile 1, Mile 2 and Mile 3, the D-Line, the “Old GRA” (Government Residential Area, now home to the Rivers State Assembly) and the “New GRA”. Colonial surveyors’ role in laying out one of Ibadan’s business districts is remembered in the name of Gbagi (apparently referring to surveying pegs) (Home 1974). In Uganda, *mailo*, a form of quasi-feudal land tenure, takes its name from a British colonial allocation of about 9000 square miles in mile-square blocks of land (equivalent to 640 acres); it originated with a political agreement between the British and the Buganda and Bunyoro kingdoms in 1900 that preserved the rights of kings and chiefs in exchange for cooperation (West 1965).

In South Africa the name Soweto (South Western Township) remains notorious as the archetypical black urban dormitory of apartheid-era Johannesburg, with a population of over a million. Its early inhabitants called the place *vukuzenzele* (“get on and do it for yourself”), reflecting government disinterest and neglect before

⁶Langalibalele (c1814–1889) was in 1873 imprisoned on Robben Island, and on his release settled near the Pinelands forestry plantation (first known as Langalibalele’s Location, then Kwa Langa, meaning place of Langa).

apartheid, but its area expanded in the 1930s when Africans were displaced from whites-only areas of Johannesburg and kept separated by a sanitary corridor made under the Urban Areas Act of 1923. Its official name of Soweto followed a competition to give a collective name to this conglomeration of townships, but the residents' suggestion of KwaMpanza ("Mpanza's place") was not accepted by the City Council because of its associations with African political activism.⁷ The name that the City Council approved in 1963 might have been deliberately functional but has lasted (Pirie 1984).

Other hangovers from white supremacist rule in southern Africa survive in perhaps surprising community memory. The Pretoria suburb of Mamelodi ("mother of melodies"), established in 1953 as a blacks-only area under the Group Areas Act on former Afrikaner president Paul Kruger's farm of Vlakfontein, kept the name the Africans gave Kruger because of his ability to whistle and imitate birds. The name of the Kwa Muhle Museum in Durban ("place of the good one") remembers a former white superintendent of African workers.⁸ Informal or squatter settlements were often named by their occupiers, and only subsequently received grudging official acceptance. Old Naledi (in Botswana's capital of Gaborone) was originally a temporary camp for construction workers that became permanent, its name meaning "sleep under the stars", and Fig. 20.7 shows the imprint of its informal past upon the present road and plot layout. Cato Manor, a farm owned and named for Durban's first mayor (George Cato), had its own African squatter settlement known to its occupiers as Umkhumbane (Edwards 1989). The Cha-cha-cha district of Lusaka (Zambia) apparently derives its name from the Latin American dance (with its ritualised turning away of partners' heads), which residents thought summed up the stormy pre-independence negotiations between nationalists and colonialists. In Northern Nigeria Tudun Wada ("place of money") was one of the stranger quarters created outside the Hausa walled city of Kano (Home 1974).⁹

20.5 Community Identity and Informality

Much of the place-naming history explored above seems unlikely to generate a strong attachment to place or much symbolic capital. The colonial masters came and went, white settlers likewise (although many stayed). In colonial times Africans were made unwelcome in towns by pass laws and petty restrictions, and mostly

⁷James Mpanza (1889–1970) was a squatter leader known as "the father of Soweto", who led a land invasion in 1944. Figure 20.8 shows a kiosk for sale of water functioning as a social meeting place.

⁸John Sydney Marwick (1875–1958) as manager of the Municipal Native Affairs Department in Durban (1916–1920) was largely responsible for the oppressive Durban System for funding African services, but his good name came from his rescue of 7000 Zulu workers left stranded at the commencement of the Anglo-Boer War.

⁹Other stranger quarters in Kano were the Sabon Gari, Gwagwarwa and Fagge.

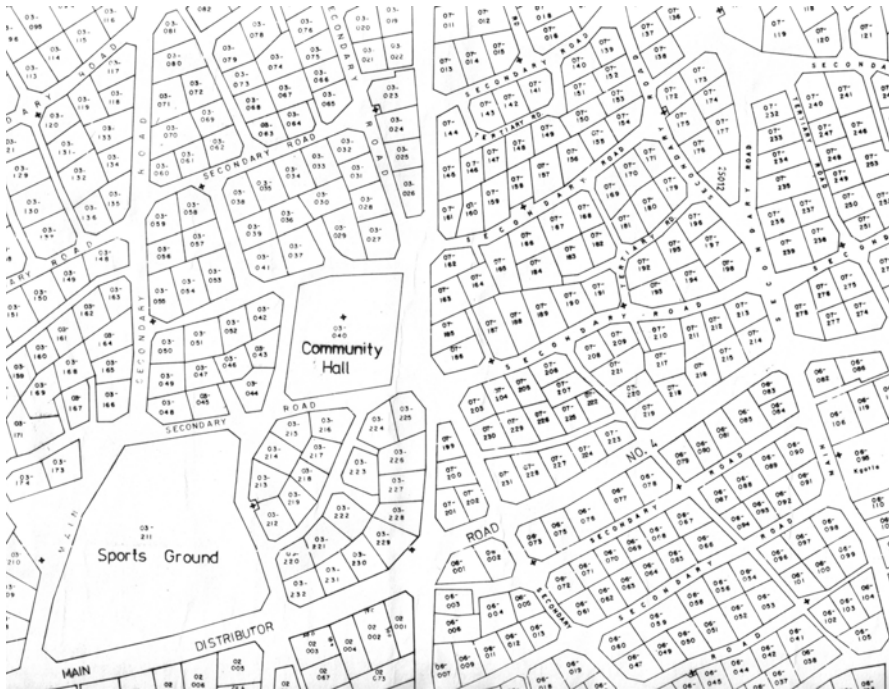


Fig. 20.7 Plan of Old Naledi informal layout after upgrading. (Source: the author 2003). Note: shows adjusted road layout and plot alignments, sports ground and community hall

lived in locations built for them, or in peri-urban settlements under weak governance. Informal settlement may now be a preferable term to slums, but still has a perception of inferior status by comparison with “formal” developments (McFarlane and Waibel 2012). As a Zambian politician said of his capital Lusaka:

Whose town is it? It appears that if you live in Woodlands, Kabulonga, and so on, you are *the* town owners, and if you live in Kaunda square or Kalingalinga or places like this, you are simply strangers in the city who can be moved and resettled somewhere. (quoted in Resnick 2013: 71–72)¹⁰

Squatters usually have to self-build yet live under threat of demolition and eviction. They may be refugees from conflicts, climate change and natural disasters, grieving for the familiar places they have lost and seeing their present circumstances as only temporary. The informal areas themselves may lack basic services and be difficult to navigate, with inadequate street and property addressing and informal roads and paths; they may be subject to occasional inter-ethnic conflict, flooding and other risks.

¹⁰Woodlands and Kabulonga are high-income housing areas; Kaunda Square is a district where the council settled urban migrants; and Kalingalinga was one of Lusaka’s earliest squatter settlements, associated with the main opposition political party.



Fig. 20.8 Communal water kiosk in peri-urban housing area, Kitwe, Zambia. (Source: the author 2003)

Forming a healthy place attachment can be a basis for developing community loyalty, resilience and engagement with local institutions and organisations (Scannell and Gifford 2017). Community (usually a group organised around common values and socially cohesive within a shared geographical location) creates social capital through a shared sense of citizenship, trust and reciprocity, making its own formal and informal rules (Lemanski 2019). Figure 20.8 shows how a water kiosk can become a community meeting place.

An understanding of local history can reinforce place identity and attachment, based upon a shared oral memory (Barnes and Win 1990; Perks and Thomson 1998). The Centre for Popular Memory at the University of Cape Town, for example, has collected people's stories of change, especially the trauma of apartheid violence, forced removals and political repression, acknowledging the role of family networks and cross-generational memory. Such lived experiences can enrich the social and physical spaces that people occupy, through narratives of individuals, gender, family and community, and people's survival strategies (Field et al. 2007). In the case of Cape Town's demolished District Six, after the fall of apartheid in 1994 the South African government recognised the claims of its displaced former residents, and supported the creation of a District Six Museum. This remembers the culture and history before the removals; displays reclaimed street signs, histories and lives of District Six families; and acts as a meeting place and community centre

(Bezzoli et al. 2002; Bohlin 1998). Another example is the Kwa Muhle Museum in Durban, occupying the former headquarters of the Native Administration Department, which ran the system of labour control, and remembers what it was like to live as a black South African during the apartheid regime. Buildings can also be a focus for material and community renewal in times of ruination after the demise of corporate paternalism (Straube 2016, on Mpatamatu, Zambia).

An example of history and archaeology helping build community identity is the World Heritage site of Cidade Velha, Cape Verde. Located off Africa's northwest coast, this was from 1456 the first European colonial settlement in the tropics, a shipping stop for the Atlantic slave trade, and developed a racially mixed and distinctive Creole culture. Archaeological excavation of what was Africa's first cathedral and hospital contributed to the town's designation as a UNESCO World Heritage site (Evans and Sørensen 2016). International specialists supported the Cape Verde government, leading to wider research on legacies of slavery linking Africa and the Caribbean.¹¹ The scope and definition of heritage by UNESCO broadened to include both the tangible and intangible, and gardens, landscape and environment (Ahmad 2006); in 2019 the Cape Verde tradition of music and dance – Morna – followed Cidade Velha as an “Intangible Cultural Heritage of Humanity”:

The adoption of Morna, by the UNESCO Commission, will increase people's awareness of the importance of Cape Verdean culture and, especially, of Cape Verdean Creole, increasing the self-esteem and pride of the people of the islands about their different cultural expressions. Social cohesion will also be strengthened, leading to the development of new forms of cooperation between musical groups, researchers and public and private institutions. The acceptance will also create new opportunities for the exchange of knowledge between generations and people from different regions of the archipelago and the immigrant community, and will also show the cultural diversity of the music and culture of the Atlantic. (Cape Verde 2019)¹²

Another approach to building community identity is through mapmaking and photography. Community counter-mapping is a recognised tool for empowering communities by documenting their informal rights to land (Panek 2015). Cape Town's District Six Museum displays on the wall a large street map, embellished by hand-written notes from former residents showing where they lived before removal (Jessa 2015). Thus collaborative community map-making with local illustrators and photographers can help create a sense of neighbourhood community and instil a pride in heritage to inform visitors and newcomers. Another example is the Kalingalinga

¹¹ Cambridge University, whose archeologists excavated the early colonial settlements, initiated a Legacies of Slavery research project in 2019: <https://www.hist.cam.ac.uk/news/122-legacies-of-slavery>

¹² Cape Verde's official UNESCO application says: *Morna is a performative genre from Cape Verde that combines voice, music, poetry and dance. It is a musical expression whose practice makes no gender distinction. Usually sung by a single person, it is accompanied by acoustic instruments, especially the guitar. It appeared in the nineteenth century, evolving from the mixing of musical styles with strong African roots, with melodies from Europe.* [<https://ich.unesco.org/en/RL/morna-musical-practice-of-cabo-verde-01469>]

poor neighbourhood of Lusaka, where an exhibition of work by local photographers and visual artists, with video interviews of their personal interpretations, has toured internationally: “I learnt that photography is not only about great images, but also how it influences the way people look at the world” (quoted in Hacker 2020). The local community thus becomes the curator assembling knowledge of local culture and living heritage, the hidden secrets and local legends, and thereby helping to define a “spirit of the place”. Putting the community on a map or in an exhibition, producing new local knowledge, can become a basis for community education and empowerment.

Armed with such local knowledge, community-based activists in informal settlements can press for upgrading and improvements to their environment. Figures 20.9 and 20.10 show two informal settlements being upgraded by self-help and gradual upgrading of buildings. Meredith in Chap. 15 discusses the Kibera case. Mindolo North, an informal settlement in Kitwe (Zambia), offers another case study (Munshifwa 2019). In the infancy or initial occupation stage, marginalised groups of society, mostly young and unemployed, occupied the land deemed vacant and struggled against council hostility towards “slums” (about 600 homes were demolished in 2014). The second or consolidation stage saw rapid expansion of land coverage and buildings, as the undeterred settlers developed an adaptive ability, based upon a mix of social norms and borrowed statutory rules. The settlement ultimately received official approval, and the third stage, maturity, saw intensified construction and house completions, an informal local governance structure, documentation of property rights and the beginnings of health and other social facilities.



Fig. 20.9 Self-build in Mogoditsane, Botswana. (Source: the author 2004).



Fig. 20.10 Peri-urban area from main road, Windhoek, Namibia. (Source: the author 2008). Note: corrugated alloy sheets weighted down with stones, no layout

20.6 Conclusions: Places for Both Past and Future

Understanding the present-day challenges of African urban land governance can be helped by a post-disciplinary approach to a complex urban history, drawing from a diverse academic scholarship, scattered in time and place and across different disciplines. This urban history involved an intense encounter between different cultures that produced new urban landscapes and rules of land governance; previously central to this was a colonial dual mandate policy that discouraged Africans from living in towns. After such a problematic and contested past, it is difficult in the post-colonial world to develop a sense of place identity and attachment, and create social capital for the local community. This chapter has attempted to outline how the relevant knowledge could be generated, by giving places names appropriate to their communities, curating local histories, especially drawing upon oral memory, and participatory mapping. From this local knowledge can follow better rules for urban land governance, both formal and informal, negotiated by the communities themselves.

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Chapter 21

Should Monrovia Communities Agree to Voluntary Slum Relocations: Land, Gender and Urban Governance



M. Siraj Sait

Abstract Slum-dwellers in Monrovia, Liberia, facing extreme environmental hazards and flooding are being advised by the National Housing Authority (NHA) to relocate, but the process and outcome is unclear. The slum-dwellers are vulnerable owing to their location, risks and socio-economic profile given prolonged civil war, the tenuous return to democracy and an Ebola health epidemic in one of the poorest economies of Africa. This chapter analyses the multi-stakeholder endeavour to develop voluntary gender-responsive relocation guidelines, while addressing issues such as land, livelihoods, financing and urban services in a relocation package. The chapter explores how good urban governance is a requirement for a successful community-led and human rights-based sustainable slum resettlement.

Keywords Voluntary relocation · Urban governance · Liberia · Gender · Community · Land · Livelihoods

21.1 Introduction

Many slum-dwellers in Monrovia, capital of Liberia, are anxiously receiving state proposals to relocate their communities in order to escape deadly environmental hazards. Two-thirds of the estimated 1.4 million Monrovia live in unplanned informal settlements in lowland swamps and coastlines, under an average annual

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rainfall of over 5000 millimetres. Natural risks and hazards, such as floods, sea erosion, rising sea levels, storms and fire hazards, hit hard such communities. Monrovia has already endured prolonged civil war (1989–2003), state collapse and foreign troops before a return to contentious democracy in 2005, the Ebola health epidemic (2014–2015) and now the Covid-19 pandemic (2020) – all this in one of the poorest economies of Africa. Many Monrovia residents have been living not only in slums but in abandoned buildings, cemeteries, beachfront huts, fishing boats and other “Foucauldian heterotopias” (Hoffman 2017). For most Monrovia residents, relocation is a daunting and complex leap of hope that can only be realized through good governance, better land rights and gender-responsive tenure security.

This case study is a narrative and reflection on a project for the voluntary relocation of slums in Monrovia between 2019 and 2020 (National Housing Authority and Habitat for Humanity International 2020), which led to Voluntary Gender-Responsive Relocation Guidelines (VGRRG). This Cities Alliance project was led by Habitat for Humanity International (hereinafter HFHI, a non-profit international NGO), and the Liberian National Housing Authority (herein after NHA), and involved various global, national and local actors, stakeholders and communities, and supported by the University of East London (UEL). A hazards, risks and vulnerability (HRV) assessment in 2017 in select settlements in Monrovia served as evidence and basis for consultations with potential relocating communities, host communities and relevant institutional partners and organisations (Singh and Sait 2019). The author was the lead advisor on the project, working closely with HFHI and NHA to use the feedback from stakeholders, available data, best practices and tools to develop draft policy guidelines as a framework for implementation.

Slum relocation is one of the most drastic of climate-related mitigation strategies if in situ upgrading is not possible. Relocation is often deemed a measure of last resort, with the need established through evidence, its viability through technical, economic, and financial capacities and the political will of the government, and with the active support of affected communities. In contrast to top-down forced relocation, voluntary relocation should be a community alternative with informed consent of affected communities. Community resilience indicates the ability to adapt in the face of climate shocks and stresses. Governance, multi-stakeholder relations and institutional arrangements are crucial elements of slum relocation in the longer term (Minnery et al. 2013).

Sustainable voluntary relocation as “planned” movement of settlements is a lofty but mostly elusive ambition. The challenge lies in translating global standards and principles into national frameworks and local realities, such as human rights-based approaches and gender equality. Yet the fate of every relocation turns upon the strength of communities and experts, and of institutions and partnerships. Whether the slum-dwellers accept voluntary relocation depends upon whether urban governance safeguards can deliver promised and sustainable outcomes. This chapter has three sections – first, a review of the voluntary guidelines, their design and practice; second, understanding linkages with urban governance, gender and human rights;

and third, evaluating significance of the relocation package in the context of land, livelihoods and services. The conclusion reflects on the chapter's main research question: "To what extent are voluntary relocations contingent upon good urban governance including land rights?"

21.2 Voluntary Guidelines, Design and Practice

With a large proportion of population living in low-lying coastal zones with high annual rainfall, Liberians are vulnerable to sea erosion and extreme weather events. The majority of Monrovia residents work in the informal economy, living in slums lacking urban and health services (Lacey and Owusu 1988). Women, children, older persons and other vulnerable groups bear a disproportionate burden of disasters, as the Ebola experience demonstrated. In 2017 HFHI and local partners carried out a Community HRV Assessment of 12 communities (286 responses, including a significant proportion of women) which showed concerns over affordability of new housing units, land tenure security, livelihoods, access to basic services, security and wellbeing (HFHI 2017). Risks that were locational, climatic, health and socio-economic were documented. Whether slum-dwellers would agree to move would depend upon whether their minimum expectations were to be addressed in the "relocation package" generated out of the needs assessment and negotiations.

Conversations between the slum communities and the Liberian government were facilitated by the NHA and brokered by a global network, Cities Alliance. Participative urban planning, sometimes through "resistance as resilience", renegotiated the balance of power and decision-making (Castelo da Cruz and de Castro Marins 2019; de Andrés et al. 2019). In 2018 a tentative consensus emerged that relocation was inevitable but would be agreed to only if residents' situation would improve, not deteriorate. The three basic expectations for a workable relocation would be community-driven processes, responsive to the needs of women, children and the vulnerable, and carried out transparently.

Monrovia communities then sought details of proposed relocation and associated risks, including disruption of livelihoods, social, economic and cultural networks (UNHCR 2017). The NHA and local communities decided to develop policy guidelines together with the support of HFHI and UEL. Worldwide, only Fiji had developed an outline framework for voluntary slum relocation (Government of Fiji 2018; Azango 2013). In Manam, Papua New Guinea, in 2005, 9000 islanders facing extensive volcanic activities were shifted to "care centres" in plantations, but inadequate consultations resulted in conflicts with existing landowners and deteriorating living conditions (IOM 2016). In Bangladesh, residents in flood-prone areas sought reassurances with free land, subsidies and long-term employment upon relocation (Rashid et al. 2007). Residents of Funafuti, the capital of Tuvalu, resisted relocation, citing "reasons of lifestyle, culture and identity" (Mortreux and Barnett 2009). Relocation could have differential impacts on women (in Haiti: Milan 2015), or on

different age groups such as youth or older persons (in Mauritius: Sultan 2017), reinforcing the importance of evidence-based interventions.

Across the world, an emerging consensus is that planned relocations require policy guidelines, with roles for stakeholders based on human rights considerations – where communities have ownership of relocation processes – integrated within government practices. In 2006, the Vunidogoloa community in Fiji, exposed to sea level rise, floods and erosion, partnered with government and civil society for a successful relocation, including site selection and policy guidelines in 2018. In Jamaica, the Harbour Heights community agreed resettlement guidelines drafted by the Jamaica Social Investment body in 2018. In Myanmar, the National Framework for Recovery for the 2015 Floods and Landslides protects communities subject to relocation through community involvement, adequate infrastructure and livelihoods (Thomas 2016). Kenya's National Adaptation Plan (2016) mainstreams and integrates climate change adaptation in land, housing, education, informal economy and capacity-building.

These examples show that planned relocations can aid successful adaptation strategies by improving livelihoods and preparedness for future hazards, but may expose the affected population to new vulnerabilities (IOM 2017). Relocation plans only succeed when community perspectives are incorporated (Thorn et al. 2015), with the aim of reducing harm and anticipating new vulnerabilities, while identifying livelihoods, land security, community cohesion and capacity development (Campbell 2010). VGRRG draws on lessons and experiences from other relocations, with a cohesive governance framework to anticipate stakeholder challenges.

The experiences of other relocations fed into discussions between the Liberian government and stakeholders to negotiate the voluntary guidelines (VGRRG). With gender equality a priority, the NHA agreed in principle to adopt the resulting document as official policy, guided by international standards such as the Sustainable Development Goals (SDGs), the New Urban Agenda (NUA), the Sendai Framework for Disaster Risk Reduction, the Paris Climate Accord, VGGT and Liberian government poverty reduction and climate change strategies (Republic of Liberia 2008). The optics of national ownership and authenticity are important, so the international framework appears in the final rather than opening chapters of the guidelines.

Ten ambitious objectives of the guidelines were agreed. These included “new and innovative” participatory governance including all levels of government and community. There are references to human rights, gender equality, cultural and environmental dimensions towards health, wellbeing of all individuals, especially children, young people and vulnerable to live in “safe, vibrant, and thriving communities in well located new settlements”. These wordings reflect not only the commitment of the state and other stakeholders but also the better consciousness and maturity of civil society, partly due to relations with international development partners and donor communities (Krawczyk 2018). The concept of voluntary relocation grew from the outline into a complex document of about 70 pages, reflecting both the gaps as well as demand of stakeholders to codify practice.

The relocation is envisaged as three broad phases: before relocation (preparation), during (management) and after (monitoring). The preparation phase starts

with the community decision to relocate, community-based needs assessment and the process of finalising the land, before establishing guidelines for eligibility and applications. Data based upon assessments determines how many can move under what conditions, and relocation is reconceptualised as having physical and economic dimensions but also psychosocial aspects. Thus stakeholders can anticipate multiple steps or adjustments with positive impacts as well as unintended outcomes for vulnerable groups. The VGRRG seeks to facilitate a smooth relocation involving all stakeholders in a gender-responsive and inclusive manner, in line with national policy frameworks.

The guidelines appear to be a breakthrough. They collate existing legal, economic and policy tools and generate several new protocols to bridge existing gaps. Every stage or decision involves the approval of the community, though not necessarily unanimity. The spirit of the guidelines is that interests and human rights of all need to be respected, protected and fulfilled for a relocation in a safe, dignified and timely manner. In April 2019, over 60 delegates from government agencies, community groups, experts and civil society proposed amendments to the draft VGRRG, subsequently approved by the Monrovia City Forum. A final version was published in March 2020 with the NHA, HFHI and local partners, acknowledging the UEL role. Two original questions still remain for the affected communities – how is the relocation to be implemented? and where?

21.3 Urban Governance, Gender and Human Rights

The challenges of pro-poor, gender-responsive, community-involved, climate change urban governance are extreme in the post-conflict and post-disaster relocation in Liberia. Urban governance refers to the process by which governments and stakeholder groups manage interventions in the communities that they represent (Paddison 2000; Goldsmith 2001). Effective land administration is an essential part of good urban governance as land underpins shelter, livelihoods and development outcomes (Global Land Tool Network 2018: 41, Chigbu 2011). Thus, good urban governance develops and implements policies, processes and institutions so that land, property and natural resources serve the best interests of all stakeholders, including the urban poor.

In the twenty-first century urban governance models have become a feature of city-regional politics as cities themselves become centres of economic activity and denser populations. Pierre (1999) argues that choices among different governance models (managerial, corporatist, pro-growth or welfare approach) are not value-neutral, but choices over inclusion of organised interests are reflected in urban policy outcomes.

Bevir (2010) notes that the evolution and contestation of urban governance models mirror the multiplicity of experience within city regions. As Mossberger et al. (2015) identifies, these approaches have fed into a growing debate over

participation, agency, institutions and societal organisation, and how to deliver local economic development in emerging city regions. In Liberia, the governance context or model is not straightforward; the Monrovia City Council or community groups seek to ride on the goodwill of an under-resourced NHA to guarantee a workable relocation package.

In most countries responsibility for human settlements has been mandated to “many ministries, agencies and commissions with unclear demarcation of responsibilities” (UN-Habitat 2014a, b). The Liberian NHA seeks to align the VGRRG with the work of over a dozen government agencies, identifying mandates in relocation as related to long-term development needs (Republic of Liberia 2013). Developing better and meaningful stakeholder relations require stronger and higher levels of political intervention.

Individuals, households and families are recognised as rights-holders and their basic human rights include rights to water, food, health, work, education and clean and healthy environment. Perforce they consider quality and adequacy of housing, basic services as well as social and cultural aspects. For example, families would prioritise that children be able to register and attend school as soon as possible and protected in particularly vulnerable situations. The legal and governance process during the relocation is intended to guarantee fairness, equal treatment and quality services, monitored by the communities.

The process has three dedicated mechanisms. The policy interventions committee within the NHA steers the process, identifying, evaluating and making recommendations for the relocation guidelines. Further, the VGRRG sets up two mechanisms that are vital to the implementation of voluntary relocation. A relocation steering committee is headed by the NHA, with some representation of communities meeting at regular intervals to coordinate ministries and oversee all stages of relocation. The relocation implementation group deals with day-to-day implementation, approves the relocation site and relocation arrangements, and guarantees the participative process and fair outcomes with an appeal process for the stages in voluntary relocation.

A key commitment of the VGRRG is alignment with the SDGs, especially poverty alleviation (goal 1), gender equality (goal 5), livelihoods (goal 8), sustainable communities (goal 11) and climate actions (goal 13). Viljoen (2012) reiterates the critical role of human rights in framing urban governance as part of processes to meet developmental aims and objectives. The end of decades-long conflict brought human rights to the fore in Liberia towards strengthening rule of law and the country’s institutions (Marong and Jalloh 2005; Young and Park 2009).

The VGRRG maps five categories of stakeholders in voluntary relocations: (1) Communities – affected or relocating communities, host communities and those left behind; (2) government departments and agencies with relevant mandates, including city councils; (3) civil society and development partners; (4) social protection workers and volunteers who aid the relocation; and (5) private sectors, developers, funders and professionals including paralegals. The space ceded by the state to non-state actors reflects the dilemma of social control and democratic freedoms (Deng 2018). Engaging with a range of local, national and global actors, NHA helped

formulate and design the guidelines, but they needed to be embedded at the institutional and grassroots level before implementation.

Resnick (2014) emphasises the “fitful” and fragmented nature of decentralised urban governance – arising from limited political, administrative and fiscal decentralisation across the continent. The competition between the needs of communities and the influence of third sector actors in the delivery of vital services are not easily filled by municipal governments. Lindell (2008) points out that urban governance has not been merely about who might carry power, but how this power is exercised (Allen 2004). Thus, power in many African cities is dispersed across stakeholder groups, and building bridges is necessary to deliver transformative change (Elander 2002; Bevir and Rhodes 2003). Pierre (1999) reminds us that the language of urban governance is one of both contestation and reconciliation in formulating trust and recognition of common aims, particularly relevant for slum relocations that cause disruptions and instability, at least in the short term.

The VGRRG repeatedly flag gender-responsiveness, at all stages and levels of the enterprise. Emphasis upon community involvement does not guarantee gender balance, so women’s experiences and voices are critical (Beall 2010). Post-conflict Liberian women experience high levels of gender-based violence (Abramowitz and Moran 2012), but remain resilient, for example, grassroots women contributed to land rights policy (Kaba and Madan 2014). The guidelines are evidence-based and recognise that household and general population data can mask major differences if not disaggregated by gender or household type. Gender audits are keys to understand and respond to challenges women face. African women have contributed to developing tools and perspectives that can deliver better urban governance outcomes (Chant 2013), yet obstacles remain to realising equality for women (Global Land Tool Network 2019).

Monrovia women are not merely slum-dwellers, but practitioners, leaders, professionals and policy makers. The guidelines recognise that women must play a vital role in all steps such as selecting sites, influencing infrastructure design and monitor site construction/preparation. These will incorporate the lived experience, needs, voices and choices that women make for themselves, families and community. Women are also a diverse group, with gender identity often intersecting with class, race, nationality, poverty, ethnic group, displacement, disability, age, marital status or sexuality. Thus girls, young females, older women require attention. Gender mainstreaming the relocation process involves not only removing obstacles for meaningful participation of women and girls in the community. The SDGs represent an opportunity to further women’s role in building critical capacity to deliver on the promises of sustainable development, framed through the unique position of women to understand and help respond to the needs of their communities and ensure effective, inclusive and accountable governance (Alberti and Senese 2020).

The VGRRG notes that public institutions should make and carry out decisions through partnerships and dialogue, considering the concerns and needs of different actors. The gap between theory and practice in urban governance is a result of several factors (Obeng-Odoom 2017). These are due to inconsistent implementation;

problems resulting from replicating singular experiences; tensions arising from socio-historical and economic challenges; restrictive assumptions; and general incoherence. The VGRRG recognises that successful urban governance requires mediation between the practicalities of delivering on mutually agreed outcomes, such as voluntary relocation and the aspirations associated with commitments – such as gender responsiveness, improved land tenure security, livelihoods restoration and fair and adequate compensation, among others. For the VGRRG, good urban governance is both a pre-condition and a core aspiration to promote “free and prior informed clear consent of affected communities, the full assessment of community needs including safety, health, livelihoods, educational, social and cultural dimensions and the provision of choices to communities”. Community governance focuses on facilitating relocation choices to maximise potential success by providing forums and avenues to anticipate and deal with implications of relocation on communities.

Urban governance especially in relation to urban poor remains highly volatile in the context of African cities. In Liberia, no clear single model adequately captures the complexity of intergovernmental, community-based, and third sector stakeholder relationships involved in the delivery of a gargantuan relocation project. The NHA’s lead role in multi-stakeholder consultations through gender-responsive and human rights-based approaches is encouraging. The Monrovia slum-dwellers appear to be persuaded by the goodwill and positive messages from the NHA to engage fully, but are not so sure about the capacity, resources and political clout of the agency in delivering. For this requires not only inclusive urban governance in the coordination and rallying of different actors, but also sustainable interventions related to pro-poor gender-responsive land management and housing tenure security, livelihoods restoration, budgeting and finance, compensation and basic services.

21.4 Relocation Package: Land, Livelihoods and Services

The Community Relocation Package serves as an agreement between the government and community groups, as well as the legal framework on the rights and responsibilities of all concerned. Relocation involves negotiations between the affected communities, state and other stakeholders over housing adequacy and affordability, environmental safety, basic services, livelihoods and social networks. Land and property rights, including tenure status, need to be captured, protected, adjudicated and secured through robust land administration systems (Norwegian Refugee Council 2017).

Four main concerns raised by Monrovia slum-dwellers in the negotiations are addressed in the VGRRG. First, how to restore livelihoods in the new location through understanding localised patterns of employment and job opportunities. Second, how land rights or tenure security in the relocation settlement could be

strengthened to prevent further marginalisation and displacement. Third, how the relocation could be made viable and affordable by the willingness and ability of the state to subsidise or bear the cost of relocation and attract public–private partnerships. Finally, how to deliver adequate and fair compensation to those affected by relocation. In each case, urban governance emerges as vital to redress obstacles in a sustainable and fair manner, lack of which could be fatal for planned relocation efforts.

Relocation potentially alters existing social and economic networks, disrupting existing support systems as well as safety nets in times of hardship (Modi 2009). Where communities relocate, some are either forced to commute back to their former settlements for economic reasons, or have to abandon previous employment or income streams (Khatun 2009). Therefore, restoring livelihoods for the urban poor has been a priority within the VGRRG. Integrating communities in newer labour markets include providing support, such as access to finance, skills training, adequate transport and unemployment insurance. However, these require robust and coordinated responses by the state with the employers or regulators. At the least, relocating populations must be informed, consultative and involved in their own relocation planning and livelihood restoration (Kabra 2018).

The challenge of livelihoods in Liberia and elsewhere requires mapping the types of employment, skills and sectors, and financial vulnerability of urban poor to allow for a managed transition to new livelihoods with financial and other support (Nikuze et al. 2019). Workable relocation plans are contingent on substituting or recovering the range of relevant livelihoods: land-based, wage-based and enterprise-based livelihoods, each with distinct pattern of livelihood reconstruction. Potential for restoration may also depend on the nature of relocation sites and extent to which the government is willing to work with the private sector and communities to enhance economic opportunities, and limitations of budget in underwriting the relocating process. Perspectives from local economic development scholarship emphasises that improving livelihoods for Monrovia’s slum-dwellers depends not only upon skills and training but also aspects such as improved access to finance, infrastructure investment and business support needed to make these voluntary relocations viable (Sait 2019). While the VGRRG flags livelihoods with many partners working in the informal economy, there is no budget or partnership with the private or financial sector to secure livelihoods.

Apart from affordable housing, land tenure issues were seen as critical to delivering economically viable and sustainable relocation processes. Voluntary relocation, unlike forced displacement, implies the exchange of existing land rights onto new arrangements. Land governance is vital for the success of relocations and avoidance of disputes (USAID 2016), with local government playing a vital role in identifying land for relocation through land-use plans and shelter strategies. Community role in selecting the land through assessing the location, size, physical characteristics and suitability of the land for relocation, looking out for flood risk or other hazards, as well as potential rezoning and housing quality standards is vital. Land is a complex

issue in Liberia, as in other African countries, and often the basis for conflict and exploitation, for example, between relocating and host, pre-existing or neighbouring communities. Prominent forms of land tenure arrangements include private land rights, customary land rights, Islamic and hybrid land rights as represented by Tribal Certificates (TCs) and public land rights held in “concession agreements”. Further, Monrovia slum tenure patterns are deeply affected by political, social and religious practices (USAID 2018; Sait and Lim 2006).

Although Liberia’s 1974 Registered Land Law formalised land registration, less than 20% of the country’s land is privately titled and registered (Republic of Liberia 2012) with widespread boundary disputes (World Bank 2008), resulting in dysfunctional land markets and poor tenure security (UN-Habitat 2014a, b). This disproportionately impacts women, traditional communities and other vulnerable groups with lesser access to, use, control, security and overall rights to land, compared to men. Therefore, land rights of these groups must be improved or at least protected. Further, voluntary relocation requires the availability of suitable public land or ability for compulsory purchase which is critical for the viability of the Monrovia relocation. The existence of informal, traditional, customary, group and collective rights, including secondary rights, lease, rental arrangements that are significant for women, minorities and other vulnerable groups to gain tenure security in addition to formal land ownership. Though specific land for the new location has not been officially declared, NHA remains confident that the state will find appropriate land and clarify land rights.

Proposed relocation is contingent upon technical, economic, and financial feasibility, with the implementation of the relocation depending upon projected actual costs for planning and execution, as well as resources required such as land and services (International Financial Cooperation 2002). The assumption of the VGRRG that the Government of Liberia sponsors the relocation efforts renders them responsible for assessing cost-effectiveness, associated costs be it powerlines or new transport connections, and identifying newer forms of funding. Additional costs of relocation include administration, project management, training, communications, dispute resolution and monitoring. While a variety of funding models have been used (UN-Habitat 2009) in Liberia, the potential of foreign funding and investment has been under-analysed, with government funding used to leverage external donor funding. The VGRRP only makes a start. Blended finance, affordable loans, subsidies, microfinance and community savings need to be pursued, but funding arrangements have not yet advanced.

An obvious challenge to the relocation proposals is the repayment capacity and finance risks in the budgeting process. A UN-Habitat review (2014a, b) of financing slum upgrading programmes demonstrates various levels of community contributions: low-interest microfinance loans with returns that are reinvested back into local community projects (Indonesia); in-kind contributions where some community members may work on the project delivery, reducing overall costs (Colombia); service charges that are levied over a period of time against a particular project (India); government-backed mortgages and blended finance to securitise community involvement (Morocco); and funding operational costs with some capital costs,

reducing state-funded burdens (Tanzania). In Liberia, relocating communities may have to take responsibility for particular services, given the limitations of external relocation funding without any form of security, and uncertain government capacity.

Relocations impact individuals, households and communities physically, economically, directly and indirectly. In principle, all affected persons should be compensated fully and fairly for losses, at market rates under the law (International Financial Cooperation 2002). Yet, in the case of large-scale voluntary relocations, limited budget and legal restrictions can limit permissible claims. The VGRRG signposts best practices through reference to legal expectations, but can work only if there is a sufficient relocation budget. The guidelines envisage that compensation for physical displacement needs to be recorded by the relocation implementation group, and responsiveness to the needs of the urban poor is vital owing their reduced resilience to economic shocks, to survive the relocation process.

Compensation is recognised by the guidelines to extend to commercial property owners, renters, vendors, and squatters. Yet, proper valuation and compensation to support the urban poor is contingent on professional capacities as well as understanding the needs of the communities facing hardship during relocation. The use of Community Needs Assessment to create an inventory of property and existing livelihoods and services to estimate potential claims for compensation for affected person can provide a mechanism for compensation but should be settled before relocation begins, so that all stakeholders are aware of all available economic measures, including compensation for land acquisition, affected assets and resettlement. Land governance implies that clear criteria and process for compensation will be implemented fairly and consistently, with the engagement of communities (Roquet et al. 2017), but expectations must be tempered with the reality that land administration of Liberia is basic and not always transparent.

The slum-dwellers of Monrovia do not yet have answers to their concerns which does not depend upon merely the existence of budget or political support, but an urban governance framework capable of delivering. As the VGRRG emphasise, voluntary relocation is first and foremost dependent on the involvement and consent of communities themselves, as well as strategic partnership with other actors, stakeholders and support groups. It is inconceivable the government or the affected community could carry out relocation unilaterally. In Monrovia, the poor slum communities are generally weakened through exposure to natural disasters, conflict, health epidemics and economic stress, while government is also fragile and overburdened with numerous responsibilities.

Voluntary relocation is promoted on the hope that, while the process and outcome may be daunting, existing deficiencies could somehow be redressed during the relocation process through goodwill and partnerships. VGRRG is workable only if underpinned by strong urban governance principles and appropriate responses to seemingly insurmountable challenges. By outlining the principles and procedures for good governance and the mechanisms for delivery, the VGRRG focuses on human rights and gender-responsiveness as practical ideals. For the Monrovia slum-dwellers, now facing the prospect of a Covid-19 epidemic, the existence of a fit for purpose pro-poor gender- and age-responsive urban governance framework

offers some reassurance that their indomitable faith, resilience and climate action can be rewarded.

21.5 Conclusions

The VGRRG proposals for planned slum relocations in Monrovia test assumptions about urban governance in a pro-poor, gendered, community led and climate change context. The VGRRG acknowledge that urban governance cannot remain a unidimensional bystander where relocation requires multifaceted and multi-stakeholder intervention. We have arrived at the age of “planetary urbanization”, a worldwide condition in which political economy, infrastructure and landscapes are all integrated into the urban fabric (Brenner and Schmid 2017). These are compounded by increased expectations of governance capacity, reflexivity and accountability (Rhodes 1997; Healey 2006). As Myers (2011) points out, the consensus that African cities need good governance necessitates inclusion of marginalised and underrepresented stakeholder groups, who are not currently part of policy discourse. Monrovia slum-dwellers, informal workers and grassroots communities do not enjoy equal rights to the city, and struggle to get heard when relocations are forced or even planned (Milbert 2010).

While the guidelines appear to be a breakthrough in shared principles and co-authorship between communities and the state, the gap between discourse and reality continues. Pierre’s (1999) four models of urban governance understate the connections and tensions that characterise contemporary debates on urban governance in African cities. Thus, managerial approaches pledge professionalism; corporatism conjures “buy-in” from stakeholders; and pro-growth makes economic development paramount, while welfarism seeks to redistribute wealth and improve public services. Monrovia urban poor seek synergies between creating social safety nets and improving municipal investments alongside private sector confidence and better employment opportunities. All governance strategies converge on multi-scalar, multi-stakeholder processes and dialogue, to restore confidence in society and rebuild relationships among the private sector and communities (Guha-Khasnobis et al. 2006; MacSweeney 2008). VGRRG pursues adequate governance systems and local legitimacy to support fragile conflict-ridden or disaster hit communities, where top-down interventions fail to meet their needs (Ogbaharya 2008; Pugh et al. 2008). In post-conflict, post-disaster societies like Monrovia demand of unequal economic development require greater attention to tackle inadequate natural resource management, socio-economic and environmental insecurities, and inequalities (Brown and Kristiansen 2008). Thus, the complex demands of secure land rights, livelihood restoration, basic services involve structural changes and institutional responsiveness.

A fit for purpose land administration is an essential part of good urban governance (Global Land Tool Network 2018: 41, Chigbu 2011). VGRRG promotes land governance by setting out clear criteria and processes, with the engagement of

communities to discuss their expectations and concerns (Roquet et al. 2017). However, land administration in Liberia is basic and still evolving. Liberia's recently reformed land rights policy, through its Land Rights Act 2016, allows for Customary Land Development Associations, recognising roles for chiefs, elders, youth and women leaders. The VGRRG also highlights the role of other tools such as needs assessments and enumeration exercises in documenting the continuum of land rights.

The VGRRG are a useful start for initiating genuine collaborations, honest characterisations and practical responses in Monrovia, especially in messaging gender-responsive and human rights approaches. Dealing with contemporary urban change is not merely about generating urban governance ambiance that captures aspirations of all, but also effective participative mechanisms through which expectations and risks can be managed. The quest for urban governance can take various forms but will rest on five core values of responsiveness, effectiveness, procedural justice, resilience and counterbalance. Whether global standards and entry points will translate into credible local practices remains debated (Björkdahl and Somun-Krupalija 2020). For Monrovia slum-dwellers the relocation process can only succeed where embedded within strong, community-driven, gender-responsive urban governance.

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Chapter 22

Where Next?



Robert Home

Abstract This final chapter explores the future for African urban land governance in the 2020s ‘decade of action’ on the UN’s SDGs, which, as ‘soft law’, depend upon the commitment of its nation states for their achievement. Of all continents Africa has the greatest number and diversity of nation states, whose sovereignty and sovereign equality is protected by the AU’s constitutive act, but the toxic colonial legacy creates asymmetric power relations between state and citizens. Progress towards the SDGs requires effective urban land governance, yet desirable law reforms may not be implemented, and a widening of stakeholder involvement is needed at sub-national level through both traditional and decentralised authorities. Material progress on the ground is increasingly driven by local communities’ formal and informal arrangements, innovation and knowledge-sharing across borders.

22.1 New Directions

In the first two decades of the twenty-first century, the global community has committed itself to new goals for sustainable development. While progress has been patchy, there are many measures linked especially to SDG11 (claimed as being at the heart of the SDGs), the NUA and the GLTN. In 2019 the UN Secretary-General called upon all sectors of society to mobilise the 2020s as a “decade of action” on the SDGs at three levels – global, local and by people – so what’s next?.

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22.2 The Vampire State?

Nation states may have signed up to the SDGs, yet the state itself has been accused of being like a vampire. A researcher wrote this of the Maasai people's dispossession from their ancestral lands by the colonial state and its successor:

In vampire films, the creature at first appears invulnerable. Charming and sophisticated, it draws in the unsuspecting victims, seduces them and drains the lifeblood out of them. They don't die, they get infected, and for a while they too are invulnerable. But they have a devastating secret: their mask cracks in the light. Will the Kenyan State, once subjected to the scrutiny of its history, similarly crumble? Kenya is a country that has not imagined itself into being. Not yet. (Kantai 2007: 120, and see Manji 2015)

The UN members who collectively committed to the SDGs are all sovereign nation states, while they may organise into regional groupings such as the AU and ECOWAS. They sign up – collectively or partially – to various treaties, conventions, declarations and agendas, but such non-binding “soft law” commitments may not translate into the political will and resources upon which the “decade of action” will depend, and African states are found to be often intolerant of citizen dissent from below.

The AU's 55 member states represent the largest number of states in relation to land area of any continent and vary significantly in population size, cultures and languages, and state capacities. Africa's population well exceeds one billion (according to estimates), and AU member states range from the largest (Nigeria at nearly 200 million, followed by Egypt, Ethiopia and DRC at around 100 million each) to 20 or more that have less than five million each. Some countries contain more than 20 separate ethnic minorities, and the continent approximately 1000 distinct spoken languages (Dersso 2012).

Most AU states were formerly colonised from Europe, and after independence kept some arbitrary colonial boundaries, along with much of the colonial governance framework and historical legacies of social inequality. The *uti possidetis* principle (“what you have you keep”) meant that old administrative boundaries became international boundaries at independence, and this norm of territorial integrity continues, even though there may be too many states for effective performance (Lalonde 2002; Shaw 1996). The AU's Constitutive Act stresses the sovereignty and sovereign equality of its member states, but their citizens are increasingly dissatisfied with their performance, not least in basic matters of urban land governance; this is part of a global trend of diminished trust in public authorities. AU states are reluctant to comply with findings by its own judiciary of violations of rights that they signed up to in the Banjul Charter of Human and People's Rights, and petitions to the AU express alarm at the shrinking of civic society space, contrary to the aspirations of SDG 16 to “peace, justice and strong institutions” (Amao 2019: 164–185; Fombad 2018).

More than half a century after most SSA countries achieved their independence; urban land governance still carries a largely toxic colonial legacy of asymmetric

power relations between the state and its citizens. The AU's *Guidelines on Land Policy* may use such prescriptive language as “[t]he overwhelming presence of the State in land matters must change” (2.1) but remains deferential to state sovereignty, with member states having the right to determine their own land laws and policies. The guidelines explicitly stated that they were *not* a normative framework intended to be binding upon member states, *nor* a draft land policy for their adoption, *nor* an instruction for specific country situations (AUC 2012). Meanwhile the manipulation of inherited colonial laws facilitates corrupt transactions in the land sector, as Chiweshe has explored in Chap. 14, and state institutions could do more to translate a right to development or a right to the city into reality, according to Kamga in Chap. 5.

Law reform can only proceed through state action, which cannot happen without political will (Berrisford 2011; Commonwealth Secretariat 2017). The area of urban land governance shows examples of desirable law reforms not happening. The Nigerian Land Use Act 1977 carried forward the previous Northern Nigerian Land Ordinance of 1910 (proclaimed by a British colonial governor). It was adapted to a multistate federal structure, and the number of states in Nigeria grew from 19 in 1976 to 36 by 1996 (with an additional Federal Capital Territory established in 1991). The Act conferred wide-ranging powers over land upon state governors (although minerals remained a federal matter) and, in spite of much criticism for its negative consequences upon land development and access to land, has not been reformed (Otubo 2018). In another example, from Namibia, urban planning law reform has proved difficult and restrictive standards inherited from colonial days remain unchanged (Berrisford 2011). As Chigbu identified in Chap. 2, Namibia's physical planning standards, unchanged from colonial origins, prohibited plot sizes less than 300m² in area, which was unrealistically large for present conditions, and effectively made peri-urban settlements illegal.

22.3 Other Stakeholders

With the nation state and its institutions falling short on meeting its citizens' needs and aspirations, non-state actors, categorised as stakeholders by the international community, are proliferating, under a veritable snowstorm of acronyms: CBOs, CSOs, NGOs and academic and professional networks such as NELGA and FIG. The African Land Policy Centre and other AU institutions have convened international land policy conferences, attracting hundreds of participants, and in 2019 the third such conference had as its theme: “Winning the fight against Corruption in the Land Sector: Sustainable Pathways for Africa's transformation”. This is encouraging, although a cynic might regard it as an example of the isomorphic mimicry concept referred to by Home in Chap. 2 and therefore unlikely to change deep-rooted practices.

Nation states may be reluctant to transfer powers and resources, whether upwards or downwards, but sub-national authorities are increasingly asserting themselves. Their umbrella organisation, United Cities and Local Governments, founded in 2004, is the largest NGO supporting democratic, effective and innovative local government close to the citizen. Progress with decentralisation in Africa, however, is slow. Chapters 3 by Cirolia and 17 by de Visser have discussed the limitations of sub-national governance structures and constitutional provisions in key areas of infrastructure and food security, while Chigbu in Chap. 2 argues for greater local autonomy in urban governance.

If sub-national governance is gaining ground, so too are traditional authorities, which increasingly assert themselves as custodians of customary land. The so-called evolutionary theory of land rights favoured by colonialists may have treated customary tenure as a vestige of the past bound for extinction, yet it has come to be recognised as an important common property resource, and a defence against the penetrative forces of globalisation and capitalism (Baldwin and Holzinger 2019; Buur and Kyed 2007; Platteau 1996). Africa has a Forum of African Traditional Authorities, and indigenous people's land rights are being championed in international legal forums. Across most of the continent traditional authorities are part of the modern political landscape, as much as any constitution, legislature or local council, and their resilience is contributing to better community participation in development efforts (UNECA 2007). Ross and Gueye in Chap. 4 show precolonial faith-based authority in Senegal surviving as a successful alternative to modern urban land governance. The AU land declaration resolved to:

Ensure that land laws provide for equitable access 1. to land and related resources among all land users including the youth and other landless and vulnerable groups such as displaced persons; 2. strengthen security of land tenure for women which require special attention. (AU 2009)

This encourages new stakeholders to emerge, such as the Kilimanjaro Initiative on women's land rights referred to in Ngang's Chap. 6. The energies of young people can be seen in applying new technologies in innovative ways (Hacker 2018; Innovation Group 2019).

Apart from these institutional factors, new themes are emerging in development agendas, such as the water-energy-food nexus and disaster risk management, now more likely to be termed resilience. De Visser's Chap. 17 discussed how the water-energy-food security nexus, originally seen as a rural issue, now involves also urban land governance through supply and distribution chains (FAO 2014). Resilience applies not only against climate change risks from extreme weather events, but involves a holistic diagnosis across the urban systems. Cobbinah in Chap. 16 shows that Ghana's conventional understanding of disaster risk reduction is limiting capacity to address resilience challenges in the face of peri-urban growth.

22.4 Urban Land Governance “on the Ground”

Urban land governance in SSA at a local every-day level should mean material change “on the ground”. Local communities and neighbourhoods can negotiate their own formal and informal land governance rules, which seem to be occurring all over Africa in response to demographic pressures and shortages of development land. Chigbu in Chap. 2 and Meredith in Chap. 15 argue for involving local CBOs in slum upgrading projects, and Home in Chap. 20 showed that local community identity can be strengthened by opposition to planner-led interventions.

Recent business and technological developments in Africa can offer many benefits to urban land governance (Leke et al. 2018). *Mpesa* (the name means mobile money in Swahili) started in East Africa in 2007 for money transfer by mobile phone, and facilitates microfinancing for house-building. New property technology is becoming available for multiple applications. GPS on smartphones, satellite mapping and drone technology (unmanned aerial vehicles or UAVs) help communities to map their land (sometimes called counter-mapping) and report flooding incidents in real time; blockchain technology can facilitate land titling and transfer and help prevent fraud and corruption.

Alternative legal structures for land management can empower local communities in land management and development. The “insurgent” common movement can harness potential for managing land at a local communal level outside of state and private land tenure systems (Bollier and Helfrich 2019), as can related legal structures such as cooperatives or community land development trusts (Basile and Ehlenz 2020).

22.5 Conclusions

The next decade will see whether SDG initiatives by UN-Habitat, such as the NUA, GLTN and urban forum events, can show concrete results. A new institutional and knowledge architecture is now largely in place, and, with no shortage of approaches and solutions on offer, the challenge is scalability, commitment and how to roll them out.

SDG 17 emphasises the role of partnerships, new knowledge production and management, and Africa’s recently constituted NELGA network can facilitate knowledge sharing for urban land governance within and between countries. Among the areas where there is plentiful scope for rethinking theory and practice one can cite the following which have been explored in this volume: access to land, eradicating negative colonial legacies, changing urban laws and top-down cultures of planning, improving public space and citizen education, stimulating entrepreneurship and innovation, and recognising the community role of urban and oral history. This book aims to raise awareness of some of the issues and stimulate new research from cross- and post-disciplinary perspectives.

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