

# Evaluation of innovative land tools in sub-Saharan Africa

Three cases from a peri-urban context

Paul van Asperen

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Proefschrift

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**Paul van Asperen**

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In loving memory of  
Irene Kosamu Nankamba (1970-1996)  
and  
Hans van Asperen (1928-2012)



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# List of abbreviations

## General

AMCHUD	African Ministerial Conference on Housing and Urban Development
ADB	African Development Bank
AU	African Union
CASLE	Commonwealth Association of Surveying and Land Economy
CBO	Community Based Organization
CFS	Committee on World Food Security
COHRE	Centre on Housing Rights and Evictions
FAO	Food and Agricultural Organisation of the United Nations
FIG	International Federation of Surveyors
GDP	Gross Domestic Product
GIZ	Deutsche Gesellschaft für Internationale Zusammenarbeit
GLII	Global Land Indicators Initiative
GLTN	Global Land Tool Network
GNI	Gross National Income
HDI	Human Development Index
IALTA	International Alliance on Land Tenure and Administration
ICT	Information and Communication Technology
IIRR	International Institute of Rural Reconstruction
JICA	Japan International Cooperation Agency
LADM	Land Administration Domain Model
LGAF	Land Governance Assessment Framework
MCC	Millennium Change Corporation
MDG	Millennium Development Goal
MPI	Multidimensional Poverty Index
NGO	Non-Governmental Organization
NORAD	Norwegian Agency for Development Cooperation
PLPR	International Academic Association on Planning, Law and Property Rights
SDI	Slum Dwellers International
SDI	Spatial Data Infrastructure
SIDA	Swedish International Development Cooperation Agency
SSA	Sub-Saharan Africa
STDM	Social Tenure Domain Model
UN	United Nations
UNDP	United Nations Development Programme
USAID	United States Agency for International Development

## Botswana

BWP	Botswana Pula
CoR	Certificate of Rights
CSO	Central Statistics Office

FPSG Fixed Period State Grants  
MLH Ministry of Lands and Housing  
LAPCAS Improvement of Land Administration Procedures, Capacity  
and Systems  
SHHA Self Help Housing Agency  
TLA Tribal Land Act

### **Ghana**

CLS Customary Land Secretariat  
LAP Land Administration Program

### **Kenya**

CLT Community Land Trust  
KENSUP Kenya Slum Upgrading Programme  
LBC Land Buying Company

### **Namibia**

CDC Community Development Committee  
CLIP Community Land Information Program  
FLTA Flexible Land Tenure Act  
FLTS Flexible Land Tenure System  
LAC Legal Assistance Centre  
LRO Land Right Office  
MLR Ministry of Lands and Resettlement  
NAD Namibian Dollar  
NHAG Namibia Housing Action Group  
SADF South African Defence Force  
SDFN Shack Dwellers Federation of Namibia  
OTC Oshakati Town Council  
OHSIP Oshakati Human Settlement Improvement Project  
PTO Permission to Occupy

### **Uganda**

KCC Kampala City Council  
LEMU Land and Equity Movement  
NSDF-U National Slum Dwellers Federation Uganda  
UGX Uganda shilling  
ULA Uganda Land Alliance

### **Zambia**

CSO Central Statistical Office  
ECZ Environmental Council of Zambia  
HfH Habitat for Humanity

HSIAA Housing (Statutory and Improvement Areas) Act  
LCC Lusaka City Council  
MLGH Ministry of Local Government and Housing  
MoL Ministry of Lands  
PPPH People's Process on Poverty and Housing  
WDC Ward Development Committee  
ZDC Zone Development Committee  
ZLA Zambia Land Alliance  
ZMK Zambian Kwacha (from 2013 onwards revalued ZR: Zambian Kwacha Revalued)



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# Preface and acknowledgements

The seeds for this work must have been sown by Prof. J.L.G. Henssen when he was lecturing on 'Cadastrals in developing countries' during the 1980s at Delft University of Technology. I was intrigued by his exotic tales couched in unknown concepts of land ownership in far-away countries. After graduating, my first assignment was at the University of Zambia, where I learned more about these concepts. Having enjoyed working abroad, I was lucky to get a position at ITC that combined the best of two worlds: living in my home country and working in an international environment. Life suddenly changed; my wife, whom I had met in Zambia, passed away when our first-born was only three months old. The following years were not easy for us, although we were blessed that our links with Africa proved strong. I was very happy to support Dr. Augustine Mulolwa's PhD defense, acting as his 'paranimf' in 2002. At that time I could not envisage that I would follow a similar track. That all changed when visiting Windhoek in 2005 and Dr. Klaus Deininger's standard work on 'Land policies for poverty reduction' caught my eye. Reading the book, I learned that the challenges in land administration that had been pointed out by Prof. Henssen proved to be persistent. This realization was the fertilizer that allowed the seeds to germinate. The idea of starting some kind of research on this topic was born, and Africa would be the area of interest. I was very happy that my ideas were enthusiastically received by Prof. Jitske de Jong and Prof. Jaap Zevenbergen, who encouraged me to write a proposal and agreed to be my PhD advisors ('promoters'). I would like to express my profound gratitude to both of them for having guided me all the way through. Besides their academic guidance and international experience, I have appreciated the patience they have shown me. Secondly, I am very grateful to the OTB Research Institute for the Built Environment, which offered me a part-time research position and financially supported this research project. I would also like to thank the members of the Doctoral Examination Committee: Prof. Faustin Kalabamu, Prof. Robert Home, Prof. Hanri Mostert, Prof. Marja Elsinga and Dr. Chrit Lemmen. I feel honored to have a Committee of such high academic standing.

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# 1 Introduction

“The former owner subdivided her land into 40x40 m plots and sold one portion to us for 2,000 Pula<sup>1</sup>... At the moment we don’t have a certificate... The Land Board is refusing to register us. We are told that the president has forgiven and charged 10,000 Pula and 11 Pula per m<sup>2</sup> in excess of the required standard size as set by the Land Board... There are only four of us, we are not given certificates, but we were the first people to stay here, the four of us. This plot was measured four times” (Interview with a an employed woman, living in Mogoditshane, Botswana, February 4th, 2011).

## 1.1 Urbanization and land tenure security in sub-Saharan Africa

Sub-Saharan Africa is urbanizing at a rapid pace. The main problem is that countries lack appropriate tools to manage the access to land, register land holdings and carry out urban planning. When governments fail to deliver plots suitable for development, citizens will access land by informal routes and thereby become vulnerable to eviction. The ensuing fear of eviction might prevent them from improving their housing, while the informal status of the settlement does not allow the government to provide services. This thesis analyses the various methods to upgrade informal land to a formal status and how these methods relate to land access. The methods to upgrade are created through land tools that are designed to deliver tenure security. Before discussing tenure security and land tools, the context will be sketched, highlighting the rate of urbanization, land tenure and informal settlements in sub-Saharan Africa.

### Urbanization and security of land tenure in sub-Saharan Africa

From 2008 onwards, the majority of the world population has been living in cities instead of rural areas. Western countries reached the ‘tipping point’ before 1950. Nowadays, it is especially Asia and Africa that are urbanizing rapidly (UN-HABITAT, 2010c, see Table 1.1). Urban growth is not restricted to the capital cities and primary urban centres of these continents. According to Kessides (2006), secondary and tertiary urban settlements tend to have even higher growth rates. Rapid urbanization is the result of a combination of demographic trends: natural increase in the urban population and ongoing rural-urban migration. The consequences are high levels of urban poverty and the rapid expansion of unplanned urban settlements and slums (Desai, 2012).

### Poverty in sub-Saharan Africa

Poverty levels in sub-Saharan Africa are among the world’s highest: 52% of

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<sup>1</sup> USD 292 at the time of the interview.

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**Table 1.1 Urbanization rates around the world**

	2010 urban (%)	2050 urban (%)	Tipping point
<b>World</b>	50.6	70.0	2008
<b>Regions</b>			
Europe	72.6	83.8	before 1950
North America	82.1	90.2	before 1950
Oceania	70.6	76.4	before 1950
Asia	42.5	66.2	2023
Latin America	79.4	88.7	1962
Africa	40.0	61.8	2030
Sub-Saharan Africa	37.3	60.5	2032

Adapted from UN-HABITAT, 2010c, p. 12

the population lives on an income below USD 1.25 a day (Alkire and Santos, 2010). The distribution of poverty across the region is displayed in Figure 1.1. There, the percentage of the population living on less than USD 1.25 a day is shown for each country. Although the majority of Africa's poor live in rural areas, poverty will increase in urban areas due to the high rates of urbanization. This urban expansion will be largely concentrated in peri-urban areas. This does not mean that only the poor live in such areas; peri-urban areas are also attractive for middle- and upper-income groups (Satterthwaite, 2007). Poverty levels may vary within a single neighbourhood, where permanent brick houses, even villas, may alternate with temporary shacks. Of course, the goal of most politicians and international organizations is to improve the lives of the poor. Their efforts are primarily geared to help those who are really in need and those who are capable of generating more wealth after receiving some form of support. The target group is immense. According to UN-HABITAT (2012c), the proportion of the urban population living in informal settlements is 61.7% for sub-Saharan Africa. So the majority of the urban poor arrange for shelter through informal occupation.

## 1.2 A brief history of land management in sub-Saharan Africa

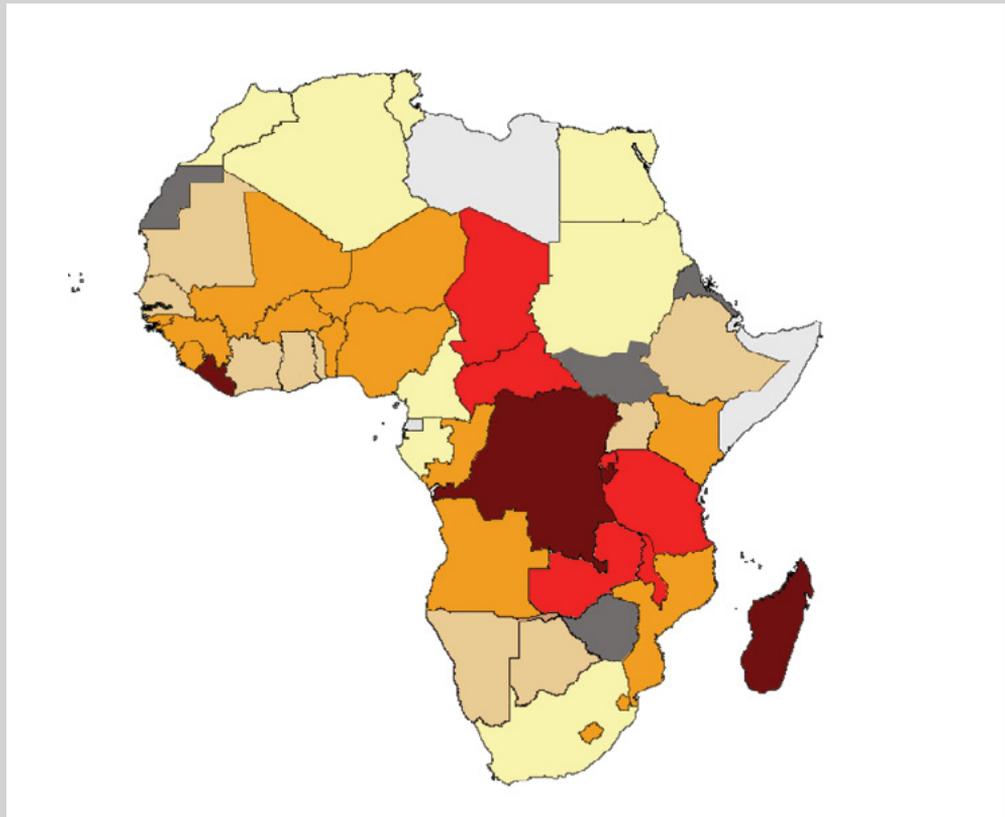
Before discussing developments in peri-urban areas, it is useful to review the history of land management in sub-Saharan Africa. In general, sub-Saharan Africa went through the following three phases:

- Pre-colonial rule: areas were occupied by groups, mostly referred to as tribes;
- Colonial rule: state formation, foreign rule by another nation, mostly European;
- Post-colonial rule: independent state, ruled by local people after the withdrawal of colonial powers.

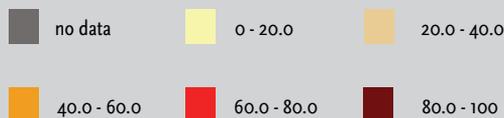
A brief characterization of these phases with special reference to land management and urbanization is given below.

Before sub-Saharan Africa was colonized by Western countries, the continent was inhabited by groups who were socially organized in tribes. National boundaries did not exist at that time. Groups could migrate to other areas in search of better natural resources or in reaction to conflicts with neigh-

Figure 1.1 Poverty in sub-Saharan Africa



Poverty headcount ratio at \$1.25 a day(PPP) (% of population), in 2012



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Source: <http://povertydata.worldbank.org/poverty/region/SSA>, accessed 6/9/2013

bouring tribes. Large villages and towns have existed, as the ruins of Great Zimbabwe testify (Shaw, 1992). Land was managed under customary law; this unwritten system of law was administered by chiefs and their advisors. Chiefs, also referred to as traditional authorities, were deemed to hold the land in trust for their people. Chiefs did not own it but could grant land rights for different land uses to their people (Mabogunje, 1992). Such land tenure systems, called customary tenure, have evolved over hundreds of years. It is important to note that these systems generally functioned properly, at least within the local communities (Deininger, 2003; Fitzpatrick, 2005).

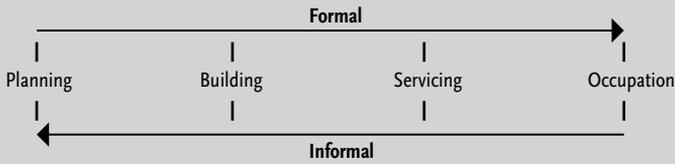
When parts of sub-Saharan Africa became colonized, national boundaries were defined, often irrespective of tribal territories. The colonial powers intro-

duced statutory law to exploit the area and protect their own interests. The laws were to a large extent copied from their home countries (Lavigne Delville and Durand-Lasserve, 2008). It was especially those areas where the colonial authorities stood to benefit from regulation that were placed under statutory control. In particular, statutory control was instated in cities where colonial settlers could reside as well as in areas with agricultural potential where colonial farmers could operate on a commercial basis. Other parts of the country could remain under customary law. The result was a dual system of land tenure. On the one hand, statutory tenure applied to the colonial settlers; it resembled the tenure system back home (with freehold and leasehold). On the other hand, customary tenure was applied where land continued to be managed by the traditional authority. So the original inhabitants were denied access to land under statutory tenure, which included the cities. However, they were allowed to stay on compounds on commercial farms and near cities, because their labour was needed there. Such settlements were supposed to be temporary. They nonetheless took on a more permanent character over time, often developing into informal settlements in the post-colonial era.

Things changed when the countries became independent. One of the positive effects was that the ban on settling on statutory land was lifted. Suddenly people had access to statutory land and could settle freely anywhere in the country. This legal change set off a rapid urbanization (Satterthwaite, 2007). The statutory institutions could not deal with the great influx of people, though. Moreover, most countries chose to maintain dual systems, even though that meant keeping on the books of some statutory laws that were not only imported but, in most cases, outdated too (Lavigne Delville and Durand-Lasserve, 2008). As a result, people still failed to access land under statutory tenure. They then found other ways of accessing land in the vicinity of towns, either by settling on vacant land or by purchasing land from customary land owners. This led to the rapid development of informal settlements in peri-urban areas (Lavigne Delville and Durand-Lasserve, 2008). In general, the governments were unhappy with these developments; they tried to evict the inhabitants and demolish entire settlements. The ensuing national and international protests turned the access to land and housing into a major political issue. Because informal settlements are usually densely populated, their inhabitants constitute a large group of potential support for politicians. Under these circumstances, even politicians have contributed to the emergence of informal settlements by allocating land to their supporters, even though they were not officially entitled to do so. Consequently, alongside customary and statutory tenure, an informal tenure category emerged.

The settlements continued to grow. Since demolition was no longer seen as an appropriate measure, improvement of informal settlements and regularization came into vogue. International donors like the World Bank supported such programs. Despite such efforts, urbanization continued and access to

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**Figure 1.2 Formal and informal approaches to housing development**

Source: Acioly Jr. & French, 2012

formal land remained problematic. Meanwhile, informal settlements are still developing, although the pace has slowed down (United Nations, 2012b).

An abstract scheme of formal and informal settlements, taken from Acioly Jr. and French (2012), is presented in Figure 1.2. It shows the reversal of the usual order of formal housing development. Under formal development, people will occupy the land at the last stage, coming after the planning process, servicing of the area and housing development. By contrast, under informal development, occupation, or land access, comes first. Informal land access is one of the main topics in the present thesis. It leads to informal land tenure, which will be discussed in the next section.

### 1.3 Land tenure in peri-urban areas

People continue to settle near towns, creating what are known as peri-urban areas. Such areas are subject to change from various perspectives. The land use changes from rural to urban; the economy changes from subsistence to cash-based; the focus of social relations shifts from the group to the individual; the demographic profile changes from lower to higher population densities; and the predominant type of dwelling is no longer a hut but a shack and eventually a house. Peri-urban areas are dynamic, both in time and space, but also heterogeneous. They provide opportunities for multiple livelihoods. For example, people may combine farming (urban agriculture) with formal or informal employment. As explained in the previous section, people may settle on vacant land, with or without permission, or they may buy land from customary land users. The way they access their land results in what is called land tenure. Briefly, land tenure refers to the way land is held, such as freehold in a formal case or squatting in an informal case.

One of the main characteristics of peri-urban areas in sub-Saharan Africa is the co-existence of multiple tenure regimes. This can partly be attributed to the history of the region. As mentioned above, most countries have dual tenure systems: customary and statutory systems. Customary tenure is still prominent in sub-Saharan Africa (Lavigne Delville and Durand-Lasserve, 2008). Another reason for the persistence of multiple systems is that hardly any formal documentation exists of the rights to land, being ownership or use rights (Toulmin, 2009).

When people fail to access land through one of the tenure systems, they find alternative pathways, which lead to informal tenure. According to Durand-Lasserve (2003), informal or customary systems predominate in land transactions in urban Africa. Durand-Lasserve and Selod (2009) distin-

guish two types of informal settlements: squatter settlements and unauthorized commercial land developments. This distinction is actually based on the different ways of land access. In squatter settlements, land is illegally occupied against the will, or without knowledge, of the landowner. With respect to unauthorized land development, land is subdivided illegally and sold as plots. In the latter case, the transfer is agreed on by both parties. It might nonetheless be illegal; subsequent development of the land might violate zoning and planning regulations and/or the land may have been subdivided without permission. According to the same scholars, “*tenure informality is the result of mechanisms of legal, political, and economic exclusion*” (Durand-Lasserre and Selod, 2009, p. 104). This mechanism is illustrated by the following two randomly chosen cases of peri-urban development:

- Mukuzu kwa Ngenga, Nairobi, Kenya (Lamba, 2005). A British-owned farm accommodated the African farm workers in villages. After independence, the British farmers left and the land reverted to the state. Meanwhile, the villages were growing by the influx of people looking for urban opportunities. The result is an informal settlement on government land.
- Otjiwarongo, Namibia (Lankhorst and Veldman, 2009). Initially, squatters settled on vacant land because they were not allowed to settle in town during apartheid. Later on, the area was used by the council as a reception area to prevent the emergence of informal settlements elsewhere.

As even such short descriptions reveal, the development of an informal settlement is a complex set of interwoven actions, both formal and informal, by individuals and authorities. Poor people mainly acquire land through customary and informal channels, as they cannot afford to access it through the formal land delivery systems or otherwise fail to do so.

Central to this thesis are the dynamics with respect to land tenure. Multiple tenure systems exist under a continuous influx of settlers. Kasim Kasanga, Cochrane *et al.* (1996, p. 53) characterize peri-urban areas “*as a locus of abrupt tenurial transformation*”, where land is being transformed institutionally from rural to urban. Although one may question whether the transformation is actually abrupt, it is clear that land tenure is dynamic in peri-urban areas. The most common bottleneck in the development of peri-urban areas is the lack of tenure security, which is discussed below.

## 1.4 Lack of tenure security

According to UN-HABITAT (2003), one of the legal characteristics of informal settlements is insecure residential status. Indeed, tenure insecurity is widespread in informal settlements in sub-Saharan Africa, where it forms a major obstacle to proper development of these areas. People who fear eviction are not likely to invest in their homes. Insecurity also hampers the

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external investment needed for the improvement of services (Deininger, 2003; UN-HABITAT, 2004). Informal settlers do not have formal papers to document their right to occupy the land they reside on, nor do they have planning or building permission to erect a structure. On the one hand, they occupied the land because they were in desperate need of shelter. On the other hand, they took a risk by acting illegally, although they might have been unaware of doing anything wrong. Official authorities generally prefer to manage (and tax) planned and serviced settlements. They can be hostile to informal settlers, even to the point of evicting them and demolishing their dwellings. Massive demolitions are increasingly seen as violations of human rights and arouse protests from national and international organizations. Yet evictions still occur, as the Centre on Housing Rights and Evictions (COHRE) periodically reports in their Global Survey on Forced Evictions (COHRE, 2003, 2006 and 2009).

Land tenure insecurity – or, from a more positive angle, land tenure security – in informal settlements has been of interest to researchers and policy makers for decades. For example, tenure security is indicator number 32 within target number 11 of Millennium Development Goal (MDG) number 7 (UN-HABITAT, 2003). The thrust of target 11 is to improve the lives of at least 100 million slum dwellers by 2015. Many programs for settlement improvement have already looked into the issue of tenure security. In most cases, as the examples in Chapter 3 will demonstrate, land documents have been introduced to pardon informal settlers for their ‘illegal’ land occupation and to give them some sort of proof of their land right. These documents resemble those known in Western economies: the diverse systems of title and deed registration that underpin land and property markets. As a smooth operation of these markets is crucial to any economy, land administration systems are often proposed to support the economies of developing countries. The most distinct (and probably the most cited) proponent of land administration is the Peruvian economist De Soto. He claims that transferring property worth USD 9.3 trillion from the informal to the formal economy would improve the livelihoods of hundreds of millions of informal settlers (De Soto, 2000). Various reactions to his theory are briefly discussed in Chapter 2. Jiusto (2012) confirms the importance of legal rights to occupy land, pointing out that informal settlers are more willing to invest in property to which they hold formal title or another legal claim. However, according to Desai (2012), developing countries still lack the tools and systematic strategies to deliver secure land rights for all. A problem specific to peri-urban areas in sub-Saharan Africa is the existence of multiple tenure systems, as explained in Section 1.3. People can access land through various way, each having its own level of tenure security. The general opinion is that the multiplicity of tenure contributes to higher levels of tenure insecurity and complicate the implementation of existing land administration tools. Therefore, policy makers and research-

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ers worldwide are developing innovative land tools, a concept that will be explained in the next section. Nevertheless, one has to remember that tenure security is an outcome of both initial land access and eventual implementation of land tools. Land access is therefore included in this study.

## 1.5 Innovative land tools

UN-HABITAT, IIRR *et al.*, (2012, p. 8) define a land tool as “a practical way to solve a problem in land administration and management. It is a way to put principles, policies and legislation into effect.” The problem in question amounts to tenure insecurity. Many land tools are available, and their variety may directly or indirectly benefit tenure security. They might take the form of political statements giving assurance of non-eviction to certain settlements, household surveys in a settlement, issuance of documents on occupancy, or issuance of land titles. Because land titling has a long tradition, it can be considered a conventional land tool. In Western countries, conventional land tools have been very effective in facilitating economic growth. Parallel to the support for the physical improvement of informal settlements, developing countries have been assisted with the implementation of land tools over the last decades. During the 1960s and 1970s, large-scale land administration projects were carried out, often in conjunction with the physical improvement of slums. The rationale was that the inhabitants would no longer fear being evicted or displaced and would therefore invest in their land and housing. In addition, land titles could be used as collateral for loans, which in turn would stimulate economic growth. In general, these projects failed because local conditions were not taken into account and the administration was not regularly updated. Moreover, it is said that the elite and the well-informed tend to benefit from such projects at the expense of the poor and destitute (Fourie, 2002; Fitzpatrick, 2005; Toulmin, 2009).

In an effort to avoid the negative effects of conventional land tools, innovative approaches such as localized and small-scale projects have been designed during the last two decades. The term pro-poor was introduced to emphasize the importance of land rights and tenure security for the poor. Meanwhile, it has become clear that conventional land tools did not have a monopoly on tenure security. People could also derive a sense of security from political statements or water bills, for instance. Additionally, communities have organized themselves to acquire land as a group and issue land rights for each individual member. Land rights and their administration no longer lie exclusively within the domain of statutory or customary institutions.

Land tools differ from one country to the next. Most can be classified as conventional land administration tools, whereby the relationships between land

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rights, parcels and persons are registered. As various laws and policies apply, the systems will be implemented differently and a range of land rights will be defined. In general, the implementation amounts to issuance of either customary certificates (under customary tenure) or occupancy licenses (under informal tenure). To a large extent, this thesis will deal with the variation among land tools. Alongside such forms of state intervention, communities themselves might develop and implement tools of their own. Local land tools will be studied here as well because they too might contribute to tenure security.

## 1.6 Problem statement

The problem addressed in this study is the lack of tenure security among the poor in peri-urban areas. Because the authorities fail to supply sufficient amounts of urban land, the citizens resort to informal means to get it, at the expense of tenure security. The poor in particular are vulnerable in the resulting informal developments. The main research problem is stated as the failure of authorities to provide tenure security for the poor in peri-urban environments. As set forth in the previous section, conventional land tools have failed to deliver tenure security. In reaction, innovative land tools have been designed and partly implemented. However, it is unknown whether these tools will provide tenure security. If innovative tools fail completely or in part to improve tenure security, the poor will be marginalized and remain trapped in poverty. These tools can only be improved and further implemented if their impact is fully understood.

## 1.7 Research outline and questions

It is unrealistic to think that the problem of tenure insecurity can be resolved by a single tool. The reason is that local situations differ too much with respect to legislative frameworks and socio-economic conditions. Instead, it would be advisable to adjust the existing tools or adapt their implementation. The main aim of this thesis, then, is to evaluate innovative land tools based on a framework that will be developed here.

The central, all-encompassing question of this thesis is as follows: *How can innovative land tools be evaluated and improved to provide tenure security for the poor in peri-urban areas in sub-Saharan Africa?*

The central problem is subdivided into four research questions:

1. *What are the characteristics of land access, land tenure systems, land tools and tenure security for the poor in peri-urban areas in sub-Saharan Africa and how do they relate to each other?*
  2. *Which criteria and indicators should be applied to evaluate innovative land tools?*
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3. To what extent can the innovative land tools be considered pro-poor, based on the evaluation criteria?
4. What can be learnt from the design and implementation of innovative land tools in the areas that have been studied?

## 1.8 Research methodology

The research methodology is derived from the central problematic. It was decided to adopt a case-study approach as the overarching research strategy. Yin (2009) states that a case study is appropriate when a ‘how’ or ‘why’ question is being asked about a contemporary set of events over which the investigator has little or no control. The main aim of this research is to evaluate innovative land tools with regard to their impact on poor households in peri-urban areas. Generally speaking, the key motivation to conduct a case study is the desire to study and demonstrate a social phenomenon in its natural context (Hutjes and Van Buuren, 1992). In addition, the case-study approach is commonly used in evaluative studies and in doctoral research on land administration (Zevenbergen, 2002; Çağdaş and Stubkjær, 2009; Arko-Adjei, 2011; Robertson, 2012; Ali, 2013) and is therefore taken as justification for using the case-study design here.

Yin (2009, p. 18) defines a case study as an empirical enquiry that “investigates a contemporary phenomenon within its real-life context, especially when the boundaries between phenomenon and context are not clearly evident.” Swanborn (2010, p. 22) adapts this definition by narrowing the focus to “detailed descriptions, interpretations and explanations that several categories of participants in the system attach to the social process.” Within this study, the impact of innovative land tools is evaluated in a number of places. In each one, it is investigated how people access land in peri-urban areas, which land rights and innovative land tools are applicable and what impact the innovative land tools have on poor households, especially with respect to tenure security. As will be pointed out in Chapters 2 and 3, the concepts of land rights, land tools and peri-urban areas are dynamic and thus difficult to define exactly. Consequently, according to Yin’s typology, the case studies have an exploratory as well as an explanatory character.

## 1.9 Case-study design

When designing a case study, several strategic decisions have to be made (Yin, 2009; Swanborn, 2010):

- What the unit of analysis is;
  - Which levels of investigation can be distinguished;
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- Whether to conduct single or multiple case studies;
  - Which case-study areas to select;
  - What data to collect;
  - How to analyse the data.

These points will be discussed consecutively in the following subsections.

### **1.9.1 Unit of analysis**

Although it is tempting to say that a specific peri-urban area forms the unit of analysis, that area is merely the context in which the analysis is carried out. Rather, the set of land tools is the unit of analysis, because it is the performance of those tools that we need to evaluate. One might ask whether land tools represent a social phenomenon. On the one hand, they may be described as administrative technicalities. On the other hand, people-to-land relationships are part of every society and land tools make those relationships explicit; thus, they may be described as a social phenomenon. The implementation of land tools has social and economic impacts. The effects on the households form the focal point of the research design. The context of land tools is broad, as land is relevant to almost all aspects of a society as a whole but also to individuals. Land pertains to the legal framework, socio-economic conditions, regulations on land-use planning, livelihoods, etc. For this study, that context was narrowed down to the state of play in peri-urban areas with their specific characteristics. Nevertheless, the context remains complex, even when typical rural concerns (tenure security relating to agricultural productivity) or urban issues (tenure security through conventional land tools) are left out of the picture.

As will be demonstrated in Chapters 2 and 3, there is a wide variety of tools, and several of them might be implemented in any given area. Therefore, this case study is a nested procedure, as several tools are evaluated in each one. The relevance of each of the land tools becomes apparent once the legal and institutional frameworks have been analysed at the national and settlement levels and classified according to the taxonomy discussed in Section 2.5.

### **1.9.2 Levels of investigation**

An issue related to the unit of analysis is the possibility of conducting the investigation at multiple levels. As the vignettes in Chapters 2 and 3 demonstrate, the legal and institutional frameworks are mainly described at the national level. However, the local level is important as well. Therefore, the settlement is included as a level of investigation. And because the studies concern the impact of land tools on households, the individual households are included and constitute the lowest level of investigation. These three levels are similar to those applied by UN-HABITAT and GLTN (2011): from the national level

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relating to the legal and institutional framework; through the settlement level relating to the legal status of land; and down to the household level relating to access to land and perceived tenure security. These three levels are also applied in the evaluation framework that is described in Chapter 4.

### **1.9.3 Single-case or multiple-case study**

The pursuit of security with respect to land tenure is a global concern. Due to rapid urbanization and problems surrounding the informal access to land, the concept of innovative tools is especially relevant to developing countries in general and sub-Saharan Africa in particular. Therefore, the impact of these tools is here evaluated for African countries; hence the need for a multiple-case study. A multiple-case study allows us to test the evaluation framework in several contexts and investigate similarities and differences between the outcomes. The present study consequently builds upon an embedded multiple-case study.

### **1.9.4 Selection of case-study areas**

The case studies deal with peri-urban contexts in sub-Saharan Africa. The selection of those contexts is two-staged: first a country is selected, then a settlement. In order to limit external influences but also for practical reasons, case-study areas were selected from places in Anglophone sub-Saharan Africa, consisting of around twenty countries.

#### **Country selection**

The following requirements for the selection of countries were set:

- Availability of peri-urban areas with multiple tenure systems, preferably statutory, informal and customary tenure all together;
- Availability of innovative land tools;
- No recent or ongoing research activities relating to peri-urban areas within the country, as far as this investigation could reveal.

Six countries were shortlisted; their characteristics are examined in detail in Chapter 3. On that basis, three countries were then selected for fieldwork: Namibia, Zambia and Botswana. The other three were considered less appropriate for various reasons. Kenya was not selected because little evidence was found on the existence of customary tenure in peri-urban areas. Uganda was dropped because of its limited progress on the implementation of the Land Act. Ghana was not selected because several studies had already been conducted there on land administration in peri-urban areas (Ubink, 2008; Nyametso, 2010; Arko-Adjei, 2011). Because the case studies are carried out in three countries, any external conditions that might affect the evaluation have to be taken into account. Some can be considered minimal due to the geo-

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**Table 1.2 Main characteristics of case-study areas**

	<b>Zambia</b>	<b>Namibia</b>	<b>Botswana</b>	
Settlement	Chazanga	Oshakati	Mogoditshane	Tlokweng
Implementation of innovative land tools	Not implemented	Being implemented	Implemented	Implemented
Estimated population	50,000	45,000	50,000	40,000
Status	Neighbourhood belonging to Lusaka (capital, 1.2 million inhabitants)	Independent town (regional capital)	Settlements adjacent to Gaborone (capital, 230.000 inhabitants)	

graphic proximity of the selected countries. Nevertheless, many other conditions could be substantially different.

### Settlement selection

Having selected the countries, the case-study areas at the settlement level remain to be selected. As will be described in Section 2.3.1, it is difficult to delineate peri-urban areas precisely. Nevertheless, priority will be given to areas that are urbanizing and where multiple tenure systems exist. The selection criteria are similar to those used to select the countries:

- Rapidly urbanizing areas at the fringes of urban centres;
- Co-existing multiple tenure systems: customary, statutory and informal;
- Various stages of implementation of innovative land tools.

The candidates for selection are cases with 'varying developmental phases'. According to Swanborn (2010), this strategy is applicable for studies looking into the factors of failure and success of innovations. Three phases are distinguished:

- Innovative land tools are not implemented;
- Innovative land tools are being implemented;
- Innovative land tools have been implemented.

The selection of case-study areas was supported by local experts. The following areas were selected:

- Peri-urban Lusaka (Chazanga), Zambia;
- Peri-urban Oshakati, Namibia;
- Peri-urban Gaborone (Mogoditshane and Tlokweng), Botswana.

In Botswana, two areas were selected because different problems existed in peri-urban Gaborone under the same land tool. This difference will be elaborated upon in detail in Chapter 7.

Table 1.2 summarizes the major characteristics of these areas. More detailed information is given when the case studies are described in the subsequent chapters. As discussed at the beginning of this section, one has to be aware that the selected area itself is not the unit of analysis; the analysis concerns the land tools.

The question to be answered now is what data has to be collected in each case-study area.

### 1.9.5 Data collection

Data is collected in accordance with the different levels of investigation. These coincide with the levels defined in the evaluation framework. The procedures for data collection at each level are discussed below. Later in this section, the main characteristics of the literature study and outline of the interview strategies that have been applied will be presented. The section ends with a list of the activities that have been carried out for each case study.

Data collection at the national level is focused on the legal and institutional framework. The main sources of data are the literature study and the interviews conducted with experts and officials. For each of the selected countries, cooperation was sought with an academic institution to support the fieldwork. The participating institutions were the Polytechnic of Namibia (Department of Land Management), the University of Zambia (Geomatics Department) and the University of Botswana (Department of Planning). During the first part of each fieldwork program, interviews were held with researchers from academic institutions, officials at the national government, representatives of Non-Governmental Organizations (NGOs) and, when available, independent experts. These interviews provided more detailed insight into the innovative land tools. The respondents also advised on which settlements to select for a case study. The literature study at the national level was carried out before visiting the case-study countries. In several instances, the respondents suggested other valuable literature, which has been used in this thesis as well.

Data collection at the settlement level is focused on the land tenure systems that are available and on the implementation of innovative land tools. Each case study was carried out in a particular peri-urban area. At this level too, the main data sources were the literature study and interviews. Each fieldwork program started off with interviews. Local officials, representatives of NGOs and, when available, Community Base Organizations (CBOs) and independent experts were interviewed to obtain an overview of the implementation of the land tools. They were also asked if they could serve as gate-keepers, which entailed approaching potential interviewees (households deemed suitable for individual interviews). In Oshakati, both the Oshakati Town Council (OTC) and members of the saving scheme served as gate-keepers. As will be discussed in Chapter 5, the OTC did not provide access to all targeted groups as respondents. The gate-keeper in Chazanga was the Ward Development Committee (WDC). In peri-urban Gaborone, the Ministry of Lands served as a gate-keeper by issuing a research permit.

Data collection at the household level is focused on the way people gain access to land, on awareness of their tenure situation and their perceptions of tenure security. In view of that focus, semi-structured interviews were deemed appropriate. The list of questions, providing guidance for the interview, is shown in Appendix A. Poor people were targeted as respondents

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and selected through purposive sampling (Russell Bernard, 2006); they were approached according to the size and appearance of their houses. Although an understanding of the legal and institutional frameworks at the national level is essential to the research, the situation of individual households is considered the most important outcome and is therefore given the most attention in each case study. A land administration system can be designed in a perfect way; however, if it is not properly used, it is of little value (Barry and Roux, 2013).

### **Literature study**

A slightly different approach to the literature study was taken for each level of data collection. Most data pertaining to the national level was derived from academic and legal publications, but some institutional reports prepared by international, national and local organizations were used as well. Illustrative material was drawn from newspaper articles. The outcome of the literature study at the national level, as reported for the six countries, is described in Chapter 3. It should be kept in mind that underexposure within the research domain was one of the criteria for selection of the settlements. Therefore, it is obvious that only a limited amount of academic literature was available at the settlement level. Grey literature, primarily reports prepared by councils and NGOs, was mainly used to describe the situation with respect to innovative land tools. Also at this level, newspaper articles were used for illustrative purposes.

### **Interview strategies**

The respondents fall into two types: householders and professionals. For later reference, all household interviews were recorded, after receiving consent. Because most interviews were held in a local language, they were carried out by an interpreter. The recordings were fully transcribed, and the transcriptions were used to rate the items in the evaluation framework. The professionals were national and local officials, representatives of NGOs and CBOs and independent experts. These interviews were not recorded, assuming that recording would hamper a free expression of standpoints. Instead, they were written out and sent for review to the professionals, although some of whom did not respond. In a few cases, additional information was required, so the respondents were visited or contacted by phone or email afterwards.

Semi-structured interviews are appropriate to capture the householders' perceptions of and experiences with land access and tenure security. According to Thorns (2012), research that is geared to an exploration of meaning and interpretation, rather than to the documentation of the frequency of occurrence, requires a qualitative approach. Perceptions may be captured using a survey strategy. Nonetheless, Bugri (2012), referring to Kitchin and Tate (2000), claims that questionnaires are not appropriate to capture experiences, atti-

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tudes and opinions, because they largely employ closed-ended questions, which can filter out meaningful information. Concerning perceived tenure security in particular, in order to know what people think, how and why they act as they do, semi-structured interviews are required. The concept of saturation was used to determine the number of interviews. According to Liamputtong and Ezzy (2005, p. 86), “saturation occurs when additional information no longer generates new understanding.” In this study, saturation was reached after interviewing approximately 25 to 30 respondents within each settlement. Referring to Mason (2010), this range lies within the range advised for qualitative interviewing, which ranges, depending on the type of research, between 5 and 60 respondents. Therefore, the samples used in this study are considered sufficient to capture the various means of land access, the ways land tools are implemented and the perceptions and experiences of households.

#### **Case-study activities**

Each individual case study was to a large extent carried out in the following steps:

- Conducting literature study at national level;
- Establishing cooperation with a research institute;
- Fieldwork: interviewing experts and officials at national level;
- Fieldwork: selecting a study area and conducting literature study at settlement level;
- Fieldwork: recruiting an interpreter;
- Fieldwork: interviewing local experts and officials;
- Fieldwork: reporting interviews and sending them back for review;
- Fieldwork: interviewing households;
- Fieldwork: making a preliminary evaluation by holding a research seminar at the cooperating research institute.

All case studies were carried out in the above order, as much as possible, and in a similar way by the same researcher. The fieldwork for each country took approximately six to seven weeks. Fieldwork in Zambia was carried out in one go; in Botswana and Namibia, it was split between the national and settlement activities.

### **1.9.6 Data analysis**

In order to evaluate the innovative land tools, the first task is to design an evaluation framework. This is accomplished in Chapter 4. In light of the literature study and interviews, the innovative tools applied in the settlements are evaluated according to the criteria and indicators set forth in the framework. The evaluation of innovative land tools is focused on households’ perceptions of and experiences with land access, tenure security and land tools.

Each indicator is rated according to the findings from the fieldwork. These may reflect the responses to one specific question at the household level or

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a mix of findings derived from the literature study and interviews. As stated earlier, the evaluation framework is tested in three contexts, allowing us to study similarities and differences among the outcomes for each setting. Afterwards, some of the lessons learned and a few recommendations for the future will be formulated with regard to the design and implementation of innovative land tools. The analytical strategy applied in this multiple-case study is called cross-case synthesis (Yin, 2009). The research design is therefore characterized as follows: a qualitative empirical evaluative embedded multiple-case study, using cross-case synthesis to answer the research questions.

## 1.10 Relevance of this study

### Academic relevance

The study of land tools is highly multidisciplinary. The subject can be viewed from diverse perspectives: legal, anthropological, social, economic, land-use planning, public policy, political, administrative, etc. Land tools can also be discussed in light of various policy ambitions: poverty reduction, equitable land distribution through land reform, prevention of land grabbing, post-conflict land management, slum upgrading and gender issues. The current set of land tools may be seen as the result of all prior multidisciplinary research and policy debates.

Many researchers have already published on land tools and land administration in informal settlements, describing the lessons learned and indicating good practices (Kombe and Kreibich, 2000; Huchzermeyer and Karam, 2006; Joireman, 2006; Martin and Mathema, 2006). Even so, much is still unknown about the levels of tenure security in informal settlements around the globe and particularly about how such levels develop over time (UN-HABITAT and GLTN, 2011). Generally speaking, land tools are most often implemented after the informal settlements have developed into high-density areas. Before the tools are implemented, people have been settling informally over long periods of time, unnoticed by or at least without intervention from any authority. So far, little research has been done on the impact of innovative land tools in peri-urban areas (Augustinus, 2004; Payne, Durand-Lasserre et al., 2009b). It is in the peri-urban context that informal settlements develop under the dynamics of tenure systems; hence the focus on peri-urban areas in this study.

This thesis may be said to contribute to the body of knowledge within the research domain, first of all because it is a multi-country study on land tools in peri-urban areas. Single-country studies have been conducted on land access and tenure security in peri-urban areas, notably in Ghana (Arko-Adjei, 2011) and Kenya (Hendriks, 2010). However, fewer scholars have undertaken a multi-country study. One of the few examples is a study by Rakodi and Leduka (2004) investigating land delivery mechanisms in peri-urban cities in six

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sub-Saharan countries. While those authors do focus on land delivery, they give only limited treatment to the impact of land tools on tenure security.

A second contribution of the present study comes from its particular angle on the performance of land tools. This is a popular research subject among land administrators and land surveyors. However, many performance studies take an institutional perspective. This thesis, in contrast, is also concerned with the effects on the beneficiaries, i.e., the land holders. In order to capture their perceptions on tenure security, qualitative methods are applied. For example, rather than determining how many land documents have been issued, this study seeks to reveal the impact of such documents on the beneficiaries.

Thirdly, it helps to fill a methodological gap. So far, an agreed standard and framework for the evaluation of land tools has been lacking. While a considerable amount of work has been done on land administration, as will be discussed in Section 4.2.1, there is no generally accepted framework for the evaluation of land tools. This study should therefore contribute to the development of such a framework as well as of uniform methods for research, analysis and reporting in this multidisciplinary research domain.

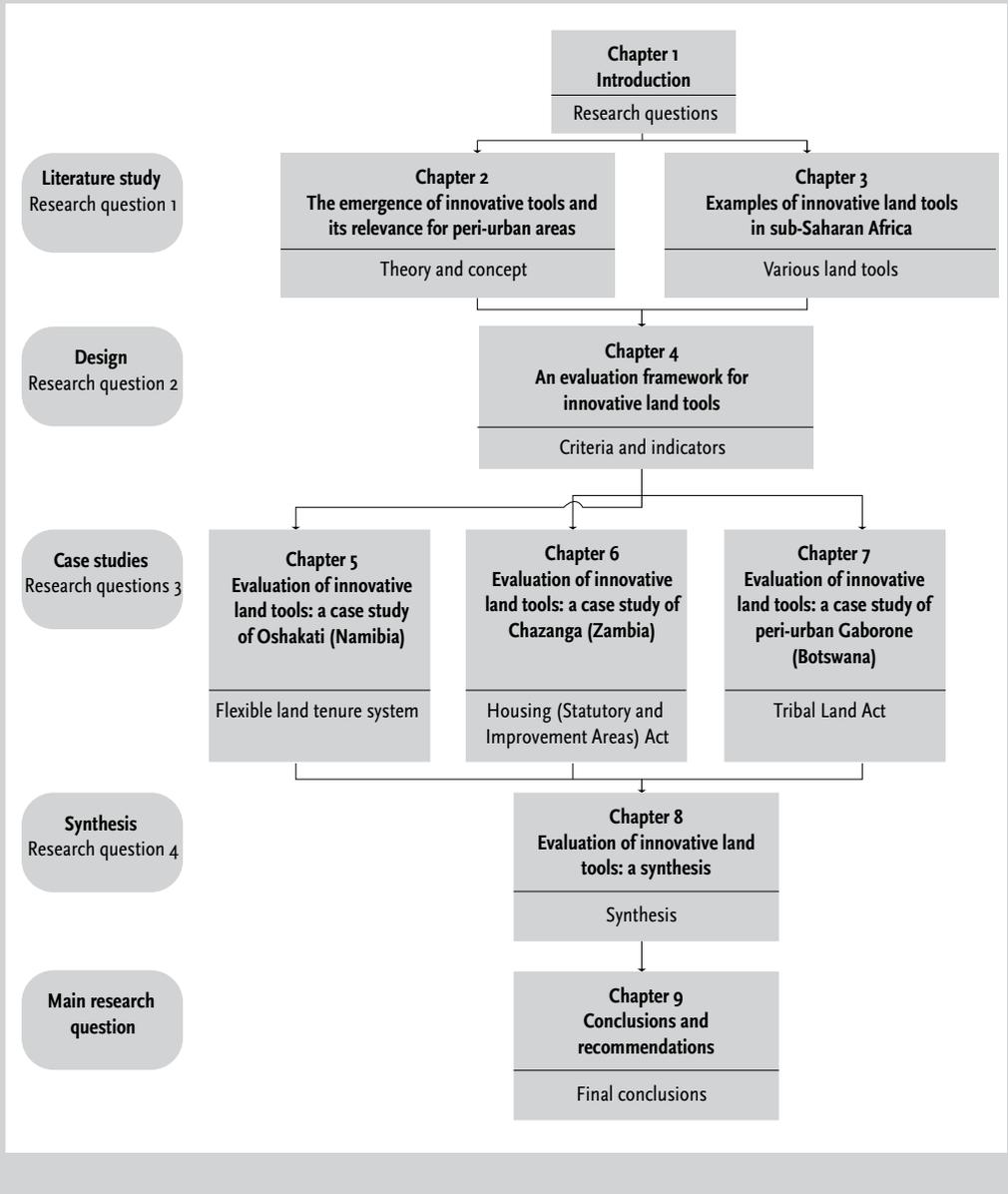
### **Social relevance**

This study has social relevance in the sense that it relates directly to poverty reduction, an aim that has been on the global agenda for decades. As mentioned earlier, probably the largest effort resorts under the Millennium Development Goals program, coordinated by the UN, which ends in 2015. Numerous organizations are involved in poverty reduction by means of land tools, each one bringing its own expertise and knowledge to bear. A short list may suffice to illustrate the range:

- International multilateral organizations: UN-HABITAT, World Bank, Food and Agricultural Organization (FAO), and Committee on World Food Security (CFS);
- Donor organizations active in promoting land administration: Millennium Change Corporation (MCC), Swedish International Development Cooperation Agency (SIDA), Norwegian Agency for Development Cooperation (NORAD), German Agency for International Cooperation (Deutsche Gesellschaft für Internationale Zusammenarbeit, GIZ), and United States Agency for International Development (USAID);
- International NGOs and networks: Centre on Housing Rights and Evictions (COHRE), Cities Alliance, Slum Dwellers International (SDI), and Global Land Tool Network (GLTN);
- International professional bodies: International Federation of Surveyors (FIG), International Academic Association on Planning, Law and Property Rights (PLPR), and International Alliance on Land Tenure and Administration (IALTA).

The findings of this study should contribute to the improvement of innovative land tools. Through the implementation of such tools, the livelihoods of the poor in peri-urban sub-Saharan Africa can be improved.

Figure 1.3 Thesis structure



## 1.11 Structure of this thesis

The structure of this thesis is visualized in Figure 1.3. Following this introduction, Chapter 2 will define the main terms used in this thesis. It will also cover in detail the theories behind the research problematic, give an overview of the latest research on the subject and formulate working definitions for the phenomena to be discussed in this study. It is mainly based on a literature review although a few experts from the Netherlands have been interviewed as well

(see Appendix C). Chapter 3 will illustrate how land tools are applied in peri-urban areas in a sample of sub-Saharan countries. In light of these examples, a selection of case-study areas has been made. Chapters 2 and 3 will answer the first research question on the basis of a literature study.

Chapter 4 will answer the second research question through the design of an evaluation framework, where the criteria and indicators are defined. The subsequent chapters will present the fieldwork results from Namibia, Zambia and Botswana. Chapter 5 will deal with Oshakati, a small city in Northern Namibia, where the Flexible Land Tenure system has been piloted. Chapter 6, on Zambia, will deal with Chazanga, a peri-urban settlement in Lusaka. It is largely concerned with the anticipated implementation of the Housing (Statutory and Improvement Areas) Act in this area. Chapter 7 will deal with two peri-urban settlements around Gaborone, the capital of Botswana, namely Tlokweng and Mogoditshane, where the Tribal Land Act has been implemented. Together, Chapters 5 through 7 will provide answers to the third research question. Results from the literature study and fieldwork have been partly published in several conference proceedings, namely Van Asperen (2007), Van Asperen and Zevenbergen (2007), Van Asperen (2011) and Van Asperen and Zevenbergen (2012). In order to improve readability, references to these publications have been omitted.

Chapter 8 will discuss the findings drawn from the case studies. It will examine the impact of the land tools that have been applied, the problems related to land access, the formalization issues and a review of the case study methodology as applied in this study. Thus, this chapter will answer the fourth and last research question. Chapter 9 will wrap up the thesis by drawing the main conclusions about the central research problematic. It will end with recommendations for researchers, policy makers and professionals regarding the design and implementation of land tools.

A final note concerns the monetary values used in this thesis. All values are given in the local currency along with the value converted to USD. The exchange rate was, as far as possible, taken from the web<sup>2</sup>; in the event it was cited in a published source, the exchange rate of January 1<sup>st</sup> of the publication year was used; in case the amount was discussed during fieldwork, the exchange rate on a day midway through the fieldwork was used. Consequently, corresponding USD values of equal values in a local currency may vary, due the difference in reference date.

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<sup>2</sup> [www.xe.com](http://www.xe.com) or <http://www.oanda.com/currency/historical-rates/> in case of rates before 2000.

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## 2 The emergence of innovative land tools and its relevance for peri-urban areas

“Land policies are of fundamental importance to sustainable growth, good governance, and the well-being of and the economic opportunities open to rural and urban dwellers – particularly poor people. ... providing poor people with access to land and improving their ability to make effective use of the land they occupy is central to reducing poverty and empowering poor people and communities” (Deininger, 2003, p. ix; xx).

### 2.1 Introduction

This chapter gives an overview of land tools and related issues with special reference to peri-urban areas in sub-Saharan Africa. To provide the academic background and conceptual framework for this thesis, it will define the key concepts used throughout this thesis. Because all the key terms are interrelated, some might appear before being properly defined. In such cases, the definition will follow later. Being based on a literature review, this chapter also reflects on current scientific debates about land tools and land administration with respect to their application in peri-urban areas.

Within the land administration domain, land can “*be treated as embracing all fixed entities, including crops and trees as well as buildings*” (Economic Commission for Europe, 2005, p. 17). The term is often taken as a synonym for real property and real estate. Nevertheless, like the work by UN-HABITAT, IIRR et al. (2012), the focus of this research is on land as a surface layer; therefore, erected buildings and other entities are not automatically included when the term land is used here.

This chapter first discusses the concept of innovative land tools in general terms. Because the delivery of tenure security is one of the main aims of those tools, tenure security will be examined closely. That discussion is followed by a general characterization of peri-urban areas, focusing on land tenure and poverty issues. The last section is dedicated to the current debate on the design and implementation of innovative land tools in peri-urban areas. By the end, the first research question should be answered: *What are the characteristics of land access, land tenure systems, land tools and tenure security for the poor in peri-urban areas in sub-Saharan Africa*, and how do these concepts relate to each other?

### 2.2 Innovative land tools

Chapter 1 briefly explained the need for innovative land tools. It was suggested that land tools must be tailored to local needs and circumstances to be ef-

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fective for the poor. This section delves into such localization concerns by examining the concept of land tools, the failure of conventional tools and the need for innovation. The section ends with an explanation of land tenure systems and tenure security, providing a conceptual framework for the application of land tools.

### **2.2.1 The concept of land tools within the land administration domain**

The term land tools has become fashionable since the beginning of this century. Before that, the terms land administration, land registration and land titling were commonly used. For each term, there are various definitions in the literature (Dale and McLaughlin, 1998; Economic Commission for Europe, 2005; Williamson, Enemark *et al.*, 2010). The common elements are that they are processes relating to the tenure (which will be discussed in detail in Section 2.2.4), use and value of land. Some definitions include land development and incorporate non-governmental agencies, while others are restricted to determining, recording and disseminating information, which are processes carried out by governmental agencies. Land registration is a vital part of land administration and concerns the registration of land rights. The definition of land administration used in this thesis is as follows: the processes of determining, recording and disseminating information about land tenure, value and use of land when implementing land management policies. This definition has been adapted from the one used by the Economic Commission for Europe (2005) and Williamson, Enemark *et al.* (2010), whereby two changes have been made. First, the term land tenure is preferred to land ownership, because ownership is considered one specific type of tenure. Secondly, the subordinate clause 'run by government' has been deleted because land administration, or parts of it, may be executed by non-governmental actors. The adapted definition therefore allows for a wider approach to land rights; it is not restricted to legal ownership alone.

Land administration and registration systems have successfully supported economic growth in several western countries. Such systems are characterized by a supportive legal framework, effective and efficient institutions, recognition by its users and high technical specifications (Burns and Dalrymple, 2006; Williamson, Enemark *et al.*, 2010). They can be referred to as conventional land administration systems or conventional land tools. In order to support economic growth, such systems have been copied and implemented in the developing world. In general, this was not an overall success, as will be explained below.

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## 2.2.2 Failure of conventional land administration

Several heterogeneous arguments have been put forward to explain why conventional land administration has failed in large parts of sub-Saharan Africa. They can largely be clustered into four reasons. First, most sub-Saharan countries lack the capacity to implement a high-standard land administration system (Augustinus, 2003). Conventional land administration systems are considered complex, slow and expensive (Durand-Lasserve and Royston, 2002; Arko-Adjei, 2011; Reerink, 2011). Estimates for developing countries state that less than 30% of the land is covered by such systems (Deininger, Augustinus et al., 2009).

Secondly, Payne, Durand-Lasserve et al. (2009a) have found no significant evidence that poverty levels are reduced through formal land titling. Such systems could even fail to deliver tenure security to the poor; they tend to push poor people off their land rather than strengthen their rights. People might be forced to move to other informal settlements; they might be involved in so-called distress sales, getting cash for their registered land right by selling the property. This process is also denoted as gentrification, defined as *“the process of neighbourhood change caused by the influx of middle classes into working-class areas, thereby displacing working classes”* (Van der Land, Curley et al., 2012, p. 275). Huchzermeyer (2008) argues that slum upgrading or improvement is preferred to demolition and redevelopment. Nevertheless, even in cases of upgrading, a potential danger of landlessness remains among the poor (Antwi, 2006). Although people may get a higher price for their property compared to a non-registered informal property – indeed, land registration normally increases the value of urban land – it also becomes less accessible to low-income groups (Rakodi and Leduka, 2004). Conventional land administration and formalization may therefore stimulate the process of unauthorized development instead of reducing it (Payne, 2001).

Durand-Lasserve and Selod (2009) add that the poor may not have the means to pay for the formalization itself. These people are in some cases referred to as professional squatters: they will continue to squat in another area. Additionally, local people might resist the arrival of outsiders who wish to settle (Platteau, 1995; Fourie, 2002), often the rural poor looking for urban opportunities. Another reason for inadequate access and use by the poor is the tendency of the elite, bureaucrats, and even land professionals to manipulate the formalization process because they can deal better with the costly and cumbersome procedures, as has been discussed in Section 1.5.

Thirdly, conventional land administration systems are not always appropriate for the range of tenure types and land rights found in real-life situations, such as the rights commonly found in informal settlements and customary areas (Augustinus, 2010). Therefore, a continuum of land rights has been designed, which will be discussed in Section 2.3.4.

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Fourthly, some scholars (notably Lavigne Delville, 2002) recommend taking local institutions into account when developing land administration systems. According to him, local mechanisms cannot be supported by a standard model alone; it is better to use a progressive crafting process of rules and procedures. However, localized approaches are not favoured by everyone. Dekker (2003), for example, claims that land administration requires radical standardization and national codification to be effective. Nevertheless, there is growing consensus on the need to adapt the concept of innovative land tools.

### 2.2.3 Innovative land tools as a solution

Innovative land tools are a conceptual answer to the challenges created by the failure of conventional land administration systems. The toolbox approach, which is rather new within the land administration domain, is propagated by the Global Land Tool Network (GLTN) coordinated through UN-HABITAT. It is a network organization with partners from academic circles, UN and World Bank organizations, professional bodies like the International Association of Surveyors (FIG) and NGOs. The network is active in disseminating the concept of land tools in academic, governmental and grass root circles. The toolbox contains conventional tools (land administration and registration) and innovative ones. The latter have been added to overcome the problems encountered when implementing conventional tools. The toolbox approach entails the selection and implementation of appropriate tools, given a certain context in a country. These tools can be applied for various aims: for example, to support a formal land market, to design and implement a land policy, to improve land-use planning, to create and define land units, etc. (Williamson, Enemark *et al.*, 2010). Unfortunately, no generally accepted definition and classification of land tools is available yet. Through the publications and presentations of UN-HABITAT and GLTN at different forums, various descriptions have been circulated, the latest one formulated in UN-HABITAT, IIRR *et al.* (2012, p. 8), which has been partly used in Section 1.5: “A land tool is a practical way to solve a problem in land administration and management. It is a way to put principles, policies and legislation into effect. The term covers a wide range of methods: from a simple checklist to use when conducting a survey, a set of software and accompanying protocols, or a broad set of guidelines and approaches.”

UN-HABITAT, IIRR *et al.* (2012) define eighteen innovative tools (see Table 2.1). The report lists a number of characteristics or goals: e.g., meeting the needs of all members of the population, including the poor, thereby reducing poverty and promoting social cohesion. These tools can be political, legal, economic, organizational, administrative or a combination. It is clear from the above discussion that land tools cover a wide variety of interventions with different aims.

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**Table 2.1 Land tools according to GLTN**

	<b>Theme, issue</b>	<b>Summary, purpose of land tool</b>
<b>1</b>	<b>Access to land and tenure security</b>	<b>Strengthening citizens through access to land and property</b>
1a	Enumerations for tenure security	Participatory methods of gathering information on population size, ownership and infrastructure in a slum or other area
1b	Building on the continuum of land rights	Taking the range of types of rights to land, from formal to informal, into account to improve tenure security
1c	Maintaining deeds or titles	Systems of recording or registering formal land documents and keeping them up to date
1d	Socially appropriate adjudication	Ensuring the process of ascertaining the rights to parcels of land is fair for women and other disadvantaged groups
1e	Statutory and customary tenure	Linking customary tenure into formal land administration systems
1f	Co-management approaches	Joint management of land by local communities with other actors: such as a government agency, the private sector or an NGO
1g	Land record management for transactability	Simplified ways of keeping land records to allow land to be bought, sold, rented, etc.
1h	Family and group rights	Ways to allocate tenure rights to families or groups rather than to individuals
<b>2</b>	<b>Land management and planning</b>	<b>Securing land and property rights for all</b>
2a	Citywide slum upgrading	Improving infrastructure and basic services for slums, and regularizing tenure arrangements
2b	Citywide spatial planning	Planning the use of land in a city in collaboration with local residents
2c	Regional land-use planning	Planning land use in a larger region
2d	Land readjustment (slum upgrading and/or post crisis)	Rearranging the land ownership and use to improve conditions and develop an area
<b>3</b>	<b>Land administration and information</b>	<b>Creating opportunity through property rights</b>
3a	Managing information on spatial units	Developing new approaches to obtaining and managing spatial information about land and people's relationships to it
3b	Costing and financing of land agencies' budget approach	Improving the budgeting of land agencies
<b>4</b>	<b>Land-based financing</b>	<b>Transforming society by raising funds from land</b>
	Land tax for financial and land management	Ways to tax land that raise revenue, discourage speculation, and encourage improvement
<b>5</b>	<b>Land policy and legislation</b>	<b>Changing structures through land policies</b>
5a	Regulatory framework for private sector	Designing laws and regulations within a public-private partnership that also benefit the poor
5b	Legal allocation of the assets of a deceased person (estate administration, HIV/aids areas) In process	Ensuring that the property of people who die without leaving a will is dealt with fairly
5c	Expropriation, eviction and compensation	Preventing evictions, and compensating evicted people for their loss

Sources: UN-HABITAT, IIRR *et al.*, 2012 and www.glt.n.net

### Pro-poor land tools

Williamson, Enemark *et al.* (2010) stress that the full range of land tools cannot be defined. The toolbox is always 'a work in progress', suggesting the continuous development and improvement of innovative land tools. Since approximately 2000, the prefix 'pro-poor' has become fashionable; pro-poor land tools are currently a focal point. Although a generally accepted definition is lacking here as well, there is a common understanding. Williamson, Enemark *et al.* (2010) distinguish pro-poor from land market tools; essentially, pro-poor tools are based on socially derived systems, while land market tools focus on legal systems. Land market tools will thus resemble conventional land administration tools because these support the formal market. In light of the GLTN definition of a pro-poor land policy (UN-HABITAT, 2007c) and the range of pro-poor land tenure reforms described by Hanstad, Proster-

man *et al.* (2009), pro-poor land tools can be defined as tools which increase the ability of the poor and other marginalized groups to gain or protect access and secure rights to land. Such tools should be, for instance, simple and easy to understand, flexible, scalable, should involve local people in decision making, be low-cost, use local languages, be applied in local institutions and so forth (Van der Molen, 2006; Sjaastad and Cousins, 2009; Toulmin, 2009; Williamson, Enemark *et al.*, 2010; Zevenbergen, Augustinus *et al.*, 2013). A good example of a pro-poor tool is the Social Tenure Domain Model (STDM), which is based on the conventional Land Administration Domain Model (LADM). The LADM standardizes the semantics of the land administration domain on top of the agreed foundation of basic standards for geometry, temporal aspects and cadastral measurements and has been declared an ISO standard (ISO 19152:2012). Nevertheless, it was observed that LADM dealt mainly with conventional land administration systems and did not model customary and informal tenure systems. To fill that gap, STDM was designed, thereby complementing LADM with other types of tenure and occupation (Lemmen, 2010; Lemmen, 2012). One example of improvement is the possibility to register overlapping claims, which is impossible in conventional tools. The characteristics of land tools specific to peri-urban areas will be described in detail in Section 2.4.

### **Innovative or pro-poor?**

The term pro-poor seems to have gained currency only relatively recent, whereas some non-conventional land tools were applied much earlier. For example, formalization of informal settlements has been implemented since the 1960s. Instead of using the adjective pro-poor, this study uses the word innovative to highlight the contrast with the conventional tools. Conventional land tools are not pro-poor; therefore innovative land tools have to be developed, based on pro-poor principles. Additionally, using 'innovative' instead of 'pro-poor' avoids the impression that all innovative tools have been developed in the last decade; in reality, innovative tools may date back to earlier times.

Conventional tools can be considered general and professional tools, according to the classification of Williamson, Enemark *et al.* (2010). These may be turned into innovative land tools by applying pro-poor principles. The definition of land tools given above suggests a high level of innovation, so no new definition of innovative land tools will be offered; actually, the word innovative itself captures the difference with conventional land tools.

Other scholars, notably Mostert (2011), differentiate between a soft and hard approach to land administration. The soft approach relates to decentralized formalization and the hard one to centralized and computerized land administration systems. The two approaches coincide largely with innovative tools and conventional tools respectively, although she adds that the distinction may be difficult to maintain in some cases. The question is, to which

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extent the innovative tools can be considered pro-poor. Therefore, instead of evaluating pro-poor land tools, in this study innovative land tools will be evaluated according to pro-poor principles. A key aspect of land tools is the delivery of security of tenure (see Theme 1 of the land tools in Table 2.1), which will be discussed below.

#### **2.2.4 Land tenure**

Before discussing the various perspectives of tenure security, it is important to understand land tenure. It is defined by UN-HABITAT and GLTN (2011; p. 5) as *“the way in which land is held or owned by individuals and groups, or the set of relationships legally or customarily defined by people with respect to land. Tenure reflects relationships between people and land directly, and between individuals and groups of people in their dealings with land.”* Land tenure is concerned with the rights, restrictions and responsibilities (or obligations) people have with respect to the land. As such, it has social, legal, economic and religious dimensions. In particular, it relates to social conventions and arrangements with respect to the management and use of land for existence and production (Dekker, 2003; Deininger, 2003).

Several tenure systems may co-exist within one country. Studying land tenure requires a thorough knowledge of the local situation, the people and their beliefs. People might have different views on land and those are based on deep traditions. These views do not necessarily coincide with political systems and/or governmental policies: for example, land is not automatically a commodity in a market economy or a communal asset in a socialist setting. In sub-Saharan Africa, multiple tenure systems are a common phenomenon in peri-urban areas, as will be described in detail in Section 2.3.2.

In some reports, for instance Payne (2001) and UN-HABITAT (2004), tenure systems are further sub-classified by subtenures like freehold tenure, leasehold tenure, etc. This further classification is indeed valid because it continues to specify the way the land is held in a particular system. In this study, subtenures are regarded as land rights within a particular tenure system. The tenure system therefore determines the variety of land rights that may exist, which implies that any land right is related to one particular tenure system. Individual land rights will be discussed in Section 2.3.4.

#### **2.2.5 Tenure security**

One of the key aims of land tools is to improve tenure security. Tenure security is a compound phenomenon, which makes it difficult to define, let alone measure (Dekker, 2005; Van Gelder, 2010; UN-HABITAT and GLTN, 2011). Methods to determine levels of tenure security are discussed in Sections 4.4.2 and 4.4.3. As the definitions of tenure security have evolved over time, these vary,

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depending on the context of the research in question (see for example Arnot, Luckert *et al.*, 2011). Therefore, the concept will be discussed from various perspectives: legal versus economic, rural versus urban, probability of eviction and objective versus subjective. The discussion will lead to a working definition, which will be given at the end of this section.

The starting point is that people have security of tenure if they are secure or safe in their holding of land (Rowton Simpson, 1976). Tenure security is one of the most prominent features within the land administration domain. Why is it so important? It allows the holder to use the land on a continuous basis, free from imposition or interference from outside sources, and confers the ability to reap the benefits of labour and capital invested in that land, either in use or upon transfer to another holder (Place, Roth *et al.*, 1994). Security of tenure therefore seems to have both a legal and an economic dimension.

#### **Legal and economic dimension**

The legal dimension relates to the number and types of rights which are offered, like use and transfer, the duration of the right and assurance. The economic dimension relates to the economic benefits: for instance economic exploitation and the possibility to access credit by using the land as collateral (Brasselle, Gaspard *et al.*, 2002; De Soto, 2000; Deininger, 2003; Gulyani and Connors, 2002; Nabutola, 2005; Place, Roth *et al.*, 1994; Smith, 2005).

Van Gelder (2009) criticizes the breakdown of tenure security into these two dimensions, arguing that although they might be essential to generate economic activity, they are not intrinsic to tenure security itself. A direct relationship between tenure security and investment behaviour is hard to prove, due to methodological issues. First, tenure security may increase investment, whereas investment may increase tenure security as well. Secondly, the variables involved are difficult to quantify (Brasselle, Gaspard *et al.*, 2002; Payne, Durand-Lasserve *et al.*, 2009b). Some scholars, for example Abdulai (2006), focus on the legal dimension of tenure security, breaking it down into a clear definition, duration and recognition of land rights, clear boundary demarcations and availability of land right enforcement institutions. However, when linking tenure security with poverty reduction, as will be discussed in Section 2.5, one cannot ignore the economic dimension.

According to Gulyani and Connors (2002), secure land tenure may also be beneficial to local authorities in terms of the possibility of service delivery and property taxation. However, these advantages are more generally related to the formalization of land rights than strictly to tenure security.

#### **Rural versus urban**

From the perspective of economic production, tenure security is considered more important in rural than urban areas. Continued use of the land for agricultural purposes gives the land holder an opportunity to enjoy the economic

benefits. For small-scale farmers, tenure security is vital, as their livelihoods fully depend on the land they cultivate. The legal dimension, particularly protection against eviction, is often emphasized in urban settings, the reason being that people should be able to live decently and without fear (Lavigne Delville and Durand-Lasserre, 2008). Or, as Atuahene (2004) states, within the rural context the productivity of land is important, whereas the urban environment relates to providing opportunities to accumulate physical capital and develop human capital. Reerinck (2011), while studying informal settlements in Indonesia, defined tenure security simply as the protection of land holders against involuntary removal from the land on which they reside, unless through due process of law and payment of proper compensation. UN-HABITAT (2003) concludes that the threat of eviction is the key factor determining the level of investment and related decisions. The report therefore describes tenure security as *“the right of all individuals and groups to effective protection by the state against forced evictions”* (UN-HABITAT, 2011, p. 19).

### **Probability of eviction**

Under international law, forced eviction is defined as *“the permanent or temporary removal against their will of individuals, families and/or communities from the homes and/or land which they occupy, without the provision of, and access to, appropriate forms of legal or other protection”* (UN-HABITAT and Cities Alliance, 2011, p. 6). Dekker (2003) formulates a definition in similar terms, adding that loss of property in a secure tenure system can only happen through a customary ruling or formalized expropriation with fair compensation.

A low probability of eviction may be referred to as passive tenure security, which has a strong legal component. The legal dimension of tenure security also relates to boundary issues and secondary rights, as will be discussed in more detail in Section 2.4.5. Additionally, definitions often focus on eviction by the state. However, evictions might stem from other institutions: traditional authorities, private landowners, gangs, neighbours, family members, etc. may lawfully or unlawfully evict (Dekker, 2003; Van Gelder, 2009). Nevertheless, according to UN-HABITAT and GLTN (2011), being free from the risk of eviction is not sufficient for households to improve their livelihoods. Unlike passive security, active tenure security relates to the possibility of transferring land rights, for instance through sale or inheritance (UN-HABITAT, IIRR et al., 2012). Active security is strongly related to the economic component of tenure security, as it enables the land holder to get a return on investment.

### **Objective and subjective tenure security**

The probability of eviction is related to threats and fear, suggesting an objective and subjective dimension of tenure security. The objective dimension concerns the nature, content, duration and enforceability of the rights, state guarantees, quality of boundary descriptions and conflict handling. In con-

trast, the subjective dimension concerns the land holders' perception of the security of their rights and the degree of confidence about their continuous use of the land (Dekker, 2003, citing Stanfield, 1995; Kanji, Cotula *et al.*, 2005).

The objective dimension resembles legal security as described above, while the subjective dimension relates to perceived tenure security, which is often referred to as *de facto* tenure security. According to Williamson, Enemark *et al.* (2010), the ultimate level of tenure security has been reached when beneficiaries are confident about land-related processes. Both Zevenbergen (2002) and Barry, Roux *et al.* (2012) endorse the paramount importance of trust; when the land administration system is not trusted, it will not be used. This will be discussed briefly in Section 4.2.1.

Van Gelder (2009) refined the concept of tenure security by separating *de facto* tenure security from perceived and legal security. He defined *de facto* tenure security at the settlement level by describing both its intrinsic and extrinsic subcomponents. Intrinsic components refer to the age and size of the settlement as well as to the level and cohesion of community organization. The extrinsic component is determined by third-party support, the provision of services, and the registration or census of populations and addresses. Durand-Lasserve (2006) lists similar factors that reduce the probability of evictions. In this study at hand, *de facto* tenure security is believed to be contained within perceived security. Consequently, only legal and perceived tenure security are considered here. Van Gelder's study dealt with informal settlements in Buenos Aires. Most informal settlements in South America arose as a result of land invasion by organized communities. Under such circumstances, it is possible to isolate *de facto* tenure security from perceived security, as he did. However, large-scale land invasions are rarely reported in sub-Saharan Africa. The few examples found concern an invasion by a group of families in Ghana (Akrofi and Whittal, 2011) and squatter invasions in South Africa (Huchzermeyer, 2001).

Van Gelder (2010) argues that the components of tenure security do not have to be consistent across the definitions. This is reflected in the emphasis that several definitions of tenure security put on perceptions rather than legal rules (Dekker, 2005; Hanstad, 1998; Place, Roth *et al.*, 1994). Under the assumption that conventional land tools deliver high levels of legal security, these tools are not considered the only means to ensure tenure security. Accordingly, the emphasis on implementing conventional land administration in the previous century has shifted towards the implementation of more innovative methods, which take perceptions into account as well.

### **Tenure insecurity**

The opposite of tenure security is, obviously, tenure insecurity. Although people might take some level of insecurity for granted to get easy and fast access to land, structurally it has a negative impact on the situation of the poor

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in the medium and long term (Durand-Lasserve, 2006). Besides problems related to land access, which will be discussed in detail in Section 2.3.3, there is an array of different sources of tenure insecurity: internal conflict; encroachment by outsiders and/or interaction with state officials; absence of legal documents defining land rights or existence of multiple documents describing the same competing rights for different people over the same piece of land (Fitzpatrick, 2005). Evidently, tenure insecurity has objective and subjective dimensions similar to tenure security.

### **Working definition of tenure security**

As may be clear from the above discussion, the study of tenure security can take different starting points: urban or rural, legal or economic, passive or active. And within the concept of tenure security, different components could be emphasized, such as *de facto*, *de jure* and perceived tenure security. This study takes the peri-urban environment and the legal perspective as its starting points. Extending the definition of Reerinck (2011), tenure security is consequently defined as the protection of land holders against any infringement by any third party of any of their land rights, unless through due process of law and payment of proper compensation. Protection should be interpreted as being derived from the legal framework and as perceived by the land holders. Tenure security is therefore considered to consist of a legal (*de jure*) and a perceived (*de facto* included) component

Having discussed the basic characteristics of land tools and their main aim, namely to deliver tenure security, the following section will examine the specific characteristics of peri-urban areas.

## **2.3 Peri-urban land issues in sub-Saharan Africa**

### **2.3.1 The dynamic nature of peri-urban areas**

Peri-urban areas are easy to characterize, although it is difficult to define them precisely. A starting point is to describe them as an area of urban settlement distant from the city centre (Mugnano, 2012). Obviously, such areas are characterized as transitional zones between rural and urban areas, where distinct boundaries are non-existent. Iaquina and Drescher (2000) prefer to describe peri-urban areas as a continuum, albeit one that is not necessarily smooth or one-dimensional. To them, proximity to the city is not essential; they emphasize the intensification of human life and activity. Therefore, the dynamic nature of peri-urban areas is their key characteristic; social forms and arrangements are created, modified and discarded, which might result in both conflict and social evolution.

From an economic perspective, peri-urban areas offer households spatial

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and economic opportunities to reduce risks (Kessides, 2006) or pursue multiple livelihood strategies (Home, 2004) such as urban agriculture or the phenomenon of white-collar farmers. The dynamic nature of peri-urban areas is also confirmed by Mbiba and Huchzermeyer (2002), who suggest that in sub-Saharan Africa such areas are dominated by conflicts related to the access, control and use of land-based resources. With respect to land tenure, Kasim Kasanga, Cochrane *et al.*, (1996) draw attention to an institutional transition from customary to statutory tenure, as already touched upon in Section 1.3. It is evident that this tenurial transformation is of key importance within the present study. Therefore, peri-urban areas are defined here as areas at the periphery of urban centres, transforming from rural into urban land use under dynamic tenurial changes, as has been pointed out in Section 1.3. While urban land has many uses – residential, commercial and recreational, in the main – the focus of this research is on residential land use.

### 2.3.2 The existence of multiple tenure systems

As discussed in Chapter 1 and Section 2.2.4, peri-urban areas are often characterized by the existence of multiple tenure systems. Various tenure systems exist, generally classified as statutory, religious, customary and informal land tenure systems (Lavigne Delville and Durand-Lasserve, 2008; Nkwae, 2006; Payne, 2011). Whereas religious land tenure systems are not encountered in this study, the other three types will be discussed below. One of their main distinguishing features is that statutory systems are codified, while informal and customary systems are not. As mentioned in Section 2.2.4, land rights, responsibilities and restrictions are defined within each of the tenure systems.

#### Customary tenure systems

The indigenous tenure system of sub-Saharan Africa is customary tenure, which Williamson, Enemark *et al.* (2010, p. 451) define simply as “*the holding of land in accordance with customary law.*” Consequently, it is a complete legal system. Most customary systems have institutions for handling conflicts, like customary courts, and are widely accepted. Rowton Simpson (1976; referring to United Nations, 1966) emphasizes that customary land management is recognized as legitimate by the community; it is not compelled by brute force or a government statute. The land rights and the rules governing their acquisition and transfer are generally known though not normally recorded. Because pressure on land is increasing in many customary areas, transfers tend to be written down nowadays, although often in an unstructured way and on an ad hoc basis (Fitzpatrick, 2005; Lavigne Delville, 2007). In customary law, land rights are often broadly divided into allodial and usufruct rights. Allodial rights are free of any superior claim (Home, 2012). Usufruct rights involve the use of land to which the user does not hold allodial rights. This also suggests

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a hierarchy, although Fourie (2002) warns that it is not comparable to the one known in common and civil law. Instead of abstracting lesser rights from a title, social units under customary tenure hold equal rights and may form competing coalitions within the hierarchy, both vertically and horizontally.

One of the main characteristics of customary tenure is the reciprocal relationship between membership of the family, tribe or clan and access to land (Berry, 1984; Platteau, 2001). In general, any member of the group can return to his or her village and is entitled to use a piece of land, independent of the period of absence. Outsiders – that is, people not linked to the family, tribe or clan – may also negotiate access to land through the traditional authority, although conditions may differ. Another distinguishing feature is that traditional authorities allocate unappropriated land (Mabogunje, 1992). Conversely, unused land reverts to communal land.

Customary land rights are often linked to specific uses like agricultural fields – even for future use when shifting cultivation is applied – or grazing areas and cemeteries. Evidently, many land claims are neither physically visible nor registered, though these claims are assumed to be known and understood by all members of the community. Secondary or derived rights (already mentioned in Section 2.2.5) can be defined in all law systems and include rights of passage, access, etc., though these are particularly important in customary systems. They often refer to collecting resources like fruit, firewood and herbs from communal land and may contribute to the livelihoods of certain, often poor, people. In customary law systems, the situation pertaining to land rights can be complex. For example, even though the land may be physically accessible to everyone, the right to pick fruit from trees may be restricted to a certain group, while the land itself is cultivated by one person only. Consequently, multiple rights may exist on the same piece of land (Deininger, 2003).

Several customary systems may co-exist within one country, as it may be populated by various social groups and tribes. However, differences and similarities between various customary systems within a country are seldom discussed. An exception within the African context is Chileshe (2005), who discusses the customary land tenure of the Bemba and Lamba tribes in Zambia in detail. Although one may consider customary tenure outdated, it has proved to be an efficient and cost-effective means of providing tenure security to the land holders (Deininger, 2003; Fitzpatrick, 2005).

### **Statutory tenure systems**

Statutory tenure is based on land law, which is drafted and implemented by statutory institutions. There are two main sources of land law: common law and civil law. Common law is rooted in the feudal system in England and found nowadays in the UK, USA and former British colonies. It is largely based on court decisions, which are deemed to reflect the norms of society. Civil law originated in the Roman Empire. After the French Revolution, laws

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were written down, codified, and based on the norms and behaviour prevailing at that time (Zwalve, 2000). Most West European countries apply civil law and have influenced their former colonies in this regard as well.

With respect to land rights, the basic difference is that common law takes a bundle of rights as the point of departure, whereas civil law stresses the unified nature of ownership. The bundle of rights determines the legal dimension and might consist of rights to lease, transfer, sublet, and mortgage and may be linked to different right holders, but civil law considers one individual to be the owner of all rights. Under common law, land rights of ownership can be shared, divided and layered; in civil law, there is always one owner at any one time (Mostert, 2011; Oestereich, 2000; Williamson, *et al.*, 2010). Nevertheless, in civil law, secondary land rights can be layered as well. The characteristics of land rights will be discussed in detail in Section 2.3.4.

Most sub-Saharan countries came into contact with statutory tenure through their former colonial powers, whereby land laws were imported and implemented in areas formerly managed under customary tenure. Obviously, it is important to consider how a particular African system of land laws has been influenced by any given European law system. In urban settings in sub-Saharan Africa, statutory tenure often prevails in the low-density residential areas where the colonial elites resided during the colonial period.

It is common knowledge that statutory tenure systems are expensive and subject to complex procedures. This is regularly reported by the World Bank in their Doing Business reports (World Bank and International Finance Corporation, 2013). Additionally, as explained in Section 2.2.2, efforts to include the poor in these land administration systems have largely failed. Consequently, politicians, policy makers and professionals are paying more attention to the poor in relation to land issues.

### **Informal tenure systems**

The last category, informal tenure, is not, theoretically, related to any of the three legal systems mentioned above, namely customary law, common law or civil law. Tenure is informal where people exercise land rights without having acquired them through customary or statutory channels. Such land holders are often called squatters or illegal settlers.

This thesis grapples with a conceptual problem regarding the relationship between peri-urban areas and informal settlements. It conceives of the peri-urban area as land, envisioned as a surface layer. Initially, that area may be rural or vacant, but the land use will change in the course of urbanization, resulting in residential, commercial and recreational facilities, either formal or informal. With respect to residential land use, the full range of housing development, from illegal to formal, may occur. In sub-Saharan Africa, the dominant development mode is informal, so peri-urban areas there will mainly feature informal settlements. Land tenure relates to the entire sur-

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face layer, i.e., the peri-urban area, whereas tenure security relates to the people who make use of this land. In the case of residential land use, the people themselves are responsible for the emergence of informal settlements, which results in informal tenure. Because this thesis focuses on the poor and on residential land use, the peri-urban context of this study will inevitably concern informal settlements. They are the outcome of rapid urbanization and the failure of authorities to deal with it in a formal way.

Because informal settlements are often associated with slums, that relationship will be briefly examined. Goetz (2012, p. 350) defines a slum as “an area of overcrowded and dilapidated, usually old, housing occupied by people who can afford only the cheapest dwellings available in the urban area, generally in or close to the inner city.” Slums may be considered informal settlements in their final stage. Slums are known for their high building densities, whereas informal settlements, especially in their early stages, may have a low density. Tenure insecurity is considered to be a key characteristic of slums (UN-HABITAT, 2003), an attribution that applies in general to informal settlements as well.

### **Land tenure under legal pluralism**

From the above overview, it should be clear that multiple tenure systems may co-exist and even overlap in peri-urban areas. This has several consequences. First, these tenure systems will be derived from various legal systems, suggesting a multiplicity of norms, also referred to as legal pluralism. Von Benda-Beckmann (1995, p. 322) defines legal pluralism, with respect to land law, as “the simultaneous existence of multiple normative constructions of property rights in social organizations.” It is widely accepted that legal pluralism and the existence of multiple tenure systems will have negative effects on tenure security. For one thing, the number of conflicts will increase because norms can be contested at another institution (Lavigne Delville, 2002). Besides creating uncertainty, pluralism offers possibilities for negotiation and opportunistic behaviour, often called legal institution shopping or forum shopping. This generally requires additional resources, which gives wealthier persons a better chance of gaining secure access or tenure to land (Fitzpatrick, 2005; Sjaastad and Cousins, 2009; Toulmin, 2009).

Secondly, the peri-urban dynamics lead to change in the tenure systems. It may become more difficult to refer to customary or local land rights, as these qualifications are rather ambiguous (Lavigne Delville, 2009). New terms to emphasize these dynamics have become fashionable, like extra-legal and neo-customary tenure systems. These will be discussed in the next section in relation to how land is accessed in peri-urban areas.

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### 2.3.3 Access to land in peri-urban areas

According to Payne (2011), access to land can be defined as the opportunities for temporary or permanent use and occupation of land for purposes of shelter, productive activity or the enjoyment of recreation and rest. It is obtained by direct occupation, exchange (purchase or rental), through membership of family and kin groups, or by allocation by government, other land owners or management authorities.

When access to land is restricted (by law, clan, wealth, gender, etc.), it may lead to an unbalanced land distribution. According to Lavigne Delville and Durand-Lasserve (2008), unequal land access worsens poverty and exclusion. It denies opportunities for development and may in turn even lead to social unrest and civil war. Of special concern is the unequal access provided for women in all tenure systems (Payne, 2011; UN-HABITAT, 2011).

Several African countries have placed unbalanced land ownership high on the political agenda. Their objective is to correct the imbalance between a small number of commercial farmers of European descent who own large tracts of land, on the one hand, and the large number of indigenous farmers living at subsistence level, on the other. Currently, land grabbing is subject to heated debate: foreign investors are said to acquire large tracts of land, in many cases disregarding the use rights of the local people. Because it is a predominantly rural phenomenon, land grabbing is assumed to be limited in peri-urban areas. Therefore, redistributive land reform and land grabbing are not touched upon in this study.

According to Lavigne Delville and Durand-Lasserve (2008) and Payne (2011), it is difficult for lower-income groups to attain private statutory tenure in urban areas. They may find some alternative means of access through informal or customary channels. As has been discussed in Section 1.3, Durand-Lasserve and Selod (2009) distinguish between unauthorized commercial land developments and squatter settlements. In unauthorized developments, land is subdivided illegally and sold as plots. The subdivision is illegal either because it violates zoning and planning regulations or because the required permission for subdivision was not obtained. In squatter settlements, the land is illegally occupied against the will or without the knowledge of the landowner, which can be a private person or organization or a governmental organization.

Apparently, the distinction between formal and informal, or legal and illegal, does not portray the entire situation. Informality may have more facets. It might also emerge when land holders do not comply with land-use regulations (unauthorized conversion from agricultural to residential land use, unauthorized subdivision) or do not comply with construction rules (building without permission, ignoring building standards and/or existing surveyed boundaries). The scope of informal housing also extends to substand-

**Table 2.2 Various forms of informalities**

	<b>Land rights</b>	<b>Construction</b>	<b>Land use</b>
Settlement	Invasion	Lack of services (roads, water, electricity)	Residential use not planned, area not suitable for human settlement
Individual	Individual occupation, illegal sale, illegal subdivision	No building permission, building not according to standards; development not realised within stipulated period	Illegal use of land, land use not according to zoning regulations

Sources: based on Durand-Lasserre (2001) and Payne (1997, 2011)

ard backyard renting and occupation in abandoned industrial and commercial buildings. In conclusion, a tangle of informalities may exist, both on the settlement and on the individual level, as reported for example by UN-HABITAT (2003). Table 2.2 lists various manifestations of informality, compiled from Durand-Lasserre and Tribillion (2001) and Payne (1997, 2011). From a housing development perspective, Acioly Jr. and French (2012) constructed a formality continuum, distinguishing between informal, informal-formal hybrid and formal. This thesis is largely concerned with informalities at the individual level in combination with land rights.

Consequently, various scholars have expanded on the concepts of neo-customary and extra-legal practices. Although firm definitions are hard to find and scholars have already indicated that distinctions are hard to make, their attempts illustrate the dynamics and variety of developments occurring under informal tenure.

### Neo-customary practices

Customary areas are predominantly rural areas. People can access land through customary channels, as discussed in Section 2.3.2. In urban and peri-urban areas, customary land access may be mixed with other formal and informal practices, which may be called neo-customary practices (Mattingly and Durand-Lasserre, 2004; Durand-Lasserre and Selod, 2009). Mattingly and Durand-Lasserre (2004) conclude that neo-customary systems deal with land rights that have been commodified. When considering the concept of the bundle of rights, they claim that, under such systems, individuals sell more rights than they have received through the customary system. For example, people may have been given rights to occupy and use the land, although transfer and sale might be excluded under strict customary norms. One might question whether sales are allowed; perhaps they are a consequence of the dynamic nature of customary tenure (Toulmin, 2009). After all, one of the characteristics of customary tenure is that it adapts to new circumstances.

According to Mattingly and Durand-Lasserre (2004), neo-customary practices are trusted by all stakeholders and therefore facilitate cheap and fast access to land. Moreover, these practices often provide higher levels of tenure security than other informal land delivery systems. However, Payne (2001) warns that urban expansion in customary areas may only benefit members of the group or those managing it. Therefore, customary and neo-customary practices may be of variable legitimacy, sometimes very strong, sometimes disputed (Lavigne Delville and Durand-Lasserre, 2008). A common problem is the multiple allocation of the same plot of land to different buyers. This is partly overcome by calling upon witnesses and through the authentication of

transfers by government administrations (UN-HABITAT, 2010b). Such practices relate to extra-legal practices as well.

### **Extra-legal practices**

Land dealings are gradually becoming better documented, even outside the formal system. Transfers may be documented and may be countersigned by local government officials, which protects the buyer against eviction attempts (UN-HABITAT, 2010b). Such transfer documents are often referred to as ‘petits papiers’ (Toulmin, 2009; Hilhorst, 2010). While these documents suggest some level of legality, the practices around them are often considered extra-legal (Lavigne Delville and Durand-Lasserve, 2008; Okoth-Ogendo, 2008). They indicate a level of legality lying between formally legal and completely illegal (Mooya and Cloete, 2007). Extra-legal practices are an example of innovative land tools. The resulting land rights may not have a solid legal background, though they may be firmly rooted in social legitimacy. According to Adams and Turner (2005), extra-legal tenure may be made formally legal, especially in urban and peri-urban areas; on the other hand, governments may be reluctant to do so.

### **Informal land access**

Neo-customary and extra-legal practices are both examples of informal land access, each with its own special features. The informal markets operate with procedures to access land that are simpler and less costly than formal procedures. According to Rakodi and Leduka (2004), who studied urban areas in six sub-Saharan countries, such markets are often effective because of their user-friendly characteristics and social legitimacy. They add that these systems are in part a response to the failures of the formal systems and form the main channels of land and housing supply. It is therefore important to know how people actually gained access to the land they occupy, which channels they used and which land rights have been delivered. The next section will discuss the range of land rights.

## **2.3.4 Land rights in peri-urban areas**

Most societies recognize a wide range of rights to land. They may allow for full ownership or occupation only; land use may be restricted to certain uses or access restricted to certain individuals. As discussed in Section 2.3.2, the roots of these land rights lie in the legal system that pertains at a given place: common law, civil law and customary law, or as in the case of peri-urban areas, a blend of these. According to Payne (2011), land rights are recognized interests in land vested in an individual or group. Such an interest may include customary, statutory or informal practices that enjoy social legitimacy at a given time and place.

Land rights can also be classified by their aim: control or economic use. Under control or management, one may think of rights to transact (sell or lease), alienate, exclude, enforce or allocate. Under economic use or exploitation, one may think of use, occupation, passage, access, withdrawal, improvement, etc. (Lavigne Delville, 2009).

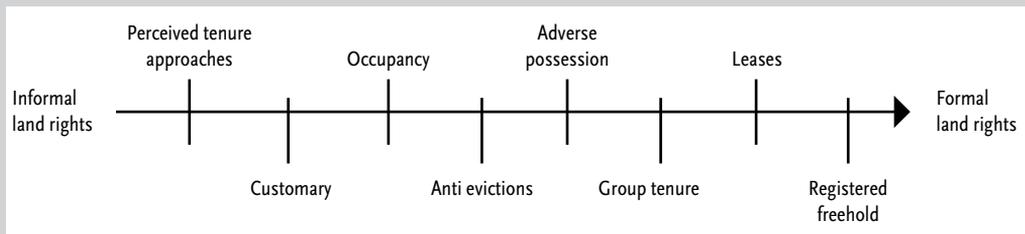
In view of the above classifications, it is evident that land rights will vary according to characteristics such as type, power, restriction, individual or group, duration, etc. With respect to group rights in an urban setting, UN-HABITAT and GLTN (2011) emphasize the importance of identifying the group. Members should be easily distinguished from non-members because the former are allowed to benefit from specific rights over an area. Von Benda-Beckmann (1995, p. 315) stresses the necessity to make “*the distinction between public and private, external and internal property relationships*” to understand the nature of land rights. Therefore, this study will take the perceptions of people and realities on the ground into account.

### **The continuum of land rights**

It is evident that the multiple tenure systems found in peri-urban areas will coincide with a wide range of land rights. Many scholars and institutions (e.g., Payne, 1997; Brasselle, Gaspard *et al.*, 2002; UN-HABITAT, 2008; Durand-Lasserve and Selod, 2009) speak of a continuum of land rights, specifying all land rights that apply within a given area. The widespread adoption of this concept marks a shift from the duality of informal and formal tenures to a more detailed model of land tenure and land rights (UN-HABITAT and GLTN, 2011). Although some refer to a continuum of tenure, this thesis uses the term continuum of land rights. Not only can land rights thereby be linked to one or more tenure systems, but these rights can be linked to a level of tenure security. When the land rights are ranked according to their level of tenure security, the continuum may be envisioned as a road map or ladder to higher levels of tenure security. In other words, plot holders with lower levels of tenure security can improve their security when they have the opportunity to acquire land rights at a higher position along the continuum (see Figure 2.1). Durand-Lasserve and Selod (2009), for example, proposed the following continuum with increasing levels of tenure security:

- Squatters (with temporary or no protection against forced eviction);
- Occupants in unauthorized land subdivisions (on sites suitable or unsuitable for development or upgrading);
- Holders of temporary permits to occupy;
- Holders of long-term or renewable permits to occupy;
- Leaseholders (with or without formal short-term renewable contracts);
- Long-term registered leaseholders;
- Freeholders.

Reviewing the above positions in combination with Figure 2.1, a few points

**Figure 2.1 Continuum of land rights**

Source: UN Habitat, 2008

should be raised. First, there is neither a standard continuum nor a standard format; a continuum can only be constructed in a real-world situation. Secondly, some rights, like occupancy, are not exclusive to customary, common or civil law systems, especially when they are based on neo-customary or extra-legal practices. In this study, all land claims, for example those based on squatting, are considered land rights even though their legality might be called into question. Some entries within the continuum shown in Figure 2.1 are not even rights but rather land tools or land acts, like anti-eviction or adverse possession measures. In this study, the continuum of rights is defined as a concept that can be operationalized by listing all applicable land rights, including informal ones, within a specific area in order of increasing tenure security.

Each category still contains a bundle of rights, like transfer, inheritance and access to credit. When the continuum is designed properly, the bundle should be invariable and fixed within each category. Although the rights along the continuum are fairly discrete, it should be realized that the rights pertaining to different tenure systems may overlap and that the rights are not mutually exclusive. Informal occupation on leasehold under statutory tenure is an obvious example.

### 2.3.5 Poverty

Just like land tenure and peri-urban areas, poverty is a multidimensional phenomenon. It will be discussed below from an income perspective, a multidimensional perspective and in view of its manifestation in rural and urban areas.

#### Poverty based on income

It is easy to link poverty with people on a low income: those who are unable to participate in labor markets and lack other means of support, and those whose wage income is so low that they are below a nominal poverty line<sup>3</sup>. (UN-HABITAT, 2003). Nominal poverty lines can be set at an income lower than USD 1.25 or USD 2 a day. However, income alone does not capture the multidimensional nature of poverty, as it also relates to a limited human, social and financial capital (UN-HABITAT, 2003).

<sup>3</sup> A poverty line is a minimum acceptable standard of a poverty indicator to separate the poor from the non-poor (Haughton and Khandker, 2009).

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### **The multidimensional approach to poverty**

Poverty is known to have severe socio-economic consequences: high child mortality, low life expectancy, high levels of adult illiteracy, low levels of school enrolment, often combined with gender bias, as described in White, Killick *et al.* (2001). Therefore, socio-economic consequences can be used as indicators for poverty. United Nations Development Programme (2010) created a Multidimensional Poverty Index (MPI) containing ten indicators in three dimensions: health, education and living standards. Although it does not include income, low scores on the named indicators are definitely caused by low income, among other things. According to UNDP (2010), the number of the multidimensional poor is higher than the number of income-poor. The index ranges theoretically from 0,000 (wealthy) to 1,000 (very poor). Both the nominal poverty line and the MPI (see Appendix B) will be used here when discussing individual countries. Nevertheless, it is evident that the reality of poverty cannot be captured in just a few digits.

### **Poverty in rural and urban areas**

In light of the income criteria for most developing countries, rural poverty rates exceed urban poverty rates, often by a very large margin. However, urban poverty is increasing faster than the national poverty rates (Kessides, 2006; Ravallion, Chen *et al.*, 2007; Arimah, 2011). As Ravallion, Chen *et al.* (2007) assert, reducing poverty through economic development could lead to higher rates of urbanization. Urbanization, in turn, may put more pressure on the urban land market and thereby cause the land rights situation to deteriorate.

According to Mbiba and Huchzermeyer (2002), urban poverty is concentrated in peri-urban areas, especially in the informal settlements, where poverty is often mirrored in poor living conditions. These consist of both quantifiable and unquantifiable factors. Millennium Project (2005) lists the following ones: political voice, secure land tenure status and good-quality housing, safety and the rule of law, good education, affordable health services, decent transportation and other public services, adequate incomes, and access to economic activity and credit. Using similar factors, Millennium Project (2005) and Gulyani and Bassett (2010) applied a living condition diamond as a diagnostic and comparative tool. Again, such research stresses the multidimensional aspect of poverty.

This study considers the poor in peri-urban areas, though it should be kept in mind that these areas are not exclusively inhabited by the poor. According to Lavigne Delville and Durand-Lasserve (2008), the informal peri-urban land market is a crucial resource for the upper segment of the lower-income group and the urban middle class. Their greater wealth allows them to buy land from farmers at relatively low prices. They might use the land for their own purposes or treat it as an investment. Such strategies increase the demand for urban land and raise land prices in peri-urban areas, thereby reducing the chance of

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access by farmers or poor settlers. In existing informal settlements, one may encounter so-called slumlords who, by renting out many dwellings, could form a solid power base within the settlement (Gulyani and Talukdar, 2009).

Additionally, the poor themselves might be a very heterogeneous group. While having bad living conditions in common, they are differ widely with respect to health status, gender, education, age, ethnicity and religion, for instance. In addition, one can differentiate between the destitute and the working poor. Atuahene (2004) argues that governments should target support programs to these specific groups. However, governments usually lack the data and tools for selection and prioritization that would allow them to do so.

### 2.3.6 Formalization

The existence of multiple tenure systems in peri-urban areas presents public authorities with challenges in their efforts to manage these areas effectively. To reduce the complexities related to multiple tenure systems, they often turn to formalization, a process by which informal tenure is integrated into a system recognized by public authorities (Durand-Lasserve and Selod, 2009; UN-HABITAT and GLTN, 2011). Its overall goals have been defined as poverty reduction and economic growth (Durand-Lasserve and Selod, 2009; Mitchell, 2009). Formalization may be desirable for a variety of reasons: provision of tenure security, implementation of proper planning and provision of services, and the ability to collect taxes and rates (Lavigne Delville and Durand-Lasserve, 2008). When taking the continuum of land rights into consideration, formalization can also be seen as a means to move land rights across the continuum to higher levels of tenure security.

Like most phenomena described in this chapter, formalization is a compound entity, encompassing legalization, transformation or regularization. While efforts have been made to distinguish between those terms (UN-HABITAT and GLTN, 2011), they are considered to be synonymous in this study. Here, the term formalization is preferred, as it stands in opposition to the status of informal tenure.

Informal tenure is often formalized in combination with slum upgrading (Gulyani and Talukdar, 2009). Depending on the dominating tenure relationships, the focus might be on the formalization of occupancy and ownership rights or of rental tenure (UN-HABITAT, 2006b). The arguments in favour of the formalization of land rights (as discussed in Sjaastad and Cousins, 2009) seem to reiterate the aims of the provision of tenure security. Therefore, formalization of land rights is considered a means to increase tenure security. Indeed, it is often equated with conventional land administration or formal titling. Sietchiping and Augustinus (2012) describe two different approaches to formalization: delivery of personal rights and delivery of real property rights. In this study, land titling is equated with conventional land tools,

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while the delivery of personal rights is aligned with the application of innovative tools. Therefore, this study considers both conventional and innovative tools as possible approaches to tenure formalization. As has been described in Section 2.2.2, formal titling has largely failed in sub-Saharan Africa.

### **Customary tenure and formalization**

Formalization has been defined in relation to informal tenure. In addition, customary tenure might also be integrated into a statutory system and considered a type of formalization, especially when it is not legally recognized. Recognition may be embedded in the constitution or land laws. In cases where customary tenure is not officially recognized, formalization may be applicable as well. Payne (1997) has already mentioned the potential conflict between customary and statutory law in cases where people settle in peri-urban areas under customary norms. In relation to overlapping tenure systems, customary tenure might be adapted or dismantled. Here, following Durand-Lasserve (2003) and Arko-Adjei (2011), four models are distinguished:

- Replacement model: customary tenure is replaced by conventional land administration and management. Besides the challenges related to complex procedures and costs, it is difficult to manage the family and group rights in the individualized conventional systems, which reduces tenure security (Durand-Lasserve and Selod, 2009).
- Adaption model: this model emphasizes the flexibility of customary tenure and its responsiveness to changing social and economic circumstances. Customary tenure will be retained and fully recognized. It will evolve over time and applicable on a local scale.
- Dual tenure model: areas are designated either under statutory tenure or customary tenure. Areas under customary tenure continue to be managed by traditional authorities. In order to reduce conflict, the exact boundaries of each jurisdiction should be well known. This model is called the minimalist approach (Fitzpatrick, 2005).
- Progressive statutory integration model, called the agency method (Fitzpatrick, 2005).

The next section will consider the current state of affairs in the use and implementation of innovative policies and tools.

## **2.4 The current debate on innovative land tools in peri-urban areas**

This section will briefly describe the recent developments in land and housing policies. The dominant issues in the current debate are highlighted: customary tenure, access to land, the need for innovative land tools and their impact in peri-urban areas.

### 2.4.1 Land and housing policies

In general, the development of land and housing policies may be summarized as follows. The early post-independence period was characterized by denial of customary and informal tenure, in some cases leading to eviction from and the demolition of informal settlements. This was followed by projects for slum upgrading and self-help schemes, although land tenure received little attention. At the turn of the millennium, customary and informal tenure was generally recognized, as was the need to address the lack of tenure security for the poor, both rural and urban. Current land policies show the following tendencies: addressing the needs of the poor on customary and informal land; legitimizing extra-legal land administration systems; simplifying land administration systems; and proposing innovative procedures to formalize informal settlements (Durand-Lasserve, 2006; Lavigne Delville and Durand-Lasserve, 2008; Okoth-Ogendo, 2008; Arimah, 2011; Payne, 2011). In short, the perception of informality shifted from undesirability towards adaption.

International organizations have recently been involved in innovative policy guidelines, notably UN-HABITAT (2007c), African Union, African Development Bank *et al.* (2010) and FAO and Committee on World Food Security (2012). Politicians have generally been responsive to these guidelines. The African Union, African Development Bank *et al.* (2010), for example, recommended that land policy processes recognize the role of local and community-based land administration/management institutions and structures, alongside those of the state. According to UN-HABITAT (2011), the African Ministerial Conference on Housing and Urban Development (AMCHUD) endorsed their commitment to facilitate access to urban land for all citizens and to ensure security of tenure for the urban poor in line with the Millennium Development Target of improving the lives of slum-dwellers by 2020 (United Nations, 2012a). The role of politicians in land issues should not be underestimated. As Williamson, Enemark *et al.* (2010) argue with respect to urban planning and land tenure, politicians have powers to permit or adjust situations which are considered desirable. On the other hand, they have powers to prohibit and refuse situations which they consider undesirable. Additionally, by facilitating access to or tenure security on land for individuals or groups, politicians wield land as a convenient tool to gain political support (Lavigne Delville and Durand-Lasserve, 2008).

### 2.4.2 The role of customary tenure in peri-urban areas

Customary land development in peri-urban areas does not get much attention, compared to the formalization of informal settlements and slum upgrading. However, according to UN-HABITAT (2003), customary landowners are often the main providers of land for housing, even when customary tenure

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is not formally recognized by the state. By contrast, Durand-Lasserve (2003) claims that most of the supply of peri-urban customary land is exhausted, although this did not put an end to customary claims. He argues that the customary systems in all sub-Saharan African countries have shown an astonishing resistance to any attempts at state reform, thereby confirming the important role of customary tenure in peri-urban development, even during a period of transition. This is best illustrated by a controversial issue, namely the sale of customary land, which has already been described in Section 2.3.3. According to Lavigne Delville and Durand-Lasserve (2008), the co-existence of traditional and local authorities together with central government raises the very question of subsidiarity and the relationships between their levels of power with respect to land management. It is proposed to adopt the concept of co-management, which will be discussed in Section 4.3.1.

### **2.4.3 Access to land in peri-urban areas**

As explained, sub-Saharan Africa is urbanizing rapidly, mainly under neo-customary, extra-legal or informal tenure categories. These peri-urban areas accommodate the majority of lower-income households. However, due to rising demand and commercialization, their access is increasingly constrained (Lavigne Delville and Durand-Lasserve, 2008; Payne, 2011). As suggested by UN-HABITAT (2010a), de facto recognition of neo-customary practices by governments may accelerate the commoditization of customary land and increase competition between poor and middle-income households. On the other hand, reluctance to recognize customary and neo-customary land delivery practices may further hinder the access of households to shelter. This poses a dilemma for governments aiming at equitable land access in peri-urban areas.

### **2.4.4 The need for innovative land tools**

It is argued that governments in sub-Saharan Africa have largely failed to manage and control peri-urban development when applying conventional land tools (Bromley, 2008). Formal titling could even reduce tenure security, so other tools might be more successful in the provision of tenure security (Payne, Durand-Lasserve et al., 2009b). Gulyani and Connors (2002) already noted that formal titling was no longer a priority in upgrading projects, although it was still desirable as a long-term goal. Various scholars have called for more innovative systems to secure land rights in peri-urban areas (Augustinus, 2004; UN-HABITAT, 2004; Van der Molen, 2006; Toulmin, 2009). Experience in Africa indicates that upgrading existing settlements by providing basic infrastructure, *“with confirmation of existing tenure security (but not necessarily formal titles), is much less disruptive or expensive per household than trying to relocate residents or directing them*

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into public housing” (Kessides, 2006, p. 41). Apparently, innovative land tools can be successfully applied in informal settlements. The question is, to what extent and under which circumstances such land tools can be applied in peri-urban areas under multiple tenure regimes.

### **Incremental approach**

One of the important innovations is intermediate tenures (Durand-Lasserve and Selod, 2009; Reerink, 2011). Their introduction should prevent vulnerable groups from marginalization and exclusion. This innovation runs contrary to the formal titling approach, which amounts to a replacement of customary tenure, as described in Section 2.3.6. According to Adams, Kalabamu *et al.* (2003) and Kalabamu (2011), replacement has been criticized as being insensitive to established traditions and disruptive of economic systems and people’s everyday life. The incremental approach aligns well with the concept of a continuum of land rights: the intermediate tenures can be ranked according to their level of tenure security and people can be encouraged to acquire stronger rights along the continuum.

### **Tenure security in peri-urban areas**

As discussed in Section 2.3.2, peri-urban areas are generally believed to lack tenure security. However, recent studies indicate that neo-customary and extra-legal practices may offer significant protection against involuntary removal (Payne, Durand-Lasserve *et al.*, 2009b). The literature identifies government policy and practice towards eviction as the key issue: more value is placed on a formal title under a policy that actively pursues eviction compared to a *laissez-faire* policy. In the latter case, people may enjoy sufficient levels of tenure security and thus not consider a title important. Holding a title may even have negative connotations, because people might be liable to conditions and rates. In that light, Lavigne Delville and Durand-Lasserve (2008) conclude that no strong link can be presumed between informal land rights and tenure insecurity. They suggest that recognition by land management authorities of local practices and the formalization of land transactions to authenticate the legitimacy of the sale will improve tenure security to sufficient levels. The formalization of land transactions may partly or entirely be organized by communities instead of government authorities (Zevenbergen, Augustinus *et al.*, 2013). Community involvement is therefore another important pillar of innovation, and it is related to the local practices mentioned above. Various forms of recognition and modes of cooperation between government and communities are imaginable. Although these innovative land tools may look simple, Mostert (2011) stresses the importance of understanding the dichotomy between simplicity and complexity in land administration reform.

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### Legal versus perceived tenure security

The discussion sketched above suggests that tenure security is considered particularly important with regard to its role in protecting people from eviction and in allowing them to reap the benefits of their investments after land transfers. Access to credit is considered of less importance within this field of research; many scholars have disputed De Soto's claim that formal lending institutions do not accept all kinds of land titles or people without a stable and regular income (Rakodi and Leduka, 2004; Sjaastad and Cousins, 2009; Durand-Lasserve and Selod, 2009). Access to credit is therefore given less emphasis in this thesis.

For urban areas in general but especially for informal settlements, there is a clear tendency to consider perceived security as equally or even more important. When people perceive their risk of eviction to be low, they are more likely to consolidate and improve their housing (Williamson, Enemark *et al.*, 2010; UN-HABITAT, 2011). Dekker (2003) even bases his definition of tenure security completely on the perceptions of the land holder. The question then arises, which is more important, legal or perceived tenure security? This will be discussed in Section 8.4.2.

## 2.4.5 The impact of innovative land tools

The implementation of conventional land tools has largely failed in sub-Saharan countries. What guarantee is there that innovative tools will have a positive outcome for the poor? A positive outcome would be the improvement of tenure security, which in turn should help reduce poverty. Several possible negative impacts on the poor are discussed below: gentrification, loss of secondary rights and tenure insecurity.

### Gentrification

Tenure formalization may induce long-term gentrification, especially in settlements located near city centres or other potentially high-value locations (Payne, Durand-Lasserve *et al.*, 2009b; Reerink, 2011). Payne (2001) and Durand-Lasserve and Selod (2009) argue that formalized properties lead to higher values, which may result in higher rents for tenants or stimulate the subdivision and sale of land. Atuahene (2004) discusses another risk: informal settlers may be relocated to areas with higher levels of tenure security. However, because they might end up in a disadvantaged place, the relocation might severely diminish their livelihoods.

### Loss of secondary rights

Special attention should be given to secondary rights under customary tenure in peri-urban areas. According to Toulmin (2009), these rights might be overlooked in land registration programs and thereby result in loss of these rights.

In many cases, these rights are of vital importance to vulnerable parties such as women and pastoralists.

### **Tenure insecurity**

Scholars like Lavigne Delville and Durand-Lasserve (2008) call attention to the possibility of tenure insecurity. Formalization may reduce tenure security for communities which held land under informal tenure with sufficient levels of perceived tenure security. Toulmin (2009) and Zevenbergen (2009) point out the risk of non-maintenance of land registers: if subsequent land transfers are not recorded, the system could erode, with decreasing levels of tenure security as a result.

## **2.5 Concluding remarks and implications for this study**

This section summarizes the main points presented above and draws some implications for the present study. Land tools are aimed at improving tenure security. In the developed world, land administration tools have served as an important economic driver; for developing countries, however, merely copying the same mechanisms has not proved effective. The land toolbox approach, by giving special attention to the poor, is seen as a solution by professionals and academics. It is obvious that the land tools listed in Table 2.1 are mutually interrelated and should be applied in combination to improve tenure security. With respect to the poor, land tools should improve their tenure security, protect them from eviction, include them in efforts to facilitate access and enforce their rights, and, in case of relocation, arrange for compensation.

The previous sections give rise to some observations within the context of sub-Saharan Africa that pertain to the first research question: *What are the characteristics of land access, land tenure systems, land tools and tenure security for the poor in peri-urban areas in sub-Saharan Africa and, how do they relate to each other?*

### **Land access**

The delivery of formal land in peri-urban areas in sub-Saharan Africa is limited, especially with reference to the poor. People resort to informal means such as neo-customary or extra-legal practices to settle near the city centres, resulting in informal settlements. Land tenure will show greater dynamics in peri-urban areas compared to rural and urban areas, and very often multiple tenure systems will emerge. As prices rise on the informal market, the poor might have even more limited access to land. Therefore, land access should be studied with an eye to access and affordability by the poor.

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### Land tenure systems

Customary tenure systems are inherently dynamic because they adapt to changing circumstances such as urbanization. Some customary practices, notably the sale of customary land, are disputed even though they are frequent. People who settled without permission or consultation from either traditional or governmental authorities are under informal tenure. When informal or customary tenure is formalized, statutory tenure is introduced. In that case, land becomes managed by governmental authorities.

This study is therefore focused on existing tenure systems in peri-urban areas, particularly on their relationships with land access and land management authorities. The extent and validity of customary tenure is especially relevant. Regarding informality, the research examines land rights; informality with regard to land-use planning or building permission is considered less relevant in this study.

### Land tools

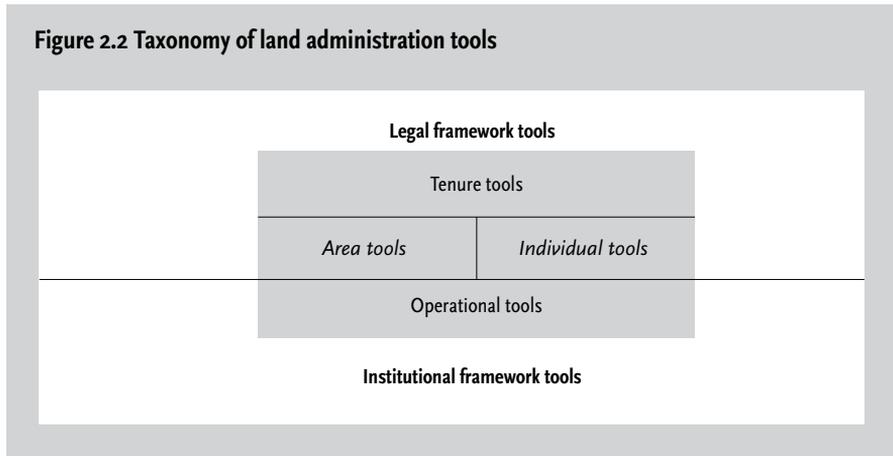
Land tools are defined as practical solutions to problems concerning land administration and land management. The focus of this study is on those tools that provide tenure security. One can distinguish between conventional and innovative tools. Where conventional tools have been implemented in the past, they have failed to deliver tenure security for the poor. While innovative tools have been designed and partly implemented, they have not yet been thoroughly evaluated.

There is a wide variety of land tools. On the basis of Williamson's toolbox (Williamson, Enemark *et al.*, 2010, p. 318) and Table 2.1, the following land tools are distinguished here: legal framework tools, institutional framework tools, tenure tools and operational tools.

Legal framework tools consist of statutory, administrative judicial systems such as laws, regulations, bylaws, court decisions, directions and instructions that regulate society and set enforcement processes (UN-HABITAT and GLTN, 2011). This study will devote special attention to the general principles of customary and informal land rights as formulated in the constitution, land policies and land-related laws.

Part of the legal framework tools consist of tenure tools. Such tools are important for this study, because they execute the land tenure function of innovative land tools. Tenure tools define the land management arrangements at the regional level through the land management authorities and at the individual level where they are used to allocate and administer land rights. Therefore, two types of tenure tools are distinguished:

- Area tools to manage multiple tenure systems: the way the authority over land management is organized among different stakeholders.
  - Individual tools to manage the allocation and administration of individual land rights. The continuum of land rights will be used as an analytical tool.
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**Figure 2.2 Taxonomy of land administration tools**

Institutional framework tools relate to all land management institutions involved in land allocation and administration, being governmental, community or private institutions. Some institutional framework tools are operational land administration tools. They relate to the methods applied to administer the plots and to survey its boundaries and thereby support the application of the tenure tools.

All land tools discussed in this study fall under or are related to the domain of land administration and are relevant to efforts supporting access to land and the delivery of tenure security to the poor in peri-urban areas. Consequently, many land tools are not discussed, either because they are not relevant to this study (e.g., marine administration tools) or because they do not directly concern land access and tenure security (for instance, ICT, SDI and land information tools or business models, risk management and funding tools, as listed by Williamson, Enemark *et al.*, 2010).

The taxonomy of the land tools selected for discussion is visualized in Figure 2.2. It appears from the diagram that all tools operate within formal and legal institutional frameworks; however, one has to be aware that some tools may operate outside the formal context.

### **Tenure security**

Provision of tenure security is related to poverty reduction (Deininger, 2003). Although the exact relationship is still under debate, for the purposes of this study tenure security is assumed to help reduce poverty. One condition contributing to poverty reduction is at least that the poor should have the right to sell and inherit land, as indicated in Section 2.2.5. Tenure security can be split into legal and perceived security. In general, the existence of multiple tenure systems in peri-urban areas does not contribute to tenure security. However, individual customary and informal tenure systems may provide for sufficient levels of perceived security, a feature that is often overlooked. Although innovative tools have been designed to deliver tenure security to the poor, the implementation of these tools is still subject to risk and danger. This study deals with both legal and perceived security but places emphasis on the latter.

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### **Other observations**

The multidisciplinary character of the research domain has led to a proliferation of concepts. Not all of the terms that have been introduced, or their definitions, are generally accepted and they may be used differently in varying contexts. Additionally, some concepts, notably land tools and subsequently pro-poor land tools, are rather new and still under debate. Therefore, the definitions and contexts have been described specifically for this study. That specificity, in turn, should contribute to a continuous refinement of the definitions. The concepts discussed are not usually distinct phenomena but can better be considered continuums. The concept of a continuum, as introduced for land rights, can be applied to the peri-urban zone as well. Although not really constituting a continuum, both poverty and wealth at varying levels may exist simultaneously in peri-urban areas and informal settlements. In addition, land tools, tenure security and poverty are all multidimensional phenomena. Nonetheless, this study deals with a delimited cross-section, namely the poor living in peri-urban areas with multiple tenure systems.

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## 3 Examples of innovative land tools in sub-Saharan Africa

“In many instances customary tenure or informal land administration systems are sufficiently secure in themselves to make large scale titling programs unnecessary. Indeed, the formal land registration system in most countries is often not neutral and where titling is implemented, people with customary tenure may in fact lose their rights. Women and overlapping rights holders are very vulnerable in these circumstances. It is because of this situation that African countries are introducing new forms of land tenure which are more appropriate” (Burns and Dalrymple, 2006, p. 23-24).

### 3.1 Introduction

This chapter describes the land tools which have been developed and applied in a limited number of countries in sub-Saharan Africa (see Figure 3.1). The aim is twofold: on the one hand, to get to know the characteristics and scope of the land tools applied; on the other, to provide information justifying the selection of the countries to use as case studies. The countries were selected in light of the availability of studies on pro-poor approaches in the English language. The author has also visited the selected countries during his research for workshops, conferences or fieldwork. The descriptions of the countries selected as case studies are more complete and detailed than the other descriptions because of the depth and breadth needed for the analysis of each case study in Chapters 5 to 7.

The countries covered in this chapter are Anglophone, which has two consequences. First, common law is the dominant legal system, although the legacy of Roman-Dutch law is acknowledged through the South African influence in southern Africa. Secondly, the British have been the dominant colonizer of the countries studied, and their laws and policies might have been different than those of other colonizers.

Each country will be described in the same format. First, the legal framework will be discussed. Secondly, the application and results with respect to tenure security in peri-urban areas will be dealt with. All the information is derived from a study of the literature. Because it generally gives little information on the institutional framework, that topic is discussed briefly for each country. The main body of text has been written between 2007 and 2009, and is updated as much as possible afterwards. Nevertheless, some very recent developments like enactments or publication of land policies may be missing.

The chapter will end with an overview of the described countries with respect to their tenure systems, available land tools, implementation of land tools and some indications of tenure security in peri-urban areas. It gives an overview of the state of affairs concerning innovative land tools and adds on the theoretical answer of the first research question as given in Section 2.5.

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Figure 3.1 African countries subject to study



## 3.2 Uganda

Uganda is centrally located between the eastern and western branches of the Great Rift Valley. Most of the country is more than 1,000 metres above sea level. Areas in the south-west have high mountains, some of which are more than 5,000 metres above sea level. Water covers almost 25% of the national area, including part of Lake Victoria. Uganda's main export products are in agriculture (coffee, tea, tobacco) and fisheries (UN-HABITAT, 2010d). Its population is 34.5 million, of which 15.6% live in urban centres. The annual urban growth rate is 5.4% (see Appendix B).

### 3.2.1 Land tools within the legal framework

A substantial part of the legal framework concerning land in Uganda is rooted in the Constitution, enacted in 1995. Uganda chose to have all land vest-

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ed in the people. The Constitution recognizes the following tenure categories: customary, leasehold, freehold and mailo tenure. These replaced a confusing set of multiple tenure systems that had evolved from various land reforms during the colonial and post-independence periods (Mugambwa, 2002). Mailo is a specific Ugandan tenure system, deriving its legality from the Constitution and precedents in written law. It dates back to the Buganda Agreement of 1900 that divided land between the Kabaka king and his officials (mailo land) and the British Government (Crown land). From a legal perspective, it is comparable to freehold tenure.

The Constitution guarantees security of tenure for lawful or bona fide occupants on mailo, freehold or leasehold land. Lawful bona fide occupants are defined in the Land Act: they are deemed to be tenants by occupancy. Especially the bona fide occupant is of interest: any person who had occupied land without being challenged by a registered owner for at least twelve years is guaranteed security of tenure. For a detailed classification of lawful and bona fide occupants, see Mugambwa (2002).

The Land Act, which was passed by Parliament in 1998, provided an elaboration of the provisions made in the Constitution. The Act has been controversial from the start. First, some innovations to support the poor, especially women, were not included due to pressure to enact the Bill on a fixed date and some alleged male conspiracies (Palmer, 2003). Secondly, the relationship between landlords and tenants was subject to heated debates. Landlords felt cheated by the introduction of bona fide occupants, who were given tenure security. These occupants could have settled without the landlords' consent so they were considered illegal and thus liable to eviction (Rugadya, 2009).

The Land Act was amended in 2001 and 2004 due to the uncertainty it generated at the local level (De Vries and Zevenbergen, 2011). In 2009, it was amended again to enhance the security of lawful and bona fide occupants (Republic of Uganda, 2010). However, it is still a challenge to determine the tenure category of each tenant (Mwebaza and Sebina-Zziwa, not dated). For example, there is no clear distinction in the legislation between government land and public land (UN-HABITAT, 2012a). The same report criticizes the lack of a clear policy framework. For instance, although the Land Act of 1998, as amended in 2009, provides the basic tenets of a land policy, several provisions do not conform to sections of other laws.

### **The institutional framework**

The Uganda Land Commission, the district land boards and area land committees are the pivotal land management institutions. The Uganda Land Commission is charged with managing the land vested in or acquired by the state. The land boards are deemed to own all land within a district which is not owned by anyone else. Land boards have the power to sell and lease such land. They also register the land within their district and issue certificates to

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the occupants. Land committees are appointed in each parish, gazetted urban area and city division. Their main function is to determine, verify and mark the boundaries of customary land to support an application for a certificate of customary ownership. The land boards and land committees have not been established at large. In the areas where they do exist, they are weak and under-resourced (Mwebaza and Sebina-Zziwa, not dated; Foley, 2007; UN-HABITAT, 2012a).

Several NGOs are active within the land management domain, notably the National Slum Dwellers Federation Uganda (NSDF-U), the Uganda Land Alliance (ULA) and the Land and Equity Movement (LEMU). LEMU circulated flyers in 2009 with provocative titles like 'Why is the legal system failing to protect people's land rights?' and 'Why is land administration failing to protect land rights?'

### **Land tools**

Land under mailo, freehold and leasehold tenure is registered according to the regulations of the Registration of Titles Act (1965; Nkurunziza, 2004). Uganda has implemented a Torrens-based system, with fixed boundaries and high-standard cadastral surveys. Registering land is unaffordable to most Ugandans. According to UN-HABITAT (2010c), the cost of processing a formal land title can run up to UGX 1 million (USD 470). Obtaining such a title from Kampala City Council takes 13 steps, which can be carried out in approximately 55 days. Ahene (2009) estimates that only 18% of all land owners have registered titles or certificates of ownership. The records in the land registry are handled manually and are in a poor state.

The Land Act stipulates four measures in tenure formalization (Mugambwa, 2002). First, leases on former public land can be converted to freehold tenure. This is a voluntary process and can be initiated by any lessee. Secondly, certificates of occupancy can be granted for tenants (lawful or bona fide occupants) on mailo or former public land. The certificate is a registerable interest under the Registration of Titles Act. Any tenant by occupancy can apply for a certificate, provided the landlord supports the application. Thirdly, individuals, families or communities owning land under customary tenure may acquire a certificate of customary ownership with respect to the land they occupy. A certificate of customary ownership is deemed by the Land Act to be conclusive evidence of the customary rights and interests endorsed on the certificate. The certificate may be used as collateral for credit. The prescribed procedure for requesting a certificate of customary ownership includes demarcation of the boundaries (not necessarily surveyed) and identification of all customary right holders. The fourth measure supports conversion of customary tenure; owners of land under customary tenure may change their tenure to freehold without first applying for a certificate of customary ownership. Additionally, the Land Act provides for the formation of land commit-

tees at the parish level to conduct the affairs of ownership and management of land under customary law. Their main function is to advise the land boards on the applications for certificates. The certificate of customary ownership might be a promising tool for the poor, although there are no reports of actual use within peri-urban settings.

Both the Constitution and the Land Act contain a number of legal innovations concerning land tenure. The legal framework is praised for its innovative character, although progress on its implementation is slow (Nkurunziza, 2004; De Vries and Zevenbergen, 2011; Zevenbergen, Hilhorst *et al.*, 2012).

In addition to the formal tools, NSDF-Uganda has been involved in enumeration (an innovative land tool, listed in Table 2.1) in Kampala and other urban centres. Especially in Kampala, tenure arrangements prove to be extremely complex due to the layered tenure systems with customary ownership rights and the informal nature of both ownership of the physical buildings and tenancy (Makau, Dobson *et al.*, 2012).

### **3.2.2 Implementation in peri-urban areas and informal settlements**

The legal framework does not deal explicitly with urban and peri-urban issues or the upgrading of informal settlements (Bwogi, Oput *et al.*, 2006; UN-HABITAT, 2007a; UN-HABITAT, 2010d). Nevertheless, the Land Act created new tenure systems in urban regions and subsequently replaced older ones. The ensuing existence of multiple tenure systems with various types of property rights affects access to land by households and constrains the preparation and implementation of physical plans (UN-HABITAT, 2010b; UN-HABITAT, 2012a).

Due to the problems related to the formal allocation and registration of land, people resort to informal occupation (UN-HABITAT, 2007a; Nkurunziza, 2004, 2007, 2008). More than 50% of Uganda's urban population lives in informal unplanned settlements on land owned by other people or the government (mainly on mailo and to some extent freehold land) and customary land (Republic of Uganda, 2008). Although informality is expected to exist in all Ugandan cities, most publications focus on the situation in Kampala. All four major tenure categories are known to exist there, though the share of each tenure category remains unclear. Mailo tenure covers approximately 46% of Kampala, freehold is reported to cover between 3% and 18% (UN-HABITAT, 2010d; UN-HABITAT, 2012a). Within the categories mentioned, special types of land rights may exist, such as customary tenants on mailo land (locally known as 'kibanja'), leases on mailo land (locally called 'plooti') and customary tenure on public land (UN-HABITAT, 2007a; Republic of Uganda, 2008; UN-HABITAT, 2010d).

### **Tenure security**

The Land Act and the Constitution together ensure security of tenure to lawful and bona fide tenants, provided that their residence exceeds 12 years. Those with fewer years of residence are liable to eviction, although the Land Act makes negotiation between landlord and tenant mandatory (Nkurunziza, 2004; UN-HABITAT, 2010d). According to COHRE (2009), the Act is reportedly often abused; hundreds of tenants have been forcibly evicted from their land and left homeless. For example, in 2007 and 2008, the eviction of hundreds of people of Kawembe Division was foreseen by Kampala City Council to make way for drainage works, and displacement was foreseen of 16,000 people of Katanga slum on land belonging to Makerere University. Although legal security might be very limited for informal dwellers, according to Nkurunziza (2004, 2008) and UN-HABITAT (2010c), the perceived prospects of tenure security are heightened through the informal land delivery systems. The cited reports describe the general characteristics of these systems: engaging friends, relatives and agents to meet supply and demand; conducting site visits; verification by involving local council leaders and local elders; both parties signing the agreement with their confidants as witnesses; making measurements of the plot and a sketch map; fencing off the plot; stamping the agreement at the local council and leaving a copy at the local council office; the buyer might eventually formalize his or her right as a formal lease or title deed, although it is not always considered necessary. Such processes draw upon a network of relations between the different market actors, which are operating within a nested series of formal and informal regulatory processes. Perceptions of tenure security are raised through the social legitimacy of these processes (Nkurunziza, 2004). On the other hand, tenure security could be threatened by multiple sales and low levels of record keeping at the local land administration agencies. According to UN-HABITAT (2010c), perceptions of tenure security are higher when the land in question is inherited instead of purchased or exchanged.

### **Implementation**

Many of the provisions envisaged by the Constitution and Land Act have never been implemented (Foley, 2007). According to UN-HABITAT (2010c), legal land conversion is a relatively dormant element of urban land markets. There are several reasons for this lack of progress. First, little effort was made to disseminate information on the possibilities within the legal framework, leaving most people ignorant about their rights (Deininger, Ayalew *et al.*, 2006; UN-HABITAT, 2007a). Secondly, a lack of capacity in the land management institutions at the different administrative levels severely limited the implementation of the Land Act (Nkurunziza, 2004; USAID, 2009). Thirdly, some stakeholders have little faith in certificates (Van Asperen and Zevenbergen, 2006). They are often considered as a temporary or transitional measure that ultimate-

ly should be upgraded to fully surveyed and registered title under the formal land registration system, where Torrens titles are issued. One example is Bantungi and Rütther (2008), advocating freehold as the unified tenure system for Uganda. However, access to land under freehold tenure is limited for the poor.

### 3.2.3 Summary

Uganda has a complex set of tenure systems, which are regulated by the Constitution and the Land Act. The complexity results in a layering of interests in land and little attention for the concerns of the poor in informal settlements. The land tools are geared to the registration of rights within the tenure systems rather than the simplification of those systems. Although the legal framework has improved legal tenure security for bona fide settlers, the land administration machinery is hampering the implementation of that framework. This can be attributed to a lack of capacity, limited faith in the intermediate tenure categories and lack of knowledge among the population. Nevertheless, people continue to access land in informal ways. Informal land delivery is combined with several checks and balances, resulting in some level of perceived tenure security. However, through multiple sales, poor record keeping and lack of formal documentation, many households in Uganda still live in fear of eviction. In short, there is a huge gap between the provisions of the legal framework and the realities on the ground.

## 3.3 Kenya

Kenya is located in East Africa and bordered by the Indian Ocean. The country has more than 40 ethnic groups. It gained independence from Great Britain in 1963<sup>4</sup>. Its population is 41.6 million, of which 24% lives in urban centres. Its annual urban growth rate is 4.4% (see Appendix B). Agriculture is its main economic sector, followed by tourism, financial intermediation and construction<sup>5</sup>.

### 3.3.1 Land tools within the legal framework

The Constitution of the Republic of Kenya (article 61(1), Republic of Kenya, 2010) declares that all land “*belongs to the people of Kenya collectively as a nation, as communities and as individuals.*” The current land tenure categories are a legacy of historical precedent and various laws. Three legal tenures exist: private

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<sup>4</sup> According to the country profile published on the website of the African Union (<http://www.au.int/en/>).

<sup>5</sup> See country notes on [www.africaneconomicoutlook.org](http://www.africaneconomicoutlook.org).

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land, customary land and government land (Olima, Obala *et al.*, 1999; Yahya, 2002). Private land comprises leasehold and freehold land, administered under the Registered Land Act. Private land refers to land lawfully held, managed and used by an individual or other entity under statutory tenure (Silayo, 2007). Customary land is held under trusteeship by the various county councils and administered under the Trust Land Act (Musyoka, 2004). According to Silayo (2007), between the 1950s and 1980s, attempts were made to convert customary tenure systems into either freehold or leasehold. These attempts are often mentioned as examples of the failure of implementation of conventional land administration in sub-Saharan Africa. For example, Burns and Dalrymple (2006) recall the problems of land grabbing by the urban elite in the 1950s. The third tenure type, government land, is administered by the Commissioner of Lands under the Government Land Act. Besides the above-mentioned statutory categories, informal tenure has emerged as well. The Constitution and land laws do not recognize either informal settlements or the tenure systems and land rights in these settlements (Lamba, 2005; Republic of Kenya, 2010). Most recent developments concern the National Land Policy, which was approved by Parliament in 2009 (Hendriks, 2010) and the enactment of the Land Act and the Land Registration Act in 2012.

The National Land Policy (as documented within the final draft of the land policy, Republic of Kenya, 2009) does address the concerns related to informal tenure. These problems are caused by the co-existence of many, sometimes incompatible, land-related laws as well as the complex land management and administration. Among other effects, these conditions lead to disparities in land ownership, poverty, squatting and landlessness, urban squalor, tenure insecurity and conflict. As a result, land tenure regimes in Kenya are fragmented, complex and pluralistic (Wachira, 2006; Onyango and Home, 2011). Various proposals have been made to deal with informal settlements, including their formalization, slum upgrading and resettlement programs under specified flexible tenure systems. Such systems might respond adequately to the critique of UN-HABITAT (2005a). In its appraisal, the approach of tenure issues in Kenya was very conservative, notably because lessons from other countries, e.g., the use of occupancy certificates or licenses, had not been implemented or even designed. Nevertheless, some existing tenure solutions may be considered innovative: land-buying companies, saving schemes and community land trusts, among others.

Traditionally, land-buying companies (LBC) are the most popular vehicle for poor people to acquire land in Kenya. They buy large farms at the fringe of cities. After acquisition, the farm is subdivided for individual housing construction. Individuals engage with the LBC in a process running from land purchase through to acquisition of share certificates and eventual granting of title deeds. A LBC might first acquire a block title for the whole area. Participants will receive share certificates once payment of the plot acquisition

costs have been made. The share certificates are documentary evidence and contribute to security of tenure. LBCs are mostly started along ethnic family lines. They seem to suffer from a weak organizational capacity, such as poor record keeping (Taylor, 2004; Obala and Kinyungu, 2004; Musyoka, 2004).

Saving schemes are self-supporting community organizations that serve to improve the members' livelihoods, for example through access to land and housing. They are often linked to a national NGO (like Pamoja Trust), which in turn might be linked to Shack Dweller International (SDI), the international umbrella organization. Savings schemes are becoming more popular. Huchzermeyer (2009) reported, for example, an increase from 5 to 102 schemes in Kisumu's informal settlements.

Community land trusts (CLT) are organizations whereby residents, by virtue of their membership, have a number of rights conferred upon them. The members can first apply for a block title and then pay a contribution to defray the costs of a perimeter boundary survey. A well-known example of a CLT exists in Voi, although its success is contested. Both Obala and Kinyungu (2004) and Taylor (2004) claim that the CLTs in general offer a feasible and appropriate way of addressing the security of tenure needs of the urban poor. By contrast, Bassett (2005) rates CLTs as unpopular because they are misunderstood and, given their complexity, harder to implement than other land ownership schemes.

### 3.3.2 Implementation in peri-urban areas and informal settlements

The literature about peri-urban and urban land issues in Kenya is dominated by the challenges posed by high-density informal settlements. Nairobi beats the lot: 65% of Nairobi's inhabitants live in informal settlements, while the settlements themselves cover only 10% of the Nairobi area<sup>6</sup>. There are approximately 170 informal settlements in Nairobi alone, housing over two million people. The majority, approximately between 80% and 90%, of the residents in informal settlements are tenants (Huchzermeyer, 2008). The owners of the buildings might live within or outside the settlement, and are also referred to as slumlords (Gulyani and Talukdar, 2009; see Section 2.3.5). Research and policy are therefore concentrated on these large informal settlements. The main policy intervention to date is the Kenya Slum Upgrading Program (KENSUP), which was initiated in 2000 through an agreement between the Kenyan government and UN-HABITAT (Hendriks, 2010). The main objective of KENSUP is to improve the livelihoods of the people living and working in the informal settlements, whereby provision of tenure security is

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<sup>6</sup> Sietchiping (2007), keynote address CASLE-conference, November 16<sup>th</sup>-17<sup>th</sup>, 2007, Mukono, Uganda.

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one of the main strategies. As a first step, enumeration would be carried out to establish the nature of land tenure. In Kisumu, where settlements were selected for the implementation of KENSUP, saving schemes were involved in the enumeration exercise. According to Huchzermeyer (2009), most tenants welcomed the exercise. However, landlords resisted for various reasons, such as fear that their land would be grabbed or fear of demolition due to non-compliance with building standards. This suggests that enumeration may have a negative impact on perceived tenure security, even for holders of freehold titles. Huchzermeyer (2009) confirms an initial unintended impact on tenure security by changing landlord-tenant relations, finding that these relations had become fairer and more business-oriented. Weru (2004) concluded that enumeration led to a reduction of the number of people and businesses that would have to be relocated.

KENSUP also assures the rights of occupancy for the residents, eliminating unlawful evictions and providing certainty of residence. This might have raised expectations amongst residents. Indeed, as Lamba (2005) reported, citing Syagga, Mitullah *et al.* (2001), levels of tenure security had increased due to actions like the recognition of settlements by the state, moratoria on evictions and demolitions, upgrading of settlements and formalization of land tenure. However, COHRE (2006) later reported that a moratorium on evictions had neither been declared nor enforced and that no occupancy rights were issued. They claimed further that many important issues relating to tenure were overlooked, particularly with regard to the relationship between the owners of the buildings and the tenants. According to Weru (2004), this relationship carries a risk of conflict. The situation can increase in complexity through tribal conflicts and political interventions. Several scholars, prominently McLaren (2009), Hendriks (2010) and Onyango and Home (2011), claim therefore that the program failed to be implemented at scale. Huchzermeyer (2008) argues that titled land for low-income housing will be traded to the better-off.

Despite programs like KENSUP, evictions or threats of eviction continued to be a reality in Kenya. Evictions may be initiated by the state or individual land owners. According to COHRE (2006, 2009) mass evictions have been announced repeatedly, even affecting up to 300,000 residents. The reasons for the evictions or threat thereof are to create space for roads, railways, an airport and the Nairobi River Basin Program. Some evictions have been suspended due to mass protests.

The legal tenure security within informal settlements is fragile because the rental contracts are based on verbal agreements, and most land parcels lack formal documents. The literature does not give a univocal view on levels of perceived tenure security. Both UN-HABITAT (2006a) and Gulyani and Talukdar (2009) estimate that half of the tenants perceive their tenure status as secure. On the other hand, Huchzermeyer (2009) claims that insecurity of

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tenure was not the primary concern in Kisumu's informal settlements during the enumeration exercise. Nevertheless, the tribal clashes at the end of 2007, resulting in demolition and displacement, contributed to increased tenure insecurity.

In addition to the existence of informal settlements, some scholars studied the development of settlements for poorer households in the urban fringe. Hendriks (2010) describes the relocation of poor households due to eviction and upgrading to six settlements in the peri-urban fringe of Nairobi, lying between 25 and 65 km from the city centre. Land was acquired through various ways, including land-buying cooperatives and land-buying trusts, servicing 48 to 10,000 members each. The relocation was only realized in one settlement, where 29% of the members involved had received share certificates. These certificates were grounds for perceived tenure security, although no formal title deed was delivered at that time. Musyoka (2004), studying land-buying companies in Eldoret, concluded that security of tenure is perceived as sufficient in terms of use rights and therefore a formal title is not regarded as important. Only when the initial subdivision was contested security did drop; people then preferred to have formal titles. Additionally, it can take very long to formalize an informal subdivision; Musyoka (2004) reported on a case in Eldoret where it took 30 years.

Although not often mentioned, peri-urban development might take place on customary land as well. As reported by UN-HABITAT (2006a), councils extended their boundaries in the seventies and eighties of the last century, through which large tracts of customary land were brought under the councils' jurisdiction. An example is Kisumu, where Okonyo (2008) studied individual access to land in these areas. Most land was acquired informally through buying from customary land owners. The practice of documenting transfers by calling upon elders or assistant chiefs was common. Although it is possible to convert these informal lands to a formal title, it has not been done very often.

### 3.3.3 Summary

Kenya has large high-density consolidated informal settlements with millions of inhabitants, where tenants are in the majority. Although tenure security is not regarded as their major problem, about half of them are believed to suffer from tenure insecurity. For land owners in the informal settlements, there are possibilities to acquire formal land titles through upgrading programs. The overall success of these programs is contested, although the landlord-tenant relationships tend to improve, especially through enumeration exercises. On the other hand, a class of landlords might emerge within the settlement and force the very poor to relocate.

The development of innovative tools is concentrated around communi-

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ties, including land-buying companies, community land trusts and saving schemes. These tools mainly support access to land. The role of NGOs and saving schemes is gaining importance. Informal subdivision of customary land is another means of land delivery for urban settlers. Other tools support formalization of informal settlements, like enumeration under KENSUP. Through all these different types of land access and formalization, each settlement in Kenya will have unique characteristics, resulting in unique landlord-tenant relationships and varying levels of legal and perceived tenure security.

## 3.4 Ghana

Ghana lies in West Africa and is bordered by the Atlantic Ocean to the south. It has a low topography with tropical and savannah regions. Ghana's population consists of over 100 different ethnic groups.<sup>7</sup> Its population is 25 million, of which 51.9% lives in urban centres. Its annual urban growth rate is 3.5% (see Appendix B). Agriculture is the main, although not dominant, economic sector<sup>8</sup>.

### 3.4.1 Land tools within the legal framework

Like other sub-Saharan countries, Ghana has a dual tenure system: customary and statutory (Abdulai, 2011). The country has over 30 different ethnic groups. Customary land is vested in communities represented by chiefs or families, as recognized in the Constitution (Barry, Roux *et al.*, 2012). In southern Ghana, customary lands are named stool lands, in northern Ghana skin lands. Together, they cover over 90% of the national territory. Physical possession and occupation is the customary proof of ownership, which is not evidenced in writing. However, in some parts of the country, transfers are often documented with a receipt or an allocation note. In some cases, solicitors or lawyers may be hired to prepare title deeds (Abdulai, 2011; Arko-Adjei, 2011). Various customary rights exist, like allodial rights, customary freehold and sharecropping. The Administration of Lands Act empowers the State to administer customary land, although ownership continues to rest within the traditional authority (Abdulai, 2011; Arko-Adjei, 2011). The Act also regulates the collection and disbursement of stool and skin land revenue, mostly in the form of rents (Arko-Adjei, 2011).

State land is land acquired by the State for public use. The State Land Act is

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<sup>7</sup> According to the country profile published on the website of the African Union (<http://www.au.int/en/>).

<sup>8</sup> See country notes on [www.africaneconomicoutlook.org](http://www.africaneconomicoutlook.org).

used for such acquisitions. According to Zevenbergen (2002), freehold was not possible after the enactment of the Constitution in 1992. No reports of freehold have been found on peri-urban areas under statutory tenure. Its coverage is assumed to be negligible.

### **Land administration**

Land rights (under customary or statutory tenure) can be registered under the Land Registry Act of 1962 and the Land Title Registration Law of 1986. The 1962 Act was a continuation of deeds registration that had been introduced by the British in 1883. According to Arko-Adjei (2011), only those who sought formal credit or who preferred greater security than available under customary tenure registered their land. Because tenure insecurity persisted, the Land Title Registration Law was enacted in 1986. It provided the machinery for compulsory title registration in areas declared Registration Districts. However, the registration of land titles had little impact. Registration was only implemented in Accra, Tema and Kumasi, where it failed to secure land rights for the poor (Arko-Adjei, 2011). The land registration process is cumbersome, bureaucratic, time-consuming and expensive and therefore not attractive to the poor. Ubink (2009) confirms that only the more educated people or people with connections in the bureaucracy manage to go through this formalization process.

In 1999, the National Land Policy was launched. It was followed by the establishment of the Land Administration Program (LAP). Its main aims are as follows (Larbi, 2006):

- Enhanced economic and social growth and poverty reduction through improved access to land and enhanced security of tenure;
- Expanded role of civil society and private sector in land administration;
- Improved governance.

One of the measures within LAP is the establishment of new or the strengthening of existing customary land secretariats (CLS; Antwi, 2006). According to Arko-Adjei (2011), 38 secretariats have been established up to 2009. Their aim is to develop and improve customary land administration.

### **3.4.2 Implementation in peri-urban areas and informal settlements**

An estimated 5.4 out of 24 million people currently live in informal settlements in Ghana (Nyametso, 2010). Several scholars have studied land access and tenure security in peri-urban areas and informal settlements. Abdulai and Ndekugri (2007) reject the premise that, due to the fact that the customary system does not permit individual ownership, people are not encouraged to invest in urban housing. These authors show that the customary system has evolved to include individual ownership; therefore, they argue, the cus-

tomary system cannot be blamed for the problems related to the existence of informal settlements. Ubink (2008) and Amanor (2009) both took the perspective of the rural farmer facing impending urbanization. Their tenure security is under threat as customary authorities may benefit from customary land sales. They point out that customary authorities have powers to adapt customary law to their own benefit (see also Barry, Roux *et al.*, 2012). An example is the acceptance of 'drink money' to confirm land sales, which used to be a bottle of schnapps, now representing the market value of the plot in question. However, in the past, land sales were uncommon under customary tenure (Nyametso, 2010).

Most people in peri-urban environments acquire plots through customary channels. Nonetheless, these channels are a source of land-related conflicts, leading to tenure insecurity and consequently placing a heavy burden on the judicial system (see for example Crook, Affou *et al.*, 2007). According to Wehrmann (2006), multiple sales of land by traditional chiefs and the violation of land-use regulations by individuals represent the most common forms of land conflicts in Accra.

In his PhD study, Nyametso (2010) took the perspective of the slum dweller, studying three settlements in Accra with varying characteristics: Christian village, Madina estate and Sodom and Gomorra (also named Old Fadama). Christian village is a settlement that developed over several decades through continuous customary land allocations. Its levels of *de facto* and *de jure* tenure security are considered high. Madina estate is a settlement where two groups of slum dwellers were resettled after forced evictions during the 1970s. These groups were resettled on government land, although part of the land is contested by the traditional council. All estate land acquisitions have been documented and backed by law. However, no individual titles were issued; instead, all assets are vested in groups of households (Nyametso, 2011). For Madina estate, levels of tenure security are considered high as well. The last of the three, Sodom and Gomorrah, is a settlement on public land and is located near the city centre. The land is illegally occupied, so people are insecure about their tenure status. According to Amnesty International (2011), between 55,000 and 79,000 people live without security of tenure and are under constant threat of forced eviction. Amnesty's involvement was initiated after the announced demolitions that were intended to create space to improve the railway system. Also COHRE (2009) reported on planned evictions: in 2007, an estimated 3,000 households in the Agyemankata community in Accra were threatened with evictions.

Arko-Adjei (2011) studied three peri-urban areas under three types of customary tenure: stool land in Japekrom, a small town; skin land in Tamale, a large town; and family land in Gwabe-Kwatei near Accra. A customary land secretariat was only operational in Gwabe-Kwatei. In all three study areas, allocations of plots were based on well-designed layouts. The earlier men-

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tioned allocation note was used to confirm that the traditional authority had allocated the plot to the beneficiary. The majority of respondents claimed that these notes offered sufficient security of tenure, though a minority claimed that tenure security can only be attained by statutory registration at the CLS. The limited need for statutory registration might be explained by the notion that registration of customary land in an individual name goes against customary norms (Barry, Roux *et al.* 2012). Arko-Adjei concludes that written documentation and the involvement of professionals have become more important in land management within the three study areas. Nevertheless, Amonor (2009) adds that physical development of the plot is regarded as a safer investment in securing the plot than any attempt to register it. Before the cumbersome process of registration is completed, the land may be given out to others. According to Abdulai (2006), even plot holders in possession of title or deed certificates still may employ unorthodox measures like the engagement of land guards to protect their land right. This suggests that the legislative framework may not provide enough tenure security under all circumstances.

Although the National Land Policy and the Land Administration Project aim to improve land administration and to increase levels of tenure security, both tools are criticized. Because the government of Ghana chose to position customary land secretariats under the umbrella of traditional authorities, the risk remains that customary authorities continue to erode land rights (Antwi, 2006; Ubink, 2009). Other scholars, like Arko-Adjei (2011), favour CLSs, claiming that they have demonstrated the ability to adopt innovative tools to increase tenure security. However, the performance of these institutions is considered poor, a deficit attributed to the lack of capacity provided to them (Bugri, 2012).

### 3.4.3 Summary

In Ghana, peri-urban areas usually develop under customary tenure and to a limited extent on state land. Under customary tenure, land is accessed through the land market. On state land, it is often acquired illegally, resulting in informal settlements. Although statutory control over customary land is contained in the legal framework, the traditional authorities manage to wield overall control and some traditional leaders manage to use the system for their own benefit.

For both farmers and new settlers, levels of tenure security are generally considered low. Tenure security can be improved through land administration, although in practice the process is only accessible to the educated, wealthy and well connected. For other people, physical development of the plot is the only way to improve tenure security.

The statutory administration tools, namely the deeds and title registration

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systems, are not considered pro-poor. The processes are cumbersome, costly and time-consuming.

It is the aim of the National Land Policy and Land Administration Project to improve and simplify the land administration system. However, scholars have raised serious doubts about whether this can be achieved if the de facto powers of traditional authorities are not reduced. Others advocate strengthening the powers of customary land secretariats. While Ghana has implemented innovative land tools, there is no conclusive evidence that they provide tenure security for the poor.

## 3.5 Namibia

Namibia is situated on Africa's south-western seaboard, bordered by the Atlantic Ocean to the west. Its main economic sectors are mining and tourism<sup>9</sup>. The national currency is the Namibia Dollar (NAD). Its population is 2.3 million, of which 38.4% lives in urban centres. The annual urban growth rate is 3.1% (see Appendix B).

### 3.5.1 Land tools within the legal framework

Namibia has the following tenure systems: State land dominated by freehold tenure and communal lands under customary tenure. Informal tenure mainly occurs on State land, which may be owned by the government or individuals. The land policy of 1998 considers freehold tenure as the only type of secure and registerable title in urban areas (Legal Assistance Centre, 2005). This is confirmed by De Kock (2006), who states that the right to own land in Namibia is enshrined in the Constitution.

The Constitution of Namibia offers rights to acquire and own land and allows free settlement for all its citizens (Republic of Namibia, 2002). This is a necessary correction from the colonial past under Apartheid rule, when blacks were not allowed to own land or stay permanently in towns (LAC, 2005). Other important stipulations with respect to peri-urban land are found in articles 66a and 100. Article 66a states that both customary law and common law are in force as long as they are not in conflict with the Constitution or any other statutory law. In article 100, land is declared to resort under State ownership if not otherwise lawfully owned.

Around 40% of the territory of Namibia, the so-called communal lands, is governed by traditional authorities. The national government holds the land in trust for the indigenous communities. Use rights are mostly granted for resi-

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<sup>9</sup> See <http://www.sadc.int/member-states/namibia/>.

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dential and agricultural purposes (LAC, 2005). People live in so-called traditional homesteads, a group of which are represented by a traditional headman.

The legal framework relating to State land provides for the delivery of freehold plots through systematic planning and land registration. In urban areas, the following Acts are important (De Vries and Lewis, 2009):

- The Land Survey Act of 1993, specifying the terms for cadastral surveying in Namibia.
- The Deeds Registries Act of 1937, stipulating that all land in Namibia must be surveyed before it can be registered. All transactions resulting in change of land ownership require a survey by a professional land surveyor, approved by the Surveyor-General (SG), and registration in the Deeds Office.
- The Townships and Division of Land Ordinance No. 11 of 1963, providing for the township establishment, subdivision and consolidation.
- The Town Planning Ordinance 60 of 1954, providing for township development and town planning guidelines.
- The Squatters Proclamation (AG 21 of 1985), providing for the removal of buildings and people who have settled unlawfully. Although this proclamation is still in force, it has never been applied after Independence (LAC, 2005).<sup>10</sup>

These acts, with the exception of the Land Survey Act, have not been reformed since the new Constitution was promulgated.

During the last decades, Namibia has been confronted with the development of informal settlements. The cause is the rapid pace of urbanization and the inability of the formal land delivery system to provide sufficient plots at affordable prices. This was confirmed by the land policy of 1998 which proposed, among other things, the development of an upgradeable tenure system and a registration system based on local land registries to provide for secure tenure (Silayo, 2007). The blueprints of these systems were already available and a Flexible Land Tenure Bill was drafted on the basis of the design for a Flexible Land Tenure System (FLTS, Christensen and Hojgaard, 1997). It was only in 2012 that the Bill was enacted as the Flexible Land Tenure Act (Republic of Namibia, 2012). This Act is regarded as one of the most recent innovative land tools for the delivery of tenure security to the poor in urban contexts.

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**10** Nevertheless, newspaper *The Namibian* reported on a case in 2010, when the Proclamation was applied to evict illegal settlers in Windhoek. The settlers in turn went to court to claim the unconstitutionality of some articles of the Proclamation. The court ruled that the settlers first had to abide the law, in this case lawfully occupying land, before they could challenge the Proclamation (*The Namibian*, November 4<sup>th</sup>, 2010; <http://www.legalbrief.co.za>; *The Namibian Law Reports*, 2011, <http://nam-elaws.com.na>: Shaanika and others v Windhoek City Police and others).

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### Flexible Land Tenure Act

The aim of the Flexible Land Tenure Act is to overcome problems related to land delivery for people with a low income. The problems are mainly attributed to the lack of affordable freehold land in urban and peri-urban areas. It creates a second property registration system, parallel to and interchangeable with the conventional system. The Flexible Land Tenure System (FLTS) provides for an affordable, more secure and simple right which can be upgraded according to what the government can afford at any given time (Christensen and Hojgaard, 1997). It can only be applied within proclaimed villages, settlements and towns; application to communal lands is excluded<sup>11</sup>. The system can be applied to upgrade existing or develop new settlements. It introduces two new land rights: a starter title and a land hold title (Christensen, Werner *et al.*, 1999).

A starter title is a statutory land right whereby a piece of land is registered for a group of beneficiaries without delimiting the extent of each individual plot. A starter title can be given to a new settlement. However, to prevent random settling, a layout plan may have to be prepared. This 'blockerf'<sup>12</sup> may be held in ownership with a government body, community organization (group, association) or a private developer. The whole block is registered as a single entity in freehold ownership, both at the Registration of Deeds in Windhoek and at the Land Right Office (LRO) located at the local authority. All (potential) inhabitants of the block have to establish an association that has a constitution. Within the block, each member must abide by the rules set up by the association. The starter title is transferable; it cannot be used as collateral for credit. The blockerf is surveyed according to the land survey regulations.

The land hold title relates to the plots defined for each individual. The Land Rights Office (LRO) registers the land hold titles, and the cadastral layout is done by a land measurer. The land measurer is a land surveyor with lower qualifications, a paraprofessional. At this stage, there is no involvement by the Ministry of Lands or other central authority. The land hold title can be used as collateral for credit and is, with respect to credit facilities, comparable to freehold. In order to upgrade to freehold, the scheme must be situated within the area of an approved township (article 15(1) of the FLTA) and at least 75% of the members have to agree. The local authority may compensate those who refuse to upgrade and sell the plots to interested outsiders (article 15(4)). It is assumed that the conversion from land hold to freehold would be less costly than registering freehold directly. A land hold title resembles freehold; the main difference is that servitudes, restrictive conditions and long-term leases are not possible on land hold titles (article 10(6) of the FLTA).

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<sup>11</sup> Communal Lands are registered through the Communal Lands Act of 2003.

<sup>12</sup> In Namibia, plots are referred to as 'erf' (singular) and 'erven' (plural).

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Another difference is that the land hold titles are registered at the local LRO whereas freehold titles are entered in the central Deeds Registry in Windhoek.

### 3.5.2 Implementation in peri-urban areas and informal settlements

According to the Shack Dwellers Federation of Namibia (2009), it is estimated that up to 25% of the Namibian population is living in informal settlements. In general, people living in such settlements lack tenure security and may be subject to eviction. According to Fjeldstad, Geisler *et al.* (2005), those ones living in so-called impermanent houses, like iron shacks, are particularly vulnerable to eviction. Nevertheless, informal settlement dwellers are reported to be 'accepted' by the authorities. COHRE (2009) did not report on evictions on a large scale in Namibia, although eviction might happen due to arrears on utility bills (LAC, 2005)<sup>13</sup>.

Lack of access to urban land for the poor has been acknowledged by local authorities, NGOs and CBOs, prompting initiatives from both private and public parties. Before the FLTS was enacted, saving schemes, in cooperation with local authorities, were already operating on similar lines. In anticipation of the enactment of FLTA, FLTS was piloted in several towns. One could therefore argue that the Act was already *de facto* in place, yet not *de jure* (De Vries and Zevenbergen, 2011). Experiences with saving schemes and FLTS pilots will be discussed below.

#### Saving schemes

Saving schemes are community-based organizations, established to improve the livelihoods of the members. The members pay fixed contributions on a regular basis. A saving scheme can support small businesses (Lankhorst and Veldman, 2009) or provide access to land and housing, and it can operate in urban and rural areas. The schemes may be linked to umbrella organizations, of which the Shack Dweller Federation of Namibia (SDFN) is the largest. It started in 1998 with 30 saving schemes and grew to encompass 587, representing around 18,000 members in 2008 (Namibia Housing Action Group, 2009; UN-HABITAT, 2005c). SDFN is a member of Shack Dweller International (SDI). The standard methods used by SDI are daily savings and loans, participatory enumerations and peer learning exchanges (Muller and Mbhuga, 2012). SDFN is mainly concerned with community organization and empowerment. It is supported by the Namibia Housing Action Group (NHAG) for technical, legal and financial issues.

Normally, saving schemes acquire a blockerf under freehold tenure,

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<sup>13</sup> There are threats to evictions, see note 10.

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with all members having an undivided share. Through a land rights agreement between an individual and the saving scheme, an individual plot will be allocated to the individual. However, the land delivery process for saving schemes has been slow in several cases, leading to impatience and withdrawal of memberships. A saving scheme also supports access to loan schemes, an important driver of success for these saving schemes. A minimum amount of NAD 1,300 (USD 160) is needed as a deposit to qualify for a national housing loan of NAD 20,000 (USD 2,466; Muller and Mbanga, 2012).

Additionally, NHAG and SDFN also participated in the Community Land Information Program (CLIP), a national information-gathering activity of low-income people living in informal settlements and backyards throughout Namibia. It conducted a general inventory of all 235 informal settlements in Namibia and made a detailed enumeration within each settlement, which proved that the Federation was able to work at scale (Muller and Mbanga, 2012).

### **FLTS pilots**

The FLTS was piloted in Windhoek, Rundu and Oshakati, and it gained international attention because of its innovative character. Hackenborch and Kozonguizi assessed the pilots and concluded on the basis of the land surveying exercises alone that perceptions of tenure security had been raised, which led to home improvements (Hackenborch and Kozonguizi, 2005).

The principles of FLTS are being applied in the city of Windhoek, where settlements are developed with varying levels of service provision for people with corresponding income categories (LAC, 2005). In addition, Windhoek facilitates saving schemes through the allocation of blockerven. The city applies practical guidelines, such as a maximum membership for the savings schemes of 100 members. Mooya and Cloete (2010) studied two settlements in Windhoek under three regimes, namely freehold, saving schemes and informal. Concurring with Campbell, de Kock *et al.* (2008), they concluded that the city of Windhoek is still unable to adequately provide secure tenure for the rapidly growing informal settlements, although a system of group rights offers better prospects. Therefore, both studies support the implementation of the FLTS. By contrast, Lankhorst and Veldman (2009), after assessing the potential of FLTS in Otjiwarongo, argue that conditions were not favourable, either locally or nationwide, because of the difficulty of establishing decentralized offices and services. Instead, they proposed to bolster extra-legal practices like allowing exemptions to the minimum plot size of 300 m<sup>2</sup> and managing layout problems at the micro level. Such measures would facilitate upgrading by promoting building permission, services construction and better perceived tenure security. They underscored the advantages of extra-legality, mainly in terms of economic freedom, an aspect often ignored in the current literature. However, legal tenure security will not change in such cases.

### Multiple tenure regimes

Windhoek is not surrounded by land under customary tenure. By contrast, many urban centres in northern Namibia expanded during the pre-independence era into the communal areas. After independence, through the Local Authorities Act of 1992, the towns were proclaimed townland. At the moment of proclamation, the area fell under the jurisdiction of the local authority and no longer under the traditional authority. As a result, the official land tenure regime suddenly changed from customary to statutory. In this way, local authorities obtained control over rural or unused land. Both traditional farmers and informal settlers were suddenly subject to statutory law and were required to register with the local authority and to pay a monthly plot rent (Fjeldstad, Geisler *et al.*, 2005). In case the local authority needs land for development, they first have to acquire it from the traditional homesteads (UN-HABITAT, 2005c).

Although the tenure conversion can be clearly marked in time, in reality the tenure systems (formal statutory, informal and customary) are intertwined and co-exist. Till the enactment of the FLTA, there was no legislation available to local authorities seeking to formalize informal settlements on former communal areas. Its absence resulted in inadequacies with respect to the land rights in peri-urban areas (Christensen and Hojgaard, 1997; LAC, 2005).

### 3.5.3 Summary

Paradoxically, though Namibia is a sparsely populated country, a lack of land available for urban settlement is an often heard complaint. This lack of availability can be attributed to the inability of the formal system to deliver land at low cost to the poor. Both authorities and communities have responded to this problem. One solution comes from the recent enactment of the Flexible Land Tenure Act, another from the operations of saving schemes to support land access and house ownership for the poor. Both solutions work along similar lines and can be seen as innovative land tools with high potential.

## 3.6 Zambia

Zambia is an entirely landlocked country in southern Africa. It is located on a gently undulating plateau, which is between 900 and 1,500 metres above sea level. This plateau is a mix of woodland and savannah regions interspersed with lakes, rivers, hills, swamps and lush plains. Its main economic sector is mining, and copper is the main mineral<sup>14</sup>.

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<sup>14</sup> See <http://www.sadc.int/member-states/zambia/>.

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The national currency is the Zambia Kwacha (ZMK)<sup>15</sup>. Its population is 13.5 million, of which 39.2% lives in urban centres. The annual urban growth rate is 4.2% (see Appendix B).

### 3.6.1 Land tools within the legal framework

The Lands Act of 1995 designates the main tenure regimes in Zambia, namely customary and statutory, which have their foundations in colonial law. The Constitution is currently under revision; a first draft was published in 2012. Both the draft and the current versions recognize customary tenure; no reference is made to squatter rights or informal settlements (Republic of Zambia, 2012; UN-HABITAT, 2012b). The same is true of the Lands Act of 1995, which explicitly prohibits illegal squatting and does not contain specific measures for informal settlements. Some settlements are now recognized by sector law through the Housing (Statutory and Improvement Areas) Act. At present, a new land policy is available in draft form; it is expected to be finalized after the enactment of the Constitution. According to the Zambia Land Alliance (2005), the draft version of the land policy does not include specific pro-poor measures for peri-urban areas, although objectives to promote equal access to land are set and the pressure on urban land is addressed (UN-HABITAT, 2012b).

#### Customary tenure

According to official figures, customary tenure covers 94% of Zambia's surface. There are 73 tribes living in the customary areas under a hierarchy of around 250 chiefs, senior and paramount chiefs (Chileshe, 2005). Chiefs and headmen have an important role to play in land matters (Mvunga, 1982). They do not own the land; they merely exercise interests of control and regulation of the acquisition and use of land while their subjects have beneficial interests in land (Mudenda, 2007). Clearing of bush is the main channel by which to acquire bare land (Mvunga, 1982, p. 40). He explains that sale of bare land is not possible under customary tenure: *“Economic pressures due to scarcity of land will no doubt be forthcoming, but as of now the impact of such pressure has not resulted in recognition of bare land as being a saleable commodity.”* Nevertheless, customary sales have increased over the last decades, a phenomenon which has not been satisfactorily resolved under customary law (UN-HABITAT, 2005b).

The Lands Act explicitly recognizes customary tenure. However, mere recognition seems to have little value. There are no other provisions in the law to improve tenure security within the customary system. The only consequence is that a customary right holder cannot forcibly be removed from his or her

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<sup>15</sup> The Kwacha has been revalued since January 1<sup>st</sup>, 2013 (ZMW).

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land. However, this security is already enjoyed within the customary system to a large extent (Mulolwa, 2002).

### **Statutory tenure**

Although relatively small in coverage (6%), State land is important, because it includes large commercial farms and most urban areas in Zambia. Land interests on State land have to be registered under the Lands and Deeds Registry Act (Cap 185). Zambia employs a system of deeds registration that has been influenced by South African cadastral surveying practices. According to UN-HABITAT (2012b), it is an expensive ‘gold standard’ system and should be reviewed.

The Lands and Deeds Registry Act applies to land allocation, transfers and subdivisions on State land. Upon allocation, the Commissioner of Lands can issue certificates of title, which normally cover leases of 99 years. In such cases, an approved survey diagram has to be produced beforehand (Mulolwa, 2002).

The Lands Act ended the legal fiction inherited from the past that land has no value, thereby restoring a land market. Nevertheless, the land market is still restricted, because the Act continues the existing leasehold tenure system and does not allow freehold tenure. Nevertheless, the third draft of the land policy reports land sales in most parts of urban Zambia in spite of these restrictions (Republic of Zambia, 2006).

### **Conversion of customary land to State land**

There is a formal way to convert customary land into statutory tenure: the Lands Act facilitates conversion of customary land into leasehold. This is a voluntary procedure and can be applied by any occupant of customary land (Mulimbwa, 1997). The conversion requires the President’s consent; he may not alienate customary land without first considering local customary law. Therefore, permission must be obtained through consultations with the appropriate chiefs and the local authority, while persons whose interests could be affected must also be consulted. According to UN-HABITAT (2005b), chiefs can, however, issue a letter of consent without prior demarcation and without a thorough check. As the leasehold has to comply with the Lands and Deeds Registry Act, the land has to be demarcated and surveyed according to the prescribed cadastral standards. When all steps have been taken, the Commissioner of Lands will issue a 99-year lease.

### **Formalization**

The colonial legacy combined with the costly and cumbersome procedures concerning land acquisition on State land resulted in the development of informal settlements around urban centres. As a response to the ensuing housing problems, the Housing (Statutory and Improvement Areas) Act (HSIAA) was enacted in 1975. According to UN-HABITAT (2012b), this is one of the most innovative laws on formalizing tenure in informal settlements. It created a system for legalizing and upgrading informal settlements through the planning and development of

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statutory housing areas. It also ensures the provision of services and the formalization of land tenure in existing informal settlements through the designation of improvement areas. The HSIAA created the opportunity to bypass the costly and lengthy procedures related to the national planning and land registration legislation embedded in the Lands and Deeds Registry Act, the Land Survey Act and the Town and Country Planning Act.

The minister may declare any area held by a council as a statutory housing area or improvement area, on condition that the land is held under the council and that a plan has been approved. Land in so-called site & service schemes or council housing estates can be declared statutory housing areas. The local council issues council certificates of title to the beneficiaries. There is no specific period prescribed for such leases; most councils issue them for 99 years. The titles are registered at the council's registry. There is not much difference in legal consequences between titles issued by the Ministry of Lands or a council.

Improvement areas were designated to formalize informal settlements and to facilitate the process of upgrading. Once formalized, roads, water and other infrastructure could be incorporated in the planning for the area. In order to create space for the construction of the proposed roads, some residents may have to be relocated to so-called overspill areas. Residents are issued 30-year renewable occupancy licenses. These do not confer title to the land but merely the right to occupy an existing dwelling on a piece of land (UN-HABITAT, 2005b; UN-HABITAT, 2007b). The license describes the property as "*the land under and immediate adjoining House (or Shop) Number (block/number) in (Improvement Area Name) Improvement Area*" (Nordin, 1998, p. 10). The plots are not demarcated; the license does not indicate the dimensions of the plot.

The most important legal consequences of the designation of an improvement area are as follows: it is not allowed to occupy land within the area without a license; no more than one occupancy license shall be issued to any person; and all land dealings like subletting and transfers require the council's consent.

Matibini (2002) claims that the occupancy license, although well intended, does not provide security of tenure. His main critique refers to the powers of the local authority. It may revoke an occupancy license with three months' notice when the licensee fails to comply with any of the conditions stipulated on the license and its right to enter the land and install or erect any works thereon, when it is in the general interest of the community at large.

According to the World Bank (2002), a clear policy on how to deal with informal settlements is lacking. Much of the existing legislation needs to be modified and streamlined<sup>16</sup>. Therefore, a Regional Planning Bill has been draft-

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**16** Office of the High Commissioner for Human Rights (2008), Zambia - Overview of the current Housing Rights situation and related activities, questions whether political will is available to upgrade informal settlements in a

ed. The aim of the Bill is to repeal both the Town and Country Planning Act and the Housing (Statutory and Improvement Areas) Act. According to UN-HABITAT (2012b), all informal areas within planning boundaries will be considered special treatment areas requiring special planning approaches, to be laid down within the Urban and Regional (Upgrading of Informal Settlements) Regulations (2009). In contrast to the current situation, the pending Bill will extend planning to all areas of Zambia, including customary areas. Traditional authorities are envisaged to participate directly in the formal planning system and the physical development within the areas of their jurisdiction (UN-HABITAT, 2012b). According to Berrisford (2011), land tenure issues were deliberately excluded from the Bill, resulting in the loss of the progressive tenure provisions of the HSIAA.

Besides the certificates of title and the occupancy licenses managed under the HSIAA, land record cards are also issued as proof of tenancy. Land record cards are issued in unplanned settlements, which are not declared statutory or housing improvement areas. They permit occupancy for 10 years and can be considered a stop-gap document. Although they may not be issued any longer, in some settlements the majority of residents are in possession of such cards (Ministry of Local Government and Housing (MLGH), Lusaka City Council (LCC) *et al.*, 2009b; UN-HABITAT, 2009).

### 3.6.2 Implementation in peri-urban areas and informal settlements

Zambia is one of the more urbanized countries in sub-Saharan Africa (UN-HABITAT, 2009). Although formal serviced land is cheap by international standards, UN-HABITAT (2012b) concludes that it is not affordable to the majority of Zambians. Customary lands surrounding urban districts at least provide for easier access but thereby call attention to the need for liaison and cooperation between the urban councils and neighbouring traditional authorities<sup>17</sup>. According to UN-HABITAT (2012b), the government of Zambia defines peri-urban areas as settlements within the area of jurisdiction of a local authority, with high population density and high-density low-cost housing, where basic services are lacking or inadequate. This does not completely coincide with the definition used within this study; the difference was also experienced during fieldwork in Zambia (see Section 6.2.1).

Although COHRE (2009) did not report on evictions in Zambia, they do take place on a small scale (UN-HABITAT, 2012b). As said, the Lands Act explicitly prohibits squatting: a person shall not without lawful authority occupy

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sustained and comprehensive manner.

**17** This will be demonstrated with reference to Lusaka in Chapter 6.

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vacant land. Section 9 (2) of the Act empowers eviction for any unauthorized occupation of vacant land (Mudenda, 2007). According to UN-HABITAT (2005b), illegal settlers have, under the existing political machinery, always been protected by the ruling party. In most cases they are unaware that the Lands Act makes squatting illegal.

Although many settlements have been declared improvement areas over the years, especially in the capital city Lusaka, few people have made the effort to collect their occupancy license. Nordin (2004) describes the experiences in Chaisa, an informal settlement where occupancy had to be formalized and the transfer of occupancy licenses to the community had to be increased. Before the start of the project, it was estimated that 10% of the inhabitants had collected their licenses. By the end of the project, this number had risen to 40%, a positive result which is also reported in the UN-HABITAT Good practices database<sup>18</sup>.

The same database also reports on the increase in the number of residents willingly paying ground rent to the council after being assured they would be granted an occupancy license. Even though the number of applicants for occupancy licenses has risen, the increase has not been as high as expected (Nabanda, Buleba-Mumbi *et al.*, 2001). According to UN-HABITAT (2005b), 1,040 occupancy licenses were issued in Chaisa in 2003, accounting for 40% of the target group.

On the adjudication procedure, Nordin (2004) described the house-to-house visits and subsequently the registration for the license. The house-to-house visits were carried out by two council officials and one representative from the Ward Development Committee (WDC). Nordin also described the verification and dispute resolution stage but added that this was not implemented because the process was not in line with the legislation.

Within the same project, Nabanda, Buleba-Mumbi *et al.* (2001) carried out an assessment of the occupancy licenses in Chaisa. They concluded that the possession of occupancy papers improved one's security of tenure. The papers provided security against any possible conflict over occupancy involving local authorities and/or community members and relatives. In addition, the possibility of using the license as collateral<sup>19</sup> was mentioned. It is important to note, however, that people in non-formalized settlements might perceive that they have tenure security, due to the involvement of party officials (UN-HABITAT, 2005b; UN-HABITAT, 2012b).

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<sup>18</sup> <http://www.bestpractices.org/database/> (accessed July 10<sup>th</sup>, 2009).

<sup>19</sup> This possibility is denied by Matibini, P. (2002). Lusaka City Council Land Tenure Initiative - A legal assessment. Lusaka. It is worth noting that the Land Record Card offers the possibility of use as collateral: the name of the lender can be written on the card and the lender may retain the card until discharged.

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### Multiple tenure systems

In Zambia, tenure systems may conflict in three ways: informal over statutory, statutory over customary, and customary over statutory. Informal over statutory conflicts occur frequently as a result of the emergence of informal settlements within city boundaries. People settle on vacant statutory land, often abandoned farm land, without permission from the city council (Van den Berg, 1984). Statutory over customary conflicts occur in the event of conversion of customary tenure. The question arises whether the land ceases to be customary land. According to Sichone (2008), a chief no longer has the authority or control over this land and it consequently ceases to be customary. He adds that chiefs themselves believe they should have the liberty to convert back to customary tenure. By contrast, UN-HABITAT (2005b, p. 26) suggests that converted land does not cease to be part of the customary area. The customary area is defined inflexibly in Section 2 of the Lands Act as the portion of the Zambian land mass as “*the area described in the Schedules to the Zambia (State Lands and Reserves) Orders, 1928 to 1964 and the Zambia (Trust Land) Orders, 1947 to 1964.*” Customary tenure over statutory tenure is theoretically impossible from a legal perspective, because traditional authorities have no legal power over land within city boundaries (UN-HABITAT, 2012b). However, as will be demonstrated by in Chapter 6, there are cases where traditional authorities claim land within city boundaries. According to Sichone (2008), the Lands Act is silent about whose interest or authority should prevail in those cases.

### 3.6.3 Summary

While the main legal framework (the Constitution and the Lands Act) does not recognize informal tenure, additional legislation (the Housing Statutory and Improvements Areas Act) was passed to deal specifically with informal settlements. The main reason to improve and upgrade informal settlements was the resounding challenge to the government to provide formal housing for the growing population, especially in urban areas. The designation of a settlement as an improvement area implies spatial restructuring of the area, provision of services, and formalization of the tenure in the form of provision of occupancy licenses to land holders. Although people in general enjoy higher levels of tenure security, it has been observed that some people are still reluctant to collect their certificates from the council. The implementation of the Lands Act has had no effect on this situation, nor on halting the expansion of informal settlements. Although a land policy was drafted, further work on it was postponed, leaving it to be finalized after the adoption of a new Constitution.

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## 3.7 Botswana

Botswana is a completely landlocked country at the centre of southern Africa. It is relatively flat, at roughly 900 metres above sea level, with gentle undulations and occasional rocky outcrops. The Kalahari Desert occupies more than 70% of the country. The main economic sector is mining, especially diamond mining<sup>20</sup>. The population amounts to two million people, concentrated in the eastern parts of the country. The majority, 61.7%, lives in urban centres. The annual urban growth rate is 2.1% (see Appendix B).

### 3.7.1 Land tools within the legal framework

Customary tenure covers the largest area in Botswana: 70.9% of the total land area. State land and freehold cover 24.9% and 4.2% respectively (Kalabamu and Morolong, 2004). These tenure systems are linked to land use systems: state land relates to urban areas, whereas customary tenure relates to peri-urban and rural land uses. Freehold, which can be applied to both land uses, will not be discussed here because it is not accessible to the poor. Compared to other countries in sub-Saharan Africa, informal tenure is limited. It will be discussed in the next sections within the urban and peri-urban contexts.

#### Urban land

The main land rights available on state land are fixed-period state grants (FPSG) and the certificate of rights (CoR). They are not described in the State Land Act. Instead, they are defined in the urban development and land policy of 1978 and confirmed in the national policy on land tenure of 1985. The policy of 1978 created the possibility for every citizen to be allocated at least one plot in each town, at almost no cost, thereby creating an exaggerated demand for urban land. The land is mainly managed by the Department of Lands and the Self-Help Housing Agency (SHHA) within the various urban councils (Kalabamu and Morolong, 2004). The FPSG is a capitalized lease, where the total rent is paid at its commencement. On expiration of the lease, the land will revert to the state. Sale or transfer of the FPSG is only allowed when the lessee has developed the land according to the covenant contained in the grant. The lease period cannot be extended through transfer or sale (Dixon-Gough and Molobeng, 2006).

The certificate of rights provides for secure tenure for urban squatters and new plot holders in SHHA areas. The SHHA departments manage state land under the CoR tenure. The CoR was introduced to avoid complex and costly registration processes. CoR plots are surveyed as a block. Each individual

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<sup>20</sup> See <http://www.sadc.int/member-states/botswana/>.

plot is marked out using metal pins or poles. Under a CoR, the plot holder is given usufruct of the plot while the state retains the ultimate ownership under a block surveyed title registered with the Registrar of Deeds. The only permitted use is to erect an owner-occupied house. The usufruct is perpetual (Kalabamu, 2011). It is transferable, it can be inherited and the house can be let, all after approval by the council. CoR titles are issued free of charge to any citizen of Botswana aged 21 years or above with a regular income. The grantee must have been living in the respective township for not less than six months. A CoR can be converted into a FPSG.

### **Customary land rights on peri-urban land**

For centuries, all land in Botswana was managed by the traditional authorities. Chiefs and headmen (also called ward heads) administered the use, allocation and transfer of land, although they did not own it. Unallocated lands remained the property of the tribe. All tribesmen had a free right of avail, and all other rights, whether individual or communal, were derived from this right (Kalabamu, 2000). All allocated or inherited land remained, in perpetuity, the exclusive property of the family concerned. Customary land could be subdivided into four major zones: residential, arable, grazing and woodlots or hunting land. People were only allowed to settle in villages on land reserved for residential use (Kalabamu and Morolong, 2004).

During colonization by the British, statutory tenure was introduced. Customary tenure was retained in the Native Reserves or Tribal Territories (Kalabamu and Morolong, 2004). After independence, political authorities were dissatisfied with the role of the traditional authorities involved with land administration. They therefore implemented the Tribal Land Act.

### **Tribal Land Act**

Through the implementation of this Act, the powers of the chiefs concerning access to and the use and disposal of tribal land were transferred to land boards (Maripe, 2007). Land boards are governmental agencies resorting under the Ministry of Lands and Housing (MLH). At present, 12 main land boards exist, supported by 39 subordinate land boards. Since 1968, all land held under customary tenure is governed by this Act (Kalabamu and Morolong, 2004).

The Tribal Land Act defines two types of land rights: customary land grants and common law leases. The customary land grant is the continuation of the customary right in perpetuity. The land board allocates such rights and is required to issue certificates of customary land grants. The various land uses and resulting rights are still recognized.

At the request of a customary land grant holder, the land board may convert the land grant into a common law lease. For residential land use, the lease is valid for 99 years. A survey diagram or plan, approved by the Director of Surveys and Mapping, has to be produced and this document is paid for

by the applicant. The common law lease can be registered as a title deed at the Deeds Registry of the MLH; however, this is not compulsory. Through the implementation of the Tribal Land Act, land under customary tenure came to be regarded as an economic asset; it was made transferable and common law leases were accepted as collateral for loans (Kalabamu and Morolong, 2004).

Two major amendments were made to the Act in 1993. First, officials from the traditional authority were no longer allowed to become members of any land board. Their role in land administration was therefore reduced to signing certificates of no objection, indicating that the land had not been allocated to anyone else. According to Kalabamu and Morolong (2004), this task tended to be left to junior staff of the tribal administration, without proper verification of the information on the records or from the field. The amendment of 1993 also excluded politicians from the land board, making it an agent of central government rather than a trustee for the people. Secondly, all customary land used to be vested in the land board in trust for the benefit and advantage of tribesmen. The amendment changed it into a trust for all citizens of Botswana, through which land access is decoupled from tribal membership (Kalabamu and Morolong, 2004).

### **3.7.2 Implementation in peri-urban areas and informal settlements**

Because urban land is managed differently than peri-urban land, these land uses will be discussed separately. The differences are especially noticeable in and around Gaborone.

#### **Urban land**

After independence, the government was confronted with the development of informal settlements. It first opted for demolition of informal houses built on state land. In the mid-1970s, it changed its policy towards upgrading and formalization. Within Gaborone, Old Naledi is the first and only substantial informal settlement in the city (Kalabamu and Morolong, 2004). Due to demolitions and a restrictive policy, squatting is rare in Botswana, although it is reported to happen in Jwaneng, Ghanzi and Francistown (Yahya, 2002). Old Naledi was upgraded and formalized between 1978 and 1981. According to Mosha (1996), Temporary Occupancy Permits have been issued in Old Naledi. These are valid for a year, and were upgraded to CoR when the informal settlement was upgraded. In 2002, consultations were going on for another upgrading. According to Kalabamu and Morolong (2004), despite improved land tenure security, plot holders did not improve the quality of their houses as was envisaged. Beneficiaries found it more profitable to invest in more rental rooms than in enhancing the quality of the buildings. The issuance of CoR was terminated in 1992; nevertheless, it has been praised for the provision of free

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tenure to the poor, while being upgradable and adaptable to the conventional land administration system (Nkwae and Dumba, 2010). Since 1992, applications for low-income plots under FPSG are channelled through SHHA offices. Less than 15% of the people having CoRs have converted to FPSG. According to Yahya (2002), people prefer the FPSG over CoR, although they feel frustrated by the various barriers to get it. One of the disadvantages of CoR was that it was perceived as an inferior title (Kalabamu and Morolong, 2004; Nkwae and Dumba, 2010).

### **Tribal Land Act in peri-urban areas**

Land boards are required to issue certificates to the existing customary land holders, to allocate plots to applicants and to approve land transfers. When rural land is converted into land for urban use, the land board will repossess the farms and fields and create new plots according to a development plan prepared by the district council. These plots will be delivered for free as customary land grants to interested citizens. In order to limit the demand for urban plots and avoid speculation, some policy rules have been implemented. First, the number of free plot allocations to individuals in any one tribal territory of any one peri-urban area is limited to one (Shabane, Nkambwe *et al.*, 2010). Secondly, according to a cabinet decision CAB 16/91 (Republic of Botswana, 1992), the transfer of undeveloped residential land is not permitted. Thirdly, an allocated plot has to be developed within a specified period to be determined by the land board; non-compliance will result in the plot being repossessed by the land board (Government of Botswana, 1970; Section 15e).

Major problems arose during the implementation of the above procedures and regulations in peri-urban areas of Gaborone, especially in Mogoditshane. First of all, as mentioned before, the land boards and traditional authorities did not check all existing customary land claims thoroughly enough. Secondly, there was a strong belief that the existing customary land holders had rights akin to land ownership and, therefore, had the right to use their land in any way they wished, including subdividing and transferring their land (Kalabamu and Morolong, 2004). Agricultural land was subdivided, sold to individuals and converted to residential use without the approval of the land boards. As a result, an informal tenure category emerged and developed rapidly, accelerated by the urbanization process. This led to a number of presidential interventions and rulings, which will be discussed in detail in Chapter 7.

### **Waiting lists**

Although informal tenure is limited, there are long waiting lists in all delivery channels for land and housing. For example, Mosha (2013) reports 6,118 entries for low-income plots in Gaborone and 140,000 entries in total for Mogoditshane. This indicates an exaggerated demand for (peri-)urban plots and the failure of the land delivery mechanisms.

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### LAPCAS

From the above, it is clear that the peri-urban areas of Gaborone continue to face challenges relating to land administration. These challenges are well understood within government circles. According to Malatsi and Finnstrom (2011, p. 5), the fundamental problem of land administration in Botswana was described in 2008 by the Ministry of Lands and Housing as follows: “*land administration processes and systems are not providing the information and services that society needs.*” The government therefore launched a project on the Improvement of Land Administration Procedures, Capacity and Systems in Botswana (LAPCAS).

### 3.7.3 Summary

It can be concluded that Botswana has a consistent legal framework with clearly defined rights. Additionally, most right holders are officially registered. Both on urban land and peri-urban land, two types of rights exist: a simple one (CoR and certificate of customary land grant), and a more advanced one (FPSG, common law lease). Due to a restrictive policy and demolitions in the past, informal tenure is limited. The only significant informal settlement, Old Naledi, has been formalized by granting Certificates of Rights. Informal tenure nowadays only appears in peri-urban areas, where former customary land is subdivided and sold, disregarding the conditions of the Tribal Land Act. This problem has been addressed for decades but proved difficult to solve.

## 3.8 Concluding remarks and implications for this study

From Table 3.1, it is clear that countries have dual or even triple tenure systems, and in most of them informal tenure occurs. There are no full implementations of pro-poor land tools or principles. Uganda and Namibia have enacted new innovative land-related laws, although implementation is rather limited. Botswana is an exception in that it has a long-standing and area-wide implementation through the Tribal Land Act, resulting in an almost fully completed land administration system. Overall, various types of informality exist due to different ways of land access. There are various levels of perceived and legal tenure security, so security responds differently to the application of land tools. Three major characteristics are more or less common. First, to manage tenure security, in most cases implementation of all possible types of land tools is required: to define land rights, a legal framework is needed; to create new land rights, tenure tools are needed; to issue certificates, institutional tools and operational tools are needed. Secondly, the upgradability of land rights is possible in most countries, although this also rais-

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**Table 3.1 Major findings on peri-urban land tools in six countries**

Country	Tenure system	Land tools	Implementation	Tenure security	Remarks
<b>Uganda</b>	Formal tenure: customary, freehold, leasehold, mailo. Informal tenure: on each of the above, resulting in complex layers of tenures.	Land Act: certificate of occupancy, certificate of customary ownership, conversion to freehold.	Land Act: limited, slum upgrading.	Informal: perceived security through social legitimacy. Certificates: disputed, lack of faith and regarded as temporary measure.	Landlord-tenant relationships.
<b>Kenya</b>	Formal tenure: private, customary, government Informal tenure: rental tenure.	Land-buying companies, community land trusts, savings schemes, enumeration, formalization.	Slum upgrading; formalization; private initiative.	Varying; effect of slum upgrading contested.	Landlord-tenant relationships.
<b>Ghana</b>	Customary, statutory.	Customary Land Secretariats.	Hardly implemented.	Varying; low for farmers and newcomers.	LAP-program.
<b>Namibia</b>	State land, customary land, informal tenure.	Formalization, savings schemes, FLTA.	Partly implemented (formalization, savings schemes).	Informal settlements: low; savings schemes higher.	
<b>Zambia</b>	State land, customary land, informal tenure.	HSIAA: formalization of informal settlements. Lands Act: conversion of customary tenure.	Slow implementation of HSIAA.	HSIAA: increase in tenure security; collection of certificates is a problem.	
<b>Botswana</b>	Customary tenure, statutory tenure, freehold, limited informal tenure.	Tribal Land Act, presidential amnesty.	Full implementation of TLA, formalization.	Problems relate to subdivision and sale of customary lands.	LAPCAS-program.

es questions on the need or desirability of rights, which are sometimes negatively perceived as intermediate or inferior. Thirdly, informal and customary tenure tend to provide sufficient tenure security for the majority of settlers through a combination of the use of documents and involvement of representatives of the traditional authority.

Major differences should be acknowledged as well. First, customary tenure is dealt with differently in Botswana, Uganda and Ghana; they have decided to maintain customary tenure within (peri-)urban areas. By contrast, Namibia, Zambia and Kenya do not allow customary tenure in these areas. Secondly, the urban areas of Kenya, Uganda and Ghana contain more large consolidated high-density informal settlements compared to Namibia, Botswana and Zambia. This might attract more political and administrative attention compared to peri-urban developments in less urbanized cities.

A related tendency is observed that in such high-density informal settlements landlord-tenant relationships dominate the tenure fabric, whereas in lower-density peri-urban areas, customary tenure evolves through neo-customary and extra-legal practices. When formalized, these practices are often replaced or integrated with statutory tenure.

As discussed in Section 1.2, policies of demolition of informal settlements are being replaced by policies of upgrading and formalization. However, this study has proved that threat of mass evictions still exists, especially to create space for infrastructural works. In the event of mass eviction, the lack of legal security of the settlers results in demolition of their shelter without compensation.

With respect to performance, it is difficult to provide conclusive answers.

The saving schemes in several counties are promising solutions. Other tools and implementations seem promising, although they might be coupled with difficulties like limited land access or non-collection of certificates. The implications for this research are to study all four types of land tools as distinguished in Section 2.5 in peri-urban areas, thereby focusing on multiple tenure systems (customary, informal, statutory). Landlord-tenant relationships will get less attention.

## 4 An evaluation framework for innovative land tools

“The reasons why people fail to register transactions after first registrations are many and multifaceted. Catch phrase clichés explaining development intervention failures such as lack of capacity, complexity, neo-liberal economic policies, and emotional attachments to land may well be relevant to titling project failures, but many observers ignore local, micro level factors” (Barry, Roux *et al.*, 2012, p. 4).

### 4.1 Introduction

To answer the second research question – which was formulated in Section 1.7 as follows: *Which criteria and indicators should be applied to evaluate innovative land tools?* – it is needed to design an evaluation framework for innovative tools. This framework is based on general principles of land administration and land tools but adapted for innovative land tools. The selection of the evaluation criteria will be discussed first. Detailed descriptions will follow for each criterion and its indicator(s). The chapter will conclude with a few remarks on the design of the framework.

### 4.2 Evaluation criteria and indicators

#### 4.2.1 Evaluation criteria for conventional land tools

Innovative land tools and their related pro-poor focus have been discussed in Chapter 2. Because the concept of innovative land tools is rather new, there is no generally accepted framework for the evaluation of these tools. Therefore, existing schemes for evaluating conventional systems of land administration are taken as stepping stones in the endeavor to develop a framework suited to innovative land tools.

Countries with a full-fledged, nationwide system of land administration are still in the minority. It is necessary to monitor and evaluate the development of land administration systems around the world, to share experiences and improve them. Considerable progress has been made in the evaluation of conventional land administration systems or their implementation; see, for example, Zevenbergen (2002); Steudler, Rajabifard *et al.*, (2004); Burns and Dalrymple (2006); Rajabifard, Williamson *et al.*, (2007); Mitchell, Clarke *et al.*, (2008); Williamson, Enemark *et al.* (2010); and FAO and Committee on World Food Security (2012). These studies have deployed a wide variety of criteria: security, fairness and equity, civic engagement, citizenship, etc. Zevenbergen (2002) subsumes all these criteria under the heading of trustworthiness. In contrast, Williamson, Enemark *et al.* (2010) group them under good governance, a perspective that has become popular in the land administration domain. Examples of evaluations conduct-

ed in terms of governance are the Global Land Indicators Initiative (GLII)<sup>21</sup> and the Land Governance Assessment Framework (LGAF) (Deininger, Selod *et al.*, 2009; Burns, Deininger *et al.*, 2010). GLII aims to harmonize monitoring efforts around land tenure and governance through composing a list of comparable and harmonized land indicators.

Criteria similar to those mentioned above have been applied in peri-urban areas by Arko-Adjei (2011). In his study, good governance refers to participation, equity, transparency, accountability, efficiency and effectiveness. He expands the list of criteria by introducing pro-poor objectives: affordability and the use of innovative tools that are easy to understand and free (i.e., no fees for technical or legal procedures). UN-HABITAT (2011), the lead monitoring agency for secure tenure in informal settlements, developed the Legal and Institutional Framework Index (LIFI). It covers mainly quantitative information on evictions, remedial and preventive measures and land administration. Sjaastad and Cousins (2009) came up with practical requirements for land registration systems, such as management at local the level, use of local languages, avoidance of discrimination. On another front, it is not only land tools that can be assessed. Different approaches to the upgrading of urban settlements can be assessed as well (see, for example, Gulyani and Connors, 2002). Other evaluative studies focus on policy development or conflict resolution. In light of the literature, it is concluded that evaluation is possible from different perspectives while applying similar criteria. However, the observation is made that hierarchies, abstraction levels, classifications and taxonomies tend to vary. In the next section, we will deal with the selection of criteria and indicators that will feed into the design of an evaluation framework for innovative tools.

### 4.2.2 Evaluation criteria and indicators for innovative land tools

The evaluation of land tools can be regarded as an application of public policy analysis. Within this domain, three general criteria for innovative land tools are taken as the starting point for an evaluation framework: equity, effectiveness and efficiency (Nagel, 1988; Dunn, 2008). These general, compound criteria are defined at the highest level of abstraction. Dunn (2008) relates equity to legal and social rationality and to the distribution of effects and effort among different groups in society. With respect to land tools, the poor and the better-off should derive equal benefit from the land tools. Effectiveness refers to the extent to which the policies and tools produce the benefits they are supposed to achieve (Nagel, 1988). That is, implementation of the land tools

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21 See <http://www.gltn.net/index.php/projects/global-land-indicator-initiative>.

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**Table 4.1 Evaluation framework: criteria and indicators**

Compound criterion	Equity			
Criteria	Inclusivity		Affordability	
Indicators	Legal recognition		Costs	
	Support for the poor			
	Accessibility			
	Co-management			
	Provisions for secondary rights			
Compound criterion	Effectiveness			
Criteria	Clarity	Legal tenure security	Perceived tenure security	Upgradability
Indicators	Awareness	Type of right	Fear of eviction	Extent of continuum of land rights
		Transfer possibilities	Documented evidence	
		Duration	Transfer possibilities	
			Inheritance	
Compound criterion	Efficiency			
Criteria	Simplicity	Speed	Approach	Completeness
Indicators	Boundary system	High volumes	Individual or systematic	Coverage

should deliver the intended results, notably improved tenure security. Dunn (2008) defines efficiency as the amount of effort required to produce a given level of effectiveness. Accordingly, the intended results of the implementation of land tools should be delivered in the shortest possible time and at the lowest possible cost. In view of the above definitions, it is clear that these criteria are not independent but rather interrelated.

For each compound criterion, a subset of related specific criteria has to be determined. Moreover, for each specific criterion, indicators have to be defined. Their purpose is to provide simple and reliable means to measure the effect of the application of innovative land tools. The more specific criteria were selected on the basis of three guidelines: the set of pro-poor principles, as described in Section 2.2.3 and those referred to in Section 4.2.1; the implementation of innovative tools in peri-urban areas; and a focus on the perspectives of households. To limit the number of criteria and indicators, those that are generally applicable to both conventional and innovative land administration systems – in particular, accountability, sustainability, transparency and timeliness – are omitted in this study, despite their significance. The evaluation framework is consequently focussed on the innovative dimension of the land tools.

Kaufmann and Kraay (2008) distinguish between rule-based and outcome-based indicators. Rule-based indicators are used to investigate whether certain rules exist. Outcome-based indicators are used to study how the rules are implemented and how households perceive their implementation. This study will use both types of indicators to enquire whether innovative land tools have been defined, to what extent they have been implemented and how they are perceived by households in peri-urban areas.

The next sections will identify the indicators for each criterion, thereby providing grounds on which to perform the evaluation. The indicators will have various characteristics, and these features will have to be taken into consideration during the evaluation. The following characteristics will be discussed:

- **Level of investigation:** As noted in Section 1.9.2, this concerns the level of investigation to which the indicator applies.

- **Type:** A criterion refers to a specific type of land tool. This type will be identified according to the taxonomy given in Section 2.5.
- **Measurement scale:** This is the scale that is applied to the indicator and the list of potential values, including their descriptions.

This study uses only those indicators that are relevant to the land tools that have a direct impact on land rights and tenure security. They are described in detail in consecutive sections below and listed in Table 4.1.

### 4.3 Equity

Equity, also called fairness, relates to the notion that all people should have an equal chance to benefit from the system, both by gaining entry to it and by its sustained use. In other words, the land tool should be neutral with respect to the characteristics of the land holders. It should not matter whether one is poor or rich, a farmer or a white-collar worker, a local native or a foreign investor, an indigenous settler or a newcomer/outsider. But neutrality has its limits; a settler acting in good faith may be given preference over a settler acting in bad faith.

When equity is linked to the notion of pro-poor, however, it seems that equity should go beyond neutrality. Their combination suggests that neutrality should passively and actively include the poor upon entry and through their continued presence within the system. The FAO and Committee on World Food Security (2012) emphasize positive action. They advocate empowerment to promote equitable access to land and land rights for all. This includes the poor but also vulnerable groups such as women, especially widows, orphans, the illiterate and minorities.

Terms like social justice and social legitimacy are also associated with equity, as discussed in Chapter 2 at several points. Within the context of this study, they relate to several core questions: Are the rights and interests of the poor in peri-urban areas under customary or informal tenure taken into account? Are the poor protected from eviction? Do they participate in the development processes within the settlement?

In this thesis, the term equity is chosen instead of legitimacy or fairness. Equity is a compound criterion by which to determine the extent to which poor people are recognized and supported with regard to access to land, prevention of evictions and possibilities for formalization. Various academics have suggested indicators for measuring equity. Durand-Lasserre and Selod (2009), for instance, introduced the notion 'recognition of tenure', whereby they distinguish between de facto recognition and administrative or legal recognition. De facto recognition denotes acceptance by local authorities, for example by providing street addresses and house numbers. Legal recognition denotes the delivery of personal rights. Both forms of recognition are consid-

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ered innovative tools in this study.

Within a peri-urban context, with its multiple tenure systems, equity is broken down into two criteria: inclusivity and affordability. The following indicators of inclusivity were selected: recognition; support for the poor; accessibility; co-management; and provisions for secondary rights. Affordability has a single indicator, namely costs. The above criteria and their indicators will be discussed in subsequent sections below.

### 4.3.1 Inclusivity

The poor are often at risk of being excluded and marginalized with respect to their access to and sustained use of land. In the words of De Soto (2000), people holding formal land rights are living under a bell jar. In his view, the legal and political systems prevent the poor majority from entering the formal system, thereby creating a capitalist apartheid. Innovative tools are meant to eliminate the exclusivity of formal land administration systems. While an understanding of inclusivity is therefore crucial, one should keep in mind that it can be studied from different perspectives. Mendoza and Thelen (2008), for example, relate it to land markets. In that context, the poor are often excluded due to the ambiguity of the prevailing legal frameworks and to corruption. In contrast, Zevenbergen, Augustinus *et al.* (2013) relate inclusivity to land administration systems. They advocate an easier accessibility to and a better transparency of land information. The present study emphasizes inclusivity within the legal and institutional framework, whereby the poor are supposed to benefit from the tools available within these frameworks.

#### Legal recognition

Recognition of rights is the first indicator within the LGAF framework, mentioned above. One can distinguish between legal recognition and *de facto* or social recognition, depending on whether the land rights are recognized by the government or the community (Durand-Lasserve and Selod, 2009; Arko-Adjei, 2011; Robertson, 2012; Zevenbergen, Augustinus *et al.*, 2013). In an ideal situation, land rights would be recognized by both the government and the community. In the present study, this indicator applies to the legal dimension; the social dimension is captured by other indicators, such as perceived tenure security and co-management (UN-HABITAT and GLTN, 2011; UN-HABITAT, IIRR *et al.*, 2012). Legal recognition relates to the legitimate informal and customary tenure rights enshrined in the constitution, it relates to land policies and to land laws (FAO and Committee on World Food Security, 2012). Obviously, recognition of the various tenures would enhance the level of inclusivity. One could differentiate between the existence of legal tools, *i.e.*, a rule-based recognition of rights, and the actual opportunities these tools offer for formalization of one's rights. The focus of this study is on the existence of

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**Table 4.2 Characteristics of indicator 'legal recognition'**

<b>Level of investigation</b>	National
<b>Type</b>	Legal framework tools
<b>Measurement scale</b>	Ordinal
None	There are no legal documents recognizing customary and/or informal tenure.
Limited	There are policies on the recognition of customary and/or informal tenure.
Fair	There are policies and sector laws towards the recognition of customary and/or informal tenure.
Good	The entire legal framework (constitution, laws and policies) recognizes customary and/or informal tenure.

**Table 4.3 Characteristics of indicator 'support for the poor'**

<b>Level of investigation</b>	National
<b>Type</b>	Institutional framework tools
<b>Measurement scale</b>	Ordinal
None	There are no organizations to support the poor with access to land and formalization of land rights.
Limited	There are organizations to support the poor with access to land and formalization of land rights, reaching a minority of the poor.
Fair	There are organizations to support the poor with access to land and formalization of land rights, reaching a majority of the poor.
Good	The poor are fully supported through organizations with access to land and formalization of land rights.

such tools. At the national scale, the land tools will be evaluated in light of this indicator on the basis of available literature pertaining to the legal framework but also on the basis of expert interviews. The use of this indicator is therefore not directly related to the fieldwork in the case-study areas or to the interviews with the respondents. Table 4.2 lists the characteristics of the indicator legal recognition.

### Support for the poor

According to Mitlin and Satterthwaite (2012), the variety of parties in civil society that are actively involved in land- and housing-related issues is wide, ranging from grass-roots organizations to local and international NGOs. They partly fill the gap that has arisen from poor performance under the legal and governmental institutional frameworks. The indicator of support for the poor is used to ascertain the presence of such parties. In many cases, they can support the efforts of poor communities to empower themselves; they can also facilitate access to secure land for the poor. The presence of such organizations may increase the inclusivity of the poor, which would get the poor involved in land administration as well. This suggests that land administration may not be run by government alone. As has been discussed in Section 2.2.1, the definition of land administration has been adapted, indicating that land administration is not exclusively within the government domain.

With respect to this indicator, some caution is warranted. As suggested by Zevenbergen, Augustinus *et al.* (2013), land administration systems should be accessible to everyone without barriers. Ideally, it should be possible for poor households to appeal to these systems with queries and to inspect documents without mediation by external organizations. Table 4.3 lists the charac-

**Table 4.4 Characteristics of indicator 'accessibility'**

<b>Level of investigation</b>	National
<b>Type</b>	Institutional framework tools
<b>Measurement scale</b>	Ordinal
None	There are no institutions available.
Limited	The institutions are far away, for example in the capital city.
Fair	The institutions are within the municipality.
Good	The institutions are within the settlement.

teristics of the indicator support for the poor.

### Accessibility

According to Zevenbergen (2002), land administration tools should provide efficient and effective access to all users, naturally within the constraints of cultural sensitivities, legal issues and privacy concerns. As Arko-Adjei (2011) suggests, accessibility can also relate to judicial and non-judicial institutions, where one could turn for conflict resolution. The indicator can be broken down to a highly detailed level. For example, Lavigne Delville (2009) examines the accessibility of a clear schedule of fees for different services, including the issuance of receipts for all transactions. A quantitative approach is possible as well. Burns and Dalrymple (2006) suggest applying indicators such as the number of registries per million inhabitants and per 100,000 km<sup>2</sup>.

In this study, the notion of accessibility is limited to the physical location of the land administration agency with respect to the dwelling place of the land holder. One barrier inherent to conventional land tools is the tendency for the agency to have a centralized location, which frequently forces people to travel long distances. Not only is that travel time-consuming, it entails extra expenditure as well. The evaluation of the tools in terms of accessibility therefore covers decentralization within the institutional framework. Ideally, the offices for land administration should be near the land holders, who would then have easy access to all of the agency's services. The local circumstances will be discussed in each of the case studies. However, the final evaluation of the land tools will refer to the national level. Table 4.4 lists the characteristics of the indicator accessibility.

### Co-management

A relatively new phenomenon within the domain of land administration is co-management. Only recently has the Global Land Tool Network (GLTN) drawn attention to it (UN-HABITAT, 2010a; UN-HABITAT, IIRR *et al.*, 2012; UN-HABITAT, University of Twente *et al.*, 2012). Although listed here among the indicators that apply to land tools (see Table 2.1), it can also serve as an indicator for the evaluation of several other tools. According to Sjaastad and Cousins (2009), experiences across Africa have shown that local institutions are vulnerable to power plays by the elites and to politics of exclusion. Through co-management, those institutions could empower the communities they represent. As a form of participation, co-management may be considered a path to social justice and is therefore included under the equity criterion. It requires all people, especially local inhabitants, including the poor and vulnerable, to take part in decision making on land management and land ad-

**Table 4.5 Characteristics of indicator 'co-management'**

Level of investigation	Settlement
Type	Institutional framework tools
Measurement scale	Ordinal
None	The land tool is imposed on the land holders without their participation.
Limited	Land holders have a formal route to participation with respect to the land tool, although it is not utilized.
Fair	A formal route to participation with respect to the land tool is utilized, although final responsibility lies with the authorities.
Good	The land tool is co-managed and co-owned by all stakeholders with shared responsibilities.

ministration. Zevenbergen, Augustinus *et al.* (2013) define co-management as a partnership arrangement between a community of local resource users and other stakeholders who share responsibility for and authority over resource management. According to Macfadyen, Cacaud *et al.* (2005), co-management rests on four pillars: supporting legislation and policies; empowered communities; good linkages between players; and finance and capacity. The first two conditions are considered more stable than good linkages or finance and capacity, which may change over time. Mitlin and Satterthwaite (2012) refer to the collaboration between civic organizations and government agencies as co-production. It may take many forms, typically mobilizing and organizing, making claims and protesting. Here, co-production is considered an extension of the indicator of support for the poor.

Co-management might improve the degree of equity, although the risks of power play and exclusion remain. According to UN-HABITAT, University of Twente *et al.* (2012), strong checks and balances are needed to protect vulnerable groups. One of the main land tools for which co-management has been adopted is enumeration, and successful applications have been reported in Kenya and Namibia (see Sections 3.3 and 3.5 respectively).

In this study, the degree of co-management is determined through the degree of participation in the implementation of land tools. The land tools may be imposed by the central or the local government. In either case, a participatory approach may have been taken or, alternatively, an approach of full co-management and co-ownership. Table 4.5 lists the characteristics of the indicator co-management.

### **Provisions for secondary rights**

In Section 2.4.5, it was noted that secondary rights, especially those rooted in customary tenure, are at risk in peri-urban areas. Secondary rights might be of major importance for the livelihoods of the poor. The indicator is derived from the study of the legal framework and underpinned by respondents' views on grazing rights, access to firewood and access to water. Table 4.6 lists the characteristics of the indicator secondary rights.

### **4.3.2 Affordability**

With respect to affordability, one should differentiate between the state and individual level (Zevenbergen, Augustinus *et al.*, 2013). State affordability relates to efficiency, whereby the state expects to recover some of its expendi-

**Table 4.6 Characteristics of indicator 'secondary rights'**

Level of investigation	Settlement
Type	Legal framework tools
Measurement scale	Ordinal
Ignored	Secondary rights under customary tenure are ignored within the application of the land tools.
Partly maintained	Secondary rights under customary tenure are taken into account within the application of the land tools, although these rights are not fully secured.
Complete	Secondary rights under customary tenure are fully secured within the application of the land tools.

ture (Burns and Dalrymple, 2006). The focus in this study is on individual affordability. While it may be considered an indicator of inclusivity, it is taken as a separate criterion here due to its importance.

### Costs

According to Zevenbergen, Augustinus *et al.* (2013), the price of obtaining land documents ranges between USD 27 and USD 603. Burns and Dalrymple (2006) set the range between USD 10 and USD 1,354 for first registrations. Obviously, such amounts cannot be considered affordable for the poor. Zevenbergen, Augustinus *et al.* (2013) suggest a fee of USD 1 as being pro-poor, although such a low figure is rarely reported. Taking the economic context of a country into account, the marginal value for this study is 'generously' set at one average monthly salary for a poor household. Unfortunately, few investigators have embarked upon a study of the affordability of land tools alone. In most cases, the affordability of land tools is aggregated with affordable housing. UN-HABITAT (2011) defines affordable housing as that which is adequate in quality and location and does not cost so much that it prohibits its occupants meeting other basic costs of living or threatens their enjoyment of basic human rights. The level of affordability is principally set by capital variables and occupancy variables. Capital variables comprise all costs incurred to purchase a house, including the land and the related administration. Occupancy variables comprise all costs associated with maintaining a house, including taxes and leases. Both variables have a land component and will therefore be considered in this study: the costs of initial registration or transfer and the costs related to occupancy, such as land rent. The marginal value of occupancy is set at one-twelfth of one average monthly salary for a poor household, based on the following two principles: a maximum of one-third of a monthly salary is considered reasonable for land and housing costs, and a quarter of that part may at most account for land-related costs alone.

Setting up a land administration system from scratch may require a substantial outlay of capital. Development costs, such as the expense of adjudication and the initial survey, should not have to be absorbed entirely by the initial users (Zevenbergen, 2002). However, especially in conventional systems, the initial costs often include significant professional fees (Zevenbergen, Augustinus *et al.*, 2013). Sjaastad and Cousins (2009) claim that land registration is less expensive in urban and peri-urban environments than in rural areas due to the communications infrastructure and expertise available in towns. Yet the fees charged to individual owners are still unaffordable. This study places emphasis on costs charged to individuals. This study focuses on

**Table 4.7 Characteristics of indicator 'costs'**

<b>Level of investigation</b>	Settlement
<b>Type</b>	Individual tenure tools
<b>Measurement scale</b>	Ordinal
Not affordable	The costs of the land tool to be paid by the beneficiaries are not affordable for the poor. This applies to both the capital component (more than one monthly average income for the poor) and the occupancy component (more than one-twelfth monthly average income for the poor).
Partly affordable	Either the capital or occupancy component of the land tool is not considered affordable.
Affordable	Both the capital and the occupancy component of the land tool are considered affordable.

**Table 4.8 Characteristics of indicator 'awareness'**

<b>Level of investigation</b>	Household
<b>Type</b>	Area tenure tools
<b>Measurement scale</b>	Ordinal
Limited aware	Land holders have limited knowledge about their own land tenure status, land management authority and range of available land tools.
Partly aware	Land holders have knowledge about their own tenure status and land management authority but are not aware of available land tools.
Fully aware	Land holders have knowledge about their own tenure status and land management authority and are aware of available land tools.

direct fees for registration; secondary costs like the expense of travel to offices are not considered here.

Affordability is considered most important with respect to individual tenure tools. Ideally, for every land tool, the amounts of both the capital and the occupancy components should be listed. However, it is assumed that such an overview would be difficult to compile. Instead, ranges will be given in the case studies, where possible. Table 4.7 lists the characteristics of the indicator costs.

## 4.4 Effectiveness

Effectiveness denotes the degree to which the goals of the implemented land tools have been reached. This criterion is broken down into legal and perceived tenure security, upgradability and clarity. According to Zevenbergen (2002) and Barry, Roux *et al.* (2012), usage can be seen as a critical factor in determining whether a system is effective or not. In this study, usage is subsumed partly under perceived tenure security and partly under efficiency through the indicator completeness. Clarity will be discussed first, as it is related to area tenure tools, while the other criteria are related to individual tenure tools.

### 4.4.1 Clarity

Clarity is often adopted as a criterion in the evaluation of land administration tools. Clarity can be an issue with respect to the mandate of land management (Lavigne Delville, 2009), to land delivery (Arko-Adjei, 2011), to land rights

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and to boundaries (Burns and Dalrymple, 2006). When evaluating area tenure tools in this study, the mandate of and authority over land management are considered most important because areas under multiple tenure systems are the focus here.

### **Awareness**

The indicator awareness can reveal which tenure system people adhere to and the degree to which they know about and accept other land management institutions. This indicator captures their own situation but also the whole legal and institutional framework regarding land rights. When people's awareness of land tools and land rights is relatively low, it is assumed that the land tools cannot be effectively implemented. The key question from a legal perspective is whether people are aware of the prevailing land management authority. Their awareness will therefore be investigated at the household level. Table 4.8 lists the characteristics of the indicator awareness.

## **4.4.2 Legal tenure security**

Even though tenure security is the main theme of this study, its measurement is rather ambiguous. It is difficult to devise an objective scale or index of tenure security because this phenomenon is complex and not directly observable (Place, Roth *et al.*, 1994; Dekker, 2003; UN-HABITAT, 2011). Many attempts have been made to construct one. The versions proposed by various scholars and institutions are often included in evaluation frameworks for land administration systems, as mentioned in Section 4.2.1. Tenure security will be investigated here with respect to the land rights that have been established through initial access to land and/or the implementation of a land tool. As pointed out in Chapter 2, security is subdivided into a legal and a perceived component. Because legal tenure security is considered to be partly independent from perceived security, these are presented as separate criteria. UN-HABITAT and GLTN (2011) have proposed a measuring and monitoring system. The evaluation at the core of the present study is largely based on the methodology underlying that system. Some indicators, however, are classified under different criteria here, mainly reflecting the distinction between legal and perceived tenure security.

The poor will enjoy legal tenure security only if they are protected from eviction or from being relocated without compensation and if possibilities exist for transfer and inheritance of their right. The indicators for legal security are type of right, transfer possibilities and duration. As discussed in Chapter 2, these indicators have an economic dimension as well. The type of right can be considered the main indicator; the others are largely dependent on it. One should keep in mind that some of these indicators relate to the perceptions of households as well. Legal protection of secondary rights could have

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**Table 4.9 Characteristics of indicator 'type of right'**

Level of investigation	Settlement
Type	Individual tenure tools
Measurement scale	Nominal
None	Land holders do not have any formal claim to stay on the land they occupy.
Informal	Land holders have settled on land under mutual agreement or under arrangement with an informal authority, including both extra-legal and neo-customary access to land.
Customary	Land holders have settled on land according to customary land law, authorized by the customary authority.
Occupancy	Land holders are given permission through a formal land authority to occupy or use the land.
Leasehold	Land holders are given formal registered land rights, although ownership remains with the formal land authority.
Ownership (freehold)	Land holders are given registered full ownership, formally registered at the formal land authority.

**Table 4.10 Characteristics of indicator 'transfer possibilities'**

Level of investigation	Settlement
Type	Individual tenure tools
Measurement scale	Ordinal
None	Land holders do not have any possibility to transfer their land or land right.
Conditional	Land holders have the possibility to transfer their land or land right, although restrictions or conditions may apply.
Complete	Land holders have a complete range of possibilities to transfer their land or land right.

**Table 4.11 Characteristics of indicator 'duration'**

Level of investigation	Settlement
Type	Individual tenure tools
Measurement scale	Ordinal
Undefined	There is no legislation or custom indicating how long people may stay on the land they occupy.
Limited	Land holders are allowed to stay for a short period of time, where short means a generation or less, i.e., less than 30 years. The period may be subject to renewal.
Sustained	Land holders are legally allowed to stay for a considerable period of time, at least 30 years. The period may be subject to renewal.
Perpetual	Land holders are legally allowed to stay forever, theoretically. Their land right can only be challenged through lawful procedures.

been included as an indicator. However, due to its links with customary tenure, it was decided to classify it under the criterion of inclusivity.

### Type of right

The type of right refers to its breadth within the bundle of rights. Full ownership and freehold are generally more secure than leasehold and rent because the bundle of rights attached to the former is larger. However, it is not automatically like that. Therefore, the indicator is rated on a nominal scale and only classifies the land right in question. Table 4.9 lists the characteristics of the indicator type of right.

### Transfer possibilities

The possibility to transfer land rights is often included in definitions of ten-

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ure security (UN-HABITAT and GLTN, 2011). It is an important property of each type of right and therefore examined separately. When transfer possibilities are limited or restricted, the impact on tenure security is generally negative. Inheritance can be considered a special case of transfer and is only studied here under perceived security. Table 4.10 lists the characteristics of the indicator transfer possibilities.

#### **Duration**

Duration, as legally defined, has a positive effect on tenure security when the period of validity is relatively long. For example, a 99-year lease provides more security than a 10-year lease. This indicator does not refer to the actual period of occupancy. Table 4.11 lists the characteristics of the indicator duration.

### **4.4.3 Perceived tenure security**

Perceived tenure security is distinguished from legal security. The most important indicator is fear of eviction. Others are documented evidence of occupancy or ownership, transfer possibilities and inheritance perils (UN-HABITAT and GLTN, 2011). All indicators relate to the household level. The prevailing perceptions of the majority of the respondents are taken into account of the evaluation. If there is no clear majority, perceptions will be rated as 'mixed'.

#### **Fear of eviction**

Fear of eviction may be subdivided into the rate of past evictions within the city or settlement and the actual fear experienced by each household. UN-HABITAT and GLTN (2011) and Van Gelder (2009) also stress the effect of the period of occupancy; the longer its duration, the higher the levels of perceived security. In this study, the fear experienced by each household is taken as a compound criterion. This fear, or the lack thereof, might be induced by the rate of evictions, duration of occupancy or other factors such as political patronage or oral evidence. Table 4.12 lists the characteristics of the indicator fear of eviction.

#### **Documented evidence**

Documented evidence refers to the availability of land-related documents and the value that people attach to them. It thus combines factual and subjective information. UN-HABITAT and GLTN (2011) list several possible types of evidence, including documents directly related to land (certificates, tile deeds and leases) and documents related to occupancy (property tax, utility bills). They classify the first type as secure and the second type as insecure. This study will capture the perception that households have of these documents. UN-HABITAT and GLTN (2011) stress the importance of making an inventory

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**Table 4.12 Characteristics of indicator 'fear of eviction'**

<b>Level of investigation</b>	Household
<b>Type</b>	Individual tenure tools
<b>Measurement scale</b>	Ordinal
None	Respondents think they cannot be removed from their land.
Mixed	Respondents have some knowledge that they may be evicted, but either it hardly affects them or they have mixed feelings.
Full	Respondents are fully aware that they may have to be evicted and live in fear of that.

**Table 4.13 Characteristics of indicator 'documented evidence'**

<b>Level of investigation</b>	Household
<b>Type</b>	Individual tenure tools
<b>Measurement scale</b>	Nominal
No documents	Respondents are not in the possession of land-related documents.
Informal documents	Respondents are in the possession of non-authorized land documents related to their land right and/or formal documents giving evidence of occupancy.
Formal land right documents	Respondents are in the possession of authorized land right documents.

of the documents. Not only do these documents reveal how the land was accessed, but they also demonstrate which steps have been taken to formalize a land claim, thereby providing evidence of attempts to make use of a land tool. Table 4.13 lists the characteristics of the indicator documented evidence.

### Transfer possibilities

Land holders may think differently about transfer possibilities compared to what is legally possible. This influences their perceptions of tenure security. The more possibilities land holders think they have, the higher their level of perceived security. Table 4.14 lists the characteristics of the indicator transfer possibilities.

### Inheritance

Inheritance is taken as a separate indicator in light of the common knowledge that women are especially vulnerable to losing their property under customary systems (UN-HABITAT and GLTN, 2011). They may face similar threats under informal or formalized tenure. During the fieldwork, the respondents were asked to talk about inheritance issues related to land in a general sense rather than to reflect on their individual situations. This indicator could also be classified under equity. This study gives little attention to the legal aspects of inheritance; only the perceptions are captured. Consequently, inheritance is classified under perceived tenure security. Table 4.15 lists the characteristics of the indicator inheritance.

## 4.4.4 Upgradability

### Extent of continuum

The concept of a continuum of land rights is based on the assumption that there is a sequence of rights giving higher levels of tenure security. UN-HABITAT and GLTN (2011) define upgrading as a mechanism for increasing ten-

**Table 4.14 Characteristics of indicator 'transfer possibilities'**

<b>Level of investigation</b>	Household
<b>Type</b>	Individual tenure tools
<b>Measurement scale</b>	Ordinal
Not possible	Respondents believe they cannot transfer their land right.
Conditional	Respondents believe they can transfer their land right upon the fulfillment of some conditions.
Possible	Respondents believe they can transfer their land right unconditionally.

**Table 4.15 Characteristics of indicator 'inheritance'**

<b>Level of investigation</b>	Household
<b>Type</b>	Individual tenure tools
<b>Measurement scale</b>	Ordinal
Non-equitable	Respondents report frequently on property grabbing or at least suspicions of it.
Mixed	Respondents report on both property grabbing and the distribution of the estate on non-discriminatory principles.
Equitable	Respondents report frequently on the distribution of the estate according to non-discriminatory principles.

**Table 4.16 Characteristics of indicator 'upgradability'**

<b>Level of investigation</b>	Settlement
<b>Type</b>	Legal framework tools
<b>Measurement scale</b>	Ordinal
None	There are no possibilities to upgrade land rights to higher levels of legal tenure security.
Limited	There are limited possibilities to upgrade land rights to higher levels of legal tenure security.
Full range	Land rights can be upgraded along the entire continuum.

ure security by formalizing one's interests in property in an incremental process. This indicator is applied to investigate the possibilities of and conditions for upgrading. According to some published examples (given in Durand-Lasserve and Selod, 2009; Burns, Deininger *et al.*, 2010; Zevenbergen, Augustinus *et al.*, 2013), the increase is mainly in legal security. Ideally, upgrading should be voluntary and at the land holders' initiative or at least it should occur through dialogue and in cooperation with the local land authority. Awareness of these possibilities among the inhabitants is investigated under the indicator of clarity. Table 4.16 lists the characteristics of the indicator upgradability.

## 4.5 Efficiency

The efficiency criterion relates to the operational aspects of land tools. Many authors place efficiency in an institutional context. For example, Lund, Odgaard *et al.* (2006) investigated the amount of time required to follow internal procedures, measuring efficiency in terms of customer satisfaction with the services provided. The present study reviews the most important design components of a pro-poor approach. To that end, efficiency is broken down into the criteria of simplicity, speed, approach and completeness.

**Table 4.17 Characteristics of indicator 'boundary system'**

Level of investigation	Settlement
Type	Operational land administration tools
Measurement scale	Nominal
None	Boundaries are not defined or only agreed upon orally.
Simple	General boundaries and the plot size are defined.
Low accuracy	Fixed or general boundaries are defined, supported with maps and low-accuracy measurements.
High accuracy	Fixed or general boundaries are defined, supported with maps and high-accuracy measurements that require professional surveyors.

**Table 4.18 Characteristics of indicator 'high volumes'**

Level of investigation	Settlement
Type	Operational land administration tools
Measurement scale	Nominal
No	The land tool is not designed to handle large volumes.
Possible	The land tool is designed to handle large volumes, although it is not realized in reality.
Realized	The land tool is designed to handle large volumes, which is realized in reality.

### 4.5.1 Simplicity

It should be easy for both government and the general public to use land tools. Highly detailed forms, procedures and regulations should be avoided in their design because complexity will discourage the use of land tools. To some extent, simplicity relates to other indicators such as inclusivity. Any complexity that may be attributed to multiple tenure systems is investigated by applying the indicator of awareness. Simplicity relates specifically to procedures, many of which, like allocation, transfer and inheritance, could be investigated. This study only applies the indicator of the boundary system because of the great impact that boundary tools can have on affordability and tenure security.

#### Boundary system

A boundary system is used to delimit land units. Some systems may not capture any boundaries at all; in other instances, the system consists of fixed or general boundaries. According to Zevenbergen (2011), a system of general boundaries should be implemented at the lower end of the continuum. This indicator is also used to ascertain whether sketches or maps are needed and to what extent professional surveyors are required. Because complex methods are usually more expensive, simple ones are preferred. However, the latter have a disadvantage, namely the potential for boundary conflicts and less tenure security. Although the suitability of various land surveying techniques to capture the boundaries has an impact on costs, this aspect is not covered in this study. Table 4.17 lists the characteristics of the indicator boundary system.

### 4.5.2 Speed

Zevenbergen (2011) discusses the importance of speed in recording pro-poor land rights. Speed relates to the possibility for rapid registration and implies a

**Table 4.19 Characteristics of indicator 'individual or systematic'**

Level of investigation	Settlement
Type	Operational land administration tools
Measurement scale	Nominal
Individual	The land tool can only be implemented at an individual's initiative.
Group	The land tool can only be implemented at the initiative of a group.
Systematic	The land tool is implemented in a large area, for example a settlement.

land tool capable of handling high volumes.

### High volumes

Most often, large settlements have to be formalized. Therefore, the tools should be capable of handling high volumes within an acceptable time span. This indicator is used to assess the design of the land tool, not to determine how much capacity is available within the existing institutions. The correlation between this indicator and 'simplicity' is evident. Table 4.18 lists the characteristics of the indicator high volumes.

### 4.5.3 Approach

The criterion of approach is used to investigate whether the tools are implemented systematically or whether households can act upon their own initiative, taking an individual or sporadic approach.

#### Individual or systematic

From the perspective of an individual, it is preferable that land holders can decide whether to take advantage of a land tool or not, depending on their needs and available resources. However, a systematic approach might be cheaper, so the approach should be in balance with affordability. Zevenbergen, Augustinus *et al.* (2013) see the wisdom of taking a sporadic approach at first, when the household's resources are limited. One's initial stance may build upon existing extra-legal or neo-customary practices like 'petits papiers', as discussed in Section 2.3.3. Several scholars warn against the sporadic approach, however. They point out the risks it entails: exclusion of the poor; and land grabbing by well-connected and powerful elites. These risks are especially high when the existing land rights are unclear or weak and the processes of registration are not transparent (Deininger, 2003; Mitchell, Clarke *et al.*, 2008; Lavigne Delville, 2009). When communities are ready for a more systematic approach, they can engage in participatory enumeration and/or community mapping. In between the individual and systematic approach, a group approach can be distinguished. Some examples are given in Chapter 3, one highlighting the community land trusts in Kenya, another the savings schemes in Namibia. The group approach is included under this criterion, whereby the application of the land tool can be related to a specific group for which the membership rules and management structure are clearly defined. Table 4.19 lists the characteristics of the indicator individual or systematic.

**Table 4.20 Characteristics of indicator 'coverage'**

Level of investigation	Settlement
Type	Operational land administration tools
Measurement scale	Ordinal
None	The land tool has not been applied.
Limited	The land tool has been implemented for only a limited number of the targeted land holders within the settlement.
Group	The land tool has been implemented for a group occupying a larger area.
Majority	The land tool has been implemented for the majority of the targeted land holders within the settlement.
Complete	The land tool has been implemented for all targeted land holders within the settlement.

#### 4.5.4 Completeness

A land administration system should provide up-to-date information in a timely fashion. The system should be complete; i.e., it should include all land parcels (Zevenbergen, 2002). Completeness of a land tool is investigated from the perspective of area coverage.

##### Coverage

The indicator of coverage relates to the land tool, not to the rights along the continuum. The evaluation of the land tool concerns how much land within the settlement is affected by the land tool. The question of how the land of the entire settlement is distributed across the continuum can only be answered once all land tools have been rated. If the coverage is high, it is assumed that the tool will lead to the reduction of conflicts and higher levels of tenure security. A tool's coverage will be determined for the area under study; its coverage at a national scale is not drawn into the evaluation. This indicator reveals the extent to which innovative land tools are implemented with respect to the targeted land holders within the settlement. Lavigne Delville (2009) and Zevenbergen (2009) stress the importance of reliable and up-to-date land records. However, this quality aspect is not included in the evaluation. Table 4.20 lists the characteristics of the indicator coverage.

## 4.6 Concluding remarks and implications for this study

The second research *Which criteria and indicators should be applied to evaluate innovative land tools?* can now be answered.

The framework presented in this chapter will be used to evaluate the four types of innovative land tools described in Section 2.5. The evaluation will be performed with the ten criteria and nineteen indicators derived from the three compound criteria, namely equity, effectiveness and efficiency. The beneficiaries of the land tools, i.e., land holders in peri-urban settlements under multiple tenure systems, will be the focal point of the evaluation. The number of indicators is considerable, despite delimiting the context to peri-urban areas and narrowing the focus to poor land holders. It has been a challenge to frame the evaluation framework within the document style of this thesis. To limit the levels and the number of individual sections, the criteria

**Table 4.21 Main criteria applied to land tools**

	Equity	Effectiveness	Efficiency
Legal framework tools	x		
Institutional framework tools	x		
Tenure tools	x	x	
Operational tools			x

will be discussed under unnumbered headings in bold style. When an individual indicator is discussed, it is added in the heading. This especially applies for Chapters 5 to 8.

There are three methodological issues underlying this framework that warrant some comment. First of all, the compound criteria do not pertain to all types of land tools, as shown in Table 4.21. This is largely due to the taxonomy constructed for the land tools and partly to an effort to reduce complexity. When each land tool has to be evaluated according to all criteria, the results will be considered too cluttered to interpret and analyse. Secondly, some indicators do not fully correspond to the land tools; they relate to the available land rights within the continuum. For instance, legal and perceived tenure security are actually indicators of land rights. Some rights might be a result of a land tool, others might be the result of the method used to access the land. The outcome of indicators of land rights which are not related to land tools will be compared with the outcome of indicators of land rights after the implementation of land tools. In such cases, the impact of the tools is better understood.

Thirdly, it should be noted that the criteria are interconnected. Inequitable tools, for instance, are not considered effective because they are not pro-poor. In the same vein, some criteria and their indicators may be interrelated, as in the following examples:

- Type of right is used to determine the degree of legal security. Some land rights are usually documented confirming a household's occupancy which might automatically reduce the fear of eviction and heighten their perceived tenure security.
- Simple boundary systems usually reduce costs, thereby increasing affordability, and allow for handling large volumes when a systematic approach is taken.

On the other hand, some criteria may contradict one another. For example, simpler and cheaper methods might result in lower levels of tenure security. According to Sjaastad and Cousins (2009), a system that complies with all criteria is unachievable due to contradictions between the criteria. Finally, when designing the framework presented here, the advice of Barry, Roux *et al.* (2012) is heeded, cited in the preamble to this chapter: to take local, micro-level factors into consideration.



# 5 Evaluation of innovative land tools: a case study of Oshakati (Namibia)<sup>22</sup>

“The Oshakati Town Council has decided that all people living in the informal settlements of Oneshila, Evululuko, Oshoopala, Kandjengedi Uupindi, Sky location, Eemwandi and Kalaula will have to be relocated to less flood prone areas in the northern part of town” (Oswald Shivute, Namibia: Settlements to be bulldozed, *The Namibian*, April 4<sup>th</sup>, 2008).

## 5.1 Introduction

This chapter presents the results of fieldwork carried out in Oshakati in November 2008. Oshakati is a small town in northern Namibia. The main characteristics of Namibia have been discussed in Section 3.5. This chapter answers the third research question for Oshakati, which was formulated in Section 1.7 as follows: *To what extent can the innovative land tools be considered pro-poor, based on the evaluation criteria?* That question includes the following three sub-questions:

- How did poor people access the land they occupy?
- What kinds of land rights are available and in which way are these rights supported by land tools?
- Which levels of tenure security are attached to the land rights?

Oshakati will be first characterized with reference to its land tenure systems, the implementation of land tools and their impact on tenure security. The legal and institutional frameworks of Namibia have been discussed in Section 3.5; these frameworks will be evaluated in Sections 5.4.1 and 5.4.2. Fieldwork revealed a variety of land rights, ranging from illegal shacks to permanent buildings recognized by the council, resulting in a wide continuum of land rights. Several land tools have been applied, notably conversion of customary tenure and savings schemes. In addition, the piloting of the Flexible Land Tenure System (FLTS) is of special interest. This pilot was the main reason to select Oshakati as a case study, as it demonstrated how new tools and approaches would work. The chapter concludes with the evaluation of these land tools as set out in Chapter 4, through which the research question will be answered.

## 5.2 Main characteristics of Oshakati

Oshakati, founded in 1966, is the capital of Oshana region, which falls within the jurisdiction of Uukwambi Traditional Authority (Hangula, 1993). Oshakati means ‘which is in between’ in the local language, because the town is re-

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<sup>22</sup> This chapter is an edited and extended version of Van Asperen, P.C.M. (2011), Land registration from a legal pluralistic perspective: A case study of Oshakati, Namibia. *Essays in Land Law in Africa*, R. Home (Ed.), PULP.

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**Table 5.1 Monthly household income distribution in Oshakati**

Monthly income (Namibian dollars)	Monthly income (USD)	% of households
0 - 339	0 - 38	16.57
340 - 725	38 - 81	16.84
726 - 1432	81 - 160	23.47
1433 - 2865	160 - 321	21.82
2866 - 3699	321 - 414	14.41
3700 - 5049	414 - 565	4.95
> 5050	> 565	1.94

Source: Oshakati Structure Plan, Urban Dynamics, 2001

garded as the centre of all Owamboland (Oshakati Town Council, 2012). Its population grew from 2,950 in 1970 to 35,600 in 2011 (Hangula, 1993; Republic of Namibia, 2011). During the South African border war and the Namibian war of independence, the town was used as a base of operations by the South African Defence Force (SADF). Since independence, the urbanization rates of Oshakati are reported to be between 4.5% and 5.5% annually (Tvedten, 2004; Oshakati Town Council, 2012). Oshakati contains two formal and eleven informal settlements<sup>23</sup>. The town is small, covering 61 km<sup>2</sup> (Oshakati Town Council, 2012).

### Flooding dangers

An important physical characteristic of Oshakati is the existence of 'oshanas', which are low-lying areas prone to flooding. They cover an estimated 50% of the total area. Thereby, they limit the amount of land available for urban expansion, although they have already been partly built up by informal settlers (Urban Dynamics, 2001). Severe flooding occurred in March 2008, February 2009 and April 2011; at each event, many houses were inundated and many casualties were reported. Thousands of people were displaced at each flood (Enviro Dynamics, 2012). The Oshakati Town Council (OTC) responded in 2008 by announcing that people in informal settlements might be relocated to higher areas. Moreover, those in informal settlements were no longer allowed to develop or even rebuild damaged buildings (Council resolution 6/27/3/2008)<sup>24</sup>. Procedures for official plot allocation and development of services in informal settlements were put on hold at that moment.

### Poverty in Oshakati

Little data on poverty is available in the public domain. One source, Urban Dynamics (2001), was accessed to compile Table 5.1, listing the distribution of incomes in Oshakati.

The data in the table does not seem to correspond with that from the Household Income and Expenditure Survey 2009/2010 (Namibia Statistics Agency, 2012). There, the average income (GDP) per household is estimated at NAD 65,445 (USD 6,924) yearly or NAD 5,454 (USD 577) monthly for the entire Oshana region. According to Tvedten (2004), only 20% of the adult population in the informal settlements is formally employed. She estimates that 60% fall

<sup>23</sup> Oshakati Town Council (2012), Town Profile: Oshakati, The Commercial Centre of the North.

<sup>24</sup> The Namibian, Settlements to be bulldozed, April 4<sup>th</sup>, 2008 and cited at the start of this chapter.

**Table 5.2 Interviews held with residents in Oshakati**

Type of respondent	Number of interviews	Remarks
Homesteads	1	Village headman
Illegal	4	
Savings group members	8	
Informal	9	Related to OHSIP, including 2 CDC-members* and 1 informal headman
Informal	4	Related to FLTS pilots
<b>Total</b>	<b>26</b>	

\* The CDC is discussed in Section 5.3.3

under the official poverty line, which means they are earning less than NAD 500 (USD 76) per month. According to the Namibia Statistics Agency (2012), the upper bound poverty line, including the poor and the severely poor, is set at NAD 378 (USD 47) monthly per adult. With respect to Oshana, 13.5% of the households are considered poor and 4% severely poor. For this study, a monthly average household income for a poor household is set at NAD 500 (USD 49 at the time of fieldwork).

With respect to land tenure, it is important to note that informal settlers have strong linkages with the rural hinterland. Tvedten and Pomuti (1994) found that a majority of informal settlers had a farm in the region, where they would stay for a considerable period of each year. Selenius and Joas (2004, p. 10) made it clear that *“in some informal settlements people do not invest in upgrading their shacks, because the investments are more urgently needed on their farms.”*

### Fieldwork characteristics

The fieldwork concentrated on interviewing 26 local residents in the informal settlements. The interviews were held in the local language, assisted by a hired interpreter with a background in land administration. In addition, local experts and officials were interviewed (see Appendix D) and available reports and documents were studied. The number of people interviewed (see Appendix D) is listed in Table 5.2. As an outcome of the fieldwork, perceptions on tenure security were captured, as were effects of attempts at formalization by the local government.

## 5.3 Land tenure in Oshakati

As identified earlier (Section 3.5), the major land tenure systems in Namibia are statutory, customary and informal. Here, they are presented in greater detail, with special reference to the situation in Oshakati. The proposed flexible tenure system is mentioned as well, followed by an instance of a savings scheme, which can be considered a special case of informal tenure. The section ends by discussing the resulting ways of gaining access to land, the applicable land tools and the continuum of land rights in Oshakati.

### 5.3.1 Statutory tenure

Statutory tenure in Oshakati deals with urban land where standard concepts

Figure 5.1 Topographic map of Oshakati (Namibia) (1996)

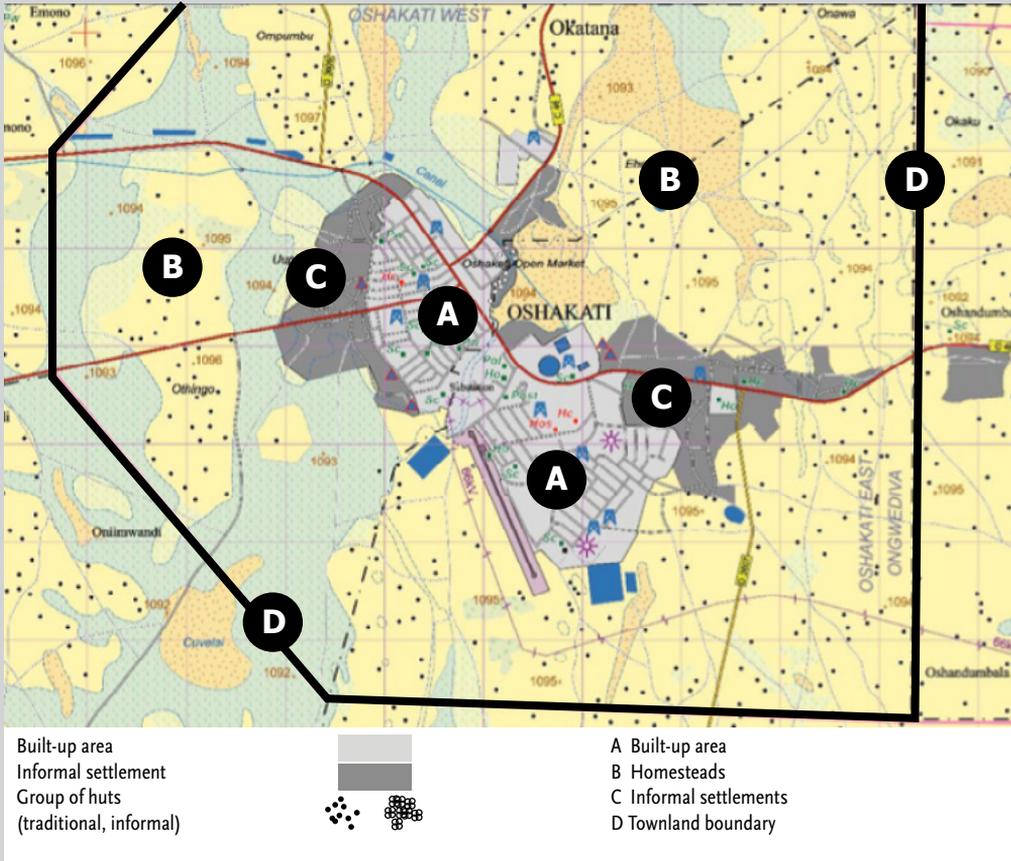


Figure not to scale (original scale 1:50,000).  
 Source: Ministry of Lands and Resettlement, Namibia

of state, municipal and private ownership apply within proclaimed boundaries under statutory law (Legal Assistance Centre, 2005). The most significant manifestation of statutory tenure is the area where private ownership applies, displayed on the topographic map as the built-up area (areas marked A in Figure 5.1). Most plots are held under freehold tenure and are registered as such at the Registry of Deeds of the Ministry of Lands and Resettlement (MLR) in Windhoek. The conditions of the Lands and Deeds Registry Act and the Land Survey Act apply.

Formal land delivery is handled by the Local Property Office of the OTC. Around 1,140 freehold plots, being the legal entity under statutory tenure, were registered in Oshakati in 2001 (Urban Dynamics, 2001). Vacant plots in Oshakati can be sold to the public under freehold, in conformity with the laws and policies concerning land survey and registration and urban planning. The regulations include the Town Planning Ordinance and Township and Division of Land Ordinance. Urban extensions require approval from the Namibian Planning Board and the Surveyor-General. Buyers of the plots may build permanent homes, subject to development permission by the council.

These plots are not considered affordable to the poor (see Section 3.5).

Besides the freehold areas, some other areas – namely, those with traditional huts (also called homesteads, see areas marked B in Figure 5.1) and informal settlements (see areas marked C in Figure 5.1) – are subject to statutory tenure. It should be noted that other tenure systems play a significant role in the peri-urban area as well. These systems will be described in the following sections.

### 5.3.2 Customary tenure

Before independence, the freehold areas of Oshakati were surrounded by communal areas, where homesteads had been established. Over time, settlements have sprawled out into the communal areas near the town. The settlers normally asked permission from the traditional headman to settle there and then built a residential house. Since informal settlements have thus been legally developed under control of the traditional authority<sup>25</sup>, they can be regarded as under customary tenure. It should be kept in mind that the former colonial administration did not permit land ownership by blacks (LAC, 2005). Permission to Occupy (PTO) was only granted as a means to deliver some tenure security (Amoo and Haring, 2009). The exact nature of this land right is rather unclear. The Oshakati Structure Plan (Urban Dynamics, 2001) confirms the strong presence of PTO in Oshakati, with special reference to commercial land uses. Christensen, Werner *et al.* (1999) describe a PTO as a limited personal right to occupy an identified site for 20 years with an option to renew for a further five. Amoo and Haring (2009) conclude that it is a leasehold *sui generis*. In contrast, the High Court ruled that PTO is not a lease<sup>26</sup>. Within this study, the tenure status of recognized informal settlers is regarded as recognized occupancy, which is considered a specific instance of informal tenure.

Oshakati, like other towns in northern Namibia, grew rapidly in the post-independence period, especially in the communal areas. After 1993, through the Local Authorities Act of 1992, Oshakati was proclaimed a townland (Hamata, Hangula *et al.*, 1996). The boundary of Oshakati was established in 1992 through Proclamation No. 6 (Republic of Namibia, 1992a). The Local Authority Act defines townlands as “*the land within a local authority area situated outside the boundaries of any approved township which has been set aside for the mutual benefit of the residents in its area, and for purposes of pasturage, water supply, aerodromes, explosive magazines, sanitary and refuse deposits or other pub-*

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<sup>25</sup> Exceptional within Africa, customary law of the Uukwambi Traditional Authority has been written down, see Ubink, J. (2011). Effectuating normative change in customary legal systems: An end to ‘widow chasing’ in Northern Namibia? *Land, Law and Politics in Africa: Mediating Conflict and Reshaping the State*: 315-333.

<sup>26</sup> High Court of Namibia (2010), Anna Nekwaya and another versus Simon Nekwaya, Case A262/2008.

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lic purposes or the extension of such township or the establishment of other approved townships” (Government of Namibia, 1992b). In Figure 5.1, the communal areas which were proclaimed townland are denoted as B, the townland boundary as D. From the moment of proclamation, the area fell under the jurisdiction of the OTC. At that point, the official land tenure regime suddenly changed from customary into statutory tenure<sup>27</sup>. As a consequence, the OTC got control over rural or unused land and existing informal settlements. The traditional homesteads and informal settlers were suddenly subject to statutory tenure, liable to register with the local authority and to pay a monthly plot rent (Fjeldstad, Geisler *et al.*, 2005). It is assumed that these rights now resemble the recognized occupancy within the informal settlements. When the local authority needs land for development, it first has to relocate and compensate the homesteads. In the event that homesteads are relocated, the compensation as set by the Ministry of Lands and Resettlement is considered inadequate (Hamata and Hangula, 1996; Fjeldstad, Geisler *et al.*, 2005). In the early years after independence, such practices were viewed by the local community as the continuation of colonialism and exploitation of the peasants by the development planners. For more historical information and an overview of the socio-economic effects of the proclamation on Oshakati, the reader is referred to Hamata, Hangula *et al.* (1996).

Because the majority of people in Oshakati cannot afford to buy freehold plots, the OTC may also deliver plots which are not subject to statutory planning procedures. Such plots are surveyed and registered at the Planning Department, which resorts under the council. However, they are not entered in the Deeds Registry at the Ministry. Once again, it is assumed that such rights resemble the recognized occupancy.

One aim of conducting field research was to interview homestead owners in the peri-urban areas to talk about their access to land and discern how aware they were of their tenure status. However, the investigators were not allowed access to these individuals because the OTC was in the process of negotiating their relocation. Only one interview was held with a headman who was still influential regarding land issues. He liaised both with the OTC and the residents of his former area of jurisdiction, which included traditional farmers and informal settlers.

### 5.3.3 Informal tenure

According to the Shack Dweller Federation Namibia (SDFN), the eleven informal settlements in Oshakati (marked with a C in Figure 5.1) contain 54,355 inhabitants in 20,353 households (SDFN, 2009). These numbers do not match

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<sup>27</sup> Republic of Namibia (1992b), Local Authorities Act, part I, Section 3(3)(a).

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the official statistics given in Section 5.2. The informal settlements mostly date from the 1960s and 1970s, when land was under the control of the traditional authority. Since 1993 it came under the control of the OTC.

The majority of Oshakati's inhabitants live in informal settlements, which the OTC intends to formalize. There is no standard procedure for doing so. Normally, the first step is to apply house numbering. The inhabitants can then be registered for election and census purposes, though without affecting their legal tenure status.

The first significant advances towards formalization were made between 1993 and 1996 within the Oshakati Human Settlement Improvement Project (OHSIP). The aim of the OHSIP project was to improve livelihoods in the informal settlements. Mainly, this entailed establishing services and supporting and facilitating small businesses. A major contribution was expected from Community Development Committees (CDCs), consisting of settlement representatives who were given a role in land allocation. Traditional leaders joined the committees later in an effort to reduce ambiguity and confusion regarding land allocation. The headman became the chairman of the land allocation sub-committee (Frayne, Pendleton *et al.*, 2001). Some committees are still in operation, serving to identify the needs of the residents and liaising with the OTC. Some members indicated that their powers to allocate land have been taken away from them, while others claimed that they still do have such powers. Nevertheless, there is no land available any more. The respondents who participated in the OHSIP project are already considered formalized. Two of them mentioned that they had to pay land rent, which amounted to NAD 12 (USD 1) monthly. This requirement is confirmed by SDFN (2009). It cites Oshakati as an example of a town where the town council keeps a register of the occupants who have been enrolled in an upgrading program.

During the OSHIP project, four settlements were formalized and upgraded. According to Urban Dynamics (2001), which acted as the planning consultant, other settlements would be formalized and upgraded as well. With respect to informality, Urban Dynamics distinguishes between a legal and an illegal component. Over time, not all households were formalized, and the influx of illegal settlers continued. The planning consultant estimated the number of households in legal informal settlements at 4,120, in contrast to the 875 in illegal informal settlements. People in legal informal settlements have permission from the OTC to reside there. They are registered at the OTC Planning Department by name and by plot or house number. Plot numbers are issued when the area is planned and surveyed by order of the council, and the plot holders are expected to pay land rent to the OTC. As said, these arrangements are assumed to be similar to those for the PTO. Some experts claimed that during the OHSIP project, certificates were issued to land holders. However, no such documents were encountered during fieldwork, although some respondents mentioned that they had been issued by the OHSIP project.

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**Illegal settling  
in Oshakati.**



After the OHSIP project, the OTC continued to deliver land under varying tenure arrangements. People pay land rent and/or other charges to the OTC. They may have their land surveyed with or without a plot number. The land may be delivered in existing settlements or in urban extensions. Some extensions are temporary relocation areas, established after the flooding in 2008, where people are not allowed to erect permanent structures. Otherwise, permanent construction is subject to development approval from the OTC. An example of development permission given by the OTC reads as follows (a letter from the Planning Department, Oshakati Town Council dated September 13<sup>th</sup> 2006): “According to our records Mr. [name withheld] has right on this plot no [plot number withheld] at Oneshila, but the plot in question is not yet proclaimed. The plot is still a part of Portion of Erf 1373, Extension2-Oshakati. He has the right to develop the above erf.” Only such plots are eligible for the installation of services such as individual water, sewerage and electricity connections.

### **5.3.4 Illegal settlements**

People without recognized occupancy in informal settlements are considered illegal (see photo above). As discussed in Section 3.5, large-scale evictions are not common. However, some evictions have recently been announced in Oshakati in the newspapers<sup>28</sup>.

During the interviews, some illegal settlers indicated that they had been evicted from their former residence and allocated a new plot. Instead of eviction, relocation might be a better term, although people who fail to be relocated in the process are still considered to have been evicted. However, such

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<sup>28</sup> ‘Oshakati to continue with demolitions’, New Era, January 12<sup>th</sup>, 2012.

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**Table 5.3 Population and tenure in Oshakati**

Tenure category	Estimated population	% of population
Formal residential: freehold	7,918	22.1
Informal residential: legal	21,425	59.9
Informal residential: illegal	4,551	12.7
Homesteads	1,875	5.2
<b>Total</b>	<b>35,769</b>	<b>100</b>

Derived from Urban Dynamics, 2001

people were not encountered in the fieldwork. In Oshakati, illegal settlers are relocated to areas which are more suitable for residential land use. According to the OTC, there are three reasons for relocation, which might be interwoven. The first is to formalize the settlers and to provide the possibility of access to services. The second is to conform to zoning regulations, because the illegal settlement might be located in an area which is not zoned for residential purposes. The third is that the land which they occupy is not physically suitable for residential purposes; for instance it may be prone to flooding. Relocated settlers are given a new place to stay and transport assistance to move their belongings. Very often, the shacks are taken away and rebuilt. They do not get any other compensation. Only people who have permanent buildings that had been approved by the OTC or the traditional homesteads are entitled to cash compensation when relocated.

The distribution within each land category is given in Table 5.3 (Urban Dynamics, 2001). To round out the picture of the general tenure categories, the following discussion will consider two distinct features of land tenure: the piloting of the Flexible Land Tenure System (FLTS) in Oshakati and the existence of savings schemes. These features will be examined separately.

### 5.3.5 Flexible Land Tenure System (FLTS)

The FLTS, as briefly discussed in Section 3.5, was actually ‘invented’ in Oshakati. The concept resulted from the formalization exercise within OHSIP. During this project, two pilots were carried out in Oshakati. The aim was to test the technicalities of the surveying exercise (Gold, 2006).

Four FLTS pilots were carried out by a land surveyor (seconded from the Ministry of Lands and Resettlement to the OTC) after 2000 in Oshakati. An estimated 2,000 individual ‘land hold’ plots were surveyed, but no association was set up, nor were any starter titles issued. Because the act was not implemented at that time, no formal arrangements could be made after the pilots; no title certificates were issued, and cadastral maps were not maintained (Hackenborch and Kozonguizi, 2005). Consequently, the pilots were more or less surveying exercises in anticipation of enactment of the FLTS (Mooya, 2009). UN-HABITAT (2005c) suggests a positive impact on tenure security resulting from these pilots. The authors based this conclusion on the observation that people were investing in permanent houses after the pilots. However, one should also realize that it is a prerequisite to have a plot surveyed in order to obtain building permission. Although the pilots did not cover all aspects of the FLTS, those respondents who were involved appreciated the exercise. Some of them got permission to build permanent structures after the land was surveyed. They paid charges to the OTC, although not all of

them said they had to pay land rent. Surprisingly, some community members did not know about the existence of the FLTS.

### 5.3.6 Savings schemes

The concept of savings schemes was introduced in Section 3.5. There are 18 SDFN savings schemes in Oshakati with 13 to 79 members per scheme. One scheme deals with access to land. The general procedure for such a savings scheme is as follows: A savings group starts when an association is formed after one or more meetings. All members have to sign the constitution, which regulates the group's affairs and describes each member's rights and duties. The scheme will apply for a group plot, also referred to as 'grouperf', from the council. It will be delivered either as a freehold plot (comparable to a 'blockerf' within FLTS) or as council land. When land is made available, the members will sign an agreement for property rights with the association. A layout plan is prepared, individual plots are surveyed, and the land committee of the association allocates plots to members, who can then apply for a loan. When the loans are issued, every member can build their own house. At the last stage, services should be provided, either by the council or by the members themselves (Mooya and Cloete, 2007).

Some members are trained in FLTS principles and try to use these in their projects. Nonetheless, according to the SDFN coordinator, the people have limited knowledge of land issues. The members of the savings scheme in Oshakati originated from other groups. They formed a new scheme to develop their own area and got a block of land from the OTC. With help from the NHAG and the MLR land surveyor at the OTC, a plan with individual plots was made. It was intended to register the block as freehold. The members of the savings scheme obtained building permission from the OTC. They did not pay land rent, only water bills and sometimes charges for waste collection. Similar to the situation of residents under informal tenure, the land for the savings scheme is assumed to be delivered under a recognized occupancy. Additionally, people have signed a land right agreement with the association of the savings scheme. An added advantage of this agreement is the listing of heirs on the agreement. Their identification prevents property grabbing by members of the extended family.

An issue which could not be clarified is whether a savings scheme should acquire a freehold title, and if so, whether freehold is required before the savings scheme starts subdividing into individual plots. Experts and stakeholders contradict one another on this matter. It appears that freehold for the blockerf is required. However, due to the long process attached to it, savings schemes take the risk and start developing before the freehold title is issued.

Savings schemes and the FLTS are both community-based systems. Potential land holders have to join the savings community. This is one of its key

success factors. Because savings are collected almost daily, and there are weekly meetings, people keep informed and help each other. People are also stimulated to share their experiences with other savings schemes at the regional, national and international level.

### 5.3.7 Land access, land tools and land rights in Oshakati

#### Formal land access

Land access in Oshakati is limited for the poor. One may have registered at the OTC to be considered for a plot in a high-density residential area, as set forth in the development plan, although one's chances of allocation are slim. Savings schemes might offer some advantages because they are supported by the SDFN and NHAG. Other alternatives open to the poor are to erect a shack illegally, with or without approval from the headman, or to rent accommodation.

#### Land tools

Referring to the land tools definition advanced in Chapter 2, the following land tools have been found in peri-urban Oshakati:

- Legal framework tools: the constitution, land-related laws and policies with respect to peri-urban areas.
- Area tenure tool: Proclamation of Townlands.
- Individual tenure tools:
  - Registration of recognized occupancy by the OTC;
  - The Land Right Agreement within the savings scheme;
  - The starter and land hold title of FLTS as a potential innovative land right tool.
- Institutional framework tool: the OTC is the only formal institution involved in land issues in Oshakati. With respect to the freehold plots, the Ministry of Lands and Resettlement (MLR) is involved as well. Additionally, several other institutions negotiate with the OTC: for instance, SDFN, traditional authorities like headmen and the Community Development Committees (CDCs).
- Operational tools for the registration of recognized occupancy by the OTC and savings schemes.

#### Continuum of land rights

Based on the study of the institutional framework and the fieldwork, the continuum of land rights in peri-urban Oshakati consists of homesteads, illegal settlers and informal settlers. Among the informal settlers, there is a special group: members of the savings scheme. Freehold has been added to the continuum to acknowledge the difference with respect to the illegal and informal land rights.

Theoretically possible or future land rights have also been added to the

continuum to include the starter and the land hold title from the FLTS. According to local experts, all informal settlers in Oshakati whose plots have been surveyed will be issued land hold titles when the FLTA has become effective. This will definitely improve the legal status of these settlers, because their current status of recognized occupancy is not very clear (see discussion in Section 5.3.2).

## 5.4 Evaluation of land tools

This section will evaluate the land tools listed above according to the evaluation framework presented in Chapter 4. The sequence of criteria is slightly different here, though. The indicators in Chapter 4 are listed according to the main criteria, whereas in this evaluation the criteria are listed according to the land tools. The overall evaluation is summarized in Table 5.4 at the end of this chapter.

### 5.4.1 Legal framework tools

The legal framework tools are evaluated according to the indicators legal recognition and provision of secondary rights, both belonging to the criterion inclusivity.

#### **Inclusivity: legal recognition**

As set forth in Section 3.5, free settlement is provided for and customary tenure is recognized through the constitution. The Land Policy of 1998 confirms the existence of informal settlements and announces measures similar to those designed within the Flexible Land Tenure Act (FLTA). As explained in Section 3.5, in practice it is impossible for the poor to access freehold plots. The delivery of land for the poor is left to the local authorities. At the time of fieldwork, the only possibility for formalization was theoretical, namely to apply for freehold title<sup>29</sup>. After the enactment of the FLTA, more opportunities for formalization became available. Taking into account the existence of the Squatters Proclamation (AG 21 of 1985) as described in Section 3.5.1, legal recognition is considered to be fair. This will apply at the national level; with respect to the local level a different picture may exist, as one might conclude from media reports referred to in Footnotes 24 and 28.

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<sup>29</sup> Regarding the poor in rural areas, a different picture exists. The Communal Land Reform Act (Republic of Namibia, 2002) aims at improving tenure security for the rural poor. The rural situation, however, lies outside the scope of this study, which deals only with the peri-urban context.

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**Cattle in informal settlement (savings scheme).**

#### **Inclusivity: provision of secondary rights**

Due to the proclamation of townlands, secondary rights under customary tenure ceased to exist. However, people continued to use the land as they had been accustomed. Besides homesteads, a significant number of households in informal settlements own cattle (Tvedten and Pomuti, 1994). Livestock is usually kept within the vicinity of the informal settlements. The cattle walk freely through the settlements and may destroy property (see photo above). In such cases, the animals may be locked up by the OTC. They may only be released by the council when the owner has paid a certain fee. The problem of their unrestricted movement is confirmed by the traditional and informal headman and the CDC. The interviewed traditional headman is involved himself, as his cattle get locked up sometimes and he has difficulty raising the money to pay for their release.

Water is not an issue in terms of secondary rights, because people in the informal settlements have access to tap water. They often share a faucet or are allowed to fetch water from another individual within the settlement. Concerning firewood, no problems have been reported. People are not allowed to take wood from the trees, a rule that is generally respected.

It is concluded that secondary rights are ignored within the legal framework in the peri-urban context. The Communal Land Reform Act (see Footnote 29) does recognize customary land rights and grazing rights. However, it does not apply to areas within townland boundaries.

### **5.4.2 Institutional framework tools**

The institutional framework tools are evaluated according to the indicators support for the poor, co-management and accessibility, all belonging to the criterion inclusivity.

**Inclusivity: support for the poor**

At the national level, there is a National Habitat Committee. The aim of this interdisciplinary multi-sector committee is to coordinate, monitor and review all activities to achieve adequate shelter for all (National Habitat Committee, 2002). Although of significant importance to policy, it may not provide direct benefits to households. More significant at that level is the active network of NGOs and CBOs, like the Shack Dweller Federation of Namibia (SDFN), the Namibia Housing Action Group (NHAG) and savings schemes. Municipalities and town councils support savings schemes. However, only a minority of informal settlers are linked to such schemes. According to Mitlin and Satterthwaite (2012), nationwide 3,700 households have been provided with secure tenure. In contrast, 500,000 people are believed to suffer from lack of tenure security (Muller and Mbanga, 2012). Therefore, support for the poor is considered limited. Nevertheless, the influence of SDFN is widespread and accordingly attracts national and international attention.

**Inclusivity: co-management**

A good example of co-management at the national level is the profiling exercise executed through the Community Land Information Program (CLIP) which has been described in Section 3.5.2. At the local level, many respondents with informal land rights complained about the communication and co-operation with the town council. During the OHSIP project, they actively participated, but now they are only informed about the council's plans and developments. As one member of the CDC in Oneshila said: "*The municipality doesn't come to hear the cry of the people. The municipality doesn't involve us in decision making regarding the committee, it is not like in the past.*" According to Pomuti (2006), participatory development outside the project was limited because CDCs and the OTC had conflicts over land, among other things. CDCs and headmen, both traditional and informal, are believed to be losing importance. This impression was confirmed by the director of NHAG: a general trend was observed, whereby local authorities changed focus from working with communities to an individual and technical approach towards their constituencies. The level of co-management for recognized occupancy is therefore considered limited.

Co-management is also considered limited with respect to the savings scheme. It has worked jointly with the OTC to allocate an area for the scheme. However, this process took around seven years. Additionally, the savings scheme plot had, at that time, not yet been converted into freehold. In addition, the announcement made by the OTC to consider relocation for all informal settlements did not improve on co-management.

Co-management among illegal settlers is non-existent; they are at the mercy of the OTC. There is also virtually no co-management for the homesteads. Although they were not interviewed, it is clear that they were not informed

about the Proclamation of Townlands, as has been discussed in Section 5.3.2. The level of co-management with respect to the FLTA is unknown, because no starter or land hold schemes have been established yet. The FLTA positions the local registry office within the OTC. However, there is no indication if or how this registry is supposed to deal with the community. LAC (2005) and Pomuti (2006) stress the need for cooperation between local authorities and communities, a goal which may be realized through the CDCs.

#### **Inclusivity: accessibility**

Strictly spoken, accessibility is considered good for illegal settlers, homesteads and savings schemes. Land holders in these categories negotiate access to land with local representatives like headmen, CDCs and representatives from the savings scheme. These representatives are usually available within the settlement. Illegal settlers may even avoid to consult any of these representatives. Nevertheless, the OTC will at some point in time deal with land issues which may decrease accessibility to a fair level.

Oshakati has no local OTC offices within the settlements, accessibility for land holders with recognized occupancy is rated as fair as well. For freehold plots, the Deeds Registry of Windhoek is involved. Assuming that freehold land holders have to report in person to deal with land issues, accessibility for the poor is considered limited, given the long distance between Oshakati and Windhoek (around 600 km). With respect to the FLTA rights, it is rated as fair for both the starter and land hold titles. Accessibility is assured through the establishment of a local Land Rights Office within the OTC. It is not known whether all members of the association have to deal with the local Land Rights Office. Accessibility may be improved when representatives can negotiate for all members at the OTC. Another uncertainty derives from the requirement to register starter and land hold title schemes at the Deeds Registry in Windhoek. It is unknown if and who has to visit the offices; either OTC staff or representatives of the schemes might be required to travel to Windhoek<sup>30</sup>.

### **5.4.3 Area tenure tools**

The land tool under evaluation is the Proclamation of Townlands in 1993. It is evaluated according to the indicator awareness of the criterion clarity.

#### **Clarity: awareness**

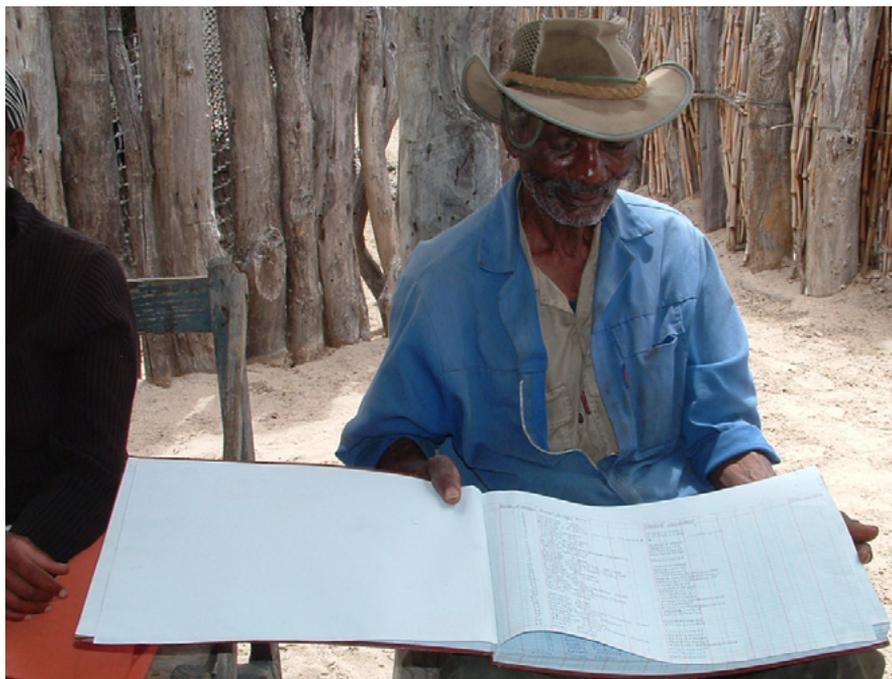
One informal headman confirmed that much authority was taken away from him after the proclamation. Although the town council has the final authori-

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<sup>30</sup> Section 11(2) of the Flexible Land Tenure Act.

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Traditional headman with land register.



ty, stakeholders such as headmen still play a role in land matters within the community, notably land allocation and conflict handling. The traditional headman answered the question on final authority as follows: “*I am the one with the final authority, but the municipality is the one that has the most.*” He also kept a land register, where he recorded allocations of plots (see photo above). People were requested to pay NAD 5 (USD 0.5) for registration. Another informal headman claimed that he had a role to play in case of land sales and transfers. He has to be consulted and is supposed to write a letter to the OTC. He added he would like to get a share of the land sales within the settlement, because he gets no income from being a headman. This suggests that the Proclamation of Townlands did not put an end to customary and informal practices. The traditional authority continued to manage and control the communal areas outside the townland boundary, while the traditional institutions within the townland boundary remained mostly intact. The headmen still claim to play a role in land issues within their areas of jurisdiction. This is confirmed by Mapaure (2009), who studied the legal aspects of proclaiming towns. He investigated the Communal Land Reform Act of 2003 by conducting a case study of Helao Nafidi town, where the traditional authority and local authority clashed over land allocation powers. From a legal perspective, the traditional authority loses power when communal land is proclaimed townland. In reality, though, local people still regard headmen as representatives of the area, and the town council feels the need to cooperate with them. However, as discussed in relation to co-management, this only happens to a limited extent.

As Hamata, Hangula *et al.* (1996) reported a few years after the proclamation, almost everybody had heard about the enclosure of their villages within the townland boundaries. During fieldwork, it was found that most respondents are aware of their land tenure situation and had experienced the proclamation of townland. While illegal and members of the savings scheme unan-

imously point to the OTC as the final authority over land, respondents within the informal category sometimes see the traditional headman in that role. Additionally, members of the savings schemes were best informed about land rights in urban settings through the information exchange with SDFN. Awareness is therefore rated as partly aware for the members of the savings scheme and limited aware for the illegal settlers and informal settlers.

Except for the members of the savings schemes and some who participated in the pilots, overall the respondents were not familiar with the FLTA. This unfamiliarity is rather surprising because it was piloted in Oshakati. On the other hand, it had not been enacted at the time of fieldwork. On a general note, Amoo and Skeffers (2009) conclude that, while the rule of law exists in Namibia, it is hampered by the lack of education and information among much of the population. Raising awareness on land rights and the provisions offered by the FLTA would therefore contribute to an improved rule of law as well.

#### 5.4.4 Individual tenure tools

The following tools are evaluated:

- The registration of recognized occupancy by the OTC;
- The Land Right Agreement within the savings scheme;
- The starter and land hold title of FLTS as a potential innovative land right tool;
- Freehold as a theoretical option for individual formalization.

They are evaluated according to the indicator costs of the criterion affordability and the criteria legal tenure security, perceived tenure security and upgradability.

##### **Affordability: costs**

In Oshakati, the formalized settlements are planned to a certain extent, they are surveyed and services are often provided. The OTC sends bills to the heads of households, specifying items like water, electricity, land rent, refuse collection and fire brigade. Land rent was shown as NAD 12 (USD 1) monthly and was considered affordable. Some respondents claimed that not all residents paid land rent; others confirmed that they only paid for water. The land rent for the homesteads and formalized informal settlements was considered affordable with respect to the occupational component. Members of the savings scheme did not pay land rent at the time of fieldwork.

The capital component was more difficult to establish. The costs for surveying and registration are assumed to be covered by the OHSIP project and the OTC, accounting for NAD 740 (USD 83) per plot (Urban Dynamics, 2001). The planning consultant planned informal settlements according to levels of affordability. Six levels of servicing were distinguished, ranging between NAD 2,550 (USD 285) and NAD 50,000 (USD 5,595) in total costs per plot. The basic level involves a formally planned and surveyed block with commu-

nal water supply, the highest level provides for a 600 m<sup>2</sup> plot with all services.

A similar system is applied in Windhoek. It can be concluded that surveying costs are significant in relation to formalization, i.e. the basic level; nevertheless they are low with respect to the cost of services. However, it is not known whether these costs are passed on to the plot holders. If they have to be paid by the plot holders, this capital component is not considered affordable, as it exceeds the average monthly income of the poor, namely NAD 500 (USD 49).

Neither formal access nor individual formalization is affordable to the poor, at least with respect to the capital component. The capital costs mainly reflect payment for the services of professionals like land surveyors and town planners. For Windhoek, experts estimate that those costs lie between NAD 1,500 (USD 148) and NAD 2,500 (USD 247). The amounts for Oshakati will be higher because the professionals are not available locally. They have to be hired from Windhoek, which results in extra expenses for travel and accommodation. In addition, the applicant also has to travel several times to Windhoek to process the application.

Professional costs with respect to the FLTS are reduced in two ways:

- By sharing the costs of the establishment of the outer boundary among all members of the starter or land hold scheme.
- By appointing a land measurer, as described in the FLTA, to lay out the individual land hold titles. The services of a land measurer are cheaper than those of a registered land surveyor.

Alternatively, the costs of land surveying and registration could be subsidized for lower-income people. This approach has been taken in Rundu and Katima Mulilo, where Lux Development was involved in the upgrading of informal settlements. Because the FLTS was not in force at that time, it was decided to facilitate the sale of land at a subsidized price (Lux Development, 2011). It is not known if this has been attempted in other towns in Namibia.

The occupational component for freehold could not be determined. Rates and taxes relate to the value of the property, which includes the house. A final assessment of affordability of freehold is therefore not given.

### **Legal security**

The legal security of each land right is evaluated in terms of the type of right, possibilities for transfer and duration.

#### **Legal security: type of right**

Five types of rights are distinguished. First, households living in homesteads are considered to have a land right equivalent to that of informal settlers, which is occupancy. Secondly, people who fail to access land in a formal way and who avoid renting accommodation tend to erect shacks at the fringe of an informal settlement or on empty spaces within it. They may have gotten permission from the headman, although they are not recognized by the town

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council with respect to land allocation. The shacks may have been numbered for census or election purposes, although this is not regarded as official recognition. In case of urban expansion, people will be evicted or relocated without any compensation. They cannot claim any rights on the basis of the legal framework. Thirdly, the informal settlers who are registered at the town council have a recognized occupancy. However, these rights are not defined in national laws and regulations. Fourthly, the savings scheme is allocated a site for the entire scheme. Initially, the scheme should acquire freehold land before settling on a site. However, the savings scheme studied in Oshakati settled on land before the freehold title was processed. The type of right can therefore be considered 'group occupancy'. In addition, each individual should have signed a land right agreement with the saving scheme. Lastly, freehold is the most secure right available. With respect to the FLTA, the legal characteristics of starter and land hold can be described, although they were not implemented. The starter title is a registerable, undefined share of a group. The land hold title is an individual registerable title and can be used as collateral to obtain a mortgage. It is almost equal to freehold (see Section 3.5).

#### **Legal security: transfer possibilities**

With respect to transfer possibilities, the homesteads, informal settlers and savings schemes have equal transfer possibilities; they can make a transfer upon approval by the OTC. Extra conditions may apply for an individual within the savings scheme, who, for example, would need to have cleared the building loan. Representatives of the NHAG and SDFN confirmed the possibility to transfer the individual share within the block. According to the Land Right Agreement, members can be replaced; compensation can only be offered when there are no outstanding debts. Instead of a simple transfer from one person to another, this suggests a more complicated procedure of replacement of membership, dealing with outstanding debts and compensation. For illegal settlers, it is assumed that formal transfers will not materialize. Whereas starter and land hold titles are transferable under approval of the scheme, transfers of freehold titles are unconditional.

#### **Legal security: duration**

The informal settlers and savings schemes are considered to have a permitted occupancy for 20 years, which can be extended for five years repeatedly (Christensen, Werner *et al.*, 1999). Although the homesteads might stay under similar conditions, it is questionable whether duration is equal for them. The homesteads are subject to relocation at any time to create space for urban expansion. Duration for the homesteads is therefore undefined. Duration for illegal settlers is undefined as well; they might be relocated anytime by the OTC. Duration for the FLTA titles and freehold is perpetual (Republic of Namibia, 2012).

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### **Overall legal security**

Based on the above descriptions, legal security across the continuum can be evaluated. Crucial indicators are the type of right and duration. Illegal settlers do not enjoy legal tenure security because they lack a recognized right. The legal security of informal settlers, homesteads and members of the savings scheme is considered limited because of the limited duration of the rights. For the starter title, security is considered fair due to its perpetual duration. For the land hold title and freehold, it is considered good because of their perpetual duration and wider bundle of rights attached to them.

It is evident that the FLTA fills the legal gap between the recognized occupancy of informal settlers and freehold tenure. Consequently, the FLTA increases legal tenure security. It should be recognized that the savings schemes currently operate on principles similar to those of the FLTA. When a savings scheme has acquired a freehold title to the block, there are no legal barriers preventing its members from subdividing the land and getting individual freehold titles, provided the members can afford the conversion. In other words, what the act envisaged is already being achieved in reality (LAC, 2005). The main difference seems to lie in the ultimate aims. According to the director of the NHAG, the aim of the savings schemes is to improve the security and livelihoods of its members. In contrast, the aim of the Namibian government is to provide freehold tenure for all citizens, using the FLTA as an intermediate step.

### **Perceived security**

The evaluation of perceived security is one of the pillars of this research. It is evaluated in terms of a fear of eviction, availability of documentation, the perceived possibilities to transfer and the way land can be inherited. Because a few categories of land right holders could not be interviewed, their perceptions of tenure security could not be captured.

Perceptions of tenure security were investigated after the proclamation of townland earlier on by Tvedten and Pomuti (1994). According to them, a large majority of the households argued that they had a de facto ownership of the plot they occupied by virtue of being in a position to transfer or sell it to others. However, they also reported considerable uncertainty about the role of external institutions with regard to the land issue. Those institutions were the OSHIP project, the Oshakati Town Council, the Ministry of Regional and Local Government, Housing and Rural Development (MRLGHRD) and the Ministry of Lands and Resettlement (MLR).

### **Perceived security: fear of eviction**

The illegal settlers who were interviewed were confident that they could stay at their place, but some said they felt threatened by the town council. Some respondents mentioned a lack of recognition by the council. They had

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requested a house number, which is regarded as some form of recognition. A self-employed woman, living in a shack, said: *“We have always been worried about eviction because here we don’t feel comfortable, because we are waiting for anything what the municipality is going to decide. Because we are not given the authority to get water or any other stuff, we feel that we are not secured, that we can be chased out anyway. We are not able to put sand<sup>31</sup> nor a cement floor... If we are given a new [house] number, which is more recognized by the municipality, then we will try, depending on the money we have, to put water, electricity, services or build a permanent structure. We will be more free to do anything like that.”* In other words, she did not invest in improvements. Some respondents knew about evictions in Oshakati. As it turned out, these were relocations of illegal settlers by the OTC. They had been moved to areas more suitable for residential purposes because they were considered less prone to flooding at the new location. One relocation area was visited during the fieldwork. It was found to have been surveyed and plots had been demarcated. However, people continued to stay in shacks because they were not allowed to build permanent structures. This was probably due to the general ban on building permanent structures. Although not many illegal settlers were interviewed, it is concluded that the majority of the people experienced fear of eviction, although it lessened over time.

Respondents in informal settlements were in general confident. Those who participated in the FLTS pilots could get permission to build permanent structures because the land had been surveyed. On the other hand, tenure security came under pressure after the media announced the council’s decision to relocate people living in flood-prone areas to higher ground. A minority of the respondents had some fear of eviction, although it did not seriously affect their overall perception of tenure security.

The savings scheme held weekly meetings. Its members were therefore well informed on land issues and consequently gave similar answers during the interviews. They all expressed fear of relocation after the council’s decision. When the media announced the council’s decision, members of the savings scheme consulted the SDFN, which established from contact with the council that relocation was possible. Nonetheless, the members continued to build (as can be seen in the photo on page 122); they moved into their new homes in the period between August and November 2008. The effect and level of fear has different consequences. Illegal settlers did not invest in improvements, whereas members of the savings scheme finished their permanent buildings.

#### **Perceived security: documented evidence**

Illegal settlers do not have any documentation. The only proof of official rec-

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**31** To heighten the plot to be less prone to flooding.

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ognition they can get is a house number, which is used for election and census purposes. As discussed earlier, no land-related certificates were found among the informal settlers. Nevertheless, they attached value to their council bills. Respondents paid the charges for water and waste collection to the OTC and in some cases land rent was included. They showed the bills from the OTC as proof of 'ownership' of their property.

For members of the savings scheme, a building permit, which had been issued before the severe flooding in 2008, was seen as an important proof of ownership of the property. It raised their perceptions of tenure security. They also mentioned that they have been filling out forms at the council and SDFN. However, they did not specifically refer to the Land Rights Agreement which should have been signed with the savings scheme. With respect to the FLTA, land right documents have to be issued to holders of starter and land hold titles<sup>32</sup>.

#### **Perceived security: ability to sell or transfer**

The answers given by respondents from the savings scheme were concise: they are not allowed to sell or transfer land. One added that that was because the land was not theirs. Only a minority mentioned that the ban was conditional: people are free to sell or transfer land when they have finished paying off the loan.

The perceptions of the settlers having other types of land rights are rather mixed. They either said that both sales and transfers are illegal or that only transfers are possible. Some illegal settlers said that sales did not happen while others said they took place anyway. One self-employed woman with recognized occupancy indicated that a transfer could only happen informally because it was not possible in a formal way. Other respondents just did not know. An OTC Newsletter<sup>33</sup> warns against the sale of council land, which indicates the reality of the practice. Before 1992, communal land in Oshakati could not be bought or sold (LAC, 2005). Few respondents indicated that transfers have to be reported to the OTC. One respondent applied to the OTC to change the title of the property of the deceased house owner, putting it in her name, but she did not get a response from the council.

In all cases, it is important to note that most respondents do not intend to sell or transfer land; they want to stay where they are. This was also reported by Tvedten and Pomuti (1994) and Tvedten and Nangulah (1999): a large majority of the respondents believed they would be living in the same place in ten years' time.

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<sup>32</sup> Articles 12(12) and 13(12) of the Flexible Land Tenure Act.

<sup>33</sup> Oshakati Town Council (2011), Oshakati Today: Oshakati Town Council Official Newsletter.

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### **Perceived security: inheritance**

Both Hangula (1995) and UN-HABITAT (2005c) report on the practice of transferring land and property according to male descent in communal areas. This has often led to the problem of widows being stripped of land by the extended family of the deceased husband. Although Ubink (2011) reports that land grabbing within the rural areas is rarely found, it apparently continues in the informal settlements. The question whether inheritance may cause problems was often received with some surprise. Many respondents reacted by telling the interpreter that she already should know what can go wrong with inheritance. In general, it was believed very possible that relatives of the deceased would take the property, leaving the surviving spouse and children without shelter. Leaving a will could be an improvement. Within the savings schemes, the problem of inheritance was addressed in a structural manner. The plot holder had to write the names of the heirs on the land right agreement, to be accompanied with a signature of a witness. The heir was also made responsible for payment of any outstanding debt that might remain. In an inheritance case, the land right agreement has to be processed through the Magistrate Court and the municipality. With respect to the FLTA, provisions are made for the registration of land hold titles in one or both spouses' name, although in starter titles the position of women might be weaker (LAC, 2005). The FLTA may therefore partly strengthen the position of women in inheritance cases.

### **Overall perceptions of tenure security**

The perceptions of tenure security in Oshakati are under pressure due to the council's announcement, although it has to be said that not all respondents mentioned this issue. Otherwise the level of perceived security could have been considered fair for people in informal settlements, especially since they tend to link their security to documented evidence like bills from the OTC and the building permit. The perception of security might even be overestimated. During the interviews, respondents often suggested that they 'own' the demarcated plot, whereas in legal terms they only have a right of occupancy. Nevertheless, several respondents were aware of the fact that the OTC had the final authority over land.

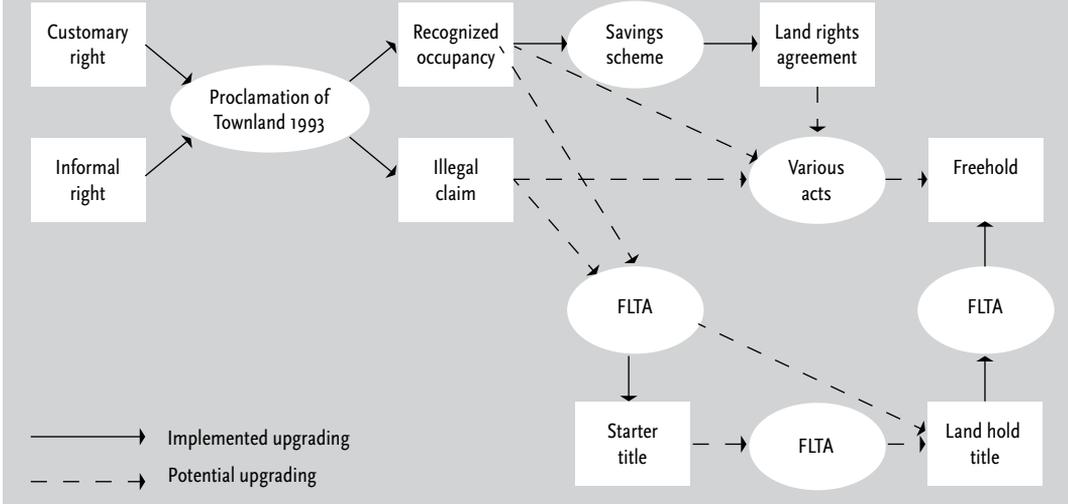
In conclusion, illegal settlers and members of the savings scheme have a limited level of perceived tenure security. For informal settlers, it is classified as fair, because they were to a lesser extent affected by the council's announcement. In addition, the survey of plots during the FLTS pilots have contributed to higher levels of perceived security. Surprisingly, most respondents were unaware of the FLTS. Apparently, the delayed enactment did not significantly affect their perceived tenure security.

### **Upgradability: extent of continuum of land rights**

The continuum of rights entails several possibilities for formalization (see Fig-

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**Figure 5.2 Existing and potential upgrading possibilities along the continuum of land rights in Oshakati**



ure 5.2). However, the question arises whether such options may be seen as an upgrade. First, the conversion of the homesteads into recognized occupancy through the proclamation of townland is not considered an upgrade because the measure was imposed without any consultation. Secondly, the relocation of illegal settlers by the OTC to plots with recognized occupancy is a dubious example of upgradability because most powers are believed to be vested in the OTC. The way the interests of the illegal settlers are dealt with in such cases is not investigated. Last, upgrading recognized occupancy into freehold is merely a theoretical option, as it is a cumbersome and complex procedure. No such upgrade was discovered during fieldwork, not even under a savings scheme. The possibilities for upgrading are therefore considered limited for the land rights as found during fieldwork. Apart from savings schemes, it is the OTC that initiates the upgrade of land rights. Nevertheless, the FLTA has clearly defined some upgrading strategies: directly from starter to freehold title, from starter to land hold title and from land hold to freehold title. Some CDC members and the land surveyor expect all plots within the informal settlements which have been surveyed during OHSIP and the FLTS pilots to be converted into land hold titles. This implies an upgrade from recognized occupancy to land hold. Before this can happen, though, several steps have to be taken, notably the establishment of the association for each scheme.

In all instances of upgrading within the FLTA, more than 75% of the members of a scheme's association have to agree to upgrade. The ones who do not agree will be granted a starter title in a similar scheme or receive fair compensation (in the case of a land hold scheme)<sup>34</sup>. This puts pressure on people to agree; otherwise, they would have to leave their house. One wonders whether this effect reflects the intentions of the FLTA.

Theoretically, land rights can be upgraded across the entire continuum, although in practice instances of upgrading are rather limited. A possible bar-

**34** Republic of Namibia (2012), Flexible Land Tenure Act, Windhoek, Government Gazette, Sections 14 (2) and 15 (4).

rier to upgrading from any title to freehold title is the stipulated minimum size of 300 m<sup>2</sup> for freehold plots. Presumably, many plots in informal settlements are smaller, although all plots within the savings scheme in Oshakati measured 300 m<sup>2</sup>.

### 5.4.5 Operational tools

The operational tools are evaluated according to the criteria simplicity, speed, approach and completeness.

#### **Simplicity: boundary system**

The homesteads and illegal settlers do not reside on surveyed plots. The formalized informal settlements, including the savings schemes, have their plots surveyed. Pegs are used to mark the boundaries. They are surveyed by a land measurer (see Section 5.4.4 on affordability). The maps are not subject to approval by the Surveyor-General; the surveying procedure is therefore considered simple.

For a starter title, the outside boundary of the block should be demarcated completely by a registered land surveyor in accordance with the Land Survey Act. The procedure for land hold titles resembles the way the informal settlements in Oshakati were surveyed. Land hold titles are based on a cadastral map which is prepared by a land measurer (Christensen, Werner *et al.*, 1999). The survey procedure for the outer boundary of starter and land hold scheme is considered complex, whereas it is simple for individual land hold titles. The subdivision can be handled by a land measurer, as prescribed within the FLTA.

The way land hold titles are converted into freehold is not yet clear. The individual plot boundaries have to be re-surveyed, as specified in the Land Survey Act. Under the assumption that the entire scheme will be upgraded, inhabitants may take advantage of economies of scale. While this would lower the surveying costs per plot, the costs might still be significant and the procedure complex.

#### **Speed: high volumes**

Homesteads within the town boundary are not subject to formalization unless they are relocated and offered a plot elsewhere. Because cases of relocation are handled individually, it is assumed that they cannot be dealt with in high volumes.

Technically speaking, simple surveying of informal settlements can be carried out relatively quickly because it can be done systematically. The surveying system is considered to be able to handle high volumes and can apply to savings schemes, starter title and land hold title schemes. However, the entire procedure for establishing such schemes, including land allocation, formalization and planning permission, might take considerable time, which has

been demonstrated by the savings scheme. Speed of these schemes is therefore rated as 'possible'. Additionally, it is doubtful whether a large number of inhabitants would be able to organize themselves into such schemes within a short period of time.

The FLTA creates local land registers which resort under the local authorities. In general, local registries are preferred, as local staff would know the local situation and the land holders would not have to travel far. An impediment might be that a person granted a starter title may not have any immovable property or land hold title in Namibia. That requirement entails a search through all local land rights offices and the Deeds Registry in Windhoek for all starter title applications.

In anticipation of the implementation of the FLTA in Oshakati, several challenges should be noted. Besides arranging for the funding, personnel and equipment for land right offices, starter and land hold schemes have to be established. This process will include the formation of associations for participating inhabitants. In addition, it is predictable that the layout of some of the plots in existing settlements will need some adjustment; no regulations are known to be available.

#### **Approach: individual of systematic**

The homesteads have been converted systematically through the proclamation of townlands. If they have to be relocated, an individual approach is assumed, because an agreement on compensation has to be reached for each homestead. The approach to illegal settlers can be individual- or group-based, depending on the case. The formalization of informal settlements as described by Urban Dynamics is done systematically. With respect to the FLTA, both the local authority and local residents can take the initiative to establish a starter or land hold scheme. The approach is group-based, similar to the savings scheme. For freehold, the approach is individual-based (Owolabi, 2004).

#### **Completeness: coverage**

The literature and the results from fieldwork give rise to the following estimates of the distribution of land rights in Oshakati:

- Squatters: between 5% and 15%;
- Customary tenure: ceased to exist after the proclamation of townland;
- Recognized occupancy: between 60% and 75%;
- Starter title: not yet implemented;
- Land hold title: not yet implemented;
- Formal (freehold): between 25% and 35%.

Additionally, the share of households renting is estimated to lie below 25%.

The savings scheme registration is considered complete, given that the schemes provide their own registration of members and land documents. The same holds for starter title and land hold title schemes. When they are set up,

it is assumed that all households will be registered through these schemes.

For informal settlements, the level of completeness is considered 'majority'. It should be kept in mind that not all settlements have been formalized. Moreover, the respondents made inconsistent statements about payments of land rent and services. It is unknown how, and to which level, the homesteads and illegal settlers are registered. Additionally, as mentioned earlier on, one headman kept a register as well, though just how complete it is remains unknown. The registration of freehold is considered almost complete. Owolabi (2004) estimated that, from a national perspective, 2% of the urban areas under freehold in Namibia are legally occupied but not registered or surveyed.

#### **5.4.6 Results and limitations of fieldwork**

The fieldwork has provided a vivid picture of land tools and land rights in Oshakati. The case study revealed more details on land access, land tenure and tools than anticipated, especially on recognized occupation.

To a large extent, the fieldwork was carried out as a case study. A few remarks on the study design should be made here. First, the fieldwork was not restricted to a single peri-urban settlement. Respondents were sought in several settlements to study specific tenure regimes like illegality and savings schemes and experiences with OHSIP and the FLTS. This is not imposing any methodological problem, taking into account the relatively small size of the town. Secondly, access to respondents was provided through either the council or savings scheme. Besides the interview with the headmen, the council did not support any interview with households of homesteads. During some interviews, a representative of the OTC was present, which might have influenced these interviews. Because access to the savings scheme was easier to arrange, this group was to some extent overrepresented.

### **5.5 Analysis of innovative land tools in Oshakati**

This section will answer the three sub-questions as formulated in Section 5.1.

#### **How did poor people access the land they occupy?**

The main problem is that poor people, who form the majority in Oshakati, cannot afford to buy formal freehold plots. Their only options are to resort to informal or illegal settlement or to seek rental accommodation. Respondents in the informal settlements did access the land through delivery by the OTC, inheritance, purchase or a savings scheme. There did not seem to be a lively informal market. Land delivery for the poor through the OTC is slow and is incorporated within the urban planning process. The FLTA may facil-

**Table 5.4 Overall evaluation of land tools in Oshakati**

Tools	Criterion	Indicator	Continuum of land rights		
			Homestead	Illegal	
<b>Equity</b>					
Legal framework	Inclusivity	Legal recognition*	Fair	Fair	
		Secondary rights*	Ignored	-	
Institutional framework	Inclusivity	Support for the poor*	Limited	Limited	
		Co-management	None	None	
		Accessibility	Good	Good	
Individual tenure	Affordability	Costs	Partly affordable	Partly affordable	
<b>Effectiveness</b>					
Area tenure	Clarity	Awareness	-	Limited aware	
Individual tenure		Type of right	Occupancy	None	
		Transfer possibilities	Conditional	n/a	
		Duration	Undefined	Undefined	
		<b>Legal security</b>	<b>Limited</b>	<b>None</b>	
			Fear	-	Full
			Documented evidence	-	No
			Transfer possibilities	-	Mixed
			Inheritance	-	Mixed
			<b>Perceived security</b>	-	<b>Limited</b>
	Upgradability	Extent of continuum*	-	Full range (theoretically)	
<b>Efficiency</b>					
Operational	Simplicity	Boundary system	None	None	
	Speed	High volumes	-	-	
	Approach	Individual/systematic	Individual	Systematic	
	Completeness	Coverage	-	-	

\* The value of these indicators are not completely attributed to specific land right categories; they are valid throughout (part) of the continuum.

itate access to land for the poor through starter title schemes, although the savings scheme achieved the same end without the FLTA. With respect to illegal settlement, people just settle somewhere on vacant land, though they might even have approached a traditional or informal headmen. Although the whole of Oshakati falls under statutory tenure, customary and informal practices are also in place. Oshakati is thus a clear example of legal pluralism.

#### **What kind of land rights are available and in which way are these rights supported by land tools?**

The variety of land rights found in peri-urban Oshakati is wide: there are homesteads on former customary lands, illegal settlers, informal settlers with recognized occupancy and members of a savings scheme with a land right agreement. Additionally, the starter and land hold titles are potential land rights and are therefore included here. These rights result from tools like the proclamation of townlands, formalization by the OTC, the savings scheme and the FLTA.

With respect to the proclamation of townlands, most respondents were aware of the tenure change. Nonetheless, traditional and informal headmen continue to, or desire, to deal with land matters. Their ongoing involvement

Table 5.4 Continuing

Continuum of land rights				
Recognized occupancy	Savings	Starter	Landhold	Freehold
<b>Equity</b>				
Fair	Fair	Fair	Fair	Fair
-	-	-	-	-
Limited	Limited	Limited	Limited	Limited
Limited	Limited	-	-	-
Fair	Good	Fair	Fair	Limited
Partly affordable	Partly affordable	Partly affordable	Partly affordable	-
<b>Effectiveness</b>				
Limited aware	Partly aware	-	-	-
Occupancy	Occupancy (group)	Occupancy (group)	Ownership (limited)	Ownership
Conditional	Conditional	Conditional	Conditional	Complete
Limited	Limited	Perpetual	Perpetual	Perpetual
<b>Limited</b>	<b>Limited</b>	<b>Fair</b>	<b>Good</b>	<b>Good</b>
Mixed	Full	-	-	-
Infomal	Informal	-	-	-
Mixed	Not possible	-	-	-
Mixed	Equitable	-	-	-
<b>Fair</b>	<b>Limited</b>	-	-	-
Full range (theoretically)	Full range (theoretically)	Full range (theoretically)	Full range (theoretically)	-
<b>Efficiency</b>				
Low accuracy	Low accuracy	Outside high; inside low	Outside high; inside low	High accuracy
Realized	Possible	Possible	Possible	No
Systematic	Group	Group	Group	Individual
Majority	Complete	Complete	Complete	Complete

might create unclear situations or conflicts. It is assumed that the influence of customary tenure will disappear. Customary land rights, including secondary rights, are legally void. Traditional homesteads will be relocated for the sake of urban extensions.

#### Which levels of tenure security are attached to the land rights?

The levels of legal security follow a logical pattern as security tends to increase towards the end of the continuum. Perceived tenure security follows a similar pattern. The surveyed boundaries, OTC bills and documented building permission give the respondents a sense of security. One could even argue that they hold higher expectations of tenure security than what is delivered legally. Unfortunately, their unrealistic expectations came into full view when the council announced the possibility of relocation. The impact was particularly strong on the savings scheme. Its members were in the process of building their new houses and they attended weekly meetings to discuss the issue. Although the council has powers to relocate informal settlements, one may question the way this decision was communicated. Nevertheless, the discrepancy illustrates the delicate balance between legal and perceived tenure security and the potential negative impact of lacking legal security.

## 5.6 Conclusions and recommendations

The third research question: *To what extent can the innovative land tools as applied in Oshakati be considered pro-poor, based on the evaluation criteria?* can now be answered. The results of the evaluation are displayed in Table 5.4.

The major aspects with a positive effect are accessibility and affordability, as far as it could have been evaluated. Levels of equity are lower towards the upper end of the continuum due to limited accessibility to land and a lack of affordability. With respect to the eventual implementation of the FLTA, co-management should be emphasized. Co-management is also important to the homesteads and traditional headmen. Additionally, the capital dimension of affordability should be clarified. The major aspects of the innovative land tools that have a negative effect on equity relate to the cancellation of the secondary rights of customary land holders.

With respect to effectiveness, the OTC has resorted to some kind of informal planning system. It amounts to simple layouts and surveying to create plots for which permission can be granted for permanent buildings and council charges can be collected for land and services. This system provides for increased levels of tenure security, although there is a delicate balance between legal and perceived security. With regard to upgradability, the status of recognized occupancy with building permission is the last realistic option for the majority of residents in Oshakati. For the savings scheme, the prospect of freehold might be an improvement for its members. However, it is assumed that the freehold title cannot be delivered as long as the future of informal settlements is unclear. With respect to the FLTA, residents on surveyed plots are assumed to be delivered land hold titles, which would increase the level of legal security.

Concerning the operational tools, the system of recognized occupancy is implemented according to pro-poor principles as defined within this study. Based on the responses gathered through the interviews, improvements have to be made in the collection of land rent and the registration of transfers. The savings scheme is also implemented according to pro-poor principles, although it is limited to a small number of land holders.

The situation in Oshakati as found during this study has a dual character. On the one hand, the approach of the OTC to the majority of inhabitants is pro-poor; i.e., their occupancy is recognized by the OTC. On the other hand, the danger of flooding casts a dark shadow over their tenure situation and illustrates how fragile their legal security is. The savings scheme has succeeded in providing the poor with land and housing. Various factors – the delivery of land to the scheme, the land rights agreement between the association and each individual, the provision of loans and the development permission issued – have allowed people to develop their own housing in a secure way. The FLTA is not strictly necessary, as demonstrated by the success of the sav-

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ings scheme, a similar system operating under the current legal framework. Nevertheless, implementation of the FLTA might improve the land rights situation, especially by increasing the levels of legal security.

**Recommendations**

The Flexible Land Tenure Act should fill the gap between informal and freehold urban tenure. Interestingly, the principles of the FLTA are already applied by NGOs and CBOs through the saving schemes. It is assumed that saving schemes cannot operate at a large scale; therefore, the FLTA is needed. However, implementation leaves many questions unanswered. For example, in the short term, associations should be organized in all informal settlements before embarking on the conversion to starter or land hold titles. It is therefore recommended to organize these associations in a relatively simple way. They are considered to play an important role in attaining sufficient levels of co-management. Furthermore, the legal status of recognized occupancy needs more clarification.

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# 6 Evaluation of innovative land tools: a case study of Chazanga (Zambia)

“The chiefs, as custodians of customary land, are increasingly important to urban growth as some of it takes place on their land, beyond urban district boundaries” (UN-HABITAT, 2012b, p. 2).

## 6.1 Introduction

This chapter presents the results of fieldwork carried out in Chazanga, an informal settlement in Lusaka, the capital city of Zambia. It answers the third research question for Chazanga, which was formulated in Section 1.7 as follows: *To what extent can the innovative land tools be considered pro-poor, based on the evaluation criteria?*

That question includes the following three sub-questions:

- How did poor people access the land they occupy?
- What kind of land rights are available and in which way are these rights supported by land tools?
- Which levels of tenure security are attached to the land rights?

The description starts with a characterization of Lusaka, focusing on Chazanga, and goes on to discuss land access and land tenure. The implementation of land tools is subsequently evaluated according to the framework set forth in Chapter 4. The legal and institutional framework of Zambia has already been outlined in Section 3.6. Here, the main land tool is the Housing (Statutory and Improvement Areas) Act, which was awaiting implementation in Chazanga when the fieldwork was carried out in August and September 2009.

## 6.2 Main characteristics of Lusaka and Chazanga

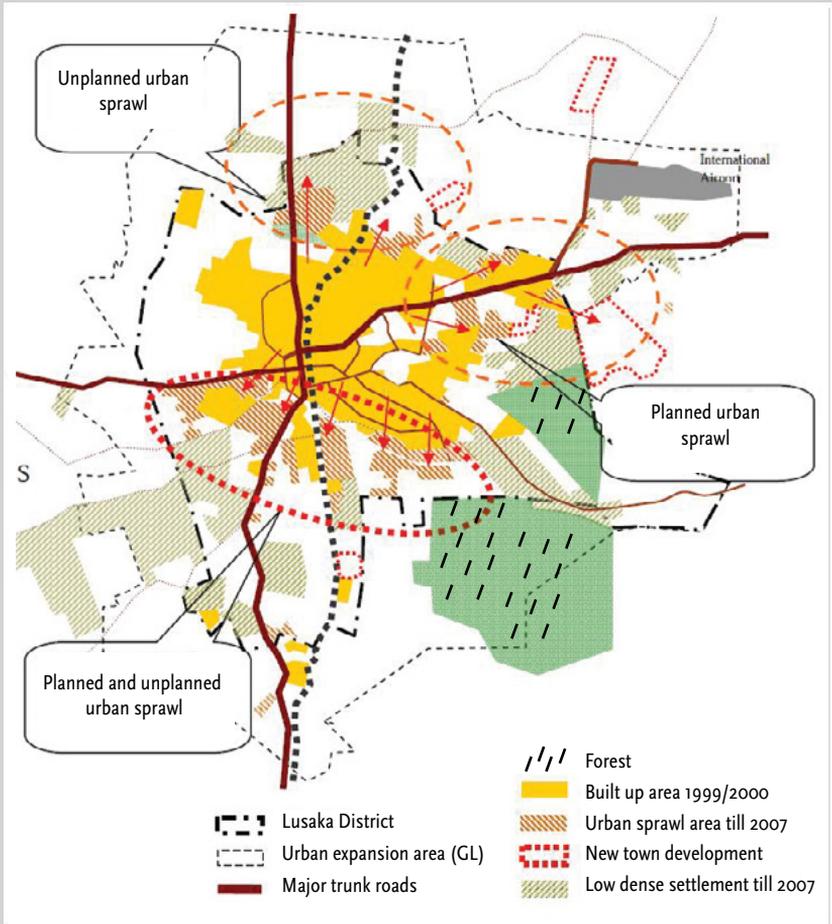
### 6.2.1 Lusaka

Lusaka is the capital city of Zambia. Together with Copperbelt Province, it forms one of the most urbanized areas in Zambia. Lusaka Province is 85% urban, whereas the Zambian average is 34.7% (Republic of Zambia, 2011). The city of Lusaka covers an area of 424 km<sup>2</sup>. Its population is estimated at 2.2 million (Ministry of Local Government and Housing (MLGH), Lusaka City Council (LCC) *et al.*, 2009b).

#### Urbanization

As reported by the Lusaka City Council (LCC) and Environmental Council of Zambia (ECZ) (2008), the population of Lusaka was roughly 1.3 million in 2005 and was increasing by approximately 3.7% per annum. Between 10% and 20% of the area is covered by informal settlements, where an estimated 70% of the population lives. Sixty percent of the land under new development is as-

Figure 6.1 Urban developments in Lusaka (Zambia)



Source: Ministry of Local Government and Housing (MLGH), Lusaka City Council (LCC) *et al.*, 2009a

sumed to be delivered through informal channels (LCC and ECZ, 2008; UN-HABITAT, 2012b). As Figure 6.1 shows, the majority of new residential areas are located at the fringe of the city (MLGH, LCC *et al.*, 2009a). Lusaka might need land from the surrounding rural district councils (UN-HABITAT, 2012b; as cited at the beginning of this chapter). The case-study area is located near the city boundary, and issues arise due to its fringe location.

Between 2007 and 2009, a study team subcontracted by Japan International Cooperation Agency (JICA) formulated the comprehensive urban master plan of Greater Lusaka, by order of the Ministry of Local Government and Housing and Lusaka City Council. They distinguished between planned and unplanned urban settlements. Definitions were not included in the documents, so it was necessary to compare maps in the study underlying the master plan with maps from other reports. It is concluded that the unplanned settlements largely relate to the informal low-cost areas, some of which may have been subject to upgrading and formalization.

**Table 6.1 Distribution of households by tenancy status in urban areas, 2010**

	Urban (National)			Lusaka Province
	low cost	medium cost	high cost	
Owner-occupied	43.8%	40.9%	34.3%	34.5%
Rented from institution	1.9%	4.5%	5.8%	2.3%
Rented from landlord	47.8%	42.4%	40.0%	51.8%
Free housing	6.2%	11.7%	19.2%	11.0%
Other	0.3%	0.5%	0.7%	0.4%
<b>All</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>
Total number of households	659,000	149,000	83,000	366,000

Source: Republic of Zambia, 2011

### Housing tenure

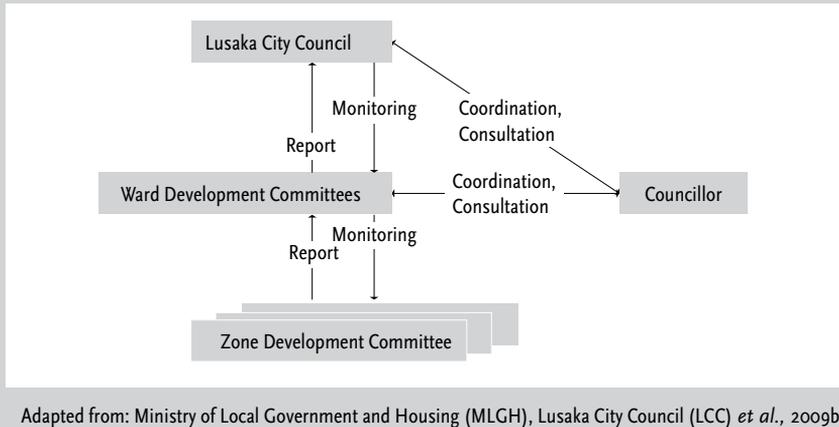
As shown in Table 6.1, renting is the dominant tenure in low-cost urban areas in Lusaka Province. With respect to Lusaka itself, JICA reported slightly different figures: 54% owner-occupied versus 39% rented in planned areas and 50% owner-occupied versus 47% rented in unplanned areas (MLGH, LCC *et al.*, 2009c).

### Institutional framework

Within the LCC, it is mainly the Department of Housing and Social Services and the City Planning Department that deal with informal settlements. The former is responsible for the improvement of living conditions for people in those settlements. The City Planning Department is in charge of managing public services and planning housing developments. Both departments have peri-urban sections which deal with issues in informal settlements (MLGH *et al.*, 2009b). In Zambia, the term peri-urban area is almost synonymous with informal settlement, as discovered during the research seminar held at the University of Zambia (UNZA) to discuss the preliminary results of the fieldwork.

The city of Lusaka is subdivided into wards. Each ward is represented by an area councillor, who is a member of the Council Meeting of Lusaka City. The councillor takes responsibility for the overall development of the ward (MLGH, LCC *et al.*, 2009c). Ward Development Committees (WDCs) have evolved as a tool for local-level organization and as way of channelling community needs to the local authority level (UN-HABITAT, 2005b). The main role of a WDC is to promote the development and the mobilization of resident participation in partnership with the councillor, the LCC, donors and NGOs (MLGH, LCC *et al.*, 2009c). The LCC has recruited volunteers in the area to form a WDC. A WDC is subdivided into zones. A zone leader represents the zone and chairs the Zone Development Committee (ZDC). Together, all zone leaders form the WDC, which is administered by the area councillor. Figure 6.2 shows the relationships among the LCC, the WDC, the ZDC and the councillor. There are in total 33 WDCs. They mainly cooperate with the peri-urban section of the Department of Housing and Social Development (MLGH, LCC *et al.*, 2009b). Both the WDC and ZDC oversee the development in the ward and look into problems concerning water, sanitation, tenure security and land issues. The land issues relate to boundary conflicts, inheritance disputes and abandoned land encroached upon by others.

Officially, there is no role for the area councillor concerning land transfers. According to some reports, however, a councillor may allocate land. Even

**Figure 6.2 Institutional framework in a ward**

though WDCs should be non-partisan, they may be influenced by local politicians (UN-HABITAT, 2012b). Many scholars and institutions have noted the involvement of local politicians concerning land allocation in and near informal settlements (Van den Berg, 1984; Mulenga, 2003; ZLA, 2005; UN-HABITAT, 2005b; Phiri, 2005). UN-HABITAT (2005b, p. 60) was very clear on the situation: “After independence, party organisation was firmly entrenched in informal settlements as this gave the settlements a form of legitimacy in the eyes of the party and government... At the lower levels, party leaders organised the residents of these areas efficiently, allocated land, controlled building activities and resolved any conflict... There has always been an ambivalent attitude towards illegal squatting because whichever party is in power derives support from these settlements...”

### Poverty

With a Gross Domestic Product (GDP) of USD 1,500, Zambia is ranked as number 200 in the world and is therefore classified as a low-income country<sup>35</sup>. CSO (2012)<sup>36</sup> has published the poverty trends between 1991-2006, which reveal that 64% of the national population was considered poor. In Lusaka Province, the poverty level is reported to be 29%, making it the least poor province within Zambia. A sharp decline was recorded between 2004 and 2006: poverty dropped from 48% to 29%, although this is partly due to a change in the methodology of poverty assessment. Poverty in rural areas is more severe than in urban areas, both absolutely and relatively. Rural poverty was reported to be 78% nationwide (Republic of Zambia, 2011).

Table 6.2 shows the poverty levels in urban Zambia. The extremely poor are those who cannot afford the basic food basket. The moderately poor are those who can afford the food basket, although not the basic needs basket (Republic of Zambia, 2011). As the table shows, urban poverty is concentrat-

<sup>35</sup> The World Factbook, <https://www.cia.gov/library/publications/the-world-factbook/>, last accessed June 18<sup>th</sup>, 2012;

<sup>36</sup> CSO, Living Conditions Monitoring Survey, 1991, 1993, 1996, 1998, 2004 and 2006 (2006 provisional figures); <http://www.zamstats.gov.zm/lcm.php>; last accessed June 18<sup>th</sup>, 2012;

**Table 6.2 Poverty levels in urban Zambia and its distribution over housing areas**

	Living in low-cost housing areas	Living in medium-cost housing areas	Living in high-cost housing areas
Extremely poor	16.7%	3.1%	1.7%
Moderately poor	17.8%	5.4%	3.2%
<b>Total poor</b>	<b>34.5%</b>	<b>8.5%</b>	<b>4.9%</b>
Not poor	65.5%	91.5%	95.1%
<b>Total</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>
Urban population (abs.)	3,334,914	765,003	400,934

Source: Republic of Zambia, 2011

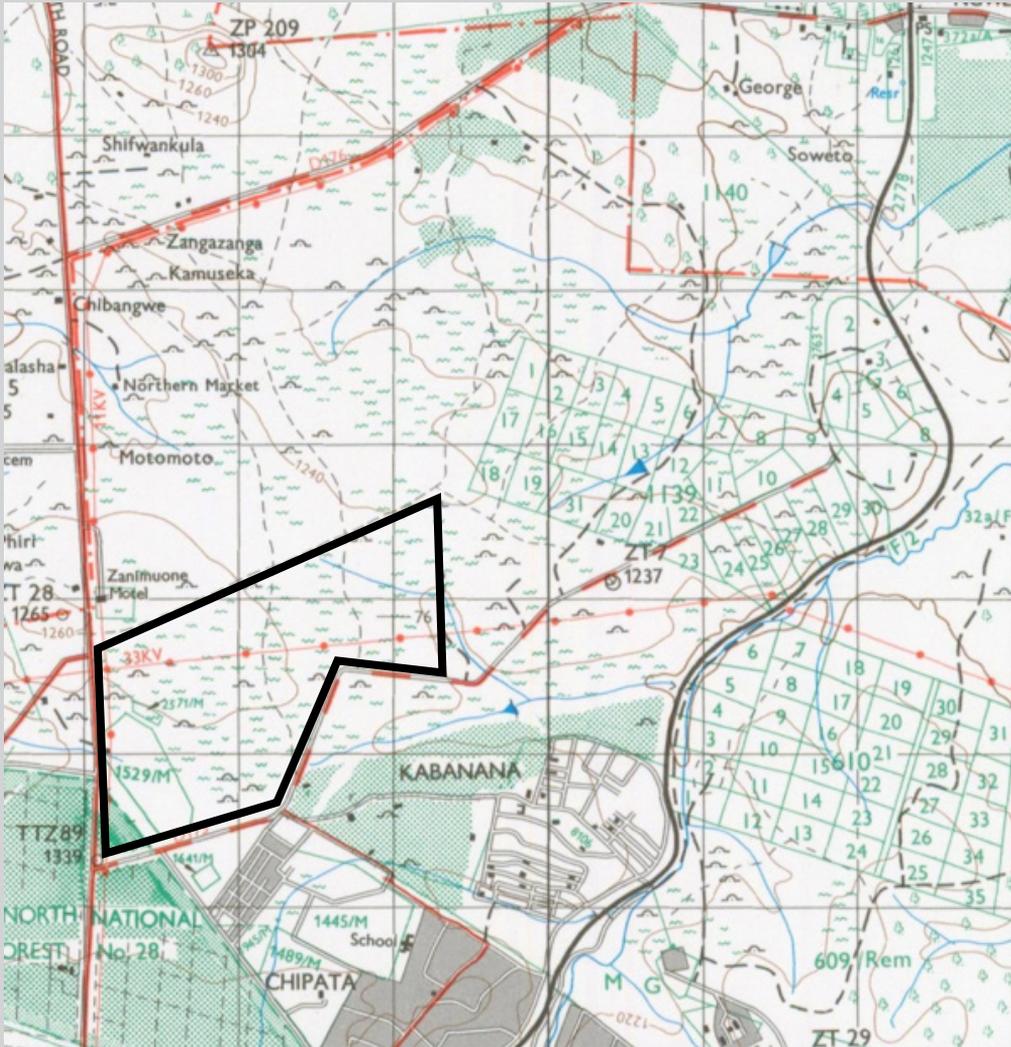
ed in low-cost housing areas; however, the majority of inhabitants there are considered not poor. Chibuye (2011) argues that poverty in urban areas, especially in Lusaka, might be more severe because the cost of the basic needs basket is much higher there compared to rural areas. This is particularly true of housing costs in planned settlements. On the other hand, income levels in planned areas in Lusaka are much higher. According to the household survey conducted by JICA in March 2008, the average household income in unplanned urban settlements amounted to ZMK 370,000 monthly (USD 100). This study takes that amount as the monthly average household income of the poor. It is less than one-fifth of the ZMK 2 million (USD 560) reported in planned urban settlements. The unemployment rates were found to be 28.7% and 19.2% respectively (MLGH, LCC et al., 2009b).

## 6.2.2 Chazanga

Chazanga is an unplanned settlement in the northern part of Lusaka (see Figure 6.4 and photo p. 146). Its exact coverage is unknown. Figures 6.3 and 6.4 display the part of Chazanga to be formalized, however Chazanga exceeds northwards. It qualifies as a case-study area: it is a rapidly growing settlement, it contains multiple tenure systems and innovative land tools had not yet been implemented. With respect to the multiple tenure systems, the land is claimed to be public land by the LCC and customary land under the Traditional Authority. This duality may be attributed to a boundary correction in 1975 (see Figure 6.5). It used to be farmland but has been urbanized during the last 40 years (Van den Berg, 1984). Now a residential area, the building density increases towards the south, towards Lusaka centre and towards Great North Road. The population of Chazanga is reported to be 37,524 (LCC and ECZ, 2008), although local experts estimated it at 50,000 on the basis of more than 10,000 households. Both sources also estimated that between half to three-quarters of the inhabitants are tenants, which is in line with the figures given in Table 6.1 on housing tenure. Implementation of the main land tool concerns the announcement to declare Chazanga as an Improvement Area. This will be discussed in Section 6.3.4.

Politically, Chazanga is represented by a member of parliament (representing Mandevu constituency) at the national level and by an area councillor at the local level (representing Chazanga Ward, an area within Mandevu constituency). Chazanga Ward was established in 2006, being separated from a larger ward. The only source of data on Chazanga relating to poverty is the Mandevu Constituency Profile (Ward Development Committee Chazanga, not dated, p.

Figure 6.3 Part of 1:50,000 map of Lusaka (Zambia), sheet 1528 A4 (not to scale)



Boundary of proposed improvement area

Source: Survey Department, Lusaka, 1986

1): "Many of the people are unemployed. They live below the budget of 1 USD per day. Only 20% are in formal employment..."

The comprehensive urban master plan of Greater Lusaka classifies Chazanga as an unplanned settlement which is located in the remote areas and has been developed in a disorderly manner without a grid pattern. Upgrading of such settlements is considered costly due to the need to rearrange plots to put in roads. Urban renewal is therefore proposed for Chazanga (MLGH, LCC et al., 2009c).

Chazanga is subdivided into 30 zones, each with more than 150 households. The Chazanga WDC has an executive committee consisting of 10 members, elected by all WDC members. The WDC meets at least weekly, the ZDC monthly. The minutes of the WDC meetings are sent by the area councillor to the LCC.

Figure 6.4 Proposed regularization of Chazanga



Source: Lusaka City Council, 2009

### Fieldwork characteristics

Fieldwork was carried out in August and September 2009. Local experts were interviewed (see Appendix E). Twenty-eight interviews with inhabitants of Chazanga were held: 2 with couples, 8 with men and 18 with women. An interpreter was hired because of the need to conduct most interviews in local languages (Nyanja and Bemba). Members of the WDC were the main channels through which to access and select respondents. They accompanied the researcher when walking through the settlement and helped the researcher to approach potential respondents. Five of the respondents were zone leaders, residing in the zone they represented.

The people interviewed had settled on their current plot between 1953 and 2009 (see Table 6.3). The area used to be vacant land (bush) though there were a few smallholder farms. The number of farms increased over the years. Most farmers subdivided their land and sold plots for residential development. The majority originated from Lusaka, including Chazanga itself (Table 6.4). They chose Chazanga because they found the settlement to be quiet and peaceful; it is not crowded and the plots are big compared to other compounds in Lusa-

Chazanga main street with market.



**Table 6.3 Respondents in Chazanga and their year of settlement**

Year of settlement	No
2000-2009	14
1990-1999	10
1980-1989	-
1970-1979	2
1960-1969	1
1950-1959	1
<b>Total</b>	<b>28</b>

**Table 6.4 Respondents in Chazanga and their former place of residence**

Former place of residence	No
From Chazanga	3
From Lusaka	18
From outside	6
Unknown	1
<b>Total</b>	<b>28</b>

ka. Most buildings are permanent brick structures; very few are made of mud. In Section 6.3.6 it is discussed how respondents accessed their land.

## 6.3 Land tenure in Lusaka with special reference to Chazanga

The land in Chazanga is claimed by both the LCC and the Traditional Authority. Both claims will be discussed below.

### 6.3.1 State land

UN-HABITAT (2005b) clearly describes the role and duties of any district council, a description that also applies to Lusaka City Council. Such councils have the power to control the development of land in their areas. They have the power to deal with state land, in which they act as agents of the state under the direction of the Commissioner of Lands, and land falling under the Hous-

Figure 6.5 Map showing boundary correction in Chazanga 1975



Source: Van den Berg, 1984

ing Statutory and Improvement Areas Act (HSIAA). Consequently, both the council and the Ministry of Lands will deal with land matters. The commissioner under the Ministry of Lands will handle leaseholds. The council will deal with its own properties (for example council houses) and the implementation of the HSIAA. The latter concerns the issuance of certificate of titles and occupancy licenses, procedures that were briefly explained in Section 3.6.

### Formal land delivery

The LCC has two options to deliver land to prospective inhabitants:

- To develop a township according to the Town and Country Planning Act;
- To declare a Statutory Housing Area in accordance with the HSIAA.

Most township plots are formally planned as medium- or high-cost land. Consequently, their development results in medium- or low-density residential areas. According to Nordin (1998), certificates of title, i.e. leaseholds, are issued by the Ministry of Lands in these areas. Members of the public can apply to the council for plots, often after the council advertises their availability. UN-HABITAT (2005b) describes the procedure in detail, a sequence that has been confirmed in interviews with local experts. The crucial aspects are the following:

- An applicant has to buy a form, costing approximately ZMK 100,000 (USD 22).
- Candidates will be selected on the basis of their financial ability to develop. Therefore, the applicant has to submit evidence like bank account statements, pay slips, etc.
- The selection of candidates may take a long time; three years is not unusual.
- The council makes recommendations to the Commissioner of Lands; the Commissioner of Lands issues the lease.
- The approved applicant can start building once a letter of offer from the

Commissioner of Lands has been received. The applicant has to start building, upon building approval, within six months and complete it within 18 months.

The land itself is delivered for free, although the Lands (Ground Rent and Fees) Regulations of the Lands Act prescribe fees for the processing of documents in terms of fee units. The value of these units could not be retrieved.

Additionally, the applicant has to pay fees for the land survey and registration, for building approval and for the delivery of services and the construction of roads. The cost of having land surveyed is estimated to lie between ZMK 1 and 3 million (USD 196 and 587), depending on the plot size. Fully serviced plots in a formal low- to medium-cost housing project in Lusaka have been advertised at prices between ZMK 10 million (USD 1,955) for 400 m<sup>2</sup> and ZMK 15 million (USD 2,933) for 600 m<sup>2</sup>. The price includes the cost of cadastral surveys and title deeds (UN-HABITAT, 2012b). It is evident that the majority of the poor are unable to access land according to the formal procedures.

### Land documents

As described above, formal land delivery may result in a council certificate of title or a leasehold title. In the literature, two other tenure-related documents are mentioned: the Land Record Card and the Agreement Form. The land record card is a memorandum of an oral agreement between a local authority and the occupant. That document is valid for 10 years and is transferable. It may be used as collateral for a loan, in which case the card must be retained by the lender until the loan is discharged. The card also indicates who is to be the successor upon the death of the holder. According to Mvunga (1982), it can be regarded as a premature certificate of title. Premature means that it can be converted to a certificate of title when the area is planned and the land is subdivided in a proper way<sup>37</sup>. According to the LCC and ECZ (2008), it is less secure and should be considered a stopgap document. Nordin (1998) notes that new land record cards are no longer given out.

An agreement form gives the participant a certain period of time to develop a plot within an Improvement Area. When the development has taken place, the person will be issued an occupancy license (Nordin, 1998). Agreement forms have been found in Chaisa (Nabanda, Buleba-Mumbi et al., 2001). The land record card and the agreement form were not encountered in Chazanga and will therefore not be evaluated. All land documents issued by the LCC are registered and maintained by the Deeds Registration within the Department of Legal Services of the LCC.

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<sup>37</sup> In areas which are difficult to survey, at least where the plot layout is irregular, occupancy licenses are issued upon declaration of an Improvement Area (see Section 6.3.4).

### 6.3.2 Customary tenure

To say that Chazanga or any part thereof is under customary tenure means that the land is managed under customary tenure by the Traditional Authority of Chieftainess Mungule. There are three headmen located in the area. Chibombo District would then be considered the planning authority. According to a council official, the headmen have refused to acknowledge the LCC as the planning authority and they continue to allocate land in Chazanga. The chief is still kept informed about allocations: during fieldwork, one respondent showed a letter written by the headman to inform the chief about an allocation.

As described in Section 3.6, customary land may be converted into statutory tenure; the Lands Act facilitates its conversion into leasehold. For Chazanga, when considered to resort under customary tenure, the conversion would have to be supported by Chibombo District. Some respondents managed to convert their customary land claim into leasehold, as illustrated by the following quotation (respondent was a woman selling fritters, mother of seven): *“I registered at the Ministry of Lands and got a title deed in 1990. It was traditional land. I got permission from chief Mungule in 1990.”* A retired father of nine children did not manage to convert: *“I wanted to get papers from the Ministry of Lands, I was sent back to go to Chibombo, from 1992, the title deeds haven’t been issued, I gave up to go to Chibombo District, because I heard that Chazanga is going to be legalized by the LCC.”* As discussed in Section 3.6, it is unclear whether converted land continues to be under customary tenure.

### 6.3.3 Informal tenure

Most unplanned land occupation in Lusaka, especially during the 1960s and 1970s, took place on abandoned farmland (Van den Berg, 1984). Later on, it happened on any land which had been vacant for a long period of time, in forests or on land belonging to dissolved parastatal mining companies in the Copperbelt (Hansungule, Feeney *et al.*, 1998).

The Lands Act explicitly prohibits squatting: a person shall not without lawful authority occupy vacant land. According to Section 9 (2), such a person is liable to be evicted (Mudenda, 2007). According to UN-HABITAT (2005b), the illegal settlers are in most cases unaware that squatting is illegal. Besides unlawful occupation, unlawful sale is another form of informal tenure. The area councillor confirmed that land is still transferred through individuals, from the traditional leader or presumed customary land holders, by subdividing and selling. Such land sales often provide a welcome supplement to their income.

### 6.3.4 Implementation of the Housing Statutory and Improvement Areas Act in Lusaka

Section 3.6 discussed the provisions of the HSIAA to formalize informal settlements. According to the World Bank (2002), the Ministry of Local Government and Housing (MLGH) considers formalizing an unplanned settlement when the following requirements are met:

- Sixty per cent or more of the land on which the settlement is located is publicly owned.
- The settlement has been in existence since 1974.
- Development for which the land is zoned on the development plan is not imminent.
- Fifty per cent or more of the dwelling structures in the settlement are constructed of conventional materials.

The declaration of an Improvement Area has the following legal consequences:

- It is forbidden to occupy land within the Area without a license.
- Not more than one occupancy license shall be issued to any one person.
- No dealing with land without the council's consent; subletting and transfers require approval.
- Buildings comply with the specifications set by the council or National Housing Authority.
- The council or National Housing Authority becomes the planning authority.
- Only formalized land can be serviced<sup>38</sup>.

It is important to realize that the following legislation is not applicable within Statutory Housing and Improvement Areas: the Lands and Deeds Registry Act, the Land Survey Act, the Rent Act and the Town and Country Planning Act. The HSIAA therefore creates the opportunity to bypass the costly and lengthy procedures related to the national planning and land registration acts. Several publications (Mulolwa, 2002; Mudenda, 2007; UN-HABITAT, 2007b and the LCC and ECZ, 2008) report on a headlease system for Improvement Areas. However, according to council officials, the headlease system has been abandoned. The occupancy license system is only applicable on municipal land and cannot be used by squatters on private or customary land (Lusaka City Council and Swedesurvey, 2012).

According to UN-HABITAT (2012b), the consensus is that 37 settlements have been declared under the HSIAA. Nevertheless, it is difficult to assess how many of these or which ones have been declared either a Statutory or an Improvement Area. The council took swift action to pronounce Site and Ser-

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<sup>38</sup> This may not be valid for all services. For example, one could get connected to electricity in Chazanga by paying a connection fee. Electricity is delivered through a parastatal company.

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vice schemes Statutory Housing Areas but were slower to give squatter settlements the status of Improvement Areas. Roughly 10 informal settlements were declared Statutory Housing Areas, while around 20 had been declared or were in the process of becoming Improvement Areas. About five of the remaining settlements were non-declared squatter settlements. During fieldwork, a council official estimated that between 10% and 15% of the informal settlements have not been declared an Improvement Area. Such settlements may be located in hazardous areas where the council considers formalization undesirable. Besides the lack of a complete overview of the status of informal settlements, limited progress with respect to the issuance of occupancy licenses has been reported regularly (Nabanda, Buleba-Mumbi *et al.*, 2001; UN-HABITAT, 2005b; Mudenda, 2007). UN-HABITAT (2005b) attributes the lack of progress mainly to the absence of a financial framework for the implementation of the HSIAA.

#### **Council certificate of title**

One should be aware of another land right defined in the HSIAA, even though it does not pertain to Chazanga. Council certificates are issued in the case of Statutory Housing Areas, which are newly developed high-density settlements. The certificates also apply when existing council dwellings are sold to the public. They are 99-year leasehold titles and require a survey diagram of the plot. The Comprehensive Urban Development Plan for the City of Lusaka advises the issuance of these certificates to residents in unplanned settlements (MLGH, LCC *et al.*, 2009c). Although the legal effect is similar to that of leasehold, these council certificates of title differ from the leaseholds which are administered by the Ministry of Lands.

#### **Land tenure programs**

In order to predict what might happen in Chazanga, it is useful to study the formalization activities of the LCC which have been carried out. The council, supported by the Swedish Development Agency (SIDA), launched the Land Tenure Initiative, which ran from 2000 till 2003. Chaisa was the first pilot area to be formalized, which enabled the transfer of occupancy licenses to the community. The impact of the issuance of occupancy licenses was studied by Nabanda, Buleba-Mumbi *et al.* (2001). It was concluded that security of tenure was optimized through the possession of occupancy licenses. It provided security against any possible conflict over ownership, both disputes arising from local authorities and/or community members and challenges by relatives. However, the limited number of people in possession of an occupancy license was reported as a problem. For example, in Chipata compound, adjacent to Chazanga, 25% of the house owners were estimated to be in possession of an occupancy license (Nordin, 1998). Although it is compulsory by law to collect the license, not every individual makes the effort. The Chaisa Land

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Tenure Program was therefore followed by a sensitization campaign in the same settlement. According to council officials, 80% of the inhabitants were in possession of an occupancy license after the campaign.

Nabanda, Buleba-Mumbi *et al.* (2001) investigated the reasons why so few people initially collected their licenses:

- Arrears to the council in ground rent. Before a license can be issued, all arrears have to be settled. Arrears may have accumulated over considerable periods of time, making it difficult for residents to get a license.
- A general apathy towards paying the council while no services have been made available to the residents for a long period of time.
- The issuance of the license at the Civic centre. Transportation takes money and time and thereby poses a barrier, especially for the elderly people.

Some other reasons mentioned were illiteracy, alleged illegal land allocations by the political leadership and council staff, family quarrels, expecting to return to the village, and the LCC's cumbersome and inefficient operation, like a lack of information, cases of bribery, the need to visit the office many times, and the perceived unreliability of council records. Furthermore, duplication of plot numbers was reported as well.

The projects in Chaisa were followed by a program called 'Building Capacity for Urban Development and Effective Land Tenure Management in Lusaka'. It was conducted during the period 2007–2011 and likewise supported by SIDA. The evaluation report (Lusaka City Council and Swedesurvey, 2012) pointed out an increased understanding of and demand for occupancy licenses. Despite that heightened awareness, there was no substantial increase in the registration of land rights. In one ward, Kanyama, the number of applications for licenses did double from about 40 per month to 80 after the campaign.

In Chazanga, preparations for the formalization had been started before the fieldwork. In a letter dated December 6<sup>th</sup>, 2006 from the Director of City Planning to the Area Councillor, the LCC set forth the details of the formalization of Chazanga. The area would be surveyed prior to the preparation of a layout plan and numbering of the structures, all to be done by the Department of City Planning. The Department of Housing and Social Services would then register all households, after which the Legal Department would issue an occupancy certificate. All residents were advised to pay a survey fee of ZMK 220,000 (USD 48).

After formalization, occupants are obliged to pay a ground rent of ZMK 8,000 (USD 2) monthly. The revenue is to be distributed as follows: 35% to the community, 5% to the WDC administration, 30% to the implementation of projects and 30% to the Lusaka Strategic Plan. According to the area councillor, the formalization would be carried out in two phases<sup>39</sup>: first the southern

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<sup>39</sup> At the time of interviewing, the respondents were not aware whether they had been included in the first or the

part and secondly the northern part. The southern part is the most urbanized and its management by the LCC is uncontested.

### 6.3.5 Pro-poor initiatives

In order to support the provision of shelter to the poor, several NGOs are active in Zambia. All are listed in UN-HABITAT (2012b). Two are discussed below: Habitat for Humanity (HfH) and People's Process on Poverty and Housing (PPPH). They are actively involved in supporting individual households to access land and proper housing. Other NGOs are active at the community and policy level, notably Caritas and the Zambia Land Alliance.

Habitat for Humanity (HfH) is an international NGO. HfH Zambia is governed by the regional HfH office for Africa & Middle East. It supports the construction of houses for people with low incomes. The land provided by HfH is either under customary or statutory tenure. In the latter case, the land is provided by the government under one title. It is a block which will be subdivided; titles will be issued once the land holders have fully paid off their loans. Since 1985, 1,154 houses have been completed. In Chazanga, 89 have been constructed, nine of which have been fully paid for. The owners of those nine were said to be in the process of getting 99-years title deeds<sup>40</sup>.

People's Process on Poverty and Housing (PPPH) have organized communities in seven municipalities. The communities address poverty-related issues, mainly focusing on housing. The PPPH acts as the supporting NGO, managing a revolving fund, and supports the acquisition of land from local authorities. They have been operating under the umbrella organization of Shack Dweller International (SDI) since 2001. About 35,000 households are associated with PPPH. The savings schemes, 144 in all, are based on daily savings (for small business loans) and monthly savings (for the Swalisano Urban Poor Fund, a capital fund, average monthly contributions amount to ZMK 8,000 or USD 2).

Because it is almost impossible to obtain land, the PPPH forms groups to find shortcuts in the process of land acquisition. Jointly the groups send applications for land to the council in the name of the organization. They conclude a Memorandum of Understanding with the local authority. In 2009, land was allocated to the PPPH in four towns, in total concerning 350 plots. The PPPH prefers this type of communal tenure (not to be confused with customary arrangements, but offered by the local authority) above individual title deeds. The PPPH has observed that tenure security is decreasing in urban areas, while few local authorities have been pro-active about taking measures to improve access to land for the poor.

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second phase.

<sup>40</sup> This project was not visited during fieldwork, because it was discovered too late.

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**Table 6.5 Respondents in Chazanga and their methods of land access**

Land access	No
Informal sale	13
Allocated by an authority	8
Rent	5
Given by relative	2
<b>Total</b>	<b>28</b>

**Table 6.6 Respondents in Chazanga and their tenure changes**

From	To	No
Rent	Ownership	10
Staying with family	Ownership	5
Unknown	Ownership	4
Ownership	Ownership	3
Customary	Ownership	1
Unknown	Rent	1
Family	Rent	2
Rent	Rent	2
<b>Total</b>		<b>28</b>

### 6.3.6 Land access, land rights and land tools in Chazanga

#### Land access

Formal land access in Chazanga is almost impossible because the LCC lacks the capacity to plan, develop and deliver plots. By contrast, informal land access was relatively easy at the time of fieldwork because Chazanga had not yet been declared an improvement area. People could still access land through customary or informal channels. In most cases, a market price had to be paid for the land, which made the land less accessible to the poor. One should recall that renting is an important alternative in Chazanga (see Section 6.2.2).

The way people accessed their plot has varied over time. The following ways were mentioned by the respondents (see Table 6.5):

- Through informal subdivision and sale, with or without informing the headman and/or chief;
- Land allocated by an authority (District Commissioner during colonial times, politician or traditional authority);
- Renting the house;
- Given by relative, with or without informing the headman and/or WDC.

Inheritance can be a means of access as well, although that vehicle was not encountered among the respondents. The respondents who acquired land through sales either consulted officials (headman, chairman or zone leader of WDC or area councillor) or did not consult anyone at all. Ideally, all newcomers to the area should register with the zone leader. According to the area councillor himself, he is not involved in overseeing land transfers. Nevertheless, one respondent said she was allocated land through the area councillor and other respondents said that land could still be acquired through the councillor or other politicians.

Most respondents were either renting or had been staying with their family elsewhere before they settled in Chazanga (see Table 6.6). The majority managed to upgrade their tenure status to ownership. Of course, ownership should be understood in relationship to the house and not to the land. As mentioned in Section 6.2.2, they chose Chazanga because it is quiet and peaceful, it is not crowded and the plots are big compared to other compounds in Lusaka.

In most cases, the respondents did not pay any fee for occupying the land. Three respondents managed to convert their customary land right into a title deed and subsequently paid land rent to the Ministry of Lands (MoL).

One respondent mentioned paying a monthly ground rent to the headman, an outlay which was not reported by any other respondent. Some were aware that they should pay ground rent to the council in the near future.

In most land dealings, a sales agreement was written and signed. If the sale was arranged in consultation with the WDC, the WDC official acted as witness to the sale. If the headman was consulted, he recorded the changes in his land register.

With respect to land access in Chazanga, an equity issue arises. The people who got farmland under customary norms decades back can now sell portions of 'their' land as residential plots at market prices. This is clearly an advantage for the early settlers, who got a claim on large tracts of customary land and can now sell land for significant amounts of money. As a market vendor said, *"Most of the land in Chazanga that used to be given out by the chief freely has finished. The only land available is the one that has been given some time back and are dividing and selling it out. There is no land for free, just for sale. If you don't have money, you can't get land. Land has become expensive, it is like 5 million Kwacha<sup>41</sup> and upwards."* According to one respondent, the chief banned the sale of vacant land without his consent. While the ban has been in place since 2000, these kinds of sales were believed to continue.

As soon as Chazanga is declared an Improvement Area, nobody will be allowed to occupy a plot without an occupancy license. Under the assumption that the WDC members are able to monitor and prevent subdivisions and sales, informal land access may become difficult.

### **The continuum of land rights**

In Chazanga, the interviews turned up three land rights among the respondents and these three form the current continuum:

- Informal land rights, through subdivisions and sales, often witnessed by members of the WDC or the headman;
- Customary land rights, which might be contested by the LCC;
- Title deeds (99-year leases) obtained from the MoL when people converted their customary claim into the statutory system.

People acquiring informal land rights occupy the land without any official recognition, although the involvement of WDC officials might give them the sense of being officially recognized. People who acquire rights without WDC involvement are still entitled to an occupancy license. Indeed, all those residing in Chazanga at the time of the declaration are entitled to it.

Perceived customary land holders have a customary occupancy right. Title deed owners have a leasehold for 99 years and their land right is clearly defined. Their rights should not be infringed upon by the legalization exer-

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<sup>41</sup> Around USD 1,080 (exchange rate 1 sept 2009).

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cise. It is useful to extend the continuum to include the occupancy license because it will be the main land right in the future.

### **Land tools**

The land tools applied in Chazanga are mainly derived from the Housing Statutory and Improvement Areas Act and to a limited extent the Lands Act (regarding conversion of customary tenure). The HSIAA will affect informal and perceived customary land rights in Chazanga. After formalization through the HSIAA, the current continuum of land rights will be replaced by two statutory land rights: occupancy licenses for 30 years for the majority and leasehold for 99 years for a few land holders. The ones having a leasehold are those who have upgraded their customary land claim to a title deed.

The extension of the city boundary in 1975 may be regarded as a land tool similar to the one in Oshakati. However, no data has been found on the reason, method and impact of the extension. Therefore, it will not be treated here as a land tool, even though it affects some indicators.

## **6.4 Evaluation of land tools**

This section will evaluate the land tools as found in Chazanga according to the framework described in Chapter 4. The overall evaluation is summarized in Table 6.7 at the end of this chapter.

### **6.4.1 Legal framework tools**

The legal framework tools are evaluated according to the indicators legal recognition and provision of secondary rights, both belonging to the criterion inclusivity.

#### **Inclusivity: legal recognition**

At the time of fieldwork, the constitution was under revision. Awaiting its enactment, the development of a land policy was put on hold. The third draft of the policy explicitly recognizes customary land tenure, in line with the Lands Act of 1995. Compared to the second draft, this one pays more attention towards unplanned settlements and peri-urban areas. It recognizes the growth of uncontrolled informal settlements and requires land use planning and control, particularly in rural and peri-urban areas. Nevertheless, the subsequent drafts and the Lands Act have been criticized by international organizations and NGOs (Machina, 2002; ZLA, 2005; UN-HABITAT, 2005b). Some of the points raised concern the concentration of powers on land issues in the President and the lack of focus in the Lands Act on the needs of the poor.

Customary tenure is recognized through the Lands Act. Although this act

prohibits squatting, informal tenure is recognized by sector law through the HSIAA, which deals with informal settlements. The HSIAA remains the key piece of legislation in the Zambian government's efforts to enable its citizens to move beyond situations of illegality and informality (UN-HABITAT, 2005b). Recognition of the poor within the legal framework is therefore considered good. The HSIAA is expected to be repealed by an Urban and Regional Planning Act, which is currently drafted as a bill. According to the draft version of the bill (Hifab International, 2009), issued occupancy licenses and certificates of titles will remain valid. Along with the development planning, the bill deals with informal settlements and customary areas as well (UN-HABITAT, 2012b).

#### **Inclusivity: provision of secondary rights**

Because Chazanga has been transformed from a rural into an urban area, one may expect conflicts over secondary rights. The HSIAA ignores secondary rights with customary origin. Besides one incident over chickens eating vegetables in neighbouring gardens, no conflicts relating to secondary rights were reported during fieldwork. Access to water was often mentioned as a problem, though this did not relate to secondary land rights under customary land rights. The Chazanga Water Trust had installed 25 water access points throughout the settlement (see photo p. 158). Some of these points were then hijacked by residents who charge other residents for fetching water.

### **6.4.2 Institutional framework tools**

The institutional framework tools are evaluated according to the indicators support for the poor, co-management and accessibility, all belonging to the criterion inclusivity.

#### **Inclusivity: support for the poor**

As discussed in Section 6.3.5, organizations which support the poor do exist. According to UN-HABITAT (2012b), many NGOs operate within the urban housing process. However, they are considered ineffective in addressing the needs of the majority of the poor as they are unable to work at scale.

The majority of potential settlers turn to the area councillor, WDC and headman for land matters. However, they do not have formal powers to allocate land. Support for the poor is therefore considered limited.

#### **Inclusivity: co-management**

UN-HABITAT (2012b) reports that the majority of the urban poor are excluded from decision making. This may hold for those settlements where the implementation of HSIAA is not yet envisaged. In Chazanga, however, some level of co-management is observed.

According to LCC officials, the communities are encouraged to participate

Queuing for water in Chazanga.



in planning and development. They are stimulated to make a Ward Development Plan, for which they solicit for donors from governmental and other institutions. However, the declaration of the Improvement Area was slow and no development plan was made. The only report from the community which was found was the Mandevu Constituency Profile (Ward Development Committee Chazanga, not dated), cited earlier. Community meetings have been reported by several respondents, though the reported frequency varied. Some of the main topics raised at community meetings were the following: water, roads, how to acquire land as it is expensive, how to secure land, how to get a title deed, and inheritance issues. Additionally, the operations of WDC and zone leaders give a sense of co-management with respect to land management. Nonetheless, no documented mandate for management and control by the WDC was found.

Regarding conflict resolution, respondents brought their grievances to different persons and institutions: the area councillor, the headman, the WDC (chairperson or zone leader) or the police in the event of violence. One respondent distinguished between referral for water conflicts (zone leader) and for land conflicts (headman). Others did not know where they could lodge their complaint. According to the WDC, the procedure is that, first, the zone leader will try to solve the conflict, secondly the WDC chairman and finally the area councillor. If no agreement can be reached, people can go to court. On the topic of costs, people thought that resolution would be either free or cost a small amount, payable to the headman or WDC. According to WDC officials, people have to pay ZMK 10,000 (USD 2) for conflict resolution. The money thus raised will be used for stationery for the WDC.

Co-management is rated fair for customary and informal land holders and holders of occupancy licenses, although they might negotiate with different authorities. For customary land rights, the headman is the most important

authority; for informal land rights and occupancy licenses, it is the WDC. People having leasehold titles should, as inhabitants of Chazanga, be able to play a role in the WDC as well. However, with respect to the conversion of their land right into leasehold, they had to deal with the chief. Their level of co-management is assumed to be equal to that of customary and informal land holders. They have to turn to the Ministry of Lands as the most important authority with respect to leaseholds.

**Inclusivity: accessibility**

For those who consider the LCC as the land management institution, accessibility is considered fair because its offices are in town. Some complaints about performance have been cited by Nabanda, Buleba-Mumbi *et al.* (2001) and by respondents. However, this indicator only pertains to physical distance. The distance from Chazanga to the civic centre is between 10 to 15 km. With respect to ground rent collection, field offices are expected to open within Chazanga or in nearby settlements, though no such field office had been established yet.

For those who consider Chazanga as traditional land, accessibility is also considered good with respect to customary land allocation, because the headmen live within the settlement. Problems relating to accessibility only arise when people want to upgrade to a leasehold title. This process requires them not only to deal with the traditional authorities and the Ministry of Lands but also to visit offices from Chibombo District, which takes more travel time. In such cases, accessibility is considered limited.

### 6.4.3 Area tenure tools

The area land tools in Chazanga are evaluated according to the indicator awareness of the criterion clarity.

**Clarity: awareness**

Chazanga is claimed to be under the LCC and the Traditional Authority of Chieftainess Mungule in the area of Chibombo District. As discussed in Section 6.2.2, the confusion might be attributed to the boundary correction of 1975, when (part of) Chazanga was brought within the city limits. The main question is whether the respondents are aware of this change. Additionally, awareness of formalization issues is also examined here.

The one headman who was interviewed kept a population register and a land register. At the time of the interview, he had recorded 2,177 plots and claimed he still had the power to manage the land. He registered and allocated land to newcomers, registered transfers, dealt with land conflicts and made recommendations to the chief on applications for conversion of customary tenure. In his view, the area was still a traditional village. Formaliza-

tion by the LCC was welcome and needed, although he still believed that the area was customary land under Chibombo District<sup>42</sup>. The area controlled by the headman is also part of the zone structure of Chazanga WDC. The ZDC members ascribe more power to the headman than to themselves. This suggests that the traditional authority still has substantial influence on land issues, at least in those zones where headmen reside.

The fact that people managed to convert their customary land into leasehold is one of the results of this controversy. If Chazanga were undoubtedly under the jurisdiction of the LCC, the Ministry of Lands (MoL) would never have accepted the application for conversions. According to officials of the MoL and LCC, existing leaseholds should be cut out of the Improvement Area. The controversy about who held final authority over land was reflected in statements by the respondents. Some said that final authority over land was in the hands of the traditional authority (headman or chief), the WDC (WDC chairperson or zone leader) or LCC. Others responded with a combined attribution or knew nothing at all about it. As a security guard said, *"I am not too sure about the council, some say LCC, some say Chibombo. There is even a wrangle between the Members of Parliament of Mandevu and Chibombo constituencies fighting over Chazanga."* When asked whether the situation concerning the final authority had changed over time, some responded that it did not change at all while others said that it did move from the traditional authority to the LCC. Even one zone leader, a contract worker, was in doubt: *"The land is under chief Mungule... Government, LCC has the final authority, especially when it is legalized."* For customary and informal land holders, awareness is therefore considered mixed. The leaseholders were well informed about their land rights because they had followed a complex procedure and obtained a properly documented land right.

Most respondents were aware of the formalization exercise. According to the above-cited security guard, *"At the local office of LCC in Chazanga, there is a ground rent pay sign at the window. Some people made payments early this year<sup>43</sup>; 220,000 Kwacha in total or 10,000 Kwacha per month<sup>44</sup>, however, the officers never came back."* For one businesswoman, the planned formalization was specifically attractive for settlement: *"In Chazanga, most of them were farm plots, so I just wanted to buy in Chazanga, because LCC has not yet legalized this place."*

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<sup>42</sup> Residents may prefer the LCC as the council in power, as LCC offices are much closer and easier to reach than Chibombo District offices: it is a matter of accessibility.

<sup>43</sup> Land rent was being collected from the area councilor's office during the first months of 2009, although later on the office was reported to be vacant.

<sup>44</sup> As explained in Section 6.3.4, ZMK 220,000 (USD 48) relates to the survey fee and ZMK 10,000 (USD 2) to monthly land rent. The rent for Improvement Areas is officially set at ZMK 8,000 (USD 2) monthly.

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#### 6.4.4 Individual tenure tools

The following tools are evaluated:

- Occupancy licenses as issued through the HSIAA;
- Leasehold as issued through the Lands Act.

They are evaluated according to the indicator costs of the criterion affordability and the criteria legal tenure security, perceived tenure security and upgradability.

##### **Affordability: costs**

As discussed in Section 6.3.1, the formal requirements to access land favour those with financial capacity and hence cut out the poor and unemployed (UN-HABITAT, 2005b). The conditions are beyond what they can afford. Additionally, respondents complained about the long procedures, which make it difficult for them to keep money for development at a later stage. When they have money available, they want to invest it at once. Otherwise they will spend it on other things in the near future. Informal land access is therefore an attractive alternative.

With respect to the declaration of an Improvement Area, the costs are distributed over the capital and occupational components. The occupational component relates to land rent, which is set at ZMK 8,000 (USD 2) monthly. This amount is considered affordable. The capital component relates to the cost of the license, the survey fee and eventual arrears. The issuance of a license costs ZMK 150,000 (USD 33, MLGH, LCC *et al.*, 2009b). Additionally, a survey fee of ZMK 220,000 (USD 48) is charged. The basis for this fee is unknown; it is not listed in the act, nor is it mentioned in the policy guidelines. The fee is imposed to cover the cost of the survey that is required to produce a base map on which structures in the area can be identified and registered so that an occupancy license can be issued for each structure afterwards. However, the plot boundaries themselves are not surveyed. Therefore, the cost of survey per structure is considered high, taking into account the comparatively low price of low-accuracy surveys<sup>45</sup>. Notwithstanding the high amount, respondents did not complain about the survey fee.

The issue of arrears was raised in the evaluation report cited earlier (Lusaka City Council and Swedesurvey, 2012). The applicant has to pay the arrears before a license will be issued. According to the report, the amount can be considerable, so it would take a long time for the debt to be settled. The effect was that most licenses were issued in connection with transactions through

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<sup>45</sup> During the World Bank Land and Poverty conferences, indications of survey costs per plot varied between USD 10 with low accuracy (communal areas in Namibia) to USD 45 for high-accuracy surveys (Uganda, Ghana, Tanzania).

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which money came available to settle the arrears. During fieldwork, one LCC official suggested that all inhabitants in Chazanga were indebted already. Their arrears had been building up ever since its declaration as an Improvement Area and amounted to ZMK 240,000 (USD 52) at that time. However, this situation could not be confirmed by other officials. In the worst case, the capital component may amount to ZMK 610,000 (USD 132) for an occupancy license. That amount is considered unaffordable when compared to the average monthly income per household of the poor, set at ZMK 370,000 (USD 80). When the arrears are not taken into account, the fees are just on the edge of being affordable. Nevertheless, the affordability indicator is rated as partly affordable for potential holders of occupancy licenses. The reason to qualify it as 'partly' is that the occupational component is affordable but, taking arrears into account, the capital component is not. Customary and informal land holders are considered affordable.

In view of the reports cited earlier, the conversion of customary land to leasehold is considered to be unaffordable for the poor.

### **Legal security**

The legal security of the land rights is discussed below, based on the type of right, the transferability and the duration of each land right that falls within the continuum.

#### **Legal security: type of right**

Two types of rights can be distinguished to occupy land for residential use: a customary right and an informal right. The involvement of WDC members in transfers suggests some degree of formality, although a legal basis was not found for the involvement of the WDC.

The formalization exercise has had a positive effect on legal security by clarifying the tenure situation in Chazanga and giving recognition to the occupants. Every land holder will receive a right of occupancy. The adjudication process does not seem to distinguish between the various methods of access to land; for instance, it does not concern whether the land transfer was overseen or by whom. Most probably, the representative of the WDC has a strong say in the adjudication. WDC-representatives will have local knowledge, having witnessed land transfers within the area. Concerning the statutory leaseholds, it is important to note that these plots have to be taken out of the Improvement Area. They are registered at the ministry in compliance with procedures described in the relevant acts.

#### **Legal security: transfer possibilities**

Transfers are possible and in most cases overseen by the headmen or members of the WDC. As documented by the fieldwork, the subdivision of farms to be sold as residential plots is a common occurrence in Chazanga, though, as

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mentioned in Section 3.6.1, the legality of customary sales may be challenged. In case the land is under customary tenure, its sale is conditional. Transfers are not legally possible for land under informal tenure; nevertheless, such land is traded and transfers are even monitored by the WDC.

With respect to the occupancy license, transfers have to be processed through the Deeds Registry of the LCC. Land can only be transferred when any arrears have been settled. This might be perceived as a loss of freedom related to land transfers. Before formalization, land holders could transfer land freely. If they are issued with an occupancy license, they would have to obtain consent from the LCC for all land dealings. Leaseholds are transferable conditionally as well, because complex and bureaucratic procedures have to be followed. For example, according to the Lands Act, all transfers require the consent of the President (Mudenda, 2007).

#### **Legal security: duration**

Holders of customary land rights are believed to hold the land in perpetuity. For informal land holders, the duration is rated as indefinite. Referring to the Lands Act, people may be evicted at any time. The occupancy license has a duration of 30 years and is renewable on condition that all terms related to the license and regulations are observed<sup>46</sup>. Leaseholds are valid for 99 years and renewable (Mudenda, 2007).

#### **Overall legal security**

Legal security for customary right holders is considered fair, as long as the land is held under customary tenure. If the land falls under informal tenure, legal security is considered to be lacking. Formalization with occupancy licenses introduces legal security, although that security comes with more obligations than under informal tenure. Such obligations after formalization include the need to obtain building approval, being restricted to only one occupancy license and imposing conditions on transfers. Regarding the restriction to a single license, some respondents in Chazanga could lose their claim because they indicated they had occupancy licenses in other compounds. Additionally, scholars like Matibini (2002), as discussed in Section 3.6.1, and Hansungule, Feeney *et al.* (1998) link a limited degree of legal tenure security with the occupancy license. Mudenda (2007) questions the lack of an explanation for the introduction of two tenure types with varying levels of legal security. The council certificate is a solid lease for a surveyed and demarcated piece of land, while the occupancy license only relates to an undefined piece of land on which one may have a house. Occupancy licenses can be used as collateral. However, according to local experts, owners of occupancy licenses will sel-

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<sup>46</sup> Indicated as such on the occupancy license.

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dom qualify for a loan because neither the quality of the building nor their income will be satisfactory. Legal security for the occupancy license is therefore considered limited due to its limited duration and the restrictions posed on the license.

Although conditions have also been imposed on leaseholds, legal security is considered good. This is mainly due to the type of right, a leasehold title contains a larger bundle of rights compared to the occupancy license.

### **Perceived security**

Perceived security is discussed below in light of the fear of eviction, documented evidence, transfer possibilities and inheritance.

#### **Perceived security: fear of eviction**

Zambia was not listed in the COHRE reports (2006, 2009) on evictions that took place between 2003 and 2009 or evictions that were likely to occur in the near future. However, the media did carry news of evictions. For example, in March 2007, hundreds of structures in compound Kalikiliki were reported to be demolished by the LCC due to the settlers' lack of legal title<sup>47</sup>.

During fieldwork, the respondents either indicated that they were not aware of any eviction in Chazanga or mentioned evictions as solitary occasions, ascribing them, for instance, to illegal or double sales, inheritance, or defaulting on payment of rent. According to these stories, the evictions were ordered by the chairman of the WDC, a court or the LCC. They did not refer to mass evictions or relocations. The majority of the respondents did not fear eviction; they based their security on their sales agreement or title deed. However, fear of eviction has been articulated by some respondents. For example:

- A housewife with five children: *"I have been worried when there were rumours that Chazanga was going to be legalized by the City Council, because I don't have title deeds. There were some rumours that they want to upgrade this road here, so that it should connect to Kasangana road... They told me that it may come into the yard or they may be breaking the house."*
  - A government official and zone leader: *"I am worried, if I am evicted where can I go? That fear is there, as of now, I don't have the proper document. That fear is still there. It is the government you hear from people their land has been taken by government to be sold to somebody. They have been evicted, their houses demolished. That, to me, it gives me fear."*
  - A street vendor: *"I am worried that we don't have legal papers from LCC. I think I am on the safe side, because I think I bought from the rightful owners of the plot."*
- Besides fearing the LLC, respondents also feared politicians, the headman

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<sup>47</sup> South African Press Association, March 11<sup>th</sup>, 2007.

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or investors who might be grabbing the land. The indicator fear of eviction is therefore considered mixed for customary and informal land holders. According to Nabanda, Buleba-Mumbi *et al.* (2001), perceived security was optimized through the issuance of occupancy licenses in Chaisa compound. However, some respondents to their survey articulated a fear about occupancy licenses. They worried, for instance, about eviction after non-payment of land rent; in one situation, they said, people had been issued occupancy licenses on land which was claimed by other people. Fear of eviction for occupancy holders is therefore considered mixed as well. The leaseholders did not fear evictions because they possess title deeds issued by the MoL, which relates to the indicator documented evidence.

#### **Perceived security: documented evidence**

Documents brought forward by the respondents included sale agreements and title deeds. Occupancy licenses would be possible in future. The fact that transactions were witnessed by either WDC members or representatives of the traditional authority contributed to their feelings of security. However, documented evidence is not a guarantee for perceived tenure security, as will be shown by presenting some typical answers relating to tenure security, categorized by the means of land access:

Transactions witnessed by WDC:

- A self-employed technician: *"We are not secure, there are a lot of rumours that politicians will grab the land from the tenants in Chazanga because we don't have proper papers from the council...What we are looking forward to is that this land in Chazanga is registered with the council and given proper title deeds to show the land is fully ours and that we should start paying for land rates."*
- A housewife: *"I have never been worried before, because I have the rightful papers. Sometime back, people came, claiming to be from LCC, telling me to sell part of my land, because it was quite big. I took them to the police. I was told that they just wanted to steal the land."*

Transactions witnessed by the traditional authority:

- A health care provider and member of WDC: *"We consulted the headman, he registered names in the book that we saw... He wrote the measurements of the plot (50x40 metres)... I feel comfortable and secure, because I followed the right procedures buying this land, and I have all the documents proving that the land is mine."*
- A market vendor: *"I consulted the chief when getting the land... I don't have any paper, I only signed in the book, I wasn't given any papers... I am not comfortable and secure, because I don't have any papers. I fear being evicted when the council comes."*

Transactions not witnessed:

- A housewife: *"We did not consult anyone. We just signed papers between the owner of this land and us... The paper is important to us, somebody might come in future trying to grab the land from us, it will be proof to us that we bought*

*this land, that we are the rightful owners... We feel very secure owning this land, because we got papers."*

According to UN-HABITAT (2005b), people outside statutory or improvement areas might have perceived tenure security, due to involvement of party officials. In the sample interviewed for this research, the sales agreement was the major indicator of perceived tenure security. The few respondents who did not have sale agreements or title deeds felt less secure. The majority of informal land holders were in possession of informal documents. The situation for customary land holders was mixed: some had documents, others did not. The following advantages of informal documents have been mentioned: nobody can grab the land; it is proof in case of selling; it is proof against reclaim; to pass the land on to children in case of inheritance; to show proof of ownership and to get title deeds in the future. The involvement of party officials in land allocations was sometimes discussed in general terms. As discussed in Section 6.3.6, only one respondent said to have accessed the land through the area councillor.

#### **Perceived security: ability to sell or transfer**

There is an informal market in Chazanga for houses and undeveloped land. Unoccupied land seems to be limited. However, people continue to subdivide land and sell it, either to generate income or because they fear that the LCC might take a portion of their land in the formalization process.

Most respondents indicated that they would prefer not to sell their property as they have nowhere to go to. They would rather transfer it to their children or put it up for rent. A few consider transferring it to their relatives, while others say that such transfers only create problems. In general, transfer possibilities were rated as possible for customary and informal land holders and for leaseholders. With respect to holders of occupancy licenses, one source (Nabanda, Buleba-Mumbi *et al.*, 2001) reported that several respondents believed that occupancy licenses facilitated the legal transfer of ownership of properties, therefore rated as possible as well.

#### **Perceived security: inheritance**

According to traditional rules, relatives of the deceased may seize the property at the expense of the surviving spouse or children. According to UN-HABITAT (2012b), the Intestate Succession Act should have stopped the practice of land grabbing. Workshops have been held in Chazanga to create awareness about this act. Although some respondents claimed that most people knew the law, property grabbing is still a reality. Perceptions of security relating to inheritance are therefore considered mixed for all land right categories. The majority of respondents are aware of the possibility of writing a will, although they have not done it themselves. They mentioned a variety of institutions where people could lodge their will: church, court, police, chief or chairman of

the WDC. Inheritance conflicts were handled within the family or in court. In some cases, the zone leader was called in to mediate.

With reference to occupancy licenses, Nordin (1998) noted that licenses were usually held in the name of the male partner, even when the land had been acquired jointly. At such time as the husband would pass away, the extended family might seize the property from the widow. Joint titling was therefore advised (Nabanda, Buleba-Mumbi *et al.*, 2001).

### **Overall perceptions of tenure security**

Generally speaking, people enjoyed perceived security of tenure in Chazanga. They felt secure because they were in the possession of a sale agreement witnessed by the WDC or because they had accessed the land through the traditional authority. Respondents who were aware of the formalization exercise welcomed it in general. They believed they would receive a stronger title that would provide more security. Some fears were also expressed, however, such as being relocated to create space for infrastructure. In some individual cases, people perceived lower levels of security because of their lack of any proof of ownership. For customary and informal land holders, perceived security is therefore considered to range between limited and fair. Based on the report on Chaisa (Nabanda, Buleba-Mumbi *et al.*, 2001), perceived tenure security related to occupancy licenses is considered fair. Respondents who had converted the land into a statutory leasehold feel most secure.

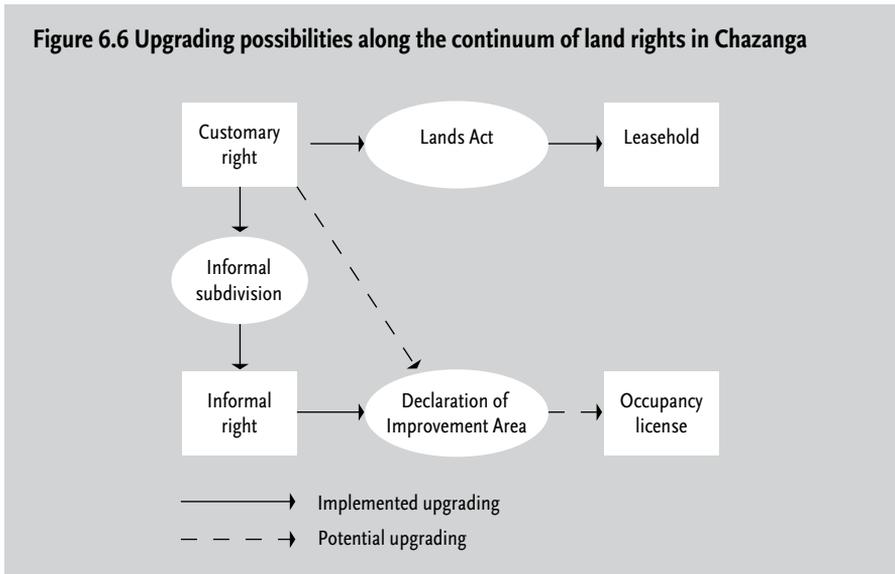
### **Upgradability: extent of continuum of land rights**

Due to the contested land tenure systems, four types of land rights and three independent paths of upgrading have been discovered during fieldwork (see Figure 6.6):

- From customary right to leasehold;
- From customary right to occupancy license;
- From informal right to occupancy license.

Conversion of customary land to leasehold can be done on one's own initiative, although it is expensive and complex. Customary rights can be formalized through the HSIAA, provided that the area is unchallenged public land by the council. As has been discussed, this is not the case, therefore only theoretically possible. Nevertheless, when customary land is informally subdivided, informal rights are created. Such rights can be upgraded to occupancy licenses after the declaration of an Improvement Area, at the initiative of the council. The upgrades to leaseholds or occupancy licenses are end points on the continuum. The leasehold is the 'strongest' land right possible in Zambia, whereas an occupancy license cannot be upgraded because the area has

**Figure 6.6 Upgrading possibilities along the continuum of land rights in Chazanga**



been declared an Improvement Area<sup>48</sup>. Although an occupancy license is one step higher along the continuum, it is also a last stop with limited legal security. Contrarily, conversion from customary tenure to leasehold leads directly to the most secure land right in Zambia. It is concluded that the land tools offer limited upgrading possibilities across the continuum; after upgrading, no options remain<sup>49</sup>.

### 6.4.5 Operational tools

The operational tools are evaluated according to the criteria simplicity, speed, approach and completeness.

#### Simplicity: boundary system

The survey and land registration components of the occupancy licenses are considered simple. Only the outer boundary of the Improvement Area needs to be surveyed according to high standards and approved by the Surveyor-General. Although land holders are requested to pay survey fees, the survey is not directly related to the issuance of occupancy licenses.

Some respondents indicated that they discussed their individual plot situation within the family:

- A housewife explained what they discussed: “How the land has been subdivided to us from the one we bought from. So we should know how the land is demarcated, in case somebody wanted to come into our plot.”
- A widow, also a zone leader: “Within the family, we discuss the issue of the land that we own, so that we know the demarcation of the land and that we are the

<sup>48</sup> According to Hansungule, Feeney *et al.* (1998), Improvement Areas may be converted into Statutory Areas, which facilitates upgrading to council certificates. However, no reports on such conversions have been found.

<sup>49</sup> As has been described in Section 6.3.5, in the Habitat for Humanity project, land holders were said to be in the process of obtaining leasehold titles. The exact nature of this arrangement is not known.

*rightful owner and no one should grab the land from us. My late husband had two ex-wives, he had other children from the same wives, I told my children that those other children should not come and grab the land from them. Because when the husband bought the plot, he was with me."*

The fact that people discuss their plot boundaries within the family shows that they have a strong sense of ownership and are vigilant about any encroachment into their plot. Additionally, when discussing sales, the prices are related to the size of the plot. However, when people are issued an occupancy license, they are only given the right to use the land adjacent to their house. The occupancy license only indicates the number of the plot and does not give its dimensions. The perceived right to a dimensioned plot will be exchanged through the formalization procedure for a right to an undefined area. This was only realized after the fieldwork and not discussed during the interviews. Most likely, informal land rights holders are not aware of this effect. Referring to the conversion of customary land to leasehold titles, the boundary system is considered complex, because it requires high-accuracy land surveys.

#### **Speed: high volumes**

Due to the simplicity and the bulk approach, occupancy licenses can be issued relatively quickly. Nonetheless, it took a long time for Chazanga to be declared an Improvement Area. The formalization was on the agenda since 1998; 11 years later, the area had not yet been declared an Improvement Area. Secondly, the survey for the base map was delayed for unknown reasons: the start was announced by the end of 2006 but the survey was not finished by mid-2009. Therefore, the criterion is rated as 'not realized'.

The issuance of leasehold titles cannot be implemented at high speed because a title is issued at one's own initiative. The procedure is complex and time-consuming as well, which is illustrated by the retired father as cited in Section 6.3.2.

#### **Approach: individual of systematic**

Initial access on customary and informal land is on individual basis. As discussed under simplicity, the HSIAA is implemented systematically, whereas the conversion of customary tenure into leasehold is done on individual basis.

#### **Completeness: coverage**

The literature and the results of the fieldwork lead to the following estimates for the distribution of land rights in Chazanga:

- Squatters: no reports on them in Chazanga;
- Customary tenure (although challenged by the council): between 30% and 50%;

- Informal subdivision: between 50% and 70%;
- Statutory tenure (leasehold): less than 5%.

In addition, between 40% and 60% of the households in Chazanga are renting. The survey at the time of declaration anticipated upon a full inventory of all houses within the Improvement Area. Theoretically, the implementation of the HSIAA will affect all households under customary and informal tenure. The indicator of completeness is therefore rated as complete. However, when it comes to collection of certificates, the response has proved to be low (see Section 6.3.4). The LCC attempts to improve collection by raising awareness about occupancy licenses. The completeness of leasehold is not assessed here. Although some people managed to convert from customary land to leasehold, there is a high probability that such conversion was infrequent. Additionally, once the area has been declared an Improvement Area, no leasehold titles can be issued.

#### **6.4.6 Results and limitations of fieldwork**

The fieldwork generated a detailed view of land issues in Chazanga. Both the controversy over land management and the challenges to formalization could be studied.

Three limitations with respect to the fieldwork have become evident. First, the analysis was hindered by the lack of clarity on who is in charge of land management. In view of the controversy over the rightful authority, the legal situation could not be properly assessed. Nevertheless, the research does shed light on the problems typical of multiple tenure systems in peri-urban areas and the impact of such controversy on its land holders and the formalization process. Secondly, WDC officials were present during most of the interviews. This did have positive effects in the sense that lively discussions were held on land matters, which offered deeper insight. On the other hand, their presence may have prevented the respondents from elaborating freely on the issues. Thirdly, Chazanga is a popular area for new settlers, especially for the relatively wealthy. Because the respondents were not queried in detail about their wealth, some may not have belonged in the target group. Whereas the sample consisted mainly of land holders, five renters who were considered poor were included. Nevertheless, responses from the more wealthy land holders and the renters were useful in answering the research questions for this case study. The last limitation is that, in some cases, the responses did not seem consistent throughout the interview. They could make remarks during the interview which were not fully consistent with answers given earlier on. This indicates at least that perceptions of land issues are complex and multi-dimensional.

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## 6.5 Analysis of innovative land tools in Chazanga

This section will answer the three sub-questions as formulated in Section 6.1.

### **How did poor people access the land they occupy?**

Land in Chazanga is more easily accessible through informal than formal procedures, even though formal land is delivered at almost no cost. The growing demand for land near the Lusaka city centre is forcing prices on the informal market upward. Consequently, informal land is becoming less accessible for the poor.

Regarding the sale of customary land, some interesting observations were made. First, the customary system evolved along with this development, because the traditional authorities approve commercial transfers. Secondly, customary land holders, even poor ones, can generate income by selling some of their land. On the one hand, the sale of customary land may be considered pro-poor, although one can challenge its social legitimacy. Those who bought the land took all the risk and may be under threat of eviction. However, there are no reports of the sellers ever being prosecuted for illegal land dealings. It should be kept in mind that vacant land was considered to have no value before 1995. According to Mulolwa (2002), it is not clear whether value is attached to bare land after the implementation of the Lands Act. By contrast, Mudenda (2007) argues the Lands Act confers value on bare land simply because it is included in the legal definition of land. Bare land is delivered for free through the formal system, although administration fees and fees for services apply. Additionally, applicants are selected in terms of their capability to develop their plot, thereby excluding the poor.

### **What kinds of land rights are available and in which way are these right supported by land tools?**

Chazanga clearly consists of multiple tenure systems. At first, the original tenure system was customary. The LCC later claimed Chazanga, thereby putting it under statutory tenure as the second system, although that claim is contested by the traditional authority. Additionally, statutory tenure was introduced when some people converted their customary claim into leasehold through the Lands Act. Thirdly, when people started to trade land, with or without the WDC officials, the informal system emerged. The existence of multiple tenure systems created opportunities for easy land access by making various means possible, although these opportunities are not strictly intended for the poor. Lastly, after formalization through the HSIAA, statutory tenure is the only tenure expected to remain in Chazanga (at least for the part which is going to be declared an Improvement Area). Nevertheless, informal and customary practices may continue to exist. As Figure 6.1 and the quota-

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tion at the start of this chapter illustrate, urban areas throughout Zambia will sprawl out on customary land, for which clear regulations should be made.

### **Which levels of tenure security are attached to the land rights?**

Comparing the levels of legal and perceived security, two important observations can be made. First, the perceptions of tenure security among customary and informal land holders are higher than warranted by their respective legal levels. Respondents believe they enjoy fair levels of tenure security, although according to the legal framework their tenure security is limited. Respondents who bought land based their tenure security on the sales documents, which could have been witnessed by the traditional authority or members of the WDC. However, especially when the land is considered to be public land under control of the LCC, there is no legal security attached to such sales. There is thus a gap between perceived and legal tenure security. This is also noted by professionals who continuously point out the lack of tenure security in peri-urban areas, presumably referring to the legal component. They therefore advocate obtaining documentation through the occupancy license. The second observation is that only slight improvement has been made in legal security, whereas the perception of the improvement to be gained from the licenses is higher. Hansungule, Feeney *et al.* (1998) reported similar misconceptions from his research in the Copperbelt: “*Yet most of the people we interviewed in poor urban compounds were under the mistaken impression that these titles gave them full security of tenure.*” He attributes these misconceptions to the bewildering array of titles which confer different degrees of tenure security, the implications of which are not always clearly understood by the holders. Although only four types of land rights are evaluated in Chazanga, the continuum of land rights in peri-urban Zambia should be extended to include agreement forms, land record cards and council certificates of title, all of which have been briefly discussed in Section 6.3.1.

The fear of partial ‘expropriation’ relates to another effect of formalization, namely exchanging a perceived right of ‘ownership’ of a dimensioned plot for a right to occupy an undefined area around the house. Although this point was not touched upon during the interviews, the formalization might reduce perceived security in the end. In any event, it will reduce the amount of freedom that people enjoyed under informal tenure; after implementation they will have to satisfy the conditions attached to the occupancy license.

## **6.6 Conclusions**

The third research question: *To what extent can the innovative land tools as applied in Chazanga be considered pro-poor, based on the evaluation criteria?* can now be answered. The results of the evaluation are displayed in Table 6.7.

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In general, people enjoyed living in Chazanga. Some moved to Chazanga from settlements where they could have had higher levels of legal tenure security. However, in Chazanga, they could get bigger plots compared to other settlements. They have built permanent houses and expect to stay for a long time.

On equity, most indicators are rated fair. The fair rating is mainly due to the existence of the HSIAA and the way the WDC is involved in the development of the settlement. The capital component of affordability is considered not pro-poor, and the basis for the fees charged for the general land survey is not made clear. Additionally, support for the poor with respect to land access could be improved.

Tenure security is the main criterion to assess effectiveness. The most important tool, the HSIAA, increases legal tenure security to a limited extent. The degree of perceived security shows variations before and after implementation of the HSIAA. Concerning upgradability, three routes can be distinguished: from a customary right to leasehold, from an informal right to an occupancy license and from a customary right to an occupancy license. Only the first route was found to have happened in Chazanga. Nevertheless, due to the intended declaration of an Improvement Area, it is assumed that the first route is no longer possible. An occupancy right under the HSIAA is the final stop along the continuum. It is unknown in which way such a limited continuum will affect the development of the area compared to the possibility of council lease or leaseholds.

The HSIAA creates a separate registry at the council. Several challenges can be identified. First, as in the case of Chaisa, non-collection of licenses and arrears in paying ground rent are frequent issues in Improvement Areas. Secondly, as one person may have only one occupancy license, procedures are needed to check eligibility, both within the local council as well as with other councils. Thirdly, people with a leasehold have to be separated from the Improvement Area. And last, due to the slow implementation, the situation may attract more wealthy opportunity seekers who try to buy land before it is formalized. The longer the formalization takes, the more it favours this group.

In terms of its design, the HSIAA is an adequate tool with which to formalize unplanned settlements. It provides a framework to set up a simple land administration system and deliver occupancy rights to the land holders. As explained in this chapter, it is not specifically pro-poor, because more wealthy people may benefit from the formalization as well. The improvement of legal security is limited, which has limited impact on individuals. Nevertheless, the community as a whole might enjoy better infrastructure and facilities through investments financed by the land rent paid by the holders of the occupancy licenses. This suggests that the development of Chazanga would not be boosted by increasing tenure security but rather by investments made by the LCC.

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Table 6.7 Overall evaluation of land tools in Chazanga

Tools	Criterion	Indicator	Continuum of land rights			
			Customary	Informal	Occupancy	Leasehold
<b>Equity</b>						
Legal framework	Inclusivity	Legal recognition*	Good	Good	Good	Good
		Secondary rights*	Ignored	-	-	-
Institutional framework	Inclusivity	Support for the poor*	Limited	Limited	Limited	Limited
		Co-management	Fair	Fair	Fair	Fair
		Accessibility	Good	Fair	Fair	Limited
Individual tenure	Affordability	Costs	Affordable	Affordable	Partly affordable	Not affordable
<b>Effectiveness</b>						
Area tenure	Clarity	Awareness	Mixed	Mixed	-	Fully aware
Individual tenure		Type of right	Occupancy	Informal	Occupancy	Leasehold
		Transfer possibilities	Conditional	None	Conditional	Conditional
		Duration	Perpetual	Undefined	Limited	Sustained
		<b>Legal security</b>	<b>Fair</b>	<b>None</b>	<b>Limited</b>	<b>Good</b>
		Fear	Mixed	Mixed	Mixed	None
		Documented evidence	Mixed	Informal	Formal	Formal
		Transfer possibilities	Possible	Possible	Possible	Possible
	Inheritance	Mixed	Mixed	Mixed	Mixed	
	<b>Perceived security</b>	<b>Limited-Fair</b>	<b>Limited-Fair</b>	<b>Fair</b>	<b>Good</b>	
Upgradability	Extent of continuum*	Limited	Limited	Limited	Limited	
<b>Efficiency</b>						
Efficiency Operational	Simplicity	Boundary system	Simple	Simple	Outside high accuracy; inside simple	High accuracy
	Speed	High volumes	-	-	Not realized	No
	Approach	Individual/systematic	Individual	Individual	Systematic	Individual
	Completeness	Coverage	Limited	Majority	-	Limited

\* The value of these indicators are not completely attributed to specific land right categories; they are valid throughout (part) of the continuum.

### Recommendations

This study raised two main concerns relating to speed and affordability. First, the declaration of an improvement area takes a long time. Although the exact reasons could not be discovered, its slow pace creates uncertainty among the residents about what is going to happen. Secondly, the LCC has to reconsider the capital costs of formalization. When the survey fee and arrears are charged as described here, there will always be some people who cannot afford to go forward with formalization. In the worst case, they would have to sell their dwelling to be able to raise the money to pay their arrears. It should be kept in mind that the primary aim of the HSIAA is to improve tenure security for the poor, not to remove them from the settlement.

# 7 Evaluation of innovative land tools: a case study of peri-urban Gaborone (Botswana)

“Kefilwe Mokopane, from Mahalapye, is currently a resident of Tlokweng and feels that like any other Motswana, he is entitled to own a plot of land in any area of his choice. ‘I know that Batlokwa are frustrated by the fact that they have to compete with outsiders for land but what can we do about it? Tlokweng is a prime area; so everyone wants to own a plot here and we all have the right to do so. I am from Mahalapye and every Motswana is free to come to my home village and apply for a plot,’ said Mokopane” (Gasebalwe Seretse, *The land stampede*, Mmegi Online, August 28<sup>th</sup>, 2009).

## 7.1 Introduction

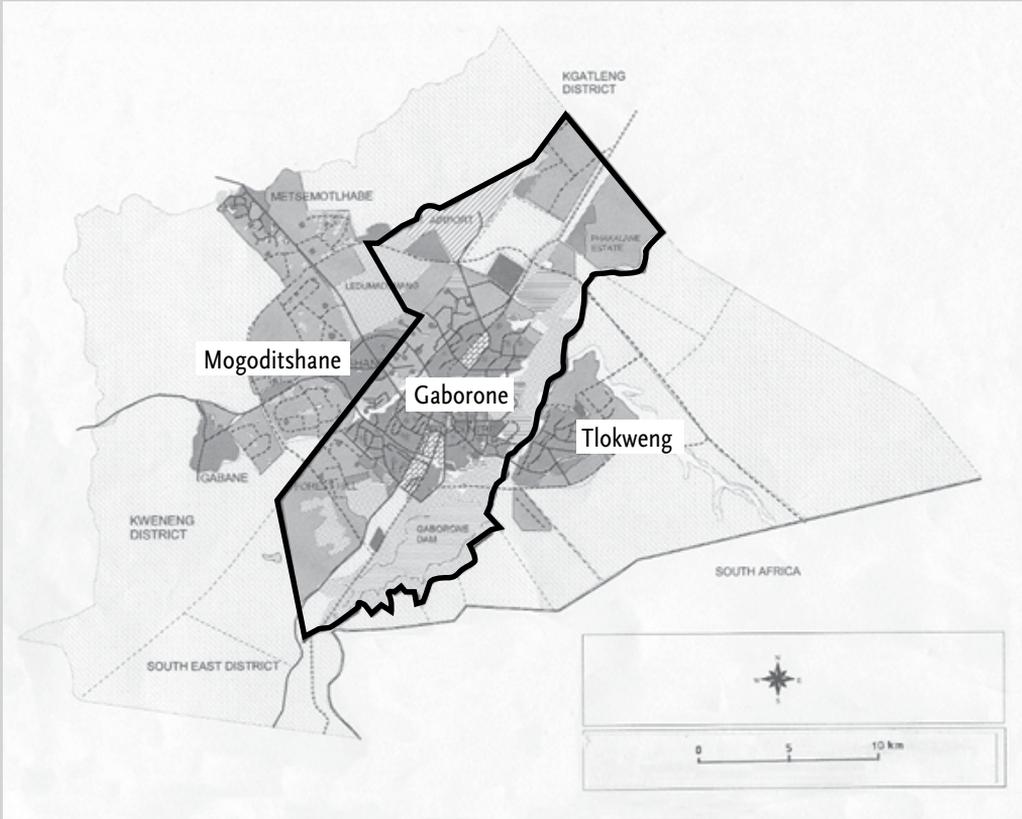
This case study was carried out in two peri-urban settlements around Gaborone: Tlokweng and Mogoditshane (see Figure 7.1). The results provide answers to the third research question for peri-urban Gaborone, which was formulated in Section 1.7 as follows: *To what extent can the innovative land tools be considered pro-poor, based on the evaluation criteria?* The following three sub-questions are raised:

- How did poor people access the land they occupy?
- What kinds of land rights are available and in which way are these rights supported by land tools?
- Which levels of tenure security are attached to the land rights?

Gaborone, with 233,000 inhabitants (Republic of Botswana, 2011), is the capital of Botswana. This landlocked, sparsely populated country has an estimated two million inhabitants, referred to as Batswana (plural). Its climate is semi-arid. Compared to other countries in sub-Saharan Africa, Botswana is relatively wealthy. Its economy is largely based on diamond mining, which accounts for about half of the revenues in the national budget. Gross domestic income per capita is an estimated USD 13,200 (UNDP, 2010). Botswana gained independence from the United Kingdom in 1966. The national language is English and the local language is Setswana, which is spoken by the officially recognized tribes. There are 46 tribes in Botswana, eight of which are officially recognized by the government (Nyati-Ramahobo, 2008). The national currency is the Pula (BWP).

Compared to most other sub-Saharan countries, Botswana has been involved in peri-urban land administration for a considerable period of time, starting from the implementation of the Tribal Land Act in 1970. This act has been discussed earlier, along with the legal and institutional framework, in Section 3.7. The overview of the case-study area presented in the next section is followed by an evaluation of the land tools.

Figure 7.1 Gaborone (Botswana) and its peri-urban settlements



— Gaborone city boundary

Source: Greater Gaborone Structure Plan, 1994, Department of Town and Regional Planning, Gaborone, in: Kalabamu & Morolong, 2004

## 7.2 Main characteristics of the case-study area

In 1981, the government, through the National Policy on Housing, committed itself to encourage “...the building of new urban housing for all income levels at a pace which [would] ensure that no citizen of an urban area is forced to reside in an unauthorized settlement.” Since then, all new unauthorized settlements in urban areas were demolished as soon as they appeared (Kalabamu and Morolong, 2004). As described in Chapter 3, Gaborone’s one and only informal settlement, Old Naledi, has been formalized. According to Gaborone’s council officials, informal settling has been brought to a halt through strict monitoring and enforcement.

However, problems have been reported outside the boundaries of the city. In these peri-urban areas, the tenure systems of Gaborone are not applicable. It was therefore decided to study two peri-urban settlements: Mogoditshane and Tlokweg. Some parts of Mogoditshane did have significant numbers of informal settlers, which had long been a matter of concern for both the national and local government. Tlokweg was selected as well because reports on informal settlers there were, interestingly, almost non-existent.

### 7.2.1 Tlokweng

Tlokweng is a peri-urban settlement, classified as an urban village, located east of Gaborone (see Figure 7.1) and falling under the jurisdiction of the South East District Council. It is a dormitory settlement for workers in Gaborone. The major Zeerust road, which connects Gaborone to South Africa, passes through Tlokweng. Its population has grown from 3,700 in 1964 (Kalabamu and Morolong, 2004) to the most recently estimated number of 36,000 (Republic of Botswana, 2011). According to the Central Statistics Office (Republic of Botswana, 2008b), 9.3% of the individuals living in Tlokweng can be classified as poor. In the South East District, the share of poor residents amounts to 14% (Republic of Botswana, 2013). The poverty level in Tlokweng is comparable to the level for towns and cities (10.6%) but is lower than the poverty level in urban villages (25.4%) and rural areas (44.8%; Republic of Botswana, 2008a). The average monthly income for households in urban villages is reported as BWP 2,445 (USD 379).

The area used to be ruled by the Batlokwa Tribal Authority whose headquarters are located in Tlokweng. However, as noted earlier in Chapter 3, land administration duties were transferred to the Tlokweng Land Board in 1970. Most of the area is tribal land and governed by the Tribal Land Act (TLA). Pockets of freehold land exist on the rural fringe. The settlement of Tlokweng has a dual spatial structure with a traditional unplanned area and a modern planned area. The plots in the unplanned area are generously large, ranging between 1,600 and 4,000 m<sup>2</sup>, while those in planned residential neighbourhoods are smaller and uniform at the size of approximately 1,000 m<sup>2</sup>. In 2002, the built-up area covered 1,548 ha, of which 56.2% was devoted to residential use (4,932 plots; Republic of Botswana, 2005b). The built-up area is surrounded by grazing and arable land use under tribal and freehold tenure.

The Tlokweng Development Plan of 2005, which guides the development of the settlement till 2025, is concerned about the rise of informal occupation: *“In worst cases dormitory settlements like Tlokweng are ideal zones for the birth of squatter settlements. It is therefore critical that the needs of this sector be justifiably met.”* (Republic of Botswana, 2005a, p. 20). This concern is underpinned by the high demand for residential plots, which will be discussed in Section 7.3.4.

### 7.2.2 Mogoditshane

Mogoditshane is located to the west of Gaborone (see Figure 7.1) and, like Tlokweng, has a major dormitory function. It falls under the jurisdiction of the Kweneng District Council. The Kweneng Land Board is the main land board for the region, located in Molepolole, about 60 km west of Gaborone. A subordinate land board has been established for Mogoditshane. The land used to be governed by the Bakwena Traditional Authority, whose paramount chief

resides in Molepolole. A major feature is the overwhelming amount of commercial activity along the main road, called the ribbon commercial heartland (Republic of Botswana, 2006b), which is dominated by second-hand car dealers.

The population of Mogoditshane has grown from 2,500 in 1964 (Kalabamu and Morolong, 2004) to approximately 58,000, the latest estimate for 2011 (Republic of Botswana, 2011). According to the Central Statistics Office (Republic of Botswana, 2008b), 11.7% of the individuals in Mogoditshane can be classified as poor. For Kweneng-East, this percentage amounts to 18% (Republic of Botswana, 2013). As in Tlokweng, this proportion is comparable with the level of poverty in cities but lower than that found in urban villages and rural areas. The area covers 4,876 ha, of which 45.8% is built up. In 2001, there were 10,015 households on 5,777 residential plots (Republic of Botswana, 2006a). Residential land use covers 40.4% (901 ha) of the built-up area, which consists of an unplanned traditional core, informal areas and planned areas. Renting is the predominant form of tenure: according to the Ministry of Lands and Housing (Republic of Botswana, 2006b), 68.1% of the inhabitants are renters. Rental housing is a common feature of Botswana. According to the Household Income and Expenditure Survey held in 2002/03, 68.5% of all households in towns are renters; the percentage in urban villages is lower, at 30.1%. Many plot holders develop additional structures on their plot to augment their income by renting these out.

### 7.2.3 Data collection

Data was collected by the following methods: a literature review, interviews with experts and stakeholders at both the national and the local level, and interviews with local land holders. The experts and officials were interviewed during November 2010 (see Appendix F). Semi-structured interviews with the land holders of both settlements were held in February 2011. Access to respondents was arranged through random house visits. Respondents were categorized as owner-occupiers (the majority), tenants (a few tenants were interviewed to get their views on land access and tenure security) and occupiers on a family plot (where the respondent was residing on a plot belonging to a family member). An interpreter was hired, as most interviews were held in the local language, Setswana. This chapter presents quotations from some respondents as translated by the interpreter; in order to maintain the original character of their statements, the terminology and grammar used in the quotes have not been corrected.

In Tlokweng, 21 land holders (4 male, 17 female) were interviewed. Fifteen of them were owners, two were tenants and four were staying on a family plot. Tables 7.1 and 7.2 show that the majority of the respondents settled there when the TLA was in force and that most respondents originat-

**Table 7.1 Respondents in Tlokweng and their year of settlement**

Year of settlement	No
2010-2011	1
2000-2009	8
1990-1999	3
1980-1989	5
1970-1979	-
1960-1969	2
unknown	2
<b>Total</b>	<b>21</b>

**Table 7.2 Respondents in Tlokweng and their former place of residence**

Former place of residence	No
From Tlokweng	14
From Greater Gaborone	3
From outside	1
Unknown	3
<b>Total</b>	<b>21</b>

**Table 7.3 Respondents in Mogoditshane and their year of settlement**

Year of settlement	No
2010-2011	2
2000-2009	6
1990-1999	11
1980-1989	6
1970-1979	2
1960-1969	1
Unknown	2
<b>Total</b>	<b>30</b>

**Table 7.4 Respondents in Mogoditshane and their former place of residence**

Former place of residence	No
From Mogoditshane	11
From Greater Gaborone	15
From outside	2
Unknown	2
<b>Total</b>	<b>30</b>

ed from Tlokweng itself. The majority of respondents (15) owned a plot, and most of them came from a family plot. It should be noted that, both for Tlokweng and Mogoditshane, the respondents spoke of 'ownership' in the vernacular, although in a legal sense they only had occupancy rights. Since the aim of this chapter is to report their responses, their term 'ownership' will be retained in this text.

In Mogoditshane, a total of 30 respondents were interviewed from the traditional core, the planned and unplanned settlements. They consisted of 7 male and 22 female respondents and one couple. Twenty-six of the respondents were owner-occupiers; two were tenants; and two resided on plots owned and occupied by family members. Tables 7.3 and 7.4 show that the majority of the respondents had settled after the implementation of the TLA and a considerable number came from Greater Gaborone. A large majority owned a plot, and they had mainly moved to it from a family plot or rented housing.

### 7.3 Land tenure in peri-urban Gaborone

All land in peri-urban Gaborone, except that under freehold, is managed through the Tribal Land Act (1970). This act largely maintains the customary tenure system, although the authority in land management has been shifted from the traditional authority to the land board. Two land rights are possible under this act: the customary land grant and the common law lease. Informal tenure exists as well and will be included in the discussion.

### 7.3.1 Certificate of customary land grant

Before discussing the customary land grant, the main characteristics of customary tenure in Botswana will be introduced. Customary land was vested in the respective communities or tribes and not in the chiefs, a distinction that is often misunderstood. Chiefs and headmen simply administered and enforced the customary rules and procedures. All land rights were derived from the right of avail, a right that was shared and applied to all people belonging to each tribe or community. All pieces of residential and agricultural land acquired through allocation by a chief or headman or through inheritance remained, in perpetuity, the exclusive property of the allottee (Kalabamu, 2011).

As set forth in Chapter 3, the TLA vested the powers of land management in the land boards. Under their management, the land holders retain their customary land rights, provided that the intended land use matches the land use plan of the district council (TLA, article 17.3). Customary tenure comprises four main land use rights: residential, arable ('masimo' in the local language), grazing land ('moraka' meaning cattlepost; Home, 2001) and woodlots or hunting land. Trading, manufacturing, business or commerce are not considered customary land uses (Kalabamu and Morolong, 2004).

Land boards are entitled to issue certificates of customary land grants. According to the TLA (Section 16.1), no person may occupy land until a certificate has been issued to him or her. This means, first, that all land holders who were allocated land by the traditional authorities had to be issued certificates. Secondly, vacant land can only be delivered through the issuance of a certificate. The procedure for the delivery of undeveloped land according to the TLA is as follows. The applicant has to provide the land board with personal information, including other land rights the applicant may have within or outside the tribal territory. The land board then assesses the application on various grounds: citizenship of Botswana; whether land is available for the proposed use; whether the land is subject to rights in favour of any other person; and whether the proposed use is in conflict with adjacent uses. The answers to these questions are supposed to be scrutinized by the ward head or land overseer who has to visit the site and sign the application form (Office of the Auditor General, 2008). According to several land board officials, the applicants' financial ability to develop the land is not scrutinized, although they are obliged to develop the plot within a specific period of time. When agreed on by the land board, the allocation is made by one of its members; afterwards, the plot is measured and lengths are recorded. The applicant is required to demarcate the plot with posts within six weeks; subsequently, the land board will issue a certificate of customary land grant (Kalabamu and Morolong, 2004).

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### 7.3.2 Common law lease

The Tribal Land Act allows a customary land grant to be converted into a common law lease at the grantee's initiative and cost. A common law lease is a written agreement between the land board and the applicant. To arrange it, a survey diagram or plan of the plot has to be submitted. According to land board officials in Tlokweng and Mogoditshane, conversion takes place frequently, occurring hundreds of times a year. The common law lease may be registered by the Registrar of Deeds in Gaborone, provided that the survey diagram is approved by the Director of Survey and Mapping. According to a leaflet from the Deeds Registry, the lease will then be referred to as the title deed. The applicant will not be issued a new document; the original lease document is converted into a title deed after registration.

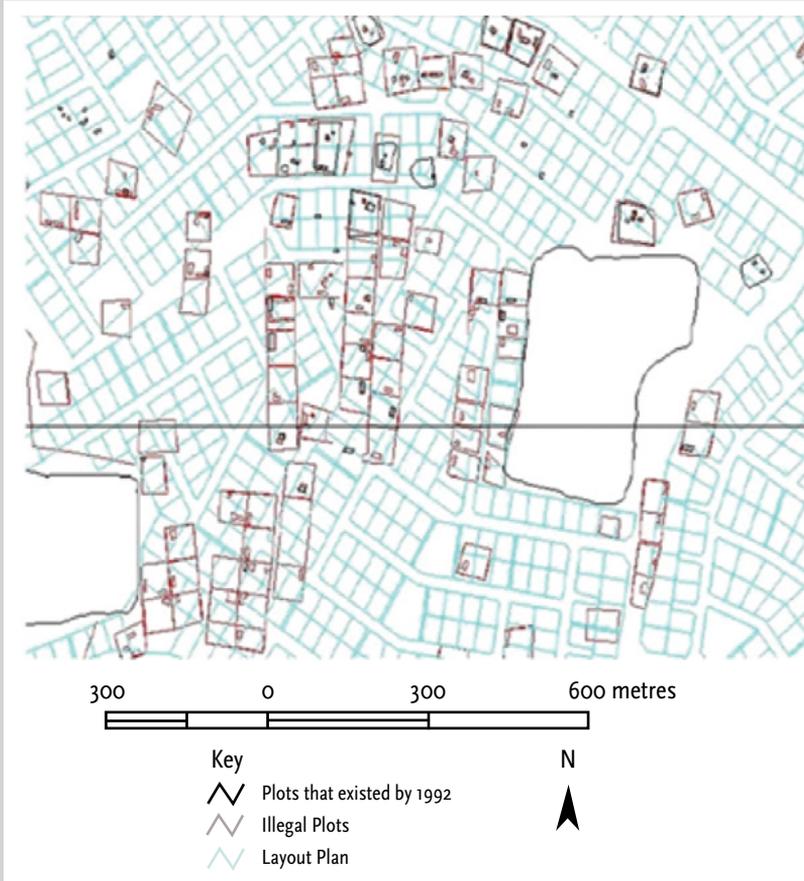
### 7.3.3 Informal tenure

As noted earlier, Mogoditshane, especially the area called Tsolamosese, is well known for informal land occupation. The informality in the land delivery system may have several interrelated causes. First, following the enactment of the TLA, the land board had to register all existing customary land rights which had been granted by the traditional authorities. The validity of these customary land rights was not properly checked, resulting in false entries. Secondly, the land board failed to completely take over the land allocation duties and instead simply rubber stamped the allocations made by headmen. The headmen assumed the power to allocate land and could get fees in return. The initial laxity surrounding land board procedures could be attributed to the distance between the village and the office of the land board (25-45 km) and the small size of the settlement. The prevailing informality was enhanced by the failure to issue certificates of customary land grant to persons who were granted land. It should be noted that the land right holders did not demand them (Kalabamu and Morolong, 2004). Because Mogoditshane was urbanizing rapidly, the pressure on land was increasing. Therefore, many owners were tempted to subdivide their fields and sell them to aspiring peri-urban residents. Since these transfers were not approved by the land board, however, these new residents could not be issued certificates.

Informal land tenure in Botswana is often referred to as 'self-allocation', 'squatting' or 'illegal land sales'. In this thesis, the terms 'informal occupation' and 'informal occupiers' are regarded as more appropriate. The tenure problems led to the appointment of a Presidential Commission of Inquiry into Land Problems in Mogoditshane and other peri-urban villages in 1991. Also known as the Kgabo commission, its findings revealed that more than 800 people had acquired land without approval from the land board. The commission recommended that undeveloped land should revert to the land board

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Figure 7.2 Mogoditshane: Existing plots overlaid on the layout plan



Source: Shabane *et al.*, 2010

and developed land should be formalized upon payment of a fine. The fine would amount to BWP 5,000 (USD 721) for a 40x40-meter plot. Upon payment, the occupation would be formalized and the occupier would be issued a certificate of customary land grant by the land board (Republic of Botswana, 1992).

According to Kalabamu and Morolong (2004), about half the people who had been ordered to pay the fine could not do so, so the problem persisted. The government responded with a presidential directive: the Ministry of Lands was directed to litigate against informal occupiers and the demolition of houses was ordered. As a result, demolitions took place between 2001 and 2003. The exact number is difficult to establish, as no records were kept (Kalabamu and Morolong, 2004). According to various officials, several hundred houses were affected. Some of the residents whose houses were demolished challenged the land board in court; some won their cases, others did not. According to Onoma (2009), the imposition of fines has not stopped people from subdividing and selling land. During fieldwork, it was learnt that in 2009 a Presidential Amnesty was proclaimed, yet another attempt to do away with

informal tenure. Details of this amnesty will be given in Section 7.4.4 when discussing perceived security.

The formalization of informal occupation was supposed to be combined with the implementation of the development plans. According to Home (2001), the plans were prepared hurriedly and did not take into account the situation on the ground. This combined approach complicated the process of formalization, since the people affected had not been consulted when the development plans were being drawn up. In general, the informal settlers had occupied plots larger than the standard size (see Figure 7.2). As Shabane, Nkambwe et al. (2010, p. 684) state: “In the year 2000 there were already 2,400 squatters’ plots occupying land which was meant to provide 5,000 plots.” As a result, people declined to accept the smaller plots or demanded compensation for the difference (Kalabamu and Morolong, 2004). In a few cases, the layouts in the development plans were revised (Shabane, Nkambwe et al., 2010). The nonconformity of existing informal plots with the development plan was also encountered during the fieldwork. That problem will be discussed in Section 7.4.4 with respect to perceived tenure security.

### 7.3.4 Land access, land rights and land tools in peri-urban Gaborone

#### Land access

All customary land is vested in the land board in trust for the benefit and advantage of the citizens of Botswana. Before the Amendment of 1993, land was held in trust for the tribesmen. The amendment represented a major policy shift because it allowed people to gain access to land irrespective of their tribal affiliation (Kalabamu and Morolong, 2004). The wider eligibility increased the demand for land in the peri-urban areas of Gaborone. To relieve the pressure on urban land, the number of free plot allocations that could be made to individuals in any one tribal territory of any one peri-urban area would be limited to one (Shabane, Nkambwe et al., 2010). According to land board officials, this was translated into a policy whereby an individual could only be allocated one residential plot within a radius of 70 km of the centre of Gaborone. Despite this restriction, the amendment still resulted in an exaggerated demand for urban and peri-urban land. According to Kalabamu (2011), the Department of Land Board Services indicated in 2010 that the waiting list for plots in peri-urban villages around Gaborone stood at 177,827<sup>50</sup> (see also Sec-

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<sup>50</sup> In Tlokweng, around 17,000 people applied for 285 plots. See: The land stampede, Mmegi Online, Friday 28 August 2009: <http://www.mmegi.bw/index.php?sid=1&aid=5&dir=2009/August/Friday28> and The Monitor 28/6/2010 “Something Fishy” As Land Board Cancels Allocations: <http://www.mmegi.bw/index.php?sid=1&aid=3349&dir=2010/June/Monday28>.

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tion 3.7.2). Consequently, people who had applied in 1994 were being allocated land at the time of the fieldwork in 2011.

Access to land was therefore an important item in the discussions with respondents. They were asked how they had accessed the plot they occupied. Their responses were grouped into direct access, inheritance, a gift and informal occupation. Direct access through allocation was facilitated in three ways. The first was through the traditional authority, before the implementation of the TLA. The second was through the land board, either on the basis of an application or as compensation for the repossession of farming plots by the board. Evidence of the latter was only found in Mogoditshane. The number of plots allocated as compensation for the repossession of the fields varied. Some families were allowed to retain only the plot with the farmhouse, while others were allocated plots for their children as well. The third was relocation by the land board as one respondent reported.

To gain access through informal occupation, people bought subdivided plots from field owners without the approval of the land board. This happened frequently in Mogoditshane. One case in Tlokweng appeared to be informal occupation but could not be definitively determined as such. The lady interviewed was staying in a shack<sup>51</sup>; she said the plot belonged to her friend, who was in negotiation with the land board over formal occupation of the plot.

Respondents from both settlements were aware of the limited possibilities of gaining formal access to land. One could apply for a plot through the land board, although everyone was aware that this was a long process. Alternatively, one could acquire land by inheriting it or buying a developed plot. Inheritance is discussed in Section 7.4.4. No other institutions were found that could provide assistance in gaining access to land.

### Land rights

A detailed continuum of land rights has been charted. At the lower end of the continuum lies the category of informal occupation. It was almost non-existent in Tlokweng but comprised a significant share of the continuum in Mogoditshane. All informal occupiers who were encountered during the fieldwork had been notified by the land board to formalize their land claim. They were found to be in various stages of formalization:

- People who had not paid the fine (or not in full);
- People who had paid the fine but not been issued certificates;
- People who had paid the fine and been issued certificates, resulting in a classification as formal occupation.

The other land rights are the customary land grant and the common law lease.

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<sup>51</sup> This was one of the few shacks seen during fieldwork in both settlements.

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### Land tools

Two land tools can be distinguished in peri-urban Gaborone. The main one is the TLA. It includes both an area tenure tool (conversion of customary lands under the authority of the land boards) and individual tenure tools (rights of customary land grant and common law lease). The tool to formalize informal occupation consists of the presidential interventions which took place in the course of time, around 1992, 2001 and 2009. All were based on the same principle: informal occupation could be formalized upon payment of a fine. These interventions are considered individual tenure tools.

## 7.4 Evaluation of land tools

The various types of land tools will be evaluated in the next sections, according to the criteria and indicators as described in Chapter 4.

### 7.4.1 Legal framework tools

The legal framework tools are evaluated according to the indicators legal recognition and provision of secondary rights, both belonging to the criterion inclusivity.

#### **Inclusivity: legal recognition**

The constitution was enacted in 1996. Article 8 protects citizens from deprivation of property, except in cases when land is needed in the public interest. There are no specific regulations on informal settlers or land rights for the poor. The constitution recognizes customary law and customary courts, although it does not address customary land tenure (Republic of Botswana, 1966). Through the TLA, customary tenure is fully recognized and actually 'copied' into statutory law. Informal tenure is only recognized through presidential interventions. All tenure categories are dealt with and recognized; legal recognition is therefore considered good.

#### **Inclusivity: provision of secondary rights**

From a legal perspective, the secondary rights derived from customary tenure are retained in the TLA. Thereby, they are considered to have been completely merged into statutory tenure. Relating to secondary rights, some people complained about cattle walking around the neighbourhood. While grazing rights are recognized by the land boards, it is unknown whether these rights apply to residential areas (see photo p. 186).

Cattle in Tlok-weng.



### 7.4.2 Institutional framework tools

The institutional framework tools are evaluated according to the indicators support for the poor, co-management and accessibility, all belonging to the criterion inclusivity.

#### **Inclusivity: support for the poor**

Basically, all Batswana had the right to occupy land anywhere in the country. Because vacant land is delivered for free, the demand for land rose to unacceptable levels. Several policies have therefore been implemented to limit the number of plots one could apply for in towns and tribal areas. While the poor still have access to land, they have to compete for it with wealthier people. Governmental support for the poor is concentrated on state land in urban areas through the Self-Help Housing Agency (SHHA). The program has supported the poor through the provision of land, by subsidizing loans for building material and through service delivery (Ikgopoleng and Cravic, 2008). While other related programs, for instance squatter upgrading, have been run, they have since been phased out without replacement (Kalabamu and Morolong, 2004). On tribal land, all land issues are dealt with by the land boards. Two NGOs, namely Human Rights Watch and Habitat for Humanity, were found to be dealing with land access and related issues, although their focus has been on rural areas. Support for the poor is therefore considered not available across the continuum of land rights as existing within peri-urban areas.

#### **Inclusivity: co-management**

The peri-urban areas of Gaborone are managed by the land boards. Currently, the land boards consist of two district council representatives, two democratically elected persons and two to five members appointed by the minister. Two co-opted members can be added to the board to bring in expert knowledge and experience, although they do not get voting power (Kalabamu, 2011).

The composition of land boards has been debated since the enactment of the TLA. Traditional authorities were banned from the land boards since the act was amended in 1993, and they were replaced by the democratically elected members. The reason was twofold: to improve the quality of leadership within the land board and to depoliticize land administration and management (Kalabamu and Morolong, 2004). Nkambwe and Totolo (2005) remark that chiefs may still influence land issues. For example, they may discourage people from transferring land to someone outside the tribe. Especially the Batlokwa have called for the reinstatement of the chief as the administrator of Tlokweneng, arguing that he would better serve the interests of the Batlokwa tribe (Kalabamu and Morolong, 2004). According to Nkwae (2006), residents in Mogoditshane are less hostile to migrants, compared to those of Tlokweneng.

Another problem related to the composition of land boards is the low level of qualifications required of the democratically elected members. All they need is a junior certificate (White, 2009). Having studied land boards in peri-urban Gaborone, Kalabamu and Morolong (2004) conclude that the local communities view them as alien, exploitative and predatory institutions with little or no social legitimacy. Furthermore, these authors suggest that land boards are involved in some form of class struggle with aristocrats, traditional leadership, grassroots powers and national leadership. Additionally, land boards are accused of causing delays in land allocations and engaging in corrupt practices<sup>52</sup>. During fieldwork, many respondents complained about the delays in land allocations.

The level of co-management is therefore considered limited for all land rights handled by the land board, despite the democratic component. With respect to the informal occupiers, co-management is lacking; they are not supported by any organization, nor did they organize themselves to gain more negotiating power.

### **Inclusivity: accessibility**

A land board is situated in Tlokweneng and is therefore considered accessible. Mogoditshane was first served from the land board office in Molepolole. However, its distance led to a lack of control over land claims and transfers. Therefore, a sub land board was established in 1992 (Kalabamu and Morolong, 2004). A sub land board can only deal with certificates of customary land grants; common law leases are handled by the main land board in Molepolole. Accessibility is considered fair (within the municipality) for the poor because their primary interest would be in a customary land grant. For a common law

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<sup>52</sup> Fieldwork evidence from Kalabamu and Morolong (2004, p. 162): "When people apply for land at the land board, they are told 'tla ka 5', which means either 'come back at 5' or 'come with 5'." Those who understand will return with BWP 5,000 (USD 1,082); others will come back at 5 p.m. and find the office closed.

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lease, accessibility in Mogoditshane would be considered limited.

### 7.4.3 Area tenure tools

The tool under consideration is the conversion of customary lands under the authority of the land boards. It is evaluated according to the indicator awareness of the criterion clarity.

#### **Clarity: awareness**

The peri-urban areas around Gaborone were converted from customary land into tribal land in 1970. Kalabamu and Morolong (2004), referring to conflicts over access to and control over land, note that the parties adopt different standpoints. The land board maintains that land holders are only granted user rights. In contrast, the land occupiers believe that, once granted customary rights, the specified pieces of land are alienated from the land board in perpetuity.

A majority of respondents understood that the land is managed under the TLA. Some of them indicated that it had been managed by the traditional authority in the past. A few stated that land was managed by the council, which may be true as well, because the council is the planning authority. In Tlokwen, the respondents who were interviewed first stated that they themselves had the final authority. However, their answers were influenced by the way the interpreter had translated the question. The respondents are considered partly aware; they are in general well informed about the land management authority, although they have limited knowledge on additional land tools. In the past, informal occupiers may not have been aware of the rules or they may have taken a calculated risk to buy land without approval from the land board. Nowadays they are aware through notifications by the land board (presidential amnesty). Awareness amongst holders of common law leases could not be assessed.

### 7.4.4 Individual tenure tools

The following individual tools are evaluated:

- The rights of customary land grant of the Tribal Land Act;
- The presidential amnesty.

They are evaluated according to the indicator costs of the criterion affordability and the criteria legal tenure security, perceived tenure security and upgradability.

#### **Affordability: costs**

The land itself is offered for free and is thus affordable to every citizen. A plot allocation with the issuance of a certificate through the land board costs

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BWP 100 (USD 15). Comparing this amount with the monthly average household income for the poor of BWP 2,445 (USD 356), this is considered affordable. Converting to a common law lease costs BWP 220 (USD 32) for the application and BWP 1,000 (USD 146) for surveying the plot. Additional costs might be incurred to register the lease at the Deeds Registry. Common law leases are still affordable, although two respondents considered the costs for conversion rather high. On the other hand, the fine imposed through the presidential amnesty is considered not affordable. Affordability in peri-urban Gaborone relates to the capital component only. As a consequence of the defined ratings in Section 4.3.2, the presidential amnesty is therefore partly affordable.

### **Legal security**

The legal security provided by each land right is discussed below on the basis of the type of right, the possibilities to transfer it and its duration for each land right that is included on the continuum.

#### **Legal security: type of right**

Three types of rights are found in peri-urban Gaborone: informal occupation, customary lands grants (formal occupancy) and common law leases (formal leasehold). Almost all respondents in Tlokweng possessed certificates of customary land grants. In Mogoditshane, in contrast, a significant number did not have certificates. Most respondents who had direct access to land were issued a certificate. A few respondents, in particular those who had been allocated land before the TLA was enforced, were reluctant to collect their certificate. In Tlokweng, one person did not get a certificate because of a boundary dispute, which had been going on for over 20 years. Some respondents, notably those who were given plots by family members or who had inherited them, were reluctant to have their names changed on the certificates. Finally, certificates have been issued to those respondents who managed to pay the fine to formalize their land claims. Those who paid without receiving their certificate are rated equal to those in Tlokweng who did not collect their certificate.

#### **Legal security: transfer possibilities**

Informal land rights cannot be transferred under the formal system. Customary land grants can only be transferred with the approval of the land board, provided that the seller is in possession of a certificate. And if a land right is to be passed on to one's heirs, the traditional authority is supposed to confirm the inheritance. If the land is held under a common law lease, the land board has to approve the transfer.

#### **Legal security: duration**

The duration of informal occupation is considered limited. The Presidential

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Amnesty of 2009 required payment of the fine within one year from the moment an agreement with the land board was made. Otherwise the land would revert to the land board. Those who have paid, even though they were not in possession of a certificate, are considered to have limited duration as well. The certificate of customary land grant is perpetual, similar to the land use rights under customary tenure. Common law leases for residential purposes are valid for 99 years (Kalabamu and Morolong, 2004). According to a land board official from Tlokweng, some holders of common law leases convert their rights back to customary land grants to benefit from the perpetual duration. But that can only be done after any outstanding loan related to the lease has been repaid. This type of conversion was not encountered during fieldwork. If the lease is not renewed upon expiry, the land reverts to a customary land grant (Kalabamu and Morolong, 2004; Nkwae and Dumba, 2010).

#### **Overall legal security**

Overall legal security is considered non-existent for informal occupiers. It is considered fair for those who are formally allocated and/or in the possession of a certificate. It is limited for those who did not collect their certificate. The common law lease is considered fairly secure, as a lease is considered stronger than a land grant, even though the duration of a lease is limited compared to a customary land grant.

#### **Perceived security**

Perceived security is evaluated in terms of the fear of eviction, documented evidence, the perceived possibilities to transfer and the way land can be inherited. Perceptions of common law leaseholders were not captured, because none of the respondents was in possession of such a lease in either settlement.

#### **Perceived security: fear of eviction**

One would expect the demolitions that took place in Mogoditshane between 2001 and 2003 to have had a shock effect, highlighting the probability of eviction. However, respondents in Tlokweng did not refer to Mogoditshane when asked whether they remembered any evictions. They mainly mentioned individual cases of eviction for reasons such as inheritance conflicts or landlords evicting tenants. The only examples of eviction for public purposes concerned encroachment onto roads. At the time of fieldwork, such instances were evident on Zeerust road. In places where the road was being widened, houses lying on the road reserves were being demolished. According to the respondents, the people affected had been duly compensated.

Even in Mogoditshane, a significant number of respondents did not remember the evictions. As has been observed by Kalabamu and Morolong (2004), the demolitions that occurred did not lead to mass protests. Only Molebatsi (2004) was found to have reported on a public outcry and a heated meeting on

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the issue with the president in Mogoditshane in 2000. Most respondents were not worried. Only those who had not been issued certificates had some fears. The probability of eviction was seen in light of the requirement to develop the land within a stipulated period of time after the allocation (see Section 7.3.1). Their other fears were related to the presidential amnesty and the implementation of the development plan, both of which will be discussed below<sup>53</sup>.

With the sole exception of the woman living in a shack on a plot that was claimed by a friend, none of the respondents in Tlokweng feared eviction. Contrarily, fear was mentioned in Mogoditshane especially by those who cannot afford to pay the fine. An unemployed single woman said: *“all houses were marked in this neighbourhood, about ten have been demolished. I was very scared, and didn’t sleep. When elections came, they stopped the demolitions.”* One respondent, a married self-employed man who was summoned to pay the fine, put his hopes in the amnesty: *“Initially yes, when houses were taking down, we were scared, but not now, because nobody’s property would ever be demolished from now on. The minister promised that houses would not be demolished.”*

People fear not only eviction but a reduction of the plot size as well. As explained by another single and unemployed woman, though this one was in possession of a certificate, *“I am worried of being evicted from the place, because of those pegs, I don’t know what is going to pass here. After they went in with the pegs, they said I should stop any development. Even if I did have money, I can’t develop. They are saying they have to solve this issue first.”* For informal occupiers, fear of eviction is considered mixed. The amnesty engenders both fear and hope, while formalization may generate fear about the reduction of plot sizes. Those, whose land had been formally allocated, including those who were not in possession of a certificate, had no fear.

### Presidential amnesty

According to the respondents, the demolitions ordered during the 2001 campaign came to an end during the election campaign of 2004. Some houses were still marked for demolition in case the fine was not paid (see photo p. 192). Since the problem of informality persisted after 2004, a presidential amnesty was declared in 2009. The fine was fixed at BWP 10,000 (USD 1320) for a

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#### 53 Media coverage of announced demolitions:

The Monitor: Confusion over Tsolamosese land issue; December 12<sup>th</sup>, 2011 (on the implementation of the development plan; Tsolamosese is a neighborhood in Mogoditshane):

<http://www.mmegi.bw/index.php?sid=1&aid=630&dir=2011/December/Monday12>;

The Monitor: Tsolamosese residents want landboard dissolved; Januari 23<sup>rd</sup>, 2012 (on delays in land allocation):

<http://72.167.255.126/index.php?sid=1&aid=76&dir=2012/January/Monday23>;

Mmegi: Demolitions Loom in Mogoditshane; September 23<sup>rd</sup>, 2005

<http://allafrica.com/stories/200509230586.html>.

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House marked for demolition on May 13<sup>th</sup>, 2001 (see inset).



standard sized plot (36x25 metres) and BWP 11 (USD 1) for every m<sup>2</sup> in excess of that.

Respondents who were ordered to pay the fine imposed by the land board were charged between BWP 5,000 (USD 729), as stipulated by the Kgabo commission in 1992, and BWP 12,000 (USD 1,750; consisting of BWP 10,000 for the standard size and BWP 2,000 for extra m<sup>2</sup> in excess), as stipulated by the amnesty in 2009. The affected respondents were required to pay the fine within one year, although not all of them were aware of that fact. Many respondents did manage to pay it, and some of them were issued certificates. A few paid only a part of the fine or none of it. Those who fail to pay are likely to be evicted without compensation, as stated in the letter from the land board. Some typical remarks on the formalization were the following. The earlier cited unemployed single woman said, “*I am not feeling comfortable...Ever since 1991, I have been filling forms.*” And a single woman, working in a social work program (Ipelegeng), said, “*I am not comfortable, I don’t have a certificate at the moment, I don’t know if I should develop, because I was told to stop developing, around 2000.*” For a few respondents, the opportunity to formalize their status reduced the fear of eviction.

### Implementation of the development plan

As mentioned earlier, the implementation of the development plan was problematic because the new layout did not take the existing situation on the

ground into account (see Figure 7.2). The land board placed new boundary markers (white stones) within people's plots. According to the respondents, the affected land holders were not informed by the land board that boundaries would be set. Some people simply returned from work to find the markers in their yard. A married self-employed woman said: *"The land board has put pegs, but they haven't showed us, we are worried, they didn't communicate with the owners."* Some went to inquire at the land board but were not given any information. A married and employed woman in Mogoditshane, residing on a large plot, explained her case thus. Instead of allowing her to pay the BWP 11 (USD 1) per m<sup>2</sup> in excess, she was only allocated a standard sized plot after paying the fine of BWP 10,000 (USD 1,458). The land board first allocated her the part of her plot with the pit latrine but without the main house. She refused to accept this arrangement; the land board responded by allocating her the part of the plot which contained the main house.

#### **Perceived security: documented evidence**

Respondents in possession of certificates based on direct access, inheritance or gift (or former illegal settlers who had paid the fine in full) indicated they felt secure about their tenure. A married and self-employed woman in Mogoditshane received the formalization letter from the land board in May 2010 and paid the fine in December 2010: *"I feel comfortable and secure, I own this land now, I have been given a plot number... Before May 11<sup>th</sup> when the letter came, I didn't know whether I could stay here."* Documented evidence was regarded as important by the majority of people in possession of a certificate. The certificate was perceived as proof of ownership. Moreover, they needed a certificate to get connected to utilities such as water and electricity. In Mogoditshane, some respondents were issued certificates without plot numbers. As a result, they failed to apply for water and electricity. In addition, a document like a certificate was considered useful in the event of boundary disputes<sup>54</sup>.

A land board official estimates that more than 90% of the residents in Tlok-weng are in possession of certificates or common law leases. Those without a certificate did not seem bothered about that. One respondent had a letter from the traditional authority (in an inheritance case) and another was planning to collect the certificate. In Mogoditshane, not having a certificate was a problem in cases of informal occupation. Lacking it caused fear of eviction, as discussed above. It has also been discussed that the amnesty could result in the reduction of plot sizes, even in cases where certificates had been issued.

The insecurity caused by formalization in Mogoditshane also influenced decisions to invest in rental housing. Two respondents believed they could not

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<sup>54</sup> Although a sketch map is not required for a customary land grant, one is often available from the development plan. On the certificate, only the dimensions of the plot are given.

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develop rooms for tenants because they had not paid the fine yet. By contrast, another respondent, who had tenants before being summoned by the land board to pay the fine, intended to use the rent to pay the fine.

With respect to the common law lease, few respondents in either settlement were aware of the possibility to convert a customary land grant to a common law lease. Only one had detailed knowledge of the procedure. Those who were aware of the possibility said they would have liked to have a common law lease for several reasons. One was to get ‘full ownership’. Another was to gain access to credit. Yet another was to enjoy higher levels of security in the event of being relocated by the land board; in other words, “*to stand a better chance against the land board.*” That last reason reflects the belief that one would be entitled to higher compensation when land under a common law lease is repossessed by the land board. A university graduate from Tlokwen (who was renting) explained this lucidly. “*I know that you get the certificate of customary land grant first, that’s when you can do the title deed [a common law lease registered at the Deeds Registry]. I prefer title deed, because with a title deed you can do anything with the land, for example you can change the land from one use to another. And it is not easy for the government to relocate you from the land, you can refuse their price, you can put your own price.*” However, a land board official refuted the veracity of this perception, explaining that compensation rates are standardized and fixed and do not discriminate between customary land grant or common law lease. The only difference is that the common law leaseholders may be awarded additional compensation to cover the costs of having converted their customary land grant. The perceived security of common law leases might therefore be overestimated.

#### **Perceived security: ability to sell or transfer**

With respect to the possibility of selling property, people responded with a range of answers. Some thought it was possible, some not, while some had no knowledge on this topic. When asked whether they would sell, the respondents were almost unanimous: they all wanted to keep their plots. Among the various reasons offered, the main ones were that this was the only plot they had or that it was supposed to be inherited by the children. Some respondents preferred to lease out their land rather than sell it.

Most respondents believed that plots were not being sold, although others thought they were, noting that even vacant plots were being sold. Officially, the sale of undeveloped plots is not allowed (see Section 3.7.2)<sup>55</sup>. Nonetheless, as Kalabamu and Morolong (2004) observed, people employ lawyers to help them sign contracts whereby the prospective buyers will officially be allowed

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<sup>55</sup> Nevertheless, the Newsletter of Tlokwen Land Board (volume 1, issue 1, September 2010) suggests that undeveloped land can be transferred with their consent.

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to build a house on their plot and transfer the plot when the building is completed. These authors see the use of letters of agreement as an indication that purchasers are aware that by acquiring land outside formal channels they are placing themselves in a precarious position.

A few respondents in Tlokweng remarked that younger people had sold their plots, suggesting they preferred cash to buy cars and other goods. In Mogoditshane, the possibility of sale was considered limited for those accused of informal occupation who have not paid the fine.

### **Perceived security: inheritance**

The TLA recognizes the acquisition of land through inheritance. Both the death of the land holder and the inheritance arrangements have to be confirmed by the traditional authority before the land board can update their registers and issue new certificates. Cases have come to court whereby people did not register the inheritance with the land board. The courts tend to rule that transfer of property by inheritance without authorization by the land board is legal (Kalabamu and Morolong, 2004; Onoma, 2009). A few respondents said they had not reported the inheritance to the land board. One was in the process of applying for the new certificate. One lady in Tlokweng was clear about why she did not intend to do so: if her father's plot were put in her name, her 'right' to a free plot in Tlokweng would be void.

Basically, the respondents thought that plots are either inherited by the last born or by all children. Those who thought the heir was the last born reasoned that the last born would not have a plot yet, while the older children would already be married and have a plot elsewhere. As a retired widower from Tlokweng said, *"Mostly, it is given to the last born, the elderly are married. ...The ladies are getting married, they are going to develop a plot with the husband that side and the last born who is not married is automatically the one, whether it is a boy or a girl... In case of five girls, and all are married, that house is going to remain without anybody so they go there for family gatherings, they turn it into a family house."*

Under Tswana customary tenure, land rights could only be inherited by men (Kalabamu, 2011). However, almost none of the respondents distinguished rightful heirs by gender. The same scholar recognized this trend in Tlokweng, suggesting that inheritance norms and practices are largely egalitarian nowadays (Kalabamu, 2009). Besides the last born, only the children who were not already in possession of a plot were mentioned as eligible to inherit. In such cases, the other children might inherit cattle. Other respondents thought that all of the children could inherit the plot. Keeping the plot as a family asset was considered important. Not only could the children stay with their families on the same plot, but the plot would also be used for family ceremonies like weddings and funerals.

No arrangements were made for the inheritance of land rights. Some fam-

ilies did discuss the topic within the family. Respondents were aware of conflicting situations, such as children grabbing the property for themselves or to quickly sell the plot.

#### **Overall perceptions of tenure security**

Perceived security for informal occupiers is considered limited. Conversely, perceived security is considered fair for formalized informal occupiers who have a certificate and for people who had formally accessed plots without a certificate. People with formal access and a certificate have high perceptions of tenure security, although transfer possibilities were not well understood in some cases.

#### **Upgradability: extent of continuum of land rights**

There are three means of upgrading land rights in peri-urban Gaborone:

- People who are officially allocated land but did not collect their certificate are eligible;
- People who were illegally allocated land could be formalized by paying a fine;
- An official upgrade of a customary certificate to a common law lease can be arranged.

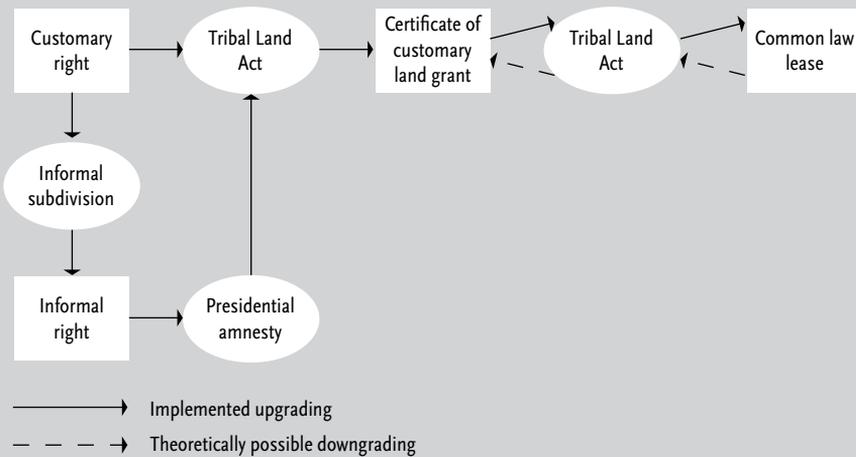
The first relates to the reluctance of land holders to collect their certificates, which they are required to do so by the TLA and will need it when applying for connections to water and electricity. The second means is a strategy to prevent eviction and demolition of the house. The third is a strategy to get access to loans. Only one respondent from Mogoditshane said she had converted her land grant into a common law lease. According to land board officials from both Tlokweng and Mogoditshane, hundreds of conversions are processed yearly. An employed married woman in Tlokweng tried to get a common law lease, but failed. She recounted it thus: *“We tried to get a title deed, by then we didn’t know it was going to end at the Ministry of Lands and Housing. We thought it was just come and register. We didn’t know you had to pay some money and that you have to visit some offices. That is why we gave up. We went to the land board, paid some money and went to offices but gave up. We wanted to get a loan to develop.”*

As discussed in this section, common law leases could be downgraded to customary land grants to benefit from its feature of duration in perpetuity. Figure 7.3 shows the full range of possibilities for upgrading (and downgrading) in peri-urban Gaborone.

### **7.4.5 Operational tools**

The operational tools are evaluated according to the criteria simplicity, speed, approach and completeness.

**Figure 7.3 Existing and potential downgrading and upgrading possibilities along the continuum of land rights in peri-urban Gaborone**



### **Simplicity: boundary system**

The certificate of customary land grant applies a simple boundary system. Only the dimensions of the plot are given on the certificate. The occupier has to mark the boundaries within a specified period of time. In many cases, the plots have already been surveyed for planning purposes. With respect to the common law lease, a survey plan has to be attached. Such plans are more detailed and complex.

Respondents mentioned a few conflicts over boundaries. Any conflicts that arise will be dealt with by the land board. One could also turn to the traditional authority, although many respondents immediately added that the chief will refer the issue to the land board. According to Kalabamu and Morolong (2004), the low levels of boundary disputes might be attributed to the long-standing cultural practice of boundary identification by fencing. Nowadays, this practice is enforced through the TLA.

### **Speed: high volumes**

The TLA came into force in 1970. Since then, the great majority of the land holders have been issued certificates of customary title or have converted these to common law leases. It is not known how fast this process went over the years. But clearly, the simplicity of the system makes implementation easy. Formalization of informal occupation takes a long time; it has been going on since 1992. The aim was to have formalization completed by 2012. The presidential amnesty is considered unable to handle high volumes. Tracing and formalizing informal occupiers have proved to be difficult and time-consuming. Moreover, the process may be delayed by the prevailing confusion about the implementation of the planned layout.

### **Approach: individual of systematic**

While certificates have been issued on a systematic basis, it is still up to the individuals to collect their certificate. Because the costs are affordable and

the land board is accessible, systematic registration is not a burden for the poor. The formalization of informal occupiers is carried out on an individual basis. Not only does the fine have to be settled but in some cases the plot has to be reduced in size as well. The conversion to a common law lease is an individual matter.

### **Completeness: coverage**

In the past, land boards have been accused of not issuing certificates for each and every allocation. Such practices render the registers incomplete and therefore ineffective (Kalabamu and Morolong, 2004). Their incompleteness might lead to disputes. Onoma (2009) takes an interesting position, claiming that disputes between land boards and individuals may empower both parties. In brief, while land boards try to punish people for informal occupations, the boards cannot prove the offence because the land registry is in a poor state, in both quantitative and qualitative terms. The informal occupiers can still claim they obtained their plot through the chief or by inheritance. In order to prevent long appeals at the tribunal and to avoid the probable loss of face when its case is rejected by the tribunal, the land board often resorts to issuing a customary grant to the informal occupier<sup>56</sup>. Onoma concludes that this solution will actually improve the land registry. The records will increasingly reflect the existing situation, while the beneficiaries can make undisturbed use of their land. Since these outcomes will merely affect the quantitative aspect of the registry, however, he adds that qualitative improvement is also indispensable.

Land in peri-urban Gaborone is managed entirely through the Tribal Land Act. On the basis of the literature and fieldwork, the distribution of land rights is estimated as follows:

- Squatters: There are no reports on squatters.
- Informal subdivision: Tlokweng has less than 5%; Mogoditshane has between 10% and 30%. For this category, the presidential amnesty is implemented.
- Customary tenure: Under the traditional authority, customary tenure ceased to exist. However, customary rights are formally recognized by the land boards.
- Statutory tenure: Tlokweng is covered by more than 95% (including some freehold farms). Mogoditshane is covered between 70% and 90%. Included in these percentages are a few households who have been formally allocated land but did not collect their certificate.
- Not all inhabitants hold land rights: between 50% and 60% of the house-

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<sup>56</sup> An interesting aspect of his paper is the fact that 'ordinary' people are able to manipulate the land registration system, while in general the elite are accused of manipulation.

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holds in both settlements rent their accommodation.

The majority of land holders have been issued certificates and common law leases. With respect to the implementation of the TLA, the registration is considered fairly complete. The coverage of common law leases is rated as 'majority', under the assumption that the majority of land holders willing to convert have done so. With respect to the presidential amnesty, the majority of informal occupiers are considered to be known; they are summoned to be formalized. The tool is therefore considered to be implemented for the majority of the targeted people. At the time of fieldwork, the process was still going on.

### **7.4.6 Results and limitations of fieldwork**

The fieldwork produced a clear picture of land issues in peri-urban Gaborone and provided all data to evaluate the land tools. Three remarks concerning the case study design have to be made. First of all, access to respondents had to be organized without external assistance. The Ministry of Lands issued a research permit, which could be shown when requested. Because plots are allocated irrespective of the applicant's wealth, people from all walks of life can settle in the same neighbourhood. So, given the relatively low incidence of poverty in Botswana, it was challenging to find respondents who fell into the target group of the study. Secondly, the case-study area had to be divided over two settlements because tribal sentiments were found more important in Tlokweng than in Mogoditshane. This added value to the evaluation of the land tools. Thirdly, several scholars have discussed the land problems in peri-urban Gaborone, like Home (2001, 2004), Molebatsi (2001), Kalabamu and Morolong (2004), Maripe (2007), Onoma (2009), Nkwae and Dumba (2010), Shabane and Nkwae (2010) and Kalabamu (2011). These works already discussed the land tools and related problems, like informal occupation, the waiting lists and the planned lay-outs. The fieldwork added on that through an update of the latest developments, especially relating to the latest presidential amnesty. And, last but not least, by evaluating the land tools according to the framework, it made the tools comparable with tools in other countries, contributing to general knowledge of the progress made in pro-poor land administration.

## **7.5 Analysis of land tools in peri-urban Gaborone**

This section will answer the three sub-questions as formulated in Section 7.1.

### **How did poor people access the land they occupy?**

There are several ways to access land formally in peri-urban Gaborone: allocation by the land board; purchase of developed land; or inheritance. The

combination of limited supply and huge demand is conducive to opportunistic practices in the search for land. In Mogoditshane, this has resulted in informal occupation which can be formalized by paying a fine. In most cases, the informal occupiers had bought their plot from customary land owners. There is no indication that customary land owners have been called to account for their role in the informal transfers. Nonetheless, the TLA, Section 39 (1), clearly declares any person who transfers land rights without approval from the land board to be guilty of an offence and liable to pay a fine of BWP 10,000 (USD 1,458). Both the fieldwork and the literature suggest that all of the consequences are shouldered by the buyer, however, leaving the seller to profit from the sale. It is therefore intriguing that the informal occupiers are referred to as self-allocators, implying that they are solely responsible for their informality. Some communities, notably Tlokweg, take an active stance in preventing informal occupation in their vicinity. As discussed in Section 7.3.4, the demand for land greatly exceeds the number of plots made available by the land boards in Tlokweg and Mogoditshane.

#### **What kind of land rights are available and in which way are these rights supported by land tools?**

A detailed continuum of land rights has been revealed. Table 7.5 shows which rights were encountered during fieldwork. At the lower end of the continuum lies the category of informal occupation. It was almost non-existent in Tlokweg but present in Mogoditshane. All instances of informal occupations that were encountered during the fieldwork were identified as such by the land board. They were found to be in various stages of formalization:

- Respondents who had not paid the fine (or not in full);
- Respondents who had paid the fine but not been issued certificates;
- Respondents who had paid the fine and been issued certificates.

The perceived security of people in the second sub-category was negatively influenced by the uncertainty created by superimposing the layout of the development plan on the layout in reality. This situation could also hinder formalization, since the occupants remain uncertain about the size and location of their plot will be once it is formalized. One problem is that they were not consulted about the development plans. A second is that they were not properly informed that the size and shape of their plots might change during the formalization exercise. In this case study, no official procedures were found on how to deal with such situations. One solution could be to use land readjustment, as proposed earlier by Fourie (2004). The status of people in the third sub-category is equal to that of people whose land had been formally allocated.

The establishment of land boards, the exclusion of tribal authorities from the boards and the separation of access to land from tribal membership together mark a far-reaching policy shift. It reflects a steady movement away from customary practices toward the new statutory tenure. With respect to

the management and administration of land, the customary authorities have been fully replaced by statutory authorities. However, the customary land rights and their conditions have, in principle, been retained. Thus, one could classify customary land rights under the TLA as statutory tenure under customary norms.

The category of informal tenure will supposedly disappear if the government of Botswana succeeds in completely applying the 2009 Presidential Amnesty to all informal occupiers. Only statutory tenure (under customary norms) will then exist in the peri-urban areas of Gaborone. However, as long as the pressure on land remains extremely high, people will surely continue to acquire land by conducting informal transactions or through corrupt or illegal practices.

#### **Which levels of tenure security are attached to the land rights?**

People who were allocated land but did not collect their certificate do not enjoy legal security. The simple reason is that possession of a certificate is mandatory under the TLA. Almost all respondents in Tlokweng did have certificates of customary land grant. This was not the case in Mogoditshane, where informal occupation was common among the respondents. Land holders with a certificate of customary land grant enjoy average levels of tenure security. Their main disadvantage under that tenure is that they cannot present a certificate as collateral for credit.

The TLA allows people to upgrade from a customary land grant to a common law lease. According to the land board, this happened frequently. Since few of the respondents had upgraded their titles, it is assumed that wealthier people tend to use this facility. The common law lease usually offers higher levels of legal security because it can be used as collateral for credit. Common law leases are perceived to be superior. Some respondents indicated that they can claim more compensation in case of compulsory acquisition if they have a common law lease, as explained in Section 7.4.4.

Assuming that legal and perceived security should improve as one moves along the continuum, Table 7.5 shows a logical sequence. However, three anomalies are apparent:

- The lowest amount of perceived tenure security is found among informal occupiers who do not have a certificate because their plots do not comply with the development plan.
- In terms of legal security, common law leases were attributed a value equal to that of the certificates of customary land grants, despite their differences. The common law lease can serve as collateral and its duration is limited to 99 years. In contrast, the certificate of customary land grant is perpetual but may not be used to secure loans. The TLA makes no mention of what happens at the end of the lease period. Because common law leases have been issued since 1970, there is no reason to assume they have any effect

**Table 7.5 Overall evaluation of land tools in peri-urban Gaborone**

Tools	Criterium	Indicator	Continuum of land rights		
			Informal occupation (Mogoditshane only)		
			Not/partly paid	Paid, no certificate	Paid, certificate
<b>Equity</b>					
Legal framework	Inclusivity	Legal recognition*	Good	Good	Good
		Secondary rights*	Complete	Complete	Complete
Institutional framework	Inclusivity	Support for the poor*	None	None	None
		Co-management	None	Limited	Limited
		Accessability	Fair	Fair	Fair
Individual tenure	Affordability	Costs	Partly affordable	Partly affordable	Partly affordable
<b>Effectiveness</b>					
Area tenure	Clarity	Awareness	Partly aware	Partly aware	Partly aware
		Type of right	Informal	Occupancy	Occupancy
Individual tenure		Transfer possibilities	None	None	Conditional
		Duration	Limited	Limited	Perpetual
		<b>Legal security</b>	<b>None</b>	<b>Limited</b>	<b>Fair</b>
		Fear	Mixed	Mixed	Mixed
		Documented evidence	No	No	Formal
		Transfer possibilities	Mixed	Mixed	Possible
		Inheritance	Equitable	Equitable	Equitable
	<b>Perceived security</b>		<b>Limited</b>	<b>Limited</b>	<b>Fair</b>
	Upgradability	Extent of continuum*	Full range	Full range	Full range
	<b>Efficiency</b>				
Operational	Simplicity	Boundary system	None	None	Simple
	Speed	High volumes	No	No	No
	Approach	Individual/systematic	Individual	Individual	Individual
	Completeness	Coverage	Majority		

\* The value of these indicators are not completely attributed to specific land right categories; they are valid throughout (part) of the continuum.

on perceived tenure security, now or in the near future.

- The perceived tenure security to be derived from a common law lease is unduly overestimated.

The continuum of land rights in peri-urban Gaborone is, from a legal perspective, considered simple because only two types of land rights apply. One could argue that parts of Tlokweng and Mogoditshane are fully urbanized and could be incorporated within the city of Gaborone<sup>57</sup>. However, a different continuum of land rights exists on urban land, where there are also problems with access and tenure security. The urban land rights system in Botswana is therefore more complex than the system described in this chapter. Kalabamu and Morolong (2004) conclude that, with the exception of freehold, land rights in Greater Gaborone are rather ambiguous, ill-defined and insecure for long-term development. Nevertheless, considering the context of sub-Saharan Africa, it is noteworthy that the majority of land rights within Greater Gaborone are being administered and the majority of Greater Gaborone has been formally planned.

<sup>57</sup> Mogoditshane and Tlokweng are not declared a town or city. Land and property in cities and towns are taxable whereas tribal land is not. This may contribute to the reluctance of people to be incorporated within Gaborone city (Kalabamu and Morolong, 2004).

Table 7.5 Continuing

Continuum of land rights		
Formal occupation		
No certificate	Certificate	Common law lease
Equity		
Good	Good	Good
Complete	Complete	Complete
None	None	None
Limited	Limited	Limited
Fair	Fair	Limited/Fair
Affordable	Affordable	Affordable
Effectiveness		
Partly aware	Partly aware	-
Occupancy	Occupancy	Leasehold
None	Conditional	Conditional
Limited	Perpetual	Sustained
<b>Limited</b>	<b>Fair</b>	<b>Fair</b>
None	None	-
No	Formal	-
Mixed	Mixed	-
Equitable	Equitable	-
<b>Fair</b>	<b>Good</b>	-
Full range	Full range	-
Efficiency		
None	Simple	High accuracy
Realized	Realized	No
Individual	Systematic	Individual
Limited	Majority	Majority

## 7.6 Conclusions

The third research question: *To what extent can the innovative land tools as applied in peri-urban Gaborone be considered pro-poor, based on the evaluation criteria?* can now be answered. The results of the evaluation are displayed in Table 7.5.

The legal framework for land administration in Botswana is considered pro-poor because informal and customary land rights are recognized. With respect to the institutional framework, there is room for improvement with respect to co-management and support for the poor, however. One of the main concerns is the non-recognition of informal occupiers. Moreover, the framework does not offer the poor special advantages or protection. It is neutral in its design, since all citizens have equal rights to land. Regarding access to land, people on low incomes have to compete with the wealthier population. Poor people settle in the same areas as wealthier ones. Unlike most other cities in sub-Saharan Africa, Tlokweng and Mogoditshane do not have a clear separation of low-cost, medium-cost and high-cost settlements.

The poor are at a serious disadvantage with respect to formalization. The fee (which takes the form of a fine) is unaffordable to them. Those who cannot afford to pay will be evicted and their houses will be demolished. The government of Botswana is evidently determined to prevent informal occupation and has imposed a fine as a deterrent. However, if this policy is fully implemented, distressing cases may arise among vulnerable occupants such as the

unemployed, the illiterate and orphans. Apart from government social workers, there are no organizations in place to support these people in disputes with the land board.

Land administration is governed by the TLA. While it is not specifically pro-poor, the act does contain pro-poor elements: land is allocated for free and the fee for the certificate is affordable for people on low incomes. However, upgrading a certificate to a common law lease is perceived as expensive and complex by low-income groups. Furthermore, many respondents were unaware of the existence of this land right. The presidential amnesty has been used to formalize informal occupations. Upon payment of a fine, their occupation will be formalized through a certificate of customary land grant. Once the residents are in possession of a certificate, their perceptions of security are considered fair in both settlements. That is because they can then invest in their property and develop structures to supplement their income through rent. A considerable number of informal occupiers in Mogoditshane suffered from tenure insecurity. They felt insecure because they did not possess a certificate and because they were unsure how they would be affected by the implementation of the layout foreseen in the development plan. Perceptions of tenure security of a common law lease, which is probably only accessible to the wealthier, could be higher than one might expect in light of its legal provisions.

Basically, the legal framework and the land boards provide sufficient tools for pro-poor land administration in Botswana. Botswana has clearly chosen to introduce strong statutory regulations through the Tribal Land Act. Their enforcement has reduced the incidence of problems related to multiple tenure systems. Nonetheless, an informal tenure regime had emerged through informal occupation and it may continue to exist.

Based on the respondents' perceptions, the implementation of the TLA in Tlokweng is considered to be implemented fairly. Still, access for non-indigenous applicants is apparently more difficult than for the indigenous inhabitants. In Mogoditshane, however, after approximately 20 years of interventions by national government and the land board, the issue of informal occupation has not yet been solved. The fines set for informal occupation are supposed to have a deterrent effect. Nonetheless, these fines are unaffordable to vulnerable groups (e.g., orphans, the illiterate and the unemployed) and will therefore lead to socially undesirable evictions.

The formalization of informal occupation in Mogoditshane has been combined with the implementation of a local development plan. However, people have not been consulted on the new layout plans, nor have they been informed about the implications of formalizing their individual plots. Public participation is recommended with respect to the formalization process, particularly in tandem with the planning process. In order to manage the implementation of the new layout plans, it would be advisable to introduce a pro-

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cedure for land readjustment. In this way, the rights and responsibilities of all parties would be better safeguarded.

The land tools implemented in peri-urban Gaborone are in general properly designed. This applies in particular to the Tribal Land Act. However, proper implementation seems to be a challenge, especially in Mogoditshane. Both of these land boards are aware that the demand for land exceeds their capacity for allocation. The government responded with the LAPCAS project (see Section 3.7.2), which is aimed at the improvement of technical systems and procedures. Yet the shortage of land cannot be addressed by land administration alone; a policy review is urgently required, particularly one giving attention to the needs of the poor. Additionally, a fundamental problem has arisen and it should be taken more seriously. It concerns the prevailing sense of entitlement among the majority of Batswana: that they are entitled to land throughout the country in combination with free land delivery, despite rising land values in peri-urban areas. Such sentiments can only be addressed through policy changes.

### **Recommendations**

Informal tenure in Botswana is limited, although the government has been struggling to formalize this type of tenure near Gaborone for more than two decades now. Several resolutions, policies and acts have been amended to correct the situation. Implementation of new development plans in combination with the formalization of informal occupiers is carried out, though without community participation. It is recommended to increase community involvement and attain higher levels of co-management, for example through some kind of land readjustment. Additionally, because the fines that must be paid to qualify for formalization are high, it is recommended to either show leniency toward the very poor and vulnerable or to provide them with sufficient support and alternative places to settle when their home is slated for demolition. It was also observed that no NGOs are actively supporting informal settlers in peri-urban areas. If present, however, they could play an important role in supporting the poor and/or enhancing community participation. A potential candidate for that role might be the NGO Ditshwanelo, the Botswana Centre for Human Rights.

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# 8 Evaluation of innovative land tools: a synthesis

“Promote security of tenure for all segments of society by recognising and respecting a plurality of tenure systems, identifying and adopting, as appropriate to particular situations, intermediate forms of tenure arrangements, adopting alternative forms of land administration and land records alongside conventional land administration systems, and intensifying efforts to achieve secure tenure in post-conflict and post-disaster situations” UN-HABITAT resolution HSP/GC/23/CRP.18 (as cited in UN-HABITAT and GLTN, 2011, p. 3).

## 8.1 Introduction

This chapter will answer the fourth research question: *What can be learnt from the design and the implementation of innovative land tools in the areas that have been studied?* This will be done by analysing the results from each case study, as described in Chapters 5, 6 and 7, according to the observed strengths and weaknesses. The results will then be discussed in relation to the criteria and their indicators used in the evaluation. Together, the cases offer a rich and detailed picture of the range of methods used to gain access to land, highlighting the resulting land rights and the available land tools. Each type of innovative land tool will be discussed in Sections 8.2 through 8.5. The tools discussed in Sections 8.2 and 8.3 are evaluated on the national level, those treated in Section 8.4 and 8.5 on the settlement level.

The innovative tools are rated according to the following rough classification:

\* : the land tool is considered limited pro-poor, meaning that the majority of the pro-poor criteria are not met;

\*\* : the land tool is considered fairly pro-poor, meaning that about half of the criteria are met;

\*\*\* : the land tool is considered pro-poor, meaning that the majority of the pro-poor criteria are met.

The synthesis is followed by a review of the case-study design and the chapter ends with some conclusions and recommendations.

## 8.2 Legal framework tools

The legal framework tools have been evaluated in light of the criteria of legal recognition and secondary rights. The following strengths and weaknesses have been ascertained:

Strengths:

- Customary tenure recognized in the constitution (all case-study areas);
- Informal tenure recognized through sector law (Oshakati, Chazanga);
- Customary tenure recognized through sector law (peri-urban Gaborone).

Weaknesses:

- Failure to deal with land access (all case-study areas);
- Lack of current land policies (all case-study areas);
- Secondary rights are ignored (Oshakati, Chazanga).

#### **Inclusivity: legal recognition**

Two main policy choices advancing towards legal recognition were found. The first one is to enact customary tenure in sector law; the second one is the formalization approach, moving from informal tenure to a more formal tenure. The recognition of customary tenure and the formalization of informal tenure through sector laws would create, at least from a legal perspective, a singular tenure system. Once established, it would provide a clear institutional framework with clear mandates for land management and administration. Although UN-HABITAT's resolution cited at the beginning of this chapter refers to *'recognising and respecting a plurality of tenure systems'*, the legal framework tools may in the end enforce a singular tenure system.

#### **Inclusivity: provision of secondary rights**

The impact of either the loss or continuation of secondary rights could not be evaluated from the perspective of customary land holders because so few of them were interviewed. However, it is clear that secondary rights can be problematic to informal settlers, such as those who complained about the nuisance of free-roaming cattle. Along with urbanization, a trend was observed whereby customary secondary rights are gradually being rescinded, whereas new settlers desire access to urban services like water and electricity. In settlements in Namibia and Botswana, a formal land right was required for eligibility to apply for such services. Access to services may therefore depend on the implementation of innovative land tools. In an optimal situation, customary right holders who are stripped of their secondary rights should be compensated for that. One may question the cost-effectiveness of administering individual secondary rights, in view of their low economic value. Nevertheless, it is suggested to include secondary rights in enumeration projects and have a safety net for those vulnerable people who are heavily dependent on secondary rights (Toulmin, 2009; Zevenbergen, Augustinus et al., 2013).

#### **Additional observations**

Most of the innovative land tools studied did not deal with land access and will not prevent informal land delivery. Three main forms of access can be distinguished: customary, informal and formal. Hybrid forms are possible as well, for example neo-customary practices and extra-legal practices, which are informal means of access using either customary or formal practices. For the poor, formal access to land is almost impossible in all case-study areas for a variety of reasons: complexity, unaffordability, unavailability of formal plots

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and excessive demand. The limited delivery of formal plots in peri-urban areas will continue to be a driving force for informal delivery mechanisms. A discrepancy was observed between formal and informal land access. In the countries studied here, land is formally delivered for free or at low cost. Barren land is often regarded as having no value; value is only attached to developed land. From this point of view, land access is pro-poor. Due to the failure of the formal land delivery systems, however, land is acquired informally. Informal land acquisition is not affordable for the poor because they would have to pay market prices. It is evident that inequity is introduced at the stage of land access (Payne, 1997). Only two innovative land tools were found dealing with land access: the savings scheme in Oshakati and the starter title of the FLTA in Namibia. Tools dealing with group rights are therefore promising for the provision of access to land.

'Pure' informal land access, in the sense that land is occupied without authorization or consultation, was only encountered in Oshakati. In Chazanga and peri-urban Gaborone, land was subdivided and sold under customary norms, even though such transactions were not formally permitted. The approaches of the respective governments are quite different. Botswana considers the deals illegal and imposes a considerable fine on the buyer, which must be paid to formalize the transfer. This is the only tool encountered that may have a deterrent effect on informal land access. In Chazanga, however, such transfers are tolerated and formalization may occur when the area is declared an improvement area. While Botswana has a zero-tolerance policy, both Zambia and Namibia lack the capacity to prevent informal land access. Nevertheless, evictions and demolitions can still occur in these two countries, as indicated by media reports and interviews with NGO officials. An innovative legal framework should prevent evictions and demolitions that are solely based on informal or illegal land claims. Land policies should make it clear under which circumstances evictions and demolitions would be allowed and how affected land holders would be compensated. Additionally, the policies should indicate how the innovative land tools are going to be implemented.

The free or low-cost delivery of land raises demand and encourages speculation. There are policies in place to suppress demand, particularly by only allowing one certificate or occupancy permit for each inhabitant. Such policies are in effect for the HSIAA in Zambia and the FLTA in Namibia and they apply within a 60-km radius of Gaborone in Botswana. These policies impose extra challenges on the decentralized land management institutions. Nevertheless, the demand for formal land in peri-urban areas far outstrips the supply. The resulting pressure on (what is perceived to be) customary land in peri-urban areas is conducive to customary land transfers. The nature of such transfers is unclear; which rights are transferred, and how does formalization affect them? As discussed in Section 2.3.3, a larger bundle of rights is being sold than had been delivered through the customary system. In fact, people

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may sell land that they do not really own (and for which they have paid little or nothing) and thereby benefit fully from the value increases that occurred in the wake of the rural-urban transition. During this study, no evidence was found that sellers are ever challenged about their informal land dealings. In case of formalization, the buyer has to secure his or her right. One could end up with a right that is narrower than what people presume to have bought. It is recommended that future research look into different models for land delivery in peri-urban areas and investigate the exact nature of neo-customary land sales.

#### **Pro-poor rating**

It is concluded that the legal frameworks in the case studies all make provision for the management and formalization of customary and informal areas. Therefore, all are rated as pro-poor:

Namibia \*\*\*

Zambia \*\*\*

Botswana \*\*\*

With respect to Namibia, the framework was originally rated as fairly pro-poor. However, after the enactment of the FLTA, it was considered to be pro-poor overall. Nevertheless, there are still deficiencies of lesser importance; it is recommended to finalize the drafted land policies and to pay more attention to the loss of secondary rights.

## **8.3 Institutional framework tools**

The institutional framework tools have been evaluated through the indicators accessibility, co-management and support for the poor. The following strengths and weaknesses have been observed:

Strengths:

- Decentralized local land registries (all case-study areas);
- Community representation and participation (Chazanga);
- NGOs and CBOs supporting the poor in land issues (Oshakati, Chazanga).

Weaknesses:

- Inadequate formal involvement of customary authorities (all case-study areas);
- Inadequate support for the poor (peri-urban Gaborone).

#### **Inclusivity: support for the poor**

In all three countries, governmental support is limited with respect to land access for the poor. Although formal land delivery provides land for free or at low cost, it is still difficult for the poor to access land. In Namibia (SDFN, NHAG) and to a limited extent in Zambia (HfH, PPPH), NGOs and CBOs are en-

gaged in helping people to access land in peri-urban and urban settings. In contrast, no NGOs or CBOs dealing with land issues in these settings were encountered in Botswana.

Especially in Namibia, the SDFN, with support from the NHAG, has made impressive strides. As discussed in Section 3.5.2, they are able to work at scale, which they demonstrated in the CLIP program, a nationwide enumeration exercise. On the other hand, one may question their ability to increase tenure security for the majority of the informal settlers. Although the savings scheme proves to be a successful innovative land tool, it is not believed that it can be implemented at scale. This will be briefly discussed in Section 8.5.

### **Inclusivity: co-management**

The results of the case studies show some variation in the position of traditional authorities, the degree of community representation and participation and the impact of project implementation.

This study shows that peri-urban areas under multiple tenure regimes are subject to wrangling about authority over land issues. Most legal land tools clearly exclude traditional authorities from land management. Nevertheless, they retain some influence on land issues and/or keep separate land administrations. The debate on the inclusion (or exclusion) of traditional authorities in land management is not sufficiently resolved in most countries. In Botswana, traditional authorities, although initially included, have been excluded from the land boards since 1993. There, land is no longer vested in the tribe but is intended for the entire population. Especially in Tlokweng, tribal sentiments towards land access were found to persist nonetheless. In Ghana, traditional authorities are involved in land administration in peri-urban areas through customary land secretariats. However, the performance of these secretariats is still under debate (see Section 3.4.2).

The main issue here is authority over a valuable resource: land. In order to prevent unclear land management structures and double land administrations, this study advises to include customary authorities within the institutional framework in those peri-urban areas where they used to have control. This will not automatically resolve the issue of authority over land. But at least it will provide an accepted forum where discussions could be held, preferably under democratic control. Additionally, the involvement of the customary authorities is needed to draw upon local knowledge about the land rights issued through (neo-)customary practices. Although the inclusion of customary authorities may be difficult to enforce, it will reduce land problems at later stages.

Especially in Chazanga, the community is involved at the grassroots level, both in land issues and in the development of the settlement. The activities of the WDCs and their zone leaders distinguish Chazanga from the two other study areas in that the committees are authorized to monitor and witness land

sales within their territory. Their activities result in informal proof of transactions (or 'petits papiers', as discussed in Section 2.3.3). These documents may be of some help during the anticipated formalization and provide the necessary local knowledge. The WDC is a good example of an innovative institutional land tool and can be useful in enumeration exercises. In peri-urban Gaborone, community representation is arranged through the election of land board members. Nevertheless, the degree of community participation at the grassroots level in peri-urban Gaborone is rather low. Even with a history of eviction and demolition, there was little evidence of an organized community.

The level of co-management tends to be linked to project implementation. This is evident in the CDCs in Oshakati and the WDCs in Chazanga. The activities of CDCs had slowed down and the cooperation with the local authority was no longer highly valued. The results of the fieldwork suggest that the poor are best supported through local committees because these best represent the philosophy of co-management. Nevertheless, involvement of local committees and CBOs is no guarantee of success. For example, mismanagement and the vested interests of major stakeholders might put the poor at a disadvantage or create a gender bias<sup>58</sup>.

#### **Inclusivity: accessibility**

In all case-study areas, the innovative land tools are mainly administered by institutions that lie within the city itself. Their offices might still be beyond walking distance, so some people will still need to arrange transport to get there. The innovative tools are a clear improvement over the conventional ones with respect to accessibility. Nevertheless, they may be slightly disadvantageous with respect to (neo-)customary land tools; the reason is that headmen tend to stay closer to the land holders than the local authorities do. Accessibility becomes more restricted when applying more conventional land tools for which people have to visit more offices. In the fieldwork areas, some of the offices were located at significant distances: in Chibombo for Chazanga, in Windhoek for Oshakati and in Molepolole for Mogoditshane.

#### **Other observations**

It was also observed that in some cases land management authorities are distinct from planning authorities. Table 8.1 summarizes some additional characteristics of the case-study areas, expanding on Table 1.2. Although it has not been investigated in-depth, in Tlokweng and Mogoditshane, where the two authorities were distinct, their separate operation raised problems with respect to land rights and planning. It is therefore suggested that both functions be carried out by one authority. That would facilitate an integrated approach.

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<sup>58</sup> The performance of the co-managed organizations has not been studied on such a detailed level in this study.

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**Table 8.1 Additional characteristics of case-study areas**

Settlement	Zambia	Namibia	Botswana	
	Chazanga	Oshakati	Peri-urban Gaborone	
			Mogoditshane	Tlokweng
Local political and planning authority	Lusaka City Council	Oshakati Town Council	Kweneng Council	South East District Council
Local formal land management authority	Lusaka City Council	Oshakati Town Council	Mogoditshane sub Land Board	Tlokweng Land Board
Rate of urbanization	4.15%	3.14%	2.07%	

**Pro-poor rating**

The institutional frameworks in the case studies are therefore rated as follows:

Namibia \*

Zambia \*\*\*

Botswana \*

Although accessibility has been improved, there is ample room for improvement in co-management and support for the poor. It is recommended to include customary authorities, CBOs and NGOs under co-management approaches. Customary authorities and CBOs will provide for local knowledge, while NGOs may create awareness and empower the poor on a national scale.

## 8.4 Tenure tools

The tenure tools are subdivided into area and individual tenure tools and will be discussed accordingly.

### 8.4.1 Area tenure tools

The area tenure tools have been evaluated through the indicator awareness. The following area tools have been studied: the extension of townland boundaries (Oshakati); the declaration of an improvement area (Chazanga); and the declaration of a tribal land area (Tlokweng, Mogoditshane). The following strengths and weaknesses were observed:

Strengths:

- The availability of fora where land issues and land tools are discussed (all areas);
- Landholders have adequate knowledge of their own tenure situation (Oshakati, peri-urban Gaborone);
- Ending multiple tenure systems from a legal perspective (all areas);
- Retaining customary tenure (peri-urban Gaborone);
- Allowing for implementing individual tenure tools (all areas).

Weaknesses:

- Some land holders have inadequate knowledge of their own legal tenure situation (Chazanga);
- Limited knowledge of the range of available land tools (all areas);
- Inadequate communication about land issues and formalization (all areas);
- (Neo-)customary and informal practices continue (all areas);

- Overnight tenure changes (Oshakati, Chazanga).

### **Clarity: awareness**

The criterion awareness concerns the extent to which people are aware of their tenure status and the opportunities that are offered through the legal and institutional frameworks. In all case-study areas, the authority over land management had been removed from the traditional authority and assigned to statutory institutions, either the council or a land board. A large majority of the respondents were aware that final authority had been removed from a traditional authority and vested in a statutory body. Only in Chazanga did a significant number of people still believe that land was being managed by the traditional authority. In general, people are informed at gatherings like kgotla-meetings in peri-urban Gaborone, meetings of the WDC in Chazanga and meetings of the savings scheme in Oshakati. Nevertheless, communication remains inadequate; not all land holders are reached through such meetings and in many cases not all stakeholders participate. Communication is expected to improve when more attention is paid to co-management, as discussed in the previous section.

Respondents in all of the studied settlements were less aware of the range of available land rights and tools. A lower level of awareness might limit the inhabitants' use of the opportunities offered through the continuum of land rights. The pursuit of awareness and empowerment of the poor with respect to current land tenure and possibilities to upgrade is the first step toward a pro-poor land policy. UN-HABITAT (2007c) suggests conducting two awareness campaigns: one during the policy development process, the other after the formalization process to inform the inhabitants about the new procedures relating to innovative land tools. This study adds a recommendation for continuous communication in peri-urban areas as long as the tenure situation remains dynamic, even long after the formalization process. Examples of issues for continuous communication are the prevention of neo-customary and informal processes and the collection of certificates.

### **Other observations**

This study showed that all case-study areas needed area tools before the individual tenure tools could be applied<sup>59</sup>. The rationale behind area tools is to terminate the co-existence of multiple tenure systems and provide instead a set of formal land rights. From a legal perspective, these tools are successful. From a pragmatic angle, however, norms and practices from informal and customary systems still exist and continue to evolve. Therefore, whereas area

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<sup>59</sup> The only tool found which did not require an area tool was the conversion of customary land into leasehold in Zambia.

tools legally end the multiplicity of tenure systems, they might de facto stimulate it. Or, as Mostert (2011) shows in the South-African context, tenure reform brings complexity when customary tenure has to be merged with the conventional land administration system. According to Payne (2011), cultural practices take longer to change than laws, and their pace of change is highly variable. Nevertheless, the case studies confirm the descriptions in UN-HABITAT and GLTN (2011), which demonstrate that customary tenure is eroding and being replaced by other informal and formal practices in peri-urban settings<sup>60</sup>. It is concluded that legal tenure multiplicity will end through the area tools, while de facto tenure multiplicity may continue to exist. This can be discouraged by continuous communication and co-management.

The expansion of cities by enlarging their jurisdiction is expected to happen more often in sub-Saharan African cities. Overbounding enables cities to incorporate the growing number of urban settlers in the periphery. The study gave several examples: of Oshakati; an assumed boundary extension of Lusaka in Chazanga in 1975; examples from Kenya (see Section 3.3.2); and the proposed boundary extension for Lusaka in the urban development plan. Oshakati was extended overnight without informing the land holders beforehand, while the affected traditional authorities were consulted while drafting the urban development plan of Lusaka (Ministry of Local Government and Housing (MLGH), Lusaka City Council (LCC) *et al.*, 2009b). In this regard too, it is advisable to take a co-management approach which creates awareness and limit the continuous development of neo-customary and informal practices. On the other hand, prior knowledge of boundary extensions and expected formalization generally attracts prospective land holders. It is therefore recommended to carry out an enumeration beforehand and deliver land rights within the shortest possible time.

### Pro-poor rating

The area land tools are evaluated through the indicator awareness. In peri-urban Gaborone and Oshakati, it was considered fairly pro-poor. The land holders had sufficient knowledge about their own tenure situation but limited knowledge about other land tools. In Chazanga, on the other hand, many land holders had limited knowledge about their tenure situation. Therefore, awareness is rated as limited pro-poor for Chazanga. The ratings are thus as follows:

Oshakati   \*\*  
 Chazanga   \*  
 Peri-urban Gaborone \*\*

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<sup>60</sup> Despite the fact that customary tenure is often recognized within the legal framework.

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## 8.4.2 Individual tenure tools

The following individual tenure tools have been evaluated on the basis of the indicators affordability, legal tenure security, perceived tenure security and upgradability:

- Oshakati: Recognized occupancy and savings scheme;
- Chazanga: Occupancy license and conversion to leasehold;
- Peri-urban Gaborone: presidential amnesty and customary land grant.

The land tools related to FLTA in Oshakati and the common law lease in peri-urban Gaborone are not discussed, as they could not be completely evaluated.

The following strengths and weaknesses have been observed:

Strengths:

- Occupational component of formalization affordable (all areas);
- Improvement of legal security (all areas);
- Recognition of heirs (savings scheme Oshakati);
- Opportunities to upgrade (peri-urban Gaborone and Oshakati);
- Demand control over peri-urban land (all areas).

Weaknesses:

- Capital component of formalization not affordable (Chazanga, peri-urban Gaborone);
- Dual upgrading possibilities (Chazanga);
- Varying levels of perceived tenure security during formalization processes (all areas);
- Limited opportunities for upgrading (Chazanga).

### **Affordability: costs**

Affordability is used as a criterion for individual tenure tools. It should be noted that affordability of land access is in fact more important for the poor. Nevertheless, as discussed in Section 8.2, there are few innovative tools dealing with land access. Reliable data on the costs of innovative land tools that were passed on to the land holders proved difficult to collect during fieldwork. The information used in this study therefore comes from a mixture of sources: the interviews with land holders and professionals and the literature. A capital and occupational component of the costs are distinguished, as described in Section 4.3.2. The occupational component is considered pro-poor in all cases; the capital component of the HSIAA in Chazanga and the presidential amnesty in peri-urban Gaborone are not. Nonetheless, the respondents in Chazanga did not complain about the costs of either component.

Affordability is at odds with the cost-recovery approach for the land management authority. Two ways have been found to reduce costs. The first is to register a large area in the name of a group through conventional land tools, as envisaged by the savings scheme and the FLTA. There is also evidence that the council and NGOs support savings schemes by carrying out

the required survey at little or no cost, as described in Section 5.3.6. The second way is to alter the specifications and to allow exemptions from certain regulations. Specifications may be altered by prescribing lower standards and allowing certain tasks to be performed by less-qualified personnel, such as the land measurer under the FLTA. In Zambia, declared improvement areas are exempted from the complex standards described in the Land Survey Act and Town and Country Planning Act. The issue of complexity will obviously be treated more extensively under the criterion simplicity, described in Section 8.5.

Making use of economies of scale, simple regulations and low accuracy will reduce the capital component. With respect to the occupational component, it would be an improvement to differentiate between the poor and those who are better off. In cases where taxes and rates do not apply (which is often the case in peri-urban areas), land rent might be linked to house value or building volume. This, however, introduces another task for the administration, which often suffers from limited capacity already.

### Legal security

The degree of legal security is evaluated in terms of the type of right the tool offers, in terms of transfer possibilities and in terms of duration. The individual tools result in individual land rights along the continuum. Two types of individual tenure tools were discovered in the case-study areas: step-in tenure tools and consolidated tenure tools. Step-in tools offer basic occupancy rights of limited duration, and these rights may be supported by some formal documentation. Some examples of step-in tools are the following: recognized occupancy, the savings scheme (without freehold) and starter titles in Namibia; the occupancy license in Zambia; and the presidential amnesty in Botswana, provided that the occupier can pay the fine.

Consolidated tools offer land rights, of sustained duration, accompanied by formal land right documents describing the plot. Two examples of consolidated tools are the land hold title in Namibia and the customary land grant in Botswana. Both step-in and consolidated tools supplement conventional tools such as leasehold in Zambia, freehold in Namibia and the common law lease in Botswana<sup>61</sup>.

Group tenure may have characteristics of all of the types of tools. For example, members of a savings scheme may apply a conventional tool for the group as a whole (freehold), while individually a step-in tool is applied (land right agreement). Group tenure, which is popular in Namibia through savings schemes and the FLTA, is promising, not only for formalization but also for

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<sup>61</sup> With regard to duration, one should consider the difference between the perpetual duration of a customary land grant compared to the 99-year common law lease in peri-urban Gaborone.

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land access.

In general, individual tenure tools can be ranked according to the degree of legal security they provide. The ranking of the tools is relative; tools of the same type in different countries may offer a different level of legal security. The innovative tools introduce intermediate titles and support an incremental approach for all land holders, in conformance with UN-HABITAT's resolution cited at the beginning of this chapter. While one may criticize the lower levels of legal tenure security of step-in tenure tools, they do offer improvement of legal tenure security for informal land holders

### **Perceived security**

Perceived tenure security is evaluated in terms of the fear of eviction, documentary evidence, possibilities for transfer and inheritance. In light of the case studies, it is concluded that the degree of perceived security generally increases along the continuum of rights. However, it has been observed that the perception of security may vary widely within each of the land right categories. First, the degree of perceived security might be reduced by the prospect of formalization, which is sometimes accompanied by the implementation of planned layouts. Secondly, perceived security is not only the result of a land tool. It also reflects external factors such as council announcements. Thirdly, documentary evidence, be it a land right agreement or another formal document, contributes to higher levels of tenure security. Interestingly, the amount of knowledge about the possibility of transfers was rather mixed. This may be attributed to the lack of interest among most respondents in transferring their property. With respect to inheritance, land grabbing by relatives was still reported as a problem, although its magnitude has decreased over time. The savings scheme resolved it by listing the names of the heirs on the land right agreement. This kind of solution was also reported for other documents, notably the land record card in Zambia and the certificate of rights in Botswana, although these were not examined in the case studies. It is therefore recommended to list heirs on land documentation to prevent land grabbing by relatives.

### **Upgradability: extent of continuum of land rights**

The land rights in each case-study area have been analysed with respect to the continuum of land rights. This study has classified them as customary rights, informal (or illegal) rights, recognized occupancy rights, consolidated rights and conventional rights. The attributed classification depends on the way land was accessed and/or which type of tenure tool has been applied. The individual land tools are evaluated in terms of upgradability, based on the land tool/land right diagrams presented in the case studies (Figures 5.2, 6.6 and 7.3). The nature of upgrading varies in every case study.

First of all, there may be various paths to upgrading. Chazanga offers a

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dual upgrading path. The authorities were enabled to do so by the controversy between the traditional authority and Lusaka City Council. An implication of this duality is inequity; those who managed to upgrade to leasehold have more advantages than those who will be under HSIAA.

Secondly, there may be single or multiple upgrades. Upgrading is possible in one (HSIAA), two (TLA) or three steps (FLTA). It should be noted that the FLTA allows for some steps to be skipped. Although the concept of the continuum of land rights suggests a wide range of choices, in reality one's choices are limited. From the perspective of the poor, only the first step may be legally possible and/or affordable (see Section 8.4.2). By merit of its design, the FLTA of Namibia offers the best upgrading opportunities among those of the three countries studied. Ultimately, that legislation may lead to the 'strongest' land right available: freehold. Offering more opportunities to upgrade does not automatically create a pro-poor environment, though. The act is inherently liable to abuse in the sense that wealthier people might use the upgrade to acquire land rights they would fail to acquire through the formal system. This danger will be discussed in Section 8.6.2. Regarding implementation, peri-urban Gaborone shows the highest incidence of upgrades from customary land grants to common law lease, according to interviews with local officials. Although some land holders have managed to upgrade, others considered the costs too high and the procedures too complex. Only a minority of the poor can be expected to be able to upgrade using consolidated tools. The majority will therefore only be able to benefit from step-in tenure tools. The latter offer them better legal and somewhat more perceived tenure security as well as the possibility to apply for services.

Thirdly, there are possibilities for downgrading as well. It may happen at the initiative of an individual, as seen in the backwards conversion of common law lease to customary land grant (peri-urban Gaborone, see Footnote 61). Or it may be imposed by the authorities, as seen in the conversion of customary land to informal tenure on council land in Oshakati.

Fourthly, each upgrading path has various 'end stations'. In Oshakati, the last stop is theoretically freehold; in peri-urban Gaborone common law lease is the end of the continuum; and in Chazanga, the path goes only so far as an occupancy license. Thus, the level of legal security that can eventually be reached differs. The three countries have varying policies on the end station. Namibia tends to favour freehold, whereas Botswana has a policy to limit freehold, and freehold is not possible at all in Zambia. Proponents of conventional titling as a necessary condition for poverty reduction will judge the continuum in an improvement area in Zambia as incomplete. Nevertheless, implementation of the HSIAA provides for an increase of legal security and prevents evictions and demolitions.

Lastly, upgrading might require conformation to the development plan. As the fieldwork in peri-urban Gaborone and Oshakati showed, the actual plot

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boundaries did not correspond to the layout of the development plan. This is especially challenging for consolidated tools, where higher surveying and planning standards are required. Land readjustment is often proposed as a solution, although it was not used in the case-study areas.

It is concluded that the continuum of land rights is a powerful tool with which to analyse the situation of land rights in dynamic areas. Using the continuum helps to discern the level of complexity and the opportunities and limitations that land holders have to improve their tenure security. All case studies showed at least one opportunity to upgrade. Although these first possibilities of upgrading are of major importance to the poor, a one-dimensional and completely accessible continuum would be optimal.

### **Other observations**

It is generally assumed that the continuum of land rights, which ranks all possible land rights with respect to tenure security, refers to the level of legal security. This is a too simplified model of reality, however; legal security is only one component of tenure security. In this study, tenure security is assumed to consist of both legal and perceived security. Perceptions of tenure security are difficult to model. Perceived security is an attribute of an individual person, whereas legal security is grounded in a land right. Moreover, within one land right category, perceptions may vary since individuals respond to changes in their own circumstances. In this study, perceptions are therefore rated as 'mixed' in some cases. Capturing perceived security is like taking a snapshot of a single person at one point in time. Apparently, perceived and legal security are, to a degree, independent components of tenure security. It is therefore strongly recommended to survey land holders with respect to their perceived security and not restrict the queries to legal security.

### *Legal versus perceived security*

Although rarely discussed in the literature, it is assumed that both components of tenure security should be in balance. For example, UN-HABITAT (2011, p. 29) states that the "gap between the practice (*de facto*) and legal (*de jure*) systems is not wide." Toulmin (2009) argues that tenure security is largely dependent on the rights holder's own perception of risk. Gulyani and Bassett (2010) discuss whether legal tenure security is a precursor to housing investment or whether housing investment reduces the probability of eviction. They take the position that legal tenure security and housing quality relate to and influence each other. Some other authors, like Van Gelder (2009), put more emphasis on perceived tenure security, arguing that housing improvement will not occur when levels of perceived security are low. This study concludes that the majority of poor land holders hold their property to provide shelter for their families and not to generate wealth through improvement and sales. Having a high level of legal security to be able to enter the formal mortgage

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market is therefore considered less important than not having to fear eviction and having a high level of perceived security. Nevertheless, innovative land tools should provide access to formal systems, not necessarily conventional systems. When there is a strict separation between pro-poor and land market tools as used by Williamson, Enemark *et al.* (2010; see Section 2.2.3), the poor will never enter formal systems. In other words, the bell jar of De Soto (2000; see Section 4.3.1) will continue to exist. Innovative land tools should be considered as a means for the poor to enter more formal systems to reach higher levels of inclusivity within the formal economy.

During the fieldwork, it was learnt that perceived tenure security could be overestimated compared to what may be expected from the legal framework. The respondents might articulate their perceived status as ‘this is my plot’ or ‘I own this plot’. In legal terms, however, legal ownership does not apply to their tenure status. In particular, those who bought land from customary land holders in Chazanga and peri-urban Gaborone, transactions that were confirmed by sales documents, ascribed high levels of tenure security to their plot. Nevertheless, from a legal perspective, such transactions are deemed illegal. In addition, when discussing the rights derived from the application of land tools, some respondents ascribed more security to them. One example is the perceived higher compensation possible under common law lease in peri-urban Gaborone as described in Section 7.4.4. There is no harm in slightly higher levels of perceived security, as long as eviction can only happen upon payment of sufficient compensation. When levels of legal security are low, land holders carry the risk, even without knowing, of losing their shelter and related investments and remain or return to more severe poverty. On the other hand, when perceived security is low, land holders will not invest and continue to live in low standard housing. Because legal security might increase perceived security through documented proof for example, tools and policies should aim at increasing levels of legal security, under the condition that perceived security increases accordingly. Perceived security needs therefore to be monitored.

### *Restricting supply*

It is observed first that in all case-study areas, measures are taken to limit the supply for land as provided through the individual tenure tools. Land holders are only entitled to one land right within a specified area (peri-urban Gaborone) or within the entire country (referring to the HSIAA in Zambia and the FLTA in Namibia). Of course, this reflects the pressure on peri-urban land. Nevertheless, restricting supply has consequences for the operational land tools, as will be discussed in the next section. Secondly, it may also affect people’s behaviour as they seek to get around this rule. Thirdly, the rules are not specified to an appropriate level. One may raise questions like: How does it relate to dual ownership and families? Are land holders allowed to have land under

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other tenure regimes, like freehold? What happens when land is inherited?

### Pro-poor rating

The ratings for individual tenure tools are as follows:

Oshakati:

Recognized occupancy \*\*

Savings scheme \*

Chazanga:

Occupancy license \*

Conversion to leasehold \*\*

Peri-urban Gaborone:

Presidential amnesty \*

Customary land grant \*\*\*

## 8.5 Operational tools

The operational tools relating to the individual tenure tools as listed in the previous section have been evaluated in terms of the indicators simplicity, speed, approach and completeness.

The following strengths and weaknesses have been observed:

Strengths:

- Simplicity; complex regulations do not apply;
- Implementation of step-in tools in a systematic manner;
- Implementation of consolidated tools on an individual basis.

Weaknesses:

- Slow implementation;
- Insufficient implementation of demand control.

### Simplicity: boundary system

Simplicity is evaluated in terms of the boundary systems applied within the scope of the land tools. All case-study areas showed a trend toward stricter boundary specifications for consolidated and conventional land tools. Compliance with strict survey specifications is also required for group or area boundaries (starter title, improvement area). Consequently, the survey costs for step-in tenure tools are lower, thereby making such tools more affordable.

With respect to simplicity, three issues may be raised. First, as the case in Chazanga shows, people thought they had bought a dimensioned plot, which could be formalized into an occupancy right for an undefined area in the immediate vicinity of their dwelling. Secondly, as discussed in the previous section, the actual plot boundaries may not correspond to the layout of the development plan. Thirdly, when the land rights have to be upgraded, a survey with higher specifications may be required. It might then be necessary

to survey the plot again according to higher specifications and consequently at higher costs. This corresponds with the recently adopted 'fit for purpose' approach by the FIG and the World Bank (Enemark, Bell *et al.*, 2014), who advocate for incremental improvement over time in response to social and legal needs and emerging economic opportunities.

**Speed: high volumes**

From the case studies, it is evident that formalization takes a long time, although area tools can be implemented relatively quickly. Two examples of the latter are the extension of the boundary of Oshakati and the enactment of the Tribal Land Act. By contrast, the declaration of Chazanga as an improvement area took a long time. The settlement was first listed in 1998, but the actual implementation only started in 2006 and had not yet been finalized in 2009. As discussed in Section 8.4.1, it is important to realize that after implementation of an area tool, people will not suddenly stop taking action on land transfers in the manner they were accustomed to. Such practices may continue for a long time, meanwhile contributing to new informal development.

It may take a long time to implement individual tools, especially when the land is contested (Chazanga) or when people are reluctant to collect their certificates (Tlokweg, Chaisa, see Section 3.6.2). In Mogoditshane, the problem of informal occupation persisted despite three interventions by three presidents over twenty years. Oshakati was supposed to be formalized on a systematic basis under the guidance of the Oshakati Development Plan, but the actual progress could not be assessed during fieldwork.

The savings scheme in Oshakati was relatively successful in providing access to land and security to its members. However, the scheme is considered difficult to implement at scale. Although large groups operate in similar cases, as has been discussed in Section 3.3.2 regarding the land-buying companies in Kenya, it is not expected that all land holders, current or potential, would like to operate within a group. The same reservations may be assumed for the starter and land hold schemes within the FLTA.

Step-in tenure tools are considered relatively easy to implement compared to conventional land tools. However, results from fieldwork show that authorities have difficulty accomplishing this. Delay might be attributed to a lack of resources and opposition from other stakeholders, like the traditional authority, or to ignorance among the land holders. Consolidated tools are implemented at the initiative of individuals. Therefore, these tools cannot be implemented with much speed, unless the land holders cooperate, as they might in savings schemes. Nevertheless, innovative land tools still have the potential to be implemented more speedily than conventional land tools.

**Approach: individual of systematic**

Among the case studies, a trend was observed whereby step-in tools are im-

plemented in a systematic manner, while consolidated and conventional tools are implemented on an individual basis. Step-in tools are often imposed by the national or local government. Their intervention supports affordability because a systematic implementation benefits from economies of scale. Concerning formal land documents, all land holders within a settlement should be registered and people are obliged to collect their certificates or licenses. From the case-study areas as well as from the cases described in Chapter 3, however, it is evident that not everyone is likely to collect the certificate or license. Their reluctance may result in continuous informality, inequalities within the settlement, lack of income for the government, etc. This obstruction endangers the sustainability of the whole system, as the initial registration has to be complete to guarantee an effective system once it is in operation. However, during several interviews in the case-study areas, the respondents said that, while enjoying sufficient tenure security at that moment, they feared the formalization exercise. This issue should be addressed when implementing individual tenure tools, for example in light of land registration usage theory as suggested by Barry, Roux *et al.* (2012). Nevertheless, the opposite may happen as well, when settlements are enumerated, levels of security might rise (UN Habitat, 2010a).

With regard to consolidated tenure tools, upgrading is based on individual need. Because these tools require more resources and effort, they are accessible for the more wealthy population. This is also in accordance with the fit for purpose approach (Enemark, Bell *et al.*, 2014).

### **Completeness: coverage**

Completeness is evaluated in terms of the level of coverage, which depends on the jurisdiction where the land tool may be or should be applied. It can be evaluated at the national level (is the whole nation covered?), settlement level (are all informal settlements covered?), and household level (are all individual rights within the settlement covered?). In this study, the household level (coverage of individual tenure tools) is considered. Table 8.2 summarizes the estimates of tenure categories in the entire built-up area of each settlement, based on the literature and estimates from fieldwork. The percentages relate to the number of households within each case-study area. The estimated share of renting is included to indicate that not all households are owner-occupiers. Especially in Mogoditshane and Tlokweng, it was common to find rental housing on an owner-occupied plot. Therefore, the sum of percentages in Table 8.2 will exceed 100%.

### **Scale of informality**

In terms of the scale of informality, Tlokweng and Mogoditshane may be classified as the most formalized cases. There, a large majority of land holders were in possession of a certificate as stipulated by the Tribal Land Act. Com-

**Table 8.2 Estimates of tenure as percentage of households in case-study areas**

	Oshakati	Lusaka	Peri-urban Gaborone	
<b>A. Area tenure</b>				
Settlement	Oshakati	Chazanga	Mogoditshane	Tlokweng
Area tool	Proclamation of Townland (1993): 100%	Improvement Area announced: 50%	Tribal Land Act (1970): 100%	Tribal Land Act (1970): 100%
<b>B. Individual tenure</b>				
<b>1. Informal</b>				
Squatters	5-15%	Not found	Not found	Not found
Informal subdivision	Not found*	50-70%	10-30%	<5%
Customary tenure	Before 1992 (converted to state/council land)	Challenged: 30-50% (as perceived by individuals)	Before 1970 (converted to tribal land)	Before 1970 (converted to tribal land)
Semi-informal	60-75%	Not found	Not found	Not found
<b>2. Formal</b>				
Formal	25-35% (freehold)	<5% (leasehold)	70-90% (Tribal Land Act)	>95% (Tribal Land Act) plus some freehold
<b>3. Formal and informal rent</b>				
Rent	<25%	40-60%	50-60%	50-60%

\* Although it might exist, see Section 5.4.4.

pared to Lusaka and Oshakati, the number of informal land holders in peri-urban Gaborone is limited: in Tlokweng they are almost non-existent; in Mogoditshane, they are a minority. This is also true of the number of informal land holders on a national level.

To a large extent, Oshakati is semi-formalized; in most cases, the respondents were not in possession of a land document and the status of their right resembled some kind of permission to occupy. Chazanga, in contrast, is almost completely informal. When the HSIAA is implemented, Chazanga will be formalized, at least partly. The main manifestation of informality in Mogoditshane and Chazanga is illegal subdivision. In Oshakati, on the other hand, it only takes the form of 'real' squatting, in the sense that people settle on vacant land without getting permission from any authority.

Several reasons have been given for the high levels of formality in Botswana. The following have been reported: a tradition of respect and order in the land delivery processes; public knowledge and close surveillance against intruders; and zero tolerance in combination with demolitions (Molebatsi, 2004; Home, 2006).

### Other observations

The limitation whereby land holders can only be entitled to one land right imposes challenges on the local registries. Every application has to be checked with all land registries within the region (peri-urban Gaborone) or throughout the country (Namibia, Zambia). It is questionable whether the registries are equipped well enough for this task at this moment. The enforcement of this measure would be easier to deal with in centralized environments; nevertheless, current IT technology provides solutions for decentralized environments.

### Pro-poor rating

As Zevenbergen, Augustinus *et al.* (2013) advocate, pro-poor land administration should be developed step by step with incremental improvements. Concerning implementation, more attention should be devoted to both completeness and speed. Although the tools have been in place for a while, formalization in all case-study areas proved to take a long time. Meanwhile, especially in Zambia and Namibia, a large number of informal settlers are not yet listed for step-in tenure tools.

The ratings for individual tenure tools are as follows:

Oshakati:

Recognized occupancy      \*\*\*

Savings scheme              \*

Chazanga:

Occupancy license          \*\*

Conversion to leasehold    \*

Peri-urban Gaborone:

Presidential amnesty        \*

Customary land grant        \*\*\*

## 8.6 Final evaluation of innovative land tools

The evaluation will be discussed from three perspectives: based on the pro-poor ratings; based on the main criteria; and reflecting on the GLTN list of land tools.

### 8.6.1 Pro-poor ratings

Table 8.3 shows the evaluation results of the innovative land tools. It is observed first that while the legal frameworks are considered pro-poor, the majority of other tools lag behind. This is mainly attributed to challenges regarding the implementation of the land tools. Secondly, when land tools are not completely pro-poor, the reasons for that are not identical across cases. This supports the proposition that land tools should be studied and adapted locally, as local conditions differ. Thirdly, because of their intermediate character, some criteria like legal security are in most cases not rated as high, albeit sufficient for the poor. Nevertheless, the land tools generally lead to improvement of the tenure situation of the poor coming from informal or customary tenure. Suggestions for improvement have been discussed in the previous sections and are summarized in Section 8.8.

**Table 8.3 Evaluation of innovative land tools**

Oshakati	Chazanga	Peri-urban Gaborone
<b>A. Legal framework tools</b>		
***	***	***
<b>B. Institutional framework tools</b>		
*	***	*
<b>C.1. Area tenure tools</b>		
Proclamation of Townlands	Declaration of Improvement Area	Tribal Land Act
**	*	**
<b>C.2. Individual tenure tools</b>		
Recognized occupancy	Occupancy license	Presidential amnesty
**	*	*
Savings scheme	Conversion to leasehold	Customary land grant
*	**	***
<b>D. Operational tools</b>		
Recognized occupancy	Occupancy	Presidential amnesty
***	**	*
Savings scheme	Conversion to leasehold	Customary land grant
*	*	***

\* Limited pro-poor  
\*\* Fairly pro-poor  
\*\*\* Pro-poor

## 8.6.2 Main criteria

The distinguished types of land tools have been evaluated. So, how do they perform in terms of the main evaluation criteria, namely equity, effectiveness and efficiency?

### Equity

With respect to equity, innovative land tools have improved in accessibility compared to conventional tools. With respect to affordability, the capital component is a matter of concern; the cost of formalization is often beyond what a poor household can afford. With respect to secondary rights, the original residents seem to lose their secondary customary rights. On the other hand, new settlers want access to services, which in some cases they can only apply for if they already have a formal occupancy right. Support for the poor and co-management are still underdeveloped ambitions. Most tools are implemented entirely by the local government. Customary authorities are excluded from the implementation, although local committees are organized to support the process. However, more co-management and probably co-ownership of the local land administration system would be necessary to make implementation more successful. That approach could improve the rate of collection of certificates, for instance. The savings scheme in Oshakati is a good example of co-management. Improvement of the land tools in this respect would certainly contribute to higher levels of equity.

**Effectiveness**

With respect to effectiveness, the innovative tools tend to heighten public awareness, although it is largely limited to an appreciation of the area and step-in tenure tools. Despite this sufficient level of awareness, inadequate communication of authorities towards land holders has been observed. Additionally, there is limited awareness of the contested legality of informal and customary land sales and consolidated and conventional land tools. Improving awareness among the poor would empower them and in turn perhaps encourage support for the poor and better co-management. The individual tenure tools provide higher levels of legal tenure security. Perceived tenure security tends to improve after formalization projects; however, as this study shows, it varies in the course of implementation. Some people fear that their land will be taken away from them or that their plots will be adjusted to comply with planned layouts. Furthermore, not only land tools but also external events may have a negative impact on perceptions of tenure security. In contrast, the study also revealed instances whereby respondents overestimated their security of tenure. These findings bring to light some interesting relationships between legal and perceived tenure security that would warrant attention in future research. The levels of upgradability vary among the countries studied. Namibia offers a full range of land rights within the urban domain, whereas Zambia offers only a formalized occupancy right for informal settlers. As described in Chapter 2 with respect to poverty reduction and economic growth, a full range is preferred.

**Efficiency**

With respect to efficiency, the case studies indicate that while relatively simple land tools are available, their implementation is rather slow. The reason for the lack of progress was not investigated in the case studies. Nonetheless, the time lag appears to reflect the low capacity within the institutional frameworks and a lack of political will. Limited progress can also be attributed to the variety of land rights in existence. The case studies show that, even when an area looks uniform in terms of land tenure, individual tenure situations may differ to a large extent. The same applies to the levels of poverty; when studying the situation of individuals, a wide variation will come to light. It is therefore recommended to chart the differences in land tenure and poverty levels before formalization is carried out. One way would be by enumeration, as has been done in Namibia through the CLIP program (UN-HABITAT, 2010a; Muller and Mbanga, 2012). It was also observed that land rights become more complex as one moves upwards along the continuum. An increasing complexity was also found for boundary delimitations and survey specifications. In Namibia, for example, procedures to upgrade efficiently from low-accuracy surveys for step-in land tools to high-accuracy surveys for freehold without a full re-survey have not yet been introduced.

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### Final evaluation

It is clear that innovative tools are especially successful at improving accessibility and legal security. Nevertheless, there is room for improvement in the implementation of innovative tools. Some promising avenues would be to increase support for the poor and encourage co-management. On the basis of the evaluation framework, this study argues that the innovative land tools are fairly pro-poor, but not exclusively used for the poor. A question that awaits future research is whether successful tools attract too many wealthy people at the expense of the poor. This equity concern was touched upon earlier in Section 4.3. The tools can also be used by the better-off to access land and obtain full title by upgrading, merely by taking advantage of the opportunities offered by the continuum<sup>62</sup>. Informal land is accessible to everyone (at almost no cost, except for informal land sales). Formalization requires more resources from land holders (rates, taxes, fees, fines) and is thus a vehicle for gentrification. 'Pro-poor' implies that poor people should benefit more from the implementation of innovative tools than those who are better off. Reerink and Van Gelder (2010) suggest that groups other than the target population might benefit from land tools, which could lead to elite capture as described by Sjaastad and Cousins (2009). The innovative land tools may make it easier for wealthier people to access formal land than they could with conventional tools. When they have difficulty securing formal land, what will prevent them from applying innovative tools? It is not unlikely that the drawbacks of conventional tools reported in Chapter 2 also apply to innovative tools. This is especially an issue where the poor and wealthy reside in the same area, i.e., in Chazanga and peri-urban Gaborone. The options offered along the continuum actually create a dilemma: is it better to provide opportunities for upgrading (and attract more wealthy people as well) or to restrict the use of step-in tools to the poor (but thereby prevent them from taking advantage of upgrading opportunities)? Because this study only looked into the impact on the poor as beneficiaries, no firm conclusions can be drawn on this equity issue. However, it is recommended that more attention be paid to models that control the inclusivity of the poor with respect to the implementation of innovative land tools. An option could be to relate land right delivery to people at specific poverty levels. Nevertheless, this will be more demanding for the land administration institutions, introducing complexity and resulting in higher costs. Improvement of equity may result in more complexity and consequently decrease efficiency.

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<sup>62</sup> The research design did not allow the investigator to study and prove this effect.

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### 8.6.3 GLTN revisited

Table 2.1 shows the land tools as distinguished by GLTN. The results of this study link to this table as follows.

#### **Theme 1: Access to land and tenure security**

With regard to Theme 1, the main focus of this study, it is concluded that few tools were found in this study which dealt with land access specifically for the poor. It is recommended to develop tools and policies that would improve land access for the poor. It is also recommended that attention be given to customary or informal land sellers as well instead of focusing exclusively on the buyers. On the basis of the literature study, enumerations are considered useful, especially when they are carried out under a co-management approach. An enumeration will reveal the continuum of land rights, which is a powerful tool to describe the tenure situation in a peri-urban area. It is recommended to assess the levels of both legal and perceived tenure security during the enumeration, which will make the continuum complete. It is recommended that an enumeration be carried out before an area is going to be formalized, thereby serving as a baseline for monitoring after formalization (Themes 1a and 1b). Although this study did not specifically deal with the difference between titles or deeds (Theme 1c), it does confirm that documented evidence enhances perceived security. It is therefore recommended that land documentation be issued in formalization projects, although conventional titles or deeds are not required. Adjudication (theme 1d) is not contained within the evaluation framework.

With respect to Theme 1e, it is clear that awareness of the co-existence of statutory and customary tenure is of vital importance in peri-urban areas. This study has shown that customary tenure is often banned, although it continues to exist and evolve de facto. A co-management approach is recommended when striving for an accepted land management authority and tenure regime. Co-management (Theme 1f) is taken as a criterion for a pro-poor approach and consequently found useful in several innovative land tools.

Theme 1g relates to simplicity, which is taken as a criterion in this study. In general, innovative land tools partly or completely fulfill this criterion. Theme 1h refers to a high-potential pro-poor land tool geared to allocating land to groups instead of individuals. This has been studied for the savings scheme and FLTA. Such tools are pro-poor, although one may question whether they can be implemented at scale.

#### **Other themes**

Theme 2 relates to planning and slum upgrading. Although planning was not the focus of this study, it proved to have strong ties to the peri-urban land issues under investigation and should thus be considered within the legal

framework. This study also recommends using the co-management approach in situations where the existing informal situation does not comply with formal plans. One promising tool is the listed land readjustment, which has already been proposed for peri-urban Gaborone and Lusaka. It is unknown where such approaches have been implemented in (peri-)urban Africa. Theme 3 is not contained within the evaluation framework, because it has a strong institutional focus.

Theme 4 has been discussed through affordability. The capital component in particular is not usually considered pro-poor. Another issue is that exemptions are often allowed for rates and taxes in peri-urban areas or informal settlements. Nevertheless, they offer opportunities for more equitable solutions. The issues mentioned under Theme 5 are touched upon in this study. The private sector has been discussed here, noting the important role of CBOs and NGOs. The commercial private sector may play an important role as well, although no examples concerning the poor were found in the case-study areas.

With respect to inheritance (Theme 5b), it is recommended to list the potential heirs on the land documentation as processed through the innovative land tools. Concerning Theme 5c, this study concludes that evictions continue to take place and that compensation is only offered when a (semi-)formal right is recognized. In such cases, the compensation is often perceived to be too low. In cases of squatting and illegal allocation, no compensation is offered. At the very most, opportunities for the recovery of building material are provided as well as for the transport of people and material to another location. It is concluded that while Table 2.1 lists the main land issues, its structure and classification can be improved. Suggestions to that end are made in Section 9.4.3.

## 8.7 Review of the case-study design

This section discusses in retrospect the following elements of the study: case-study selection, evaluation framework, validity and reliability.

### Case-study selection

As discussed in Section 1.9.1, one has to be aware that a selected area itself is not the unit of analysis; the analysis concerns the land tools. Initially, the selection of case-study areas was based on the phase of implementation of land tools. Peri-urban Gaborone was an instance of full implementation; Oshakati exemplified a pilot version; and in Chazanga, no implementation was assumed beforehand. Although this classification still applies, the pilot that was run in Oshakati was less elaborate than anticipated. Nevertheless, the recognition of informal rights there appeared to be a discovery of an unexpected

innovative land tool. The Flexible Land Tenure System (FLTS) has drawn much attention internationally, but it was only enacted in 2012<sup>63</sup> With respect to Chazanga, the implementation of a land tool took place in the wake of the declaration of the settlement as an improvement area. The evaluation of the FLTS (Oshakati) and HSIAA (Chazanga) is therefore partly *ex ante*. The evaluation of implementation in peri-urban Gaborone examines a long-standing tool, although the presidential interventions are of more recent date.

It is important to note some significant differences between the case-study areas. Chazanga is a relatively well defined settlement; several of Oshakati's informal settlements were examined; and two settlements in peri-urban Gaborone that are adjacent to the city were selected. The choice to represent the local diversity resulted in a more detailed evaluation than would be feasible if a rigid selection of one specific settlement for each town was made. Nevertheless, all case-study areas were comparable in terms of population numbers and having multiple tenure systems.

### **Evaluation framework**

With respect to the evaluation framework, it should be realized first that some indicators are mutually dependent, as pointed out in Section 4.6. For example, documentary evidence, as discussed in Section 4.4.3, increases the level of overall perceived security and partly reduces fear of eviction, being another indicator for perceived security. Secondly, improvement of tenure security is considered the most important criterion for the success of any land tool. Therefore, the evaluation is focused on the effectiveness of area tools and individual tools. Thirdly, external events might influence several criteria. For example, the Oshakati case showed that the council's announcement to remove land holders from flood-prone areas reduced the level of perceived tenure security. Lastly, as discussed in Section 8.4.2, some indicators could not be rated precisely due to the differing views of respondents. In such cases, indicators were rated as 'mixed'.

### **Validity**

Validity consists of construct, internal and external validity. Construct validity refers to establishing correct operational measures for the concepts being studied (Yin, 2009). Or as Swanborn (2010) asks himself: Are variations in measurements caused by variations in theoretical concepts? First of all, evidence should be based on multiple information sources, also called data triangulation. In this case study, the data has been triangulated by combining a review of the literature with interviews of land holders, officials and experts.

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<sup>63</sup> The Flexible Land Tenure Act was published in the Government Gazette of the Republic of Namibia on June 13<sup>th</sup>, 2012.

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One operational limitation was the difficulty of approaching specific types of respondents. It was hard to reach customary land holders in Oshakati and land holders with consolidated rights. The latter obstacle may be due to the sampling strategy; it may be assumed that holders of consolidated land rights live in higher-quality houses and were therefore not considered suitable respondents. Nevertheless, through literature study and interviewing local officials and experts, information on land holders with consolidated land rights was gathered. Additionally, construct validity has been ensured by reviewing the interviews of officials and experts (also called member checking) and holding a research seminar at the end of each case-study period to discuss the preliminary results (also called peer debriefing; Creswell, 2009).

Internal validity refers to establishing causal relationships, whereby certain conditions are believed to lead to other conditions, as distinguished from spurious relationships (Yin, 2009). Is the relation between variables that the researcher interprets as causal really causal? Or do the correlations result from other factors (Swanborn, 2010)? This evaluation study ensures internal validity through the development of an evaluation framework that is based on the literature study as described in Chapter 2. The determination of indicators and their possible measurement values contributes to internal validity. However, one should not ignore the external influences, which are not modelled here. It will always be possible to find rival theories that might explain a possible success or failure of an innovative land tool. Some examples of such potential rivals are disturbances on the land market affecting levels of tenure security (super rival theory) or well-designed land tools being poorly implemented (implementation rival; Yin, 2009). Notably, Payne, Durand-Lasserre *et al.* (2009) raise the question of attribution; to what extent can changes in the social and economic characteristics of the land holders be attributed to the success or failure of innovative land tools? This study focuses on the legal characteristics of land rights and the perceptions of land holders towards them. External influences, as long as they are not contained in one of the indicators, are not considered. For example, out of the three countries, Botswana gives the best picture of land administration. It can be argued that this is mainly caused by the state of the national economy, combined with the capacity reserved for land administration. However, this was not modeled within the framework.

Yin (2009) defines external validity as establishing the domain to which a study's findings can be generalized. Swanborn (2010) formulates the question of external validity as follows: Are the results of the study generalizable to the targeted populations or domains? This study evaluates a wide range of innovative land tools in specific areas. Outcomes cannot be automatically generalized to other tools in other areas. Nevertheless, it has been proven that the evaluation framework can be applied in other areas. Furthermore, results can be compared to analyse similarities and differences. That offers a point of

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departure for general recommendations on the design and implementation of innovative land tools, which will be discussed in Section 9.4.

### **Reliability**

Reliability is defined as demonstrating that the operations of the study, such as data collection, can be repeated with the same results (Yin, 2009). Or as Swanborn (2010) formulates the question: Are the results stable over time, independent of the researcher(s), and independent of contextual properties? Reliability aims at minimizing the errors and biases in the case study. One of the strengths of this study is that the multiple-case studies are carried out by one individual; in other words, researcher triangulation was not applied. Using a single perspective can minimize the chance of varying interpretations of equal phenomena. Nevertheless, there are risks of adapting approaches along the way and bias. The risk of adapting approaches between the case-study areas is minimized through the re-use of the case-study protocol and the interview guide. To avoid bias requires some reflection on the part of the researcher. Johnson (1997) refers to reflexivity when the researcher engages in critical self-reflection about his or her potential biases and predispositions. For this study, self-reflection relates to the background of the researcher, namely, his education within the legal tradition of civil law and his knowledge of and experience with the Dutch land administration system. Concerning his education, the author has studied concepts of civil land law as part of the land surveying and geodesy curriculum. Therefore, common law and customary law are relatively alien to him. To fill this gap in knowledge, a literature study was carried out, as described in Chapter 2. Referring to the Dutch land administration system, this is considered worldwide to be a well-designed and properly operated system. It is therefore tempting to propose Dutch solutions for land administration problems in other countries. The belief that western approaches are superior is often called a Eurocentric bias. However, as already discussed, western land administration systems have not been successfully implemented in developing countries. A Eurocentric bias is prevented by choosing a qualitative research approach focusing on local land holders and capturing the reflections of local experts as much as possible (Çağdaş and Stubkjær, 2009). In addition, reliability can be achieved by documenting the case study and writing a case-study protocol (Gibbert, Ruigrok *et al.*, 2008). Such a protocol was indeed prepared and it was followed throughout this study. Nevertheless, as described earlier in this section, not all went according to what was expected beforehand and improvisation was needed. As Robertson (2012) suggests, case-study work is inherently incomplete.

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## 8.8 Conclusions and recommendations

The answers to the fourth research question posed in Section 8.1 *What can be learnt from the design and the implementation of innovative land tools in the areas that have been studied?*, are discussed below.

### Conclusions

The legal framework tools are in general considered pro-poor, although secondary rights are generally overlooked. It is observed that the availability of such tools does not prevent evictions and demolitions; they continue to happen, for reasons that do not exclusively relate to land rights. The institutional frameworks improve on accessibility due to decentralization. Nevertheless, there is limited support for the poor and a lack of co-management.

Ultimately, area tools should end multiple tenure systems (de jure), but they continue to exist de facto. Neo-customary and extra-legal practices can be discouraged by continuous communication and co-management. The implementation of the area tools was found to be a prerequisite for the implementation of the individual tenure tools. These individual tools were considered partly affordable in that the capital component was often beyond affordability for the poor. Two types of individual tenure tools were discovered in the case-study areas: step-in tenure tools and consolidated tenure tools. They can be regarded as precursors of conventional land tools. The step-in tools are simple and facilitate a systematic approach. However, it was observed that implementation was generally slow.

The continuum of land rights has proved to be a powerful tool with which to analyse the situation of land rights in dynamic areas. It was found to help discern the level of complexity and the opportunities and limitations that land holders have to improve their tenure security. Legal security was increased to a limited extent. Although perceived security did increase as well, it showed more variation and could come under pressure during the implementation of the land tools. The levels of tenure security of conventional land tools proved to be out of reach. Instead, the innovative land tools should be considered as a means for the poor to enter more formal systems and thereby reach higher levels of inclusivity.

No individual land tools were found that dealt with land access. Only tools delivering group rights dealt with access to land. Individual land access will continue to be a challenge in peri-urban areas in sub-Saharan Africa. Finally, it was observed that either official planning was exempted when using innovative tools or that the tools and planning were not properly attuned.

### Recommendations

The following recommendations can be made. First of all, co-management should be introduced and enforced to end the de facto multiplicity of ten-

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ure. It is believed that co-management will lead to improved communication and awareness among land holders. Customary authorities and NGOs/CBOs should be included in the institutional framework. NGOs and CBOs should focus on support for the poor and vulnerable in the population.

Secondly, it is recommended to finalize drafted land policies and to include pro-poor policies with a special focus on peri-urban areas. Demand for land will only continue to increase. Future research should look into different models for land delivery in peri-urban areas and investigate the exact nature of neo-customary and extra-legal land sales. In addition, mechanisms should be developed to attune land tools with planning.

It is also recommended to carry out enumeration before an area is formalized. Enumeration should be carried out under a co-management approach, also called participatory enumeration (UN-HABITAT, 2010a). The results would be used as a baseline for monitoring purposes. Secondary rights should be included as well. Their loss should be compensated through a safety net for the vulnerable groups who are heavily dependent on such rights.

On affordability, the capital component should be decreased. In order to maintain cost-recovery, it may be an option to adjust the occupational component. That could be achieved, for example, by differentiating between the poor and those who are better off. In cases where taxes and rates do not apply, which is often the case in peri-urban areas, land rent might be linked to house value or building volume. Doing so would contribute to equity, although it would introduce complexity and increase demand on the local land administration capacity. This also applies to the last recommendation: to list heirs on land documentation to prevent land grabbing by relatives.

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# 9 Conclusions and recommendations

“Innovative land tools are better than conventional ones at providing security of tenure for the poor in peri-urban areas of sub-Saharan Africa” (first proposition of this thesis).

## 9.1 Introduction

Sub-Saharan Africa is urbanizing at a rapid pace. The delivery of formal land in peri-urban areas in sub-Saharan Africa is limited, especially for the poor. People therefore resort to informal means of access, often using neo-customary or extra-legal practices, to settle near city centres. As a result, informal settlements develop. Land tenure will show greater dynamics in peri-urban areas compared to fully urbanised and rural areas, a trend that is conducive to the emergence of multiple tenure systems. It is plausible that many cities are expanding their territory into customary areas to provide space for aspiring settlers. Countries and cities are therefore being challenged to manage processes of land access, land administration and urban planning in dynamic contexts.

Concerning land administration, conventional tools have proved inappropriate to support the poor in their pursuit of secure access to land. During the last decades, however, innovative land tools have been developed. The question now arises whether these tools actually deliver what they promise. The main research question for this study is thus formulated as follows: How can innovative land tools be evaluated and improved to provide sufficient levels of tenure security for the poor in peri-urban areas in sub-Saharan Africa? Before the main question can be answered, the specific research questions will have to be dealt with one by one. The answer to the main question will be followed by recommendations on policy development and future research. The last section of this chapter discusses the main contributions of this study within the land administration domain.

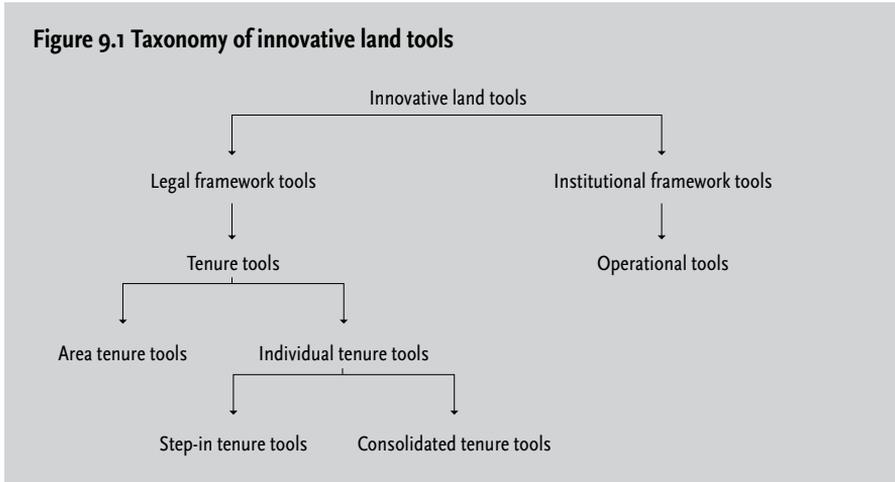
## 9.2 Answers to the four research questions

The answers to the four research questions are presented in consecutive order.

1. *What are the characteristics of land access, land tenure systems, land tools and tenure security for the poor in peri-urban areas in sub-Saharan Africa and how do they relate to each other?*

The characteristics and relationships have been explained in Chapter 2. The fundamental position is that innovative tools are necessary in order to increase tenure security for the poor, given that conventional tools have failed

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**Figure 9.1 Taxonomy of innovative land tools**

to do so. Tenure security is important for the poor; by removing the fear of being evicted, it enables them to improve their dwellings. Tenure security may be split into a legal and perceived component, each with its particular characteristics.

In the course of this investigation, a taxonomy of land tools has been designed, which is displayed in Figure 9.1. All tools may support either individual or group rights.

The implementation of area tools was observed in all case-study areas, where they serve as a prerequisite for implementing individual tenure tools. The step-in, consolidated and conventional tools operate at the lower, middle and upper part of the continuum, respectively. In general they operate with decreasing levels of affordability and are therefore to a lesser extent pro-poor at the upper part. The variety of tools offers opportunities for policy development and monitoring, i.e. the tools can be applied to specific target groups. The proposed taxonomy invites an integrated approach to the study of land tools in general, as opposed to the bipolar stance of innovative versus conventional tools. While this taxonomy was sufficient for the present evaluation, it does not cover the entire land administration domain. A first attempt to construct a complete taxonomy is demonstrated in Section 9.4.3.

The dynamics of tenure and the resulting co-existence of multiple tenure systems in peri-urban areas have been discussed and are clearly demonstrated in the case studies. Because the poor cannot access urban land through formal channels, they access land in other ways as a last resort. Although sub-Saharan countries are usually said to have dual tenure systems, many of their peri-urban areas reveal triple tenure systems: a mixture of statutory, customary and informal tenure. The mixture may be attributed to the various channels through which the inhabitants have gained access to land as well as to the formalization processes initiated by local authorities. Land tools should theoretically limit the multiplicity, although implementation often results, contrarily, in greater multiplicity. Land tools introduce new land rights, while the current practices are continuing and difficult to stop. This is specifically true for customary tenure. The official status of the traditional authorities has been marginalized with respect to land issues. Nevertheless, they continue to play a role. Traditional authorities apparently wish to hold on to their con-

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trol over land management. Additionally, people may still trade land through (neo-)customary practices. It is expected that with the passage of time and strict enforcement of the land tools the multiplicity of tenure in peri-urban areas will decrease.

The existence of multiple tenure systems is regarded as a threat to tenure security. In Chapter 3, six countries are studied with respect to the implementation of land tools in peri-urban areas. Tenure insecurity has been acknowledged as a problem in these countries. However, tenure in peri-urban areas or informal settlements is not by definition insecure; insecurity depends on the circumstances and on which component of tenure is considered.

In most countries, land policies and sector law have been implemented or drafted to address the issue of tenure insecurity. However, the implementation of innovative land tools was often limited. The tenure system in Uganda, for instance, is complicated; having multiple layers, it is difficult to formalize all land claims. Only Botswana has managed to implement a framework on a full scale. The impact on tenure security varies among the countries studied. Where the legal and institutional frameworks lack tools for formal land access and land administration, the land holders themselves engage in practices that deliver at least some level of perceived security. Further, a tendency was observed in high-density urbanized areas for tenure issues to be dominated by landlord-tenant relationships, whereas in low-density areas the issues largely relate to the existence of multiple tenure systems. This study is focused on land occupancy and ownership rights in lower-density peri-urban areas; nevertheless rent will remain an important option to provide shelter for the poor.

## *2. Which criteria and indicators should be applied to evaluate innovative land tools?*

This study has evaluated innovative land tools with respect to the poor by means of an evaluation framework. For the subjects of interest, no standard and accepted definitions, typologies and indicators were available. This implied the danger of ending up in semantic discussions and complex typologies or using catch-all terms lacking in the required differentiation. Therefore, this study has defined all relevant items and concepts on the basis of a literature review; this approach is clear in the taxonomy of land tools. On the basis of existing indicators for conventional and innovative land tools as described in the literature, an evaluation framework was designed. It stipulates ten criteria relating to equity, effectiveness and efficiency. Nineteen indicators were defined as grounds on which to perform the evaluation (see Table 4.1). The evaluation is focused on the land holders in peri-urban settlements, because it is they who are supposed to benefit from the land tools. In order to reduce complexity, some compromises had to be made. With respect to the evaluation framework, it was noted that some criteria are interrelated and may con-

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tradict one another (see Section 8.7). All indicators have been qualitatively assessed through semi-structured interviews and that assessment has been substantiated by literature and interviews with officials and local experts. The rigorous qualitative approach has uncovered important details on several criteria, thereby contributing to the evaluation of the impact of the land tools and recommendations to improve them.

3. *To what extent can the innovative land tools be considered pro-poor, based on the evaluation criteria?*

Innovative tools have been evaluated in three peri-urban areas in sub-Saharan Africa: peri-urban Oshakati in northern Namibia; Chazanga, a peri-urban settlement in Lusaka, Zambia; and peri-urban Gaborone in Botswana. The results of the evaluation are given in Table 8.3; the main points are discussed below.

#### **Legal framework tools**

The legal framework tools are considered pro-poor because customary and informal tenure systems are usually recognized. Nevertheless, points for improvement relate to the recognition of secondary rights and implementation of land policies.

#### **Institutional framework tools**

The institutional framework tools are pro-poor with regard to accessibility. Nevertheless, they need improvement on co-management and support for the poor. Customary authorities, NGOs and CBOs should be more involved in land administration activities in peri-urban areas.

#### **Area tenure tools**

The area tools are considered fairly pro-poor. Although the majority of land holders are aware of their own tenure situation, they are not aware of alternatives along the continuum of land rights. A co-management approach is expected to increase awareness among the land holders.

#### **Individual tenure tools**

With regard to affordability, the occupational component is in all cases considered pro-poor, whereas the capital component is often beyond what poor households can afford. Additionally, the possibilities for upgrading turn out to be different in the cases that have been studied. Lastly, the increase of legal tenure security is limited, especially regarding step-in tools. Although this increase may be of major importance to the poor, the individual tenure tools are considered limited pro-poor. A special type of rights is the category of group rights, for instance savings schemes. Land tools supporting group

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rights have the advantage that they deal with land access as well. Such tools are promising, although it is questionable whether they can be implemented at scale.

### **Operational tools**

Operational tools are evaluated in terms of their simplicity, speed, approach and completeness. The step-in tools in particular prescribe simple methods for land registration. Their simplicity facilitates a speedy and systematic approach to implementation. These tools are therefore considered fairly pro-poor. However, it was observed that formalization takes a long time. This may, on the one hand, be attributed to lack of political will, lack of capacity or even mismanagement and corruption; on the other hand, it may be ascribed to the introduction of innovative tools that bring complexity into the existing land administration systems.

#### *4. What can be learnt from the design and implementation of innovative land tools in the areas that have been studied?*

Innovative and pro-poor land tools have gained popularity, and a number of them have been designed recently. This study also evaluated land tools that have been implemented for decades and may be characterized as innovative land tools as well. Nevertheless, few of them have been implemented at scale. It is concluded that innovative tools are fairly pro-poor, especially with respect to accessibility, to the occupational component of affordability and to simplicity. The innovative land tools have some advantages for the poor in comparison with conventional land tools. Yet their impact can be improved by paying more attention to co-management and support for the poor, by reducing the capital component of affordability and by a speedy implementation.

The continuum of land rights is still an evolving concept. In this study, it proved to be a very powerful tool with which to analyse the land tenure situation in a peri-urban area. It has been used to describe the available land rights within the case-study areas. The rights range from illegal occupation to statutory land rights like leasehold and freehold. Land rights or claims might exist in reality even though they are impossible in light of the legal framework. This discrepancy reflects the multiplicity of tenure systems and neo-customary and extra-legal practices. Each peri-urban area may have its own continuum with varying upgrading possibilities. It is recommended to design land tools that facilitate upgrading across the entire continuum.

The land rights along the continuum are generally ordered according to increasing levels of legal tenure security. The other component of tenure security, perceived security, shows more variation. It increases when the land tools are applied and when the land holders are provided with legal documentation on their land right. However, perceived security is also improved

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through other documents, like council bills and building permits. At the same time, perceived security can come under pressure. Even formalization may introduce lower levels of perceived security because land holders may be relocated or have portions of their land taken away. External events, for instance, an announcement by the council relating to possible relocations, would obviously decrease the level of perceived security as well. In a few cases, the perception of security was overestimated with respect to informally accessed land or other formal land rights along the continuum.

Different characteristics of legal and perceived tenure security have been found as well. Legal security relates to a land right. It is stable over time and comes at a cost, both for land administration institutions and land holders. Perceived tenure security relates to an individual land holder. It changes over time and does not relate to land tools alone but also depends on external factors. Consequently, perceptions of security differ, even if the same land tool is applied. Nevertheless, perceived tenure relates to investment decisions and is therefore of great importance. An interesting question is whether, and how, legal and perceived security should be in balance. This study argues that their levels should be balanced; too much difference would be conducive to informal tenure.

With respect to a continuous implementation of land tools and enforcement of land policies, two main challenges have been identified. First, land holders should be supported to take action to register their land rights. They should be made aware of the available options, along with their costs and benefits. Land holders might have to pay charges and could lose their freedom in dealing with land. In turn, they would gain more security against eviction and services would become available or upgraded.

Secondly, the limitation of allocating only one plot to a prospective land holder poses a challenge to the local registries. It means that they need to check the entries, both within their own jurisdiction and in all local registries nationwide. Despite the work this entails, responding to this challenge will decrease the demand for peri-urban land and improve on equity with respect to land access. More equity will result in more complexity and less efficiency.

### 9.3 Answer to the main research question

The groundwork has now been laid for an answer to the main research question: *How can innovative land tools be evaluated and improved to provide sufficient levels of tenure security for the poor in peri-urban areas in sub-Saharan Africa?*

This study has proved that it is possible to evaluate innovative land tools in peri-urban areas. As described in Section 4.2.1, more assessment frameworks are being designed. For international comparisons, it would be useful for one to be chosen and applied in the current longitudinal international sur-

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veys. Additionally, this study argues that perceptions of land holders should be included in evaluations at all times. Studying perceptions of tenure security not only offers insight into the impact of land tools but also provides information on other events that may have influenced these perceptions.

The innovative tools, especially the individual tenure tools, provide higher levels of legal security. Nevertheless, the increase provided by step-in tenure tools is limited, albeit of importance to the inclusivity of the poor. Levels of perceived tenure security are also increased, especially through documented proof of the land rights. It is also observed that perceived tenure security is under pressure during formalization projects. Overall, the innovative tools are considered fairly pro-poor, as discussed in the previous section. Although a direct relationship with poverty reduction is difficult to prove, the innovative land tools appear to contribute to the inclusion of the poor in the formal administrations and economy.

With respect to the implementation of innovative land tools in peri-urban areas under multiple tenure regimes, the following approach is recommended. Most important, a land policy is needed where peri-urban challenges are addressed. Awareness among land holders should be created regarding the variety of existing land claims and land rights and the various possibilities for formalization. Area tenure tools should be implemented under co-management approaches. Through co-management, all land holders should be made aware of the changes with respect to land tenure and the land management authority. The institutional framework tools should be aligned with the area tools. Before formalization is carried out, it is advised to carry out an enumeration exercise, also under a co-management approach. The contextual continuum of land rights can be constructed from the results of the enumeration and also provide a baseline for monitoring purposes. The enumeration can be followed up by the implementation of step-in tenure tools, where land rights are systematically issued to all land holders, being individuals or groups. Documents with a simple boundary description, at least indicating the size of the plot, should be issued. Whether or not to upgrade along the continuum is left up to each individual land holder.

It should be acknowledged that the wealthier can make use of the innovative tools as well. As the case studies demonstrate, it is also difficult for them to gain formal access to land. That makes it plausible that they will take recourse to innovative land tools as well. Some measures have been taken to prevent widespread abuse of the tools; for instance, the number of rights at the lower end of the continuum has been limited to one. Therefore, equity may be as relevant an issue in land access as it is in land administration. The key challenge in peri-urban areas relates to resource allocation to different aspiring land holders. Resource allocation is pre-eminently a political issue. Innovative land tools cannot solve the land access problems of the poor; they can at best support the policies made by politicians. Lastly, it is observed that

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the innovative land tools may be at odds with planning tools. The issues of land access and planning are topics for future research, as recommended in the next section.

## **9.4 Recommendations for policy development and future research**

During the research, some interesting phenomena and questions were encountered but left uninvestigated, as they were considered to lie beyond the scope of the research questions. In retrospect, it would be worthwhile to develop land policies and conduct future research on equity with regard to land access, on the relation between land tools and planning and on the taxonomy of land tools.

### **9.4.1 Equity and land access**

When the overarching objective is to promote pro-poor land policies, it is not sufficient to design and implement equitable land administration tools. Access to land needs to be equitable as well. This study has revealed some intriguing examples of land access and formalization. Both of these topics require more in-depth study. Equity relates to the difference in value between formal and informal land. Formal land is offered for free or at low cost, even though it may not be available, while informal land is traded at informal market prices. Due to high demand, these prices can be significant and unaffordable to the poor. Land may therefore be neither available nor affordable for the poor; they can only resort to squatting. Equity also relates to whether and to what extent the wealthier will benefit from innovative land tools at the expense of the poor, given that the wealthier can still afford to pay the informal market prices for land and can take advantage of innovative land tools. A possible solution is to link the available tenure categories with specific poverty levels of aspiring land holders.

### **9.4.2 Innovative land tools and planning**

Formalization of existing informal settlements is problematic with regard to formal planning. The study has offered some good examples: for instance, the attempt to retrofit existing layouts to comply with the plans in Mogoditshane; and the proposals for urban renewal in Lusaka. All case studies revealed issues with minimum plot sizes, which could be an obstacle for formalization. In peri-urban Gaborone and Oshakati, access to services was only possible when one has a formal land right. There is a need to investigate and develop innovative planning tools that are geared to the application of innovative

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land tools. Their compatibility would facilitate formalization or at least provide for an acceptable rearrangement of land tenure and services in peri-urban areas.

### 9.4.3 Taxonomy of land tools

A relatively simple taxonomy of land tools has been constructed for this study. The taxonomies found in the literature were considered too complex, given the overlap and interrelations between the various tools. It would be beneficial for the land administration domain if a taxonomy of land tools were to be constructed that is generally applicable across the domains of policy development, tool design and evaluation. Such a taxonomy should be aligned with land access tools and with adjacent domains like planning. The following suggestion is made:

- Legal tools: constitution, land laws and land policies:
  - Land access tools: application procedures, allocation policies;
  - Area and individual tenure tools;
  - Planning tools: attuning land rights to layout planning;
  - Financial tools: both institutional and land holders (capital and occupational component);
  - Dispute resolution tools.
- Institutional tools: the collection of land administration institutions, both governmental and non-governmental:
  - Survey and monitoring tools: enumeration;
  - Operational tools: land right documents, boundary descriptions.

## 9.5 Benefits for the land administration domain

As indicated in Section 1.10, this study contributes to knowledge of the land administration domain from three different perspectives. First, the evaluation is focused on the perspective of land holders. It shows how they respond to the implementation of land tools. Their perceptions are indicators of the performance of the land tools. This adds to those studies that have evaluated land administration from an institutional perspective. Secondly, it is a detailed study of peri-urban areas under multiple tenure systems in three countries. Detailed studies of several areas are of major importance for sub-Saharan Africa, because urbanization will largely take place on land under multiple tenure systems. In the past, peri-urban studies were mainly focused on formalization projects in informal settlements, where tenure multiplicity got limited attention. Lastly, the concepts of land tools and the continuum of land rights are rather new. This study provides a detailed consideration of these concepts and suggestions for further refinements. This also holds for

the operationalization of evaluation criteria. Lessons learned from this study can be applied to facilitate access by the poor to land under secure tenure in peri-urban areas in the near future.

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## Appendix A Interview guide

### Questions for semi-structured interviews with land holders

1. Can you briefly explain who you are, what you do?  
[name, job, family, spouse: job]
  - 2a. Since how long have you settled here, in this house, in this settlement?
  - 2b. Where did you live before? [housing career]
  - 3a. Is your house self-build, purchased or rented. If rented, who is the owner?
  - 3b. If purchased, how did you know you bought from the rightful owner?
  - 3c. Who is the owner of the land?
  - 4a. Why did you decide to settle here?
  - 4b. What is positive of staying here?
  - 4c. What is negative of staying here?
  - 4d. Do you have to pay fees to stay here? To whom, may I know how much?
  - 5a. Can you explain how did settled here, who did you consult, did you get some kind of permission, from whom?
  - 5b. Was your name registered in one way or another? [concerning the land/plot]
  - 5c. Is the land itself registered in some way?
  - 5d. Do you have some papers on that? On land or the building?
  - 5e. What are the details of the paper?
  - 5f. Is this paper important to you? Can you explain why?
  - 5g. If a lease: from date, valid for, how many times renewed
  - 5h. Have your neighbours followed the same procedure to settle here?
  - 5i. Do you feel comfortable and secure using/owning this land?
  - 6a. Who do you think has the final authority of the land in this area?
  - 6b. Has there been any change in the status of your land concerning any final authority since you have settled here?
  - 7a. If owner: Do you rent? Do you want to rent? Why/why not?
  - 7b. If renter: Do you want to buy land or lease land from anyone? Why/why not? If yes, from whom do you want to buy/lease?
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- 8a. Are you able to transfer/sell this property? [being able, not necessary willing][empty land, houses]
  - 8b. Do you think you will ever try to transfer/sell this property?
  - 8c. Can you explain?
  - 8d. Do sales happen in this neighbourhood?
  
  - 9a. Can you describe in general what happens to property when people pass away?
  - 9b. Is it known who will inherit the property?
  - 9c. Are there any arrangements for that?
  - 9d. Do you know if land and inheritance cause conflicts?
  
  - 10a. Do you know people in this settlement who are evicted from their place? What was the reason for doing that?
  - 10b. Have you ever been worried being evicted in the past? What happened?
  - 10c. What has been the effect on your decisions on land and housing later on?
  - 10d. In case of relocation, do you know what assistance is provided? [Compensation]
  
  - 11a. Do you have land or houses somewhere else? Do you have a house there as well?
  - 11b. How did you get that piece of land?
  
  - 12a. Are you aware of land surveys and land registration at the municipality/ministry? Can you explain?
  - 12b. Do you think you can benefit from land surveys/land registration?
  - 12c. Do you know people who have documented evidence on land rights?
  - 12d. Are you in need of documented evidence for your plot? Why/why not?
  
  - 13a. Are you aware of saving schemes?
  - 13b. If so, would you like to join such a scheme? Why/why not? [In case of saving schemes, can you explain:
  - 13c. the reasons for joining
  - 13d. the procedures for joining
  - 13e. the procedures for getting a plot
  - 13f. the documents made available
  - 13g. your experiences so far relating to the saving scheme, in relation with your past experiences]
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- 13h. Which organizations (governmental, private sector) may help you in getting land? What is your opinion about the services they provide?
  - 14a. Are there any conflicts in the neighbourhood concerning land (boundaries, water, firewood, cattle)? Can you explain those conflicts briefly?
  - 14b. Who would you consult if you have any complaint or conflict related to land?
  - 14c. Do you have to pay for that?
  - 15a. Are you satisfied with your land and housing situation now?
  - 15b. If not what would you like to see to change?
  - 16a. Do you discuss land issues with family and/or friends? How often?
  - 16b. What are the issues you discuss?
  - 16c. Are there any other items you want you mention in relation to land in this settlement?
  17. Do you think you will live at this same place in ten years' time?
  18. Do you feel confident that you can stay here as long as you want? Why/Why not?
  19. Do you have any questions or comments for us?
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## Appendix B Quantitative indicators for selected sub-Saharan countries

	Year	Uganda	Kenya	Ghana	Namibia	Zambia	Botswana	SSA
1 Population (thousands)	2011	34,509	41,610	24,966	2,324	13,475	2,031	843,249
2 Percentage urban	2011	15.6	24.0	51.9	38.4	39.2	61.7	36.7
3 Population capital city (thousands)	2011	1,659	3,363	2,573	380	1,802	202	n.a.
4 Urban annual growth rate (2005-2010)	n.i.	5.93	4.25	3.82	3.39	3.78	2.59	3.67
5 Urban annual growth rate (2010-2015)	n.i.	5.74	4.36	3.5	3.14	4.15	2.07	3.61
6 HDI rank 2012	2012	161	145	135	128	163	119	n.a.
7 Adult literacy	n.i.	73.2	87.4	67.3	88.8	71.2	84.5	63
8 GNI per capita in PPP terms US\$	n.i.	1,168	1,541	1,684	5,973	1,358	13,102	2,010
9 MPI	n.i.	0.367	0.229	0.1444	0.187	0.328	n.i.	0.475
10 MPI: Population living below \$1.25 PPP per day (%)	n.i.	38	43.4	28.6	31.9	68.5	n.i.	44.0
11 Population in slums (thousands)	2005	2,420	3,897	4,805	242	2,336	n.i.	n.i.
12 Population in slums (% of urban population)	2005	66.7	54.8	45.4	33.9	57.2	n.i.	n.i.
13 Proportion of urban population living in slum area	2009	60.1	54.7	40.1	33.5	57.3	n.i.	61.7
14 Urban Slum Population (thousands)	2009	2,578	4,762	4,848	272	2,633	n.i.	198,168
15 Population below the national poverty line (%) -rural	2003-2012	27.2	49.7	39.2	49	77.9	44.8	n.i.
16 Population below the national poverty line (%) -urban	n.i.	9.1	33.7	10.8	17	27.5	19.4	n.i.
17 Population below the national poverty line (%) -national	n.i.	24.5	45.9	28.5	38	60.5	30.6	n.i.
18 Survey year		2009	2005	2006	2004	2010	2003	n.i.

### References

- 1-5 UN (2012b)  
 6-7 UNDP (2013); [data.uis.unesco.org](http://data.uis.unesco.org)  
 8-10 <http://hdrstats.undp.org/en/countries/profiles/>; UNDP  
 11-12 (2013)  
 13-14 <http://www.unhabitat.org/stats/default.aspx>  
 15-18 UN-HABITAT (2012)  
<http://www.africaneconomicoutlook.org>

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## Appendix C **Interviews held with experts in The Netherlands**

December 13<sup>th</sup>, 2006, Dr. H.A.L. Dekker, Independent consultant

January 21<sup>st</sup>, 2007, Prof. mr. A.J. Hoekema, Faculty of Law, University of Amsterdam

July 6<sup>th</sup>, 2007, Drs. M. Lankhorst, PhD-researcher, Center for Law and Economics University of Amsterdam

November, 13<sup>th</sup>, 2009, Dr. J. Van Gelder, Researcher, Netherlands Institute for the Study of Crime and Law Enforcement

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## Appendix D Interviews held with officials and experts in Namibia

- July 31<sup>st</sup>, 2008, Mr. J. Lewis, Senior Lecturer, Polytechnic of Namibia
- August 1<sup>st</sup>, 2008, Mr. C.T. Bayer, Senior Lecturer, Polytechnic of Namibia
- August 7<sup>th</sup>, 2008, Mr. W. Odendaal, Project Coordinator, Legal Assistance Center
- August 8<sup>th</sup>, 2008, Mrs. J. Gold, Senior Lecturer, Polytechnic of Namibia
- August 8<sup>th</sup>, 2008, Mr. J. Kangwa, Coordinator Integrated Land Management Institute, Polytechnic of Namibia
- August 8<sup>th</sup>, 2008, Mr. J. de Kock, Chief Town and Regional Planner, Ministry of Regional and Local Government, Housing and Rural Development
- August 11<sup>th</sup>, 2008, Mr. F. Mwaamba, Town Planner, City of Windhoek
- August 11<sup>th</sup>, 2008, Mr. B. Fuller, Consultant
- August 12<sup>th</sup>, 2008, Mrs. M. Kasita, Deputy-Director Land Boards, Tenure and Advice, Ministry of Lands and Resettlement
- August 12<sup>th</sup>, 2008, Mr. H. Shipena, Under-Secretary, Ministry of Lands and Resettlement
- August 13<sup>th</sup>, 2008, Mrs. E. Mbanga, National Coordinator, Shack Dweller Federation of Namibia
- August 13<sup>th</sup>, 2008, Mr. L. Mvula, Project manager FLTS, Ministry of Lands and Resettlement
- August 15<sup>th</sup>, 2008, Mrs. H. Likando, Coordinator Habitat Committee, Ministry of Regional and Local Government, Housing and Rural Development
- August 15<sup>th</sup>, 2008, Dr. A. Muller, Director, Namibia Housing Action Group
- August 25<sup>th</sup>, 2008, Mr. W.T. Rudd, Director, Urban Dynamics
- August 25<sup>th</sup>, 2008, Mr. J.B. Opperman, Managing Director, Urban Dynamics
- November 7<sup>th</sup> and 12<sup>th</sup>, 2008, Mr. P. Shikongo, Town Planner, Oshakati Town Council
- November 11<sup>th</sup>, 2008, Mr. P. Nghipondoka, Land Surveyor, Ministry of Lands and Resettlement
- November 14<sup>th</sup>, 2008, Mrs. M. Kaolwa, Coordinator, Shack Dweller Federation of Namibia
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## Appendix E Interviews held with officials and experts in Zambia

- July 29<sup>th</sup>, 2009, Mr. Alick Mwanza, Senior Lecturer, University of Zambia  
July 31<sup>st</sup>, 2009, Mrs. N. Nsemiwe, Project Officer, Zambia Land Alliance  
August 6<sup>th</sup>, 2009, Mr. B. Zulu, Town Planner, Lusaka City Council  
August 18<sup>th</sup>, 2009, Mr. Mabuku, Deeds Registration, Lusaka City Council  
August 19<sup>th</sup>, 2009, Mr. K. Ntamtaale, Dept. of Housing, Peri-urban unit, Lusaka City Council  
August 19<sup>th</sup>, 2009, Mrs. N. van Breugom de Haas, First Secretary, Embassy of the Kingdom of the Netherlands, Lusaka  
August 20<sup>th</sup>, 2009, Dr. J. Mukupa, Director, Dept. of City Planning, Lusaka City Council  
August 20<sup>th</sup>, 2009, Mr. R. Mwandunga, Chief Land Surveyor, Lusaka City Council  
August 20<sup>th</sup>, 2009, Mr. M. Phiri, Peri-urban section, Lusaka City Council  
August 25<sup>th</sup>, 2009, Mr. J. Njebe, Area Councillor, Lusaka City Council  
August 26<sup>th</sup>, 2009, Mr. A. Luwanga, Team leader Chipata Field Office, Lusaka City Council  
August 26<sup>th</sup>, 2009, Dr. E. Mutale, Owner, Ground Force Land and Engineering Services  
August 27<sup>th</sup>, 2009, Mr. Niyerenda, Chief Examiner, Ministry of Lands  
August 27<sup>th</sup>, 2009, Mr. T. Mwanalushi, Assistant Surveyor-General, Ministry of Lands  
August 27<sup>th</sup>, 2009, Mr. N. Ncube, Coordinator, Peoples Process on Poverty and Housing  
August 27<sup>th</sup>, 2009, Mrs. M. Shirwa, Project Officer, Peoples Process on Poverty and Housing  
August 27<sup>th</sup>, 2009, Mr. J. Hanna, MSc-student, Peoples Process on Poverty and Housing  
August 28<sup>th</sup>, 2009, Mr. Mukata, Chief Lands officer, Ministry of Lands  
September 8<sup>th</sup>, 2009, Dr. Wina, Director Physical Planning, Ministry of Local Government and Housing  
September 9<sup>th</sup>, 2009, Mr. E.P. Kabilika, Programme Coordinator, Caritas  
September 9<sup>th</sup>, 2009, Mr. J. Zimba, Member, Kabanana Resident Committee  
September 11<sup>th</sup>, 2009, Mr. Sakala, Habitat for Humanity, Civil engineer
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## Appendix F **Interviews held with officials and experts in Botswana**

October 26<sup>th</sup>, 2010, Mr. K.A. Bachobeli, Head of Research, Ministry of Lands and Housing

October 28<sup>th</sup>, 2010, Mrs. G.K. Kgwadi, Physical Planner, Gaborone City Council

October 28<sup>th</sup>, 2010, Mr. E. Tembo, Lecturer Civil Engineering, University of Gaborone

October 28<sup>th</sup>, 2010, Dr. B. Nkwae, Senior lecturer Civil Engineering, University of Gaborone

November 3<sup>rd</sup> and 8<sup>th</sup>, 2010, Prof. C. Ng'ong'ola, Faculty of Law, University of Gaborone

November 8<sup>th</sup>, 2010, Dr. K. Andreasson, LAPCAS expert, Mogoditshane sub Land Board

November 8<sup>th</sup>, 2010, Dr. K. Jefferis, Managing Director, Econsult

November 8<sup>th</sup>, 2010, Mrs. B.J. Kenewendo, Economist/consultant, Econsult

November 8<sup>th</sup>, 2010, Mr. B.C. Malatsi, Director of Surveys and Mapping, Ministry of Lands and Housing

November 9<sup>th</sup>, 2010, Mrs. I. Shabane, Deputy Board Secretary, Kweneng Land Board

November 9<sup>th</sup>, 2010, Mr. C. Dikaelo, Senior Land Registration Officer, Kweneng Land Board

November 9<sup>th</sup>, 2010, Mr. N. Rakodi, Land Surveyor, Kweneng Land Board

November 10<sup>th</sup>, 2010, Mr. M.P. Phiri, Senior Manager, Corporate Services, Ministry of Lands and Housing

November 10<sup>th</sup>, 2010, Mr. T. Mompoti, Principal Land Officer, Ministry of Lands and Housing

November 11<sup>th</sup>, 2010, Mr. Thabo, Project Manager, Habitat for Humanity

November 11<sup>th</sup>, 2010, Mr. S. Aaron, SHHA Officer, Gaborone City Council

November 12<sup>th</sup>, 2010, Prof. F.T. Kalabamu, Department of Architecture and Planning, University of Gaborone

February 2<sup>nd</sup>, 2011, Mrs. N.P. Mothobi, Land Board Secretary, Tlokweng Land Board

February 2<sup>nd</sup>, 2011, Mr. F. Chitsike, Land Surveyor, Tlokweng Land Board

February 8<sup>th</sup>, 2011, Mrs. L. Chilume, Registry, Tlokweng Land Board

February 14<sup>th</sup>, 2011, Mrs. J. Wantlo, Land Board Deputy Secretary, Mogoditshane sub Land Board

February 16<sup>th</sup>, 2011, Mr. M. Segwati, Land Surveyor, Mogoditshane sub Land Board

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# Summary

## Evaluation of innovative land tools in sub-Saharan Africa

### Three cases from a peri-urban context

*Paul van Asperen*

#### **Introduction**

Sub-Saharan Africa is urbanizing at a rapid pace. A major problem is that countries lack appropriate tools to manage this urban growth. When governments fail to deliver plots suitable for development, citizens will access land by informal routes and thereby become vulnerable to eviction. The ensuing fear of eviction might prevent them from improving their housing, while the informal status of the settlement does not allow the government to provide services. This thesis presents an analysis of various methods to upgrade informal land to a formal status. One of the main aims of formalization is to reduce poverty. Poverty levels in sub-Saharan Africa are among the world's highest: 52% of the population lives on an income below the poverty line of USD 1.25 a day. Although the majority of Africa's poor live in rural areas, poverty will increase in urban areas due to the high rates of urbanization. This urban expansion will be largely concentrated in peri-urban areas.

#### **Application of land tools in peri-urban areas**

Peri-urban areas are dynamic and heterogeneous, both in time and space. One of the main characteristics of peri-urban areas in sub-Saharan Africa is the co-existence of multiple tenure regimes. This can partly be attributed to the history of the region. Most countries have dual tenure systems: customary and statutory. Customary tenure systems are the indigenous tenure systems. Statutory tenure systems were introduced by the colonial powers and have been maintained after independence. Customary tenure systems are inherently dynamic because they adapt to changing circumstances such as urbanization. When people fail to access land through one of the tenure systems, they find alternative pathways, which lead to informal tenure. Informal or customary land access is predominant in peri-urban Africa. Some customary practices, notably the sale of customary land, are disputed from a theoretical perspective but occur frequently.

Both tenure systems are generally regarded as insecure, meaning that land holders are liable to eviction. During last century, land administration approaches from developed countries were introduced, i.e., statutory tenure systems. They largely failed to reduce poverty because people who are better off financially benefitted more from these interventions than the poor. Therefore, pro-poor and innovative land tools became popular. One of the main proponents of such tools, the Global Land Tool Network, defines land tools as practical ways to solve a problem in land administration and management by putting principles, policies and legislation into effect. The problem in ques-

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tion for peri-urban areas amounts to tenure insecurity. This study distinguishes conventional land tools from innovative tools. The former refers to the Western land administration systems, also called land titling; the latter refers to tools that are pro-poor. However, it is as yet unknown whether these innovative tools will provide tenure security for the poor. If they fail completely or in part to improve tenure security, the poor will be marginalized and risk remaining trapped in poverty. The central, all-encompassing question of this thesis is as follows: *How can innovative land tools be evaluated and improved to provide tenure security for the poor in peri-urban areas in sub-Saharan Africa?* This question is answered by designing an evaluation framework and carrying out the evaluation on material from three case studies.

### **Innovative land tools**

Four main types of innovative land tools are distinguished: legal framework tools, tenure tools, institutional framework tools and operational tools. Legal framework tools consist of statutory, administrative and judicial systems such as laws, regulations, bylaws, court decisions, directions and instructions that regulate society and set enforcement processes. Some of the legal framework tools consist of tenure tools. These define the land management arrangements at the regional level through the land management authorities and also at the individual level, where they are used to allocate and administer land rights. Accordingly, two types of tenure tools are distinguished: area tools to manage multiple tenure systems; and individual tools to manage the allocation and administration of individual land rights. Institutional framework tools relate to all land management institutions involved in land allocation and administration, being governmental, community or private institutions. Some institutional framework tools are operational land administration tools. They concern the methods applied to administer the plots and to survey their boundaries and thereby support the application of the tenure tools.

### **The evaluation framework**

The evaluation framework consists of three compound criteria, namely equity, effectiveness and efficiency. These are broken down into ten criteria and nineteen indicators. The criteria and indicators have been defined in light of the available literature on the evaluation of land administration systems and the requirements for pro-poor land administration approaches. The beneficiaries of the land tools, the land holders in peri-urban settlements under multiple tenure systems, are the focal point of the evaluation. The key criterion for the evaluation of land tools is the delivery of security of tenure. Security of tenure is subdivided into a legal (de jure) and perceived (de facto) component.

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### **Case studies**

In order to select suitable case-study areas, a general picture of peri-urban land issues in six sub-Saharan African countries was obtained through a review of the available literature. Those countries were Uganda, Kenya, Ghana, Namibia, Zambia and Botswana. All six had dual or even triple tenure systems, given that informal tenure occurred as well. There were no reports of full implementation of pro-poor land tools or principles. Two conclusions were drawn from the country studies. First, various types of informality exist due to different ways of land access. Secondly, there are various levels of legal and perceived tenure security, depending on the type of land tool being implemented.

Case-study areas were selected on the basis of the rate of urbanization and the existence of multiple tenure systems, meaning that influences of customary and informal tenure had to exist. The following areas were chosen: Oshakati, a small city in northern Namibia; Chazanga, a peri-urban settlement in Lusaka, the capital city of Zambia; and two peri-urban settlements, Tlokweng and Mogoditshane, around Gaborone, the capital of Botswana.

### **Oshakati**

Oshakati was of particular interest because the Flexible Land Tenure System was piloted there. It is regarded as one of the most recent innovative land tools for the delivery of tenure security to the poor in urban contexts. It provides for affordable, more secure and simple rights that can be upgraded, introducing a starter title and a land hold title. The pilots turned out to be mere surveying exercises since no such titles were issued. The system could not be completely evaluated in this study because it was only enacted in 2012, four years after the fieldwork. What is known is that the majority of informal land holders were given a right to occupy, which is regarded as an innovative land tool as well. Other crucial land tools and land rights were the proclamation of townland and the savings scheme. The proclamation of townland is considered an area tenure tool that expanded the jurisdiction of the Oshakati Town Council; the land was no longer under the traditional authority. The savings scheme is an individual tenure tool providing access to land for the poor with the support of NGOs. Despite the occupancy rights and savings schemes, a number of land holders continued to settle illegally. Land issues in Oshakati are further complicated by the fact that about 50% of the area is prone to flooding. These areas have already been partly built up by informal land holders who are therefore at risk for relocation, even when registered under recognized occupancy.

### **Chazanga**

Chazanga is an unplanned settlement in the northern part of Lusaka, which is claimed by both the Lusaka City Council and the traditional authority. The

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area is rapidly urbanizing and has a lively informal land market. The Council has started preparations for formalization through the Housing (Statutory and Improvement Areas) Act. Part of Chazanga would then be declared an improvement area (being the area tenure tool), at which time informal land holders would be issued occupancy licenses (being the individual tenure tool). In the past, the Lands Act has been applied to convert individual customary land rights to statutory leasehold; nevertheless such conversions are legally impossible on council land. The land transfers are overseen, as far as possible, by the Ward Development Committee, consisting of volunteers managed by the area councilor. The WDC is instrumental in providing the information needed in the formalization process.

#### **Peri-urban Gaborone**

Gaborone, the capital city of Botswana, is almost completely built up. Incoming settlers are largely absorbed in the neighbouring villages, particularly Tlokweng and Mogoditshane. Concerning land law, the main difference is that the Tribal Land Act applies to the villages, excluding Gaborone itself. This legislation formalizes customary tenure as an area tool. It also provides for the issue of certificates of customary land grants by the Land Board as an individual tool. The majority of land holders have been issued certificates since the enactment in 1970. Nevertheless, due to high demand and long waiting lists, people have accessed land informally, especially in Mogoditshane. These land holders are monitored by the Land Boards; in some cases people have been evicted and their houses have been demolished. Several Presidential Amnesties have been declared during the last 20 years, offering formalization upon the payment of a fine. During fieldwork in 2011, an amnesty was declared, aiming to formalize all land claims within one year thereafter.

#### **Evaluation of the legal framework tools**

Based on the literature review and the case-studies, the innovative land tools have been evaluated according to the framework. The legal framework tools have been evaluated in light of the indicators legal recognition and secondary land rights. Legal recognition relates to the legitimate informal and customary tenure rights enshrined in the constitution, land policies and land laws. Secondary rights, especially those rooted in customary tenure, are at risk in peri-urban areas. They might be of major importance for the livelihoods of the poor and should therefore be recognized within the legal framework. As a result of this study, the legal framework tools of Zambia and Botswana are considered pro-poor because customary and informal occupiers are generally recognized. Secondary rights are preserved in Botswana only, where these rights are recognized under the TLA. The legal framework of Namibia is considered pro-poor as well, especially after the enactment of the FLTA.

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### **Evaluation of the institutional framework tools**

The institutional framework tools have been evaluated through the indicators accessibility, co-management and support for the poor. Accessibility is defined as the physical location of the land administration agency with respect to the dwelling place of the land holder. Longer distances are generally a disadvantage for the poor. Co-management is defined as a partnership arrangement between a community of land holders and other stakeholders who share responsibility for and authority over land management, like councils and customary authorities. Finally, support for the poor refers to the existence of parties in civil society that are actively involved in land- and housing-related issues. These parties may empower poor communities in peri-urban settings; they can also facilitate access to secure land. In this study, major improvements were observed with regard to accessibility because land administration has been decentralized to local land registries. The institutional framework in Chazanga is rated pro-poor in view of the active role of the WDC in land matters. Local committees were not at all or only to a limited extent available in Oshakati and peri-urban Gaborone. Support for the poor was lacking in peri-urban Gaborone; in Oshakati support was available on a limited scale. The institutional frameworks in these two peri-urban areas are therefore considered pro-poor to a limited extent.

### **Evaluation of tenure tools**

The area tenure tools have been evaluated through the indicator awareness. The indicator refers to the knowledge of land holders about both their own tenure situation and the whole legal and institutional framework regarding land rights. In all of the studied settlements, knowledge of the institutional framework was limited. In peri-urban Gaborone and in Oshakati, land holders were generally aware of the formal land authority; awareness was therefore rated as fairly pro-poor. Only in Chazanga, due to the lack of clarity concerning the land management authority, is the declaration of improvement area considered limited pro-poor.

Individual tenure tools have been evaluated by their impact on legal and perceived tenure security, affordability and upgradability. The poor will enjoy legal tenure security only if they are protected from eviction or relocation without compensation and if possibilities exist for transfer and inheritance of their land rights. The indicators for legal security are the type of right, transfer possibilities and duration. The most important indicator for perceived security is fear of eviction. Other indicators are having documented evidence of occupancy or ownership, transfer possibilities and inheritance perils. The level of affordability is principally set by capital and occupational components relating to land administration, like the costs of initial registration or transfer and the costs related to occupancy, such as land rent. Finally, upgradability refers to the possibilities of and conditions for upgrading. It

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is a mechanism for increasing tenure security by formalizing one's interests in property in an incremental process. The concept of the continuum of land rights is applied to assess the level of upgradability. Conceiving of land rights as a continuum suggests complete upgradability, i.e., that land holders can at any time shift to rights with higher levels of tenure security.

Apart from the customary land grant in peri-urban Gaborone, the individual tenure tools are considered to be limited or fairly pro-poor. This assessment mainly reflects the limited increase in legal security (recognized occupancy, occupancy license and savings scheme) and the non-affordability of the capital component. Levels of perceived tenure security have risen, especially through documented proof of the land rights. It is also observed that perceived tenure security is under pressure during formalization projects. The possibilities for upgrading turn out to differ among the cases studied. Either multiple paths were possible or some paths were blocked from upgrading. Although the first possibilities for upgrading are of major importance to the poor, a one-dimensional and completely accessible continuum would be optimal. The individual tenure tools could be subdivided into step-in tools (recognized occupancy, starter title) and consolidated tools (land hold title) and can be regarded as stepping stones to conventional land tools.

### **Evaluation of the operational tools**

Operational tools have been evaluated in terms of their simplicity, speed, approach and completeness. Simplicity was assessed through the boundary system in use: some systems may not capture any boundaries at all; in other instances, the system consists of fixed or general boundaries. Speed relates to the capacity to handle high volumes of plots in the initial process of land administration within an acceptable time span. The approach is used as a criterion to investigate whether the tools are implemented systematically or whether land holders can act upon their own initiative, which implies taking an individual or sporadic approach. Completeness is assessed through coverage, which reveals the extent to which innovative land tools are implemented with respect to the targeted land holders within the settlement. The step-in tools found in the case-study areas in particular prescribe simple methods for land registration. Their simplicity facilitates a speedy and systematic approach to implementation. These tools are therefore considered pro-poor. However, it was observed that formalization takes a long time. This is true for the implementation of area tenure tools, like the declaration of improvement areas, as well as individual tenure tools, like the presidential amnesty.

### **Conclusions and recommendations**

This study demonstrates that it is possible to evaluate innovative land tools in peri-urban areas. For international comparisons, it would be useful if one framework was chosen and applied in the current longitudinal internation-

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al surveys. Additionally, this study argues that perceptions of land holders should be included in the evaluations at all times. Studying perceptions of tenure security not only gives insight into the impact of land tools but also provides information on other events that may have influenced these perceptions. Overall, the innovative tools are considered fairly pro-poor. Although a direct relationship with poverty reduction is difficult to prove, the innovative land tools contribute to the inclusion of the poor in the formal administrations and economy.

It should be acknowledged that the wealthier can make use of the innovative tools. As the case studies reveal, it is also difficult for them to gain formal access to land, which makes it plausible that they will take recourse to innovative land tools as well. Some measures have been taken to prevent widespread abuse of the tools; for instance, the number of plots issued through step-in land tools has been limited to one for each land holder. Nevertheless, such measures introduce complexity and challenge efficiency.

It is concluded that innovative tools are pro-poor with respect to accessibility, to the occupational component of affordability and to simplicity. The innovative tools, in comparison to conventional land tools, offer a limited degree of improvement in legal recognition, support for the poor, legal security and perceived security. It is argued that improvement is needed with regard to co-management, awareness (especially of the available land tools) and the capital component of affordability. In general, this assessment means that the tools are fairly equitable, fairly effective and fairly efficient. Continuous implementation and improvement of innovative land tools in peri-urban areas is still recommended, because the poor would benefit more from innovative than from conventional tools.

The key challenge in peri-urban areas lies in resource allocation to different aspiring land holders. Resource allocation is pre-eminently a political issue. Innovative land tools cannot solve the land access problems of the poor; at most they can support the policies made by politicians. Finally, it is observed that innovative land tools may be at odds with planning tools. The issues of land access and planning are recommended topics for future research. The findings of this study should contribute to the continuous improvement of innovative land tools. Through the implementation of such tools, the livelihoods of the poor in peri-urban sub-Saharan Africa will be improved.

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# Samenvatting

## Evaluatie van innovatieve landregistratie-instrumenten in sub-Sahara Afrika

### Drie cases binnen een peri-urbane context

*Paul van Asperen*

#### **Inleiding**

Sub-Sahara Afrika verstedelijkt in een snel tempo. Het grootste probleem is dat de landen niet de juiste instrumenten tot hun beschikking hebben om die stedelijke groei beheersbaar te laten plaatsvinden. Omdat het bestuur er niet in slaagt voldoende land uit te geven, zullen de burgers het land op informele wijze in bezit nemen waardoor ze later kwetsbaar blijken voor uitzetting en verlies van land en huis. De daaruit voortvloeiende angst beperkt hen te investeren in het verbeteren van hun woningen, terwijl de informele status de overheid dikwijls verhindert te investeren in de verbetering van de nutsvoorzieningen. Dit proefschrift analyseert de verschillende methoden om informeel landbezit te formaliseren. Een van de belangrijkste doelstellingen van de formalisering is om de armoede terug te dringen. Sub-Sahara Afrika behoort tot de armste regio's ter wereld: 52% van de bevolking leeft van een inkomen onder de armoedegrens van 1,25 dollar per dag. Hoewel de meerderheid van deze armen momenteel op het platteland leeft, zal de armoede in stedelijke gebieden toenemen als gevolg van de toenemende verstedelijking. Deze verstedelijking zal grotendeels plaatsvinden in de peri-urbane gebieden.

#### **Toepassing van landregistratie-instrumenten in peri-urbane gebieden**

Peri-urbane gebieden zijn dynamisch en heterogeen, zowel in tijd en ruimte. Een van de belangrijkste kenmerken van de peri-urbane gebieden in sub-Sahara Afrika is het naast elkaar bestaan van meerdere landrechtssystemen. Dit kan deels worden toegeschreven aan de geschiedenis van de regio. De meeste landen hebben twee parallelle systemen: een traditioneel en een overheids-systeem. De traditionele systemen bevatten de landrechten zoals vastgelegd in het aloude traditionele recht, het overheidssysteem is geïntroduceerd door koloniale machten en is dikwijls gehandhaafd na de onafhankelijkheid. De traditionele systemen zijn inherent dynamisch omdat ze zich continu aanpassen aan de veranderende omstandigheden, zoals verstedelijking. Wanneer het overheidssysteem er niet in slaagt voldoende land ter beschikking te stellen, worden alternatieve trajecten gevonden, die leiden tot informeel landbezit. Traditionele en informele systemen zijn overheersend in peri-urbaan Afrika. Sommige aanpassingen in de traditionele systemen, met name de koop en verkoop van land, worden vanuit theoretisch oogpunt onwenselijk geacht, ook al komt het vaak voor.

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Beide systemen worden in het algemeen beschouwd als onbeschermd, wat betekent dat de landbezitter uitzetting en verlies van land riskeert. Aan het einde van de vorige eeuw zijn op westerse basis geschoeide landregistratiesystemen geïmplementeerd als nieuwe overheidssystemen. Deze droegen echter niet bij aan armoedebestrijding, omdat de welgestelden meer profiteerden van deze interventies. Daarom zijn momenteel innovatieve landregistratie-instrumenten populair die bijdragen aan armoedebestrijding. Het Global Land Tool Network (GLTN) is een van de belangrijkste voorstanders van dergelijke instrumenten en heeft innovatieve landregistratie-instrumenten gedefinieerd als praktische manieren om problemen met landregistratie en management op te lossen door het toepassen van principes en het uitvoeren van beleid en wetgeving. Het kernprobleem in peri-urbane gebieden is het beschermen van het landbezit. Deze studie onderscheidt conventionele instrumenten en innovatieve instrumenten; de eerste categorie verwijst naar de overheidssystemen van westerse origine, de tweede naar systemen die gunstiger zijn voor de armen. Het is echter nog niet uitgezocht of die innovatieve instrumenten daadwerkelijk de beoogde bescherming voor de armen gaan leveren. Wanneer de innovatieve instrumenten er niet in slagen voldoende bescherming te bieden, zullen de armen worden gemarginaliseerd met het risico dat ze in de armoede gevangen blijven. De centrale, allesomvattende vraag van dit proefschrift is als volgt: Hoe kunnen innovatieve landregistratie-instrumenten worden geëvalueerd en verbeterd om bescherming te bieden aan de armen in peri-urbane gebieden in sub-Sahara Afrika? Deze vraag wordt beantwoord door het ontwerpen van een toetsingskader en de evaluatie uit te voeren in drie casestudy's.

### **Innovatieve landregistratie-instrumenten**

Er worden vier hoofdtypen van innovatieve instrumenten onderscheiden: juridische instrumenten, landrecht-instrumenten, institutionele instrumenten en operationele instrumenten. Juridische instrumenten komen voort uit wettelijke, bestuursrechtelijke rechtsstelsels zoals wetten, reglementen, statuten, rechterlijke beslissingen, aanwijzingen en instructies die de maatschappij reguleren en waarvan de handhaving is georganiseerd. Een onderdeel van de juridische instrumenten zijn de landrecht-instrumenten. Deze instrumenten bepalen de regelingen op regionaal niveau door het aanwijzen van de autoriteiten die bevoegd zijn het land te beheren en op individueel niveau om landrechten toe te wijzen aan individuele landbezitters. Daarom worden twee soorten landrecht-instrumenten onderscheiden: gebiedsinstrumenten om de diverse rechtssystemen te managen en individuele instrumenten om individuele landrechten te verdelen en te beheren. Institutionele instrumenten hebben betrekking op alle instellingen die bij landuitgifte en landbeheer betrokken zijn, zoals de overheid, de lokale gemeenschap en lokale hulporganisaties. Operationele instrumenten zijn onderdeel van de institutionele instrumenten. Zij hebben betrekking op het registreren van de percelen en het vast-

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stellen van de bijbehorende perceelgrenzen waarmee zij de institutionele instrumenten ondersteunen.

### **Toetsingskader**

Het toetsingskader bestaat uit drie samengestelde criteria, namelijk billijkheid, effectiviteit en efficiëntie; deze worden verder opgedeeld in tien criteria en negentien indicatoren. De criteria en indicatoren zijn gedefinieerd op basis van de beschikbare literatuur over de evaluatie van landregistraties in het algemeen en de specifieke eisen in het kader van de armoedebestrijding. De doelgroep van de innovatieve instrumenten wordt gevormd door de arme landbezitters in peri-urbane wijken waar meerdere landrechtssystemen bestaan. De kern van de evaluatie behelst het bepalen van het effect van de gebruikte instrumenten op de doelgroep. Het belangrijkste criterium voor de evaluatie is het niveau van bescherming van het landbezit. Deze bescherming heeft een juridische (de jure) en een door het individu werkelijk ervaren (de facto) component.

### **Casestudy's**

Om geschikte cases te kunnen selecteren, zijn van zes landen de peri-urbane situaties onderzocht, op basis van de beschikbare literatuur. Deze landen waren: Oeganda, Kenia, Ghana, Namibië, Zambia en Botswana. Al deze landen hadden meervoudige landrechtssystemen, zoals de traditionele, informele en overheidssystemen. Er waren geen volledige implementaties van innovatieve instrumenten beschreven. Twee conclusies zijn uit dit literatuuronderzoek getrokken. Op de eerste plaats bleken diverse soorten van informaliteit te bestaan als gevolg van de verschillende manieren van landverkrijging. Ten tweede zijn uiteenlopende niveaus van juridische en ervaren bescherming gevonden, afhankelijk van de toegepaste instrumenten.

De studiegebieden zijn geselecteerd op basis van de mate van verstedelijking en de aanwezigheid van meervoudige landrechtssystemen, wat betekent dat invloeden van het traditionele recht en informele systemen moeten bestaan. De volgende gebieden werden gekozen: Oshakati, een kleine stad in het noorden van Namibië; Chazanga, een peri-urbane wijk in Lusaka, de hoofdstad van Zambia en twee peri-urbane dorpen, Tlokweng en Mogoditshane, rond Gaborone, de hoofdstad van Botswana.

### **Oshakati**

Oshakati was van bijzonder belang, omdat daar een innovatief flexibel landrechtstelsel is getest. Het wordt beschouwd als een van de meest recente innovatieve instrumenten voor de bescherming van landbezit van de armen in een stedelijke context. Het voorziet in betaalbare, eenvoudige en beschermde rechten die kunnen worden opgewaardeerd: een zogenaamd start-landrecht en een landbezitsrecht. De uitgevoerde testen bleken slechts landmeetkun-

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dige projecten te betreffen, er waren geen innovatieve landrechten uitgegeven en geregistreerd. Het systeem kan niet volledig worden geëvalueerd in deze studie, omdat het pas in 2012 als wet is vastgesteld, vier jaar na het veldwerk. Niettemin is wel ontdekt dat de meeste informele landbezitters door de gemeente werden erkend, wat ook als een innovatief instrument kan worden beschouwd. Andere cruciale instrumenten en landrechten waren de omzetting van traditioneel land naar gemeentegrond en de spaargemeenschap. De omzetting naar stadsland wordt beschouwd als een gebiedsinstrument die het grondgebied van de gemeente Oshakati heeft uitgebreid; hierdoor viel het land niet langer onder het traditionele management. De spaargemeenschap is beschouwd als een individueel instrument, waarbij het verkrijgen van land voor de armen met de steun van lokale organisaties heeft plaatsgevonden. Ondanks het erkende informele landbezit en de spaargemeenschappen, bleven mensen zich illegaal vestigen. De landproblematiek in Oshakati wordt verder gecompliceerd door het feit dat ongeveer 50% van het gebied gevoelig is voor overstromingen. Deze gebieden zijn al deels bebouwd door informele landbezitters, en dragen een verhoogd risico op gedwongen verplaatsing, zelfs wanneer zij zijn geregistreerd en erkend door de gemeente.

### **Chazanga**

Chazanga is een niet geplande wijk in het noorden van Lusaka, die zowel wordt opgeëist door het gemeentebestuur van Lusaka als de traditionele autoriteit. Het gebied wordt gekenmerkt door een snelle verstedelijking met een levendige informele landmarkt. Het gemeentebestuur is begonnen met de voorbereidingen om de wijk te formaliseren door middel van de Wet op de wijkverbetering. Een deel van Chazanga zal als wijkverbeteringsgebied worden aangemerkt (een gebiedsinstrument) waarbinnen informele landbezitters een gebruiksrecht kunnen verkrijgen (een individueel instrument). In het verleden is de landwet toegepast om individuele traditionele landrechten naar erfpacht om te zetten, wat te beschouwen is als een recht vanuit het overheidssysteem. Dergelijke omzettingen zijn echter juridisch onmogelijk op gemeentegrond. De huidige landtransacties vinden zo veel mogelijk plaats onder toezicht van het plaatselijke wijkontwikkelingscomité, bestaande uit vrijwilligers aangestuurd door het gemeenteraadslid die de wijk vertegenwoordigt in het gemeentebestuur. Dit comité is belangrijk voor het verstrekken van de informatie die nodig is in het formalisatie-proces.

### **Peri-urbaan Gaborone**

Het grondgebied van Gaborone, de hoofdstad van Botswana, is bijna volledig bebouwd. Nieuwkomers worden grotendeels geabsorbeerd in de omliggende dorpen, zoals Tlokweng en Mogoditshane. In deze dorpen gelden andere wetten dan in de stad; in de dorpen is de tribale landwet van toepassing. Deze wet heeft het oorspronkelijk traditionele recht getransformeerd naar het

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overheidssysteem en is daarom een gebiedsinstrument. Daarnaast biedt het ook mogelijkheden voor de verstrekking van certificaten van traditioneel landbezit door het zogenaamde landbestuur. Dit kan worden beschouwd als een individueel instrument. De meerderheid van de landbezitters hebben certificaten ontvangen sinds de inwerkingtreding van de wet in 1970. Toch hebben veel mensen, vooral in Mogoditshane, het land op informele wijze in bezit genomen, vanwege de grote vraag en de lange wachtlijsten. Dit wordt door het landbestuur niet getolereerd, in bepaalde gevallen zijn de informele landbezitters verdreven en hun huizen gesloopt. Gedurende de laatste 20 jaar hebben diverse presidenten middels het verlenen van amnestie een einde proberen te maken aan het informele landbezit: middels het betalen van een boete werd het geformaliseerd. Tijdens de uitvoering van het veldwerk in 2011 was een amnestie uitgevaardigd, gericht op de formalisatie binnen een jaar.

#### **Evaluatie van de juridische instrumenten**

Op basis van de uitgevoerde literatuur- en casestudy's zijn de innovatieve instrumenten geëvalueerd op basis van het geformuleerde toetsingskader. De juridische instrumenten zijn geëvalueerd door de indicatoren wettelijke erkenning en secundaire landrechten. Wettelijke erkenning heeft betrekking op de legitieme informele en traditionele landrechtssystemen die zijn vastgelegd in de landwet, het grondbeleid en wetgeving aangaande landbezit. Secundaire landrechten, vooral die geworteld zijn in het traditionele landrechtssysteem, worden dikwijls vergeten in het formalisatie-proces in peri-urbane gebieden. Deze kunnen echter van groot belang zijn voor het levensonderhoud van de armen, die dus binnen het wettelijk kader zullen moeten worden erkend. Alleen in Botswana worden secundaire rechten erkend, omdat deze rechten zijn opgenomen in de tribale landwet. Volgens deze studie worden de juridische instrumenten van Zambia en Botswana als gunstig voor de armen beschouwd, omdat de informele en traditionele landbezitters in het algemeen worden erkend. Na de inwerkingtreding van de flexibele landwet in 2012 kan het juridisch kader van Namibië ook worden beschouwd als gunstig voor de armen.

#### **Evaluatie van de institutionele instrumenten**

De institutionele instrumenten zijn geëvalueerd door de indicatoren toegankelijkheid, co-management en ondersteuning voor de armen. Toegankelijkheid is gedefinieerd als de fysieke locatie van de instantie belast met de landregistratie in relatie tot de woonplaats van de landbezitter. Grotere afstanden zijn in het algemeen een nadeel voor de armen. Co-management is gedefinieerd als een partnerschap tussen een gemeenschap van landbezitters en andere belanghebbenden die de verantwoordelijkheid voor en gezag over het landbeheer delen, zoals gemeenten en de traditionele autoriteiten. Ondersteuning van de armen evalueert het bestaan van particuliere organisaties die

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in het maatschappelijk veld actief betrokken zijn bij de landverdeling en aan huisvesting gerelateerde zaken voor de armen. Zij kunnen de positie van de arme gemeenschappen in het peri-urbane krachtenveld versterken. Bovendien kunnen ze het verkrijgen van land vergemakkelijken en een betere juridische bescherming realiseren. In deze studie zijn belangrijke verbeteringen waargenomen met betrekking tot toegankelijkheid, omdat de landregistratie is gedecentraliseerd naar de lokale instanties. De institutionele instrumenten in Chazanga zijn als gunstig voor de armen beoordeeld door de actieve rol van het wijkcomité in landzaken. Dergelijke lokale comités waren niet of nauwelijks actief in Oshakati en peri-urbaan Gaborone. Ondersteuning van de armen ontbrak in peri-urbaan Gaborone; in Oshakati was het alleen op beperkte schaal aanwezig. De institutionele instrumenten in deze twee peri-urbane gebieden worden daarom beschouwd als ten dele gunstig voor de armen.

#### **Evaluatie van de landrecht-instrumenten**

De gebiedsinstrumenten, als onderdeel van de landrecht-instrumenten, zijn geëvalueerd middels de indicator bewustzijn. De indicator beoordeelt de kennis van landbezitters, op zowel hun eigen juridische situatie als het volledige palet aan beschikbare juridische en institutionele instrumenten met betrekking tot landrechten. In alle onderzochte wijken bleek de kennis over dat palet beperkt. In peri-urbaan Gaborone en Oshakati waren de landbezitters zich over het algemeen bewust van de formele landautoriteit; bewustzijn werd daarom beoordeeld als grotendeels gunstig voor de armen. Alleen in Chazanga is het bewustzijn aangemerkt als ten dele gunstig voor de armen, te wijten aan de onduidelijkheid over de land autoriteit en de aangekondigde wijkverbetering. Individuele instrumenten zijn geëvalueerd op basis van het effect op de juridische en werkelijk ervaren bescherming, de betaalbaarheid en de mogelijkheden tot opwaardering. De armen zijn juridisch beschermd wanneer ze niet van het land kunnen worden verwijderd en hun huizen afgebroken, zonder dat daar compensatie tegenover staat. Bovendien zal het landbezit overdraagbaar en overerfbaar moeten zijn. De indicatoren voor de juridische bescherming zijn het soort landrecht, de overdraagbaarheid en de periode van geldigheid. De belangrijkste indicator voor de werkelijk ervaren bescherming is de angst voor huisuitzetting. Overige indicatoren zijn de aan het landbezit gerelateerde documenten, de veronderstelde mogelijkheden van overdraagbaarheid en overerving. Het niveau van betaalbaarheid wordt voornamelijk bepaald door de eenmalige investering en de periodieke kosten benodigd voor landregistratie, zoals de kosten van eerste inschrijving of overdracht en de kosten voor het in bezit houden, zoals pachtgelden. Ten slotte zijn de mogelijkheden tot opwaardering van de landrechten en de bijbehorende voorwaarden onderzocht. Het opwaarderen is een mechanisme dat stapsgewijs de bescherming verhoogd door het formaliseren van de landrechten. Het concept van het continuüm van landrechten is toegepast om de mogelijk-

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heden van opwaardering te beoordelen. Het continuüm suggereert volledige opwaardeerbaarheid, dat wil zeggen, dat landbezitters te allen tijde hun landrechten naar een hoger beschermingsniveau kunnen brengen.

Afgezien van de verleende certificaten in peri-urbane Gaborone, zijn de individuele instrumenten ten dele of grotendeels gunstig voor de armen. Dit wordt voornamelijk veroorzaakt door een beperkte toename van de rechtsbescherming (erkend bezit, gebruiksrecht en spaargemeenschap) en de hoge investeringen benodigd voor de initiële landregistraties. De niveaus van de ervaren bescherming zijn toegenomen, met name op basis van de aan het landbezit gerelateerde documenten. Daarbij moet worden opgemerkt dat de ervaren bescherming onder druk staat tijdens de uitvoering van de formalisering. De mogelijkheden tot opwaardering blijken verschillend te zijn per onderzocht gebied. Er bleken ofwel meerdere opwaardeerpaden mogelijk of sommige paden bleken geblokkeerd. Hoewel de eerste stap bij opwaardering van groot belang is voor de armen, zou een volledig toegankelijk en eendimensionaal continuüm optimaal zijn. De individuele instrumenten kunnen worden onderverdeeld in instap-instrumenten (erkend bezit, start-landrecht) en geconsolideerde instrumenten (landgebruiksrecht), die als voorlopers van conventionele instrumenten kunnen worden beschouwd.

### **Evaluatie van de operationele instrumenten**

Operationele instrumenten zijn geëvalueerd op basis van hun eenvoud, snelheid, aanpak en volledigheid. Eenvoud werd beoordeeld op basis van het gebruikte grenssysteem: sommige instrumenten leggen geen grenzen vast; in andere gevallen worden grenzen fysiek vastgelegd of ingemeten op basis van objecten in het terrein. Snelheid betreft het vermogen om grote aantallen percelen in korte tijd te verwerken bij de initiële landregistratie. Bij aanpak wordt onderzocht of de instrumenten systematisch worden ingezet of dat landbezitters kunnen handelen op eigen initiatief in een individuele of sporadische aanpak. Volledigheid wordt beoordeeld door de dekking, die de mate weergeeft waarin de innovatieve instrumenten zijn toegepast op de beoogde landbezitters binnen de wijk. Met name de instap-instrumenten die in de studiegebieden zijn gevonden, passen eenvoudige registratie-methoden toe. Hun eenvoud maakt een snelle en systematische aanpak mogelijk. Deze instrumenten worden daarom beschouwd als gunstig voor de armen. Desondanks blijkt in de praktijk dat de formalisering lang duurt. Dit geldt zowel voor de toepassing van de gebiedsinstrumenten, zoals de aanwijzing tot wijkverbeteringsgebied, en voor de individuele instrumenten, zoals de presidentiële amnestie.

### **Conclusies en aanbevelingen**

Deze studie heeft aangetoond dat het mogelijk is om innovatieve landregistratie-instrumenten te evalueren in peri-urbane gebieden. Voor internationa-

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le vergelijkingen zou het nuttig zijn dat één kader wordt gekozen en toegepast in de huidige longitudinale internationale onderzoeken. Op de tweede plaats stelt deze studie dat de door de landbezitters ervaren bescherming altijd deel moet uitmaken van dergelijke evaluaties. Bestudering daarvan geeft niet alleen inzicht in de impact van de toegepaste instrumenten, het levert ook informatie op over andere gebeurtenissen die deze ervaringen hebben beïnvloed. Over het algemeen zijn de bestudeerde innovatieve instrumenten als grotendeels gunstig voor de armen beoordeeld. Alhoewel een directe relatie met armoedebestrijding moeilijk direct is te bewijzen, dragen innovatieve instrumenten bij aan de integratie van de armen in de formele administraties en economie.

Erkend moet worden dat de meer kapitaalkrachtigen ook gebruik kunnen maken van de innovatieve instrumenten. Zoals wordt aangetoond in de case-study's, is het ook moeilijk voor deze groep om land te verkrijgen, waardoor het aannemelijk is dat zij ook hun toevlucht zullen nemen tot het gebruik van dergelijke instrumenten. Er zijn maatregelen genomen om wijdverbreid misbruik hiervan te voorkomen; zo wordt het aantal percelen wat verkregen kan worden door het toepassen van instap-instrumenten dikwijls beperkt tot één per persoon. Dit introduceert natuurlijk extra complexiteit en vormt een uitdaging voor een efficiënte implementatie van de instrumenten.

Geconcludeerd wordt dat innovatieve instrumenten gunstig zijn voor de armen met betrekking tot toegankelijkheid, de periodieke kostencomponent van betaalbaarheid en eenvoud. De innovatieve instrumenten, in vergelijking tot de conventionele, bieden in beperkte mate een verbetering van de wettelijke erkenning, ondersteuning van de armen en de juridische en ervaren bescherming. Er wordt gesteld dat verbetering noodzakelijk is met betrekking tot co-management, bewustzijn (vooral over de beschikbare instrumenten) en de investeringscomponent van de betaalbaarheid. In het algemeen betekent dit dat de instrumenten redelijk billijk, redelijk effectief en redelijk efficiënt zijn. Implementatie en verdere verbetering van de innovatieve instrumenten in peri-urbane gebieden wordt nog steeds aanbevolen, omdat de armen meer profiteren van innovatieve dan van conventionele instrumenten.

De belangrijkste uitdaging in peri-urbane gebieden vormt de toewijzing van beperkte hoeveelheden land aan een grote groep aspirant landbezitters. Verdeling van schaarse middelen is bij uitstek een politieke kwestie. De onderzochte innovatieve instrumenten zijn doorgaans minder geschikt om een evenwichtige landuitgifte te realiseren, ze kunnen hooguit het vastgestelde landbeleid ondersteunen. Ten slotte wordt opgemerkt dat de innovatieve instrumenten op gespannen voet kunnen staan met planologische instrumenten. De problematiek rondom deze combinatie wordt aanbevolen voor nader onderzoek. De resultaten van dit onderzoek zullen hopelijk bijdragen aan de veelvoudige toepassing en continue verbetering van innovatieve landregistratie-instrumenten. Hierdoor zullen de levensomstandigheden van de

armen in peri-urbaan sub-Sahara Afrika worden verbeterd, omdat hen meer zekerheid over het landbezit wordt geboden.

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# Curriculum vitae

Paul van Asperen was born on September 4<sup>th</sup>, 1965 in Veldhoven, the Netherlands. After completing his secondary education (VWO) at the Anton van Duinkerkencollege, he started to study Geodesy at Delft University of Technology (DUT) in 1983. He specialized in planning and administrative geodesy and received his degree in 1989. He was lucky to be able to remain at DUT, which was then establishing cooperation with the University of Zambia (UNZA). Paul was seconded as a lecturer at UNZA, Department of Land Surveying, in Lusaka at the end of 1989 till mid-1992. He continued his academic career at ITC in Enschede till 1994 as an assistant professor at the Department of Geoinformatics. Both at UNZA and ITC, he specialized in GIS and related disciplines. He then moved to the Topografische Dienst Nederland (National Mapping Agency), at that time in Emmen, to innovate topographic map production and databases. He was employed there till 2000 and then returned to Delft to join the renowned Meetkundige Dienst (Survey Department) of Rijkswaterstaat (RWS, the Directorate-General of Public Works and Water Management of the Ministry of Infrastructure and Environment). There he held several positions related to GIS data and GIS applications, most recently as Service Delivery Manager at RWS Central Information Services. In the course of 2014, he has moved to RWS Water, Traffic and Environment as a senior advisor to the national environmental portal ('omgevingsloket'). During his work for RWS, he embarked on a part-time PhD study in 2005 at DUT and served as a part-time PhD researcher at the OTB Research Institute of the Built Environment between 2006 and 2012. He has been an external examiner at ITC, referee for several academic journals, external supervisor of several MSc students, member of several national user groups related to topographic mapping and national research projects on GIS, and member of the Editorial Board of GIM Magazine. He is also a member of Geo Informatie Nederland and the Dutch Association for African Studies.

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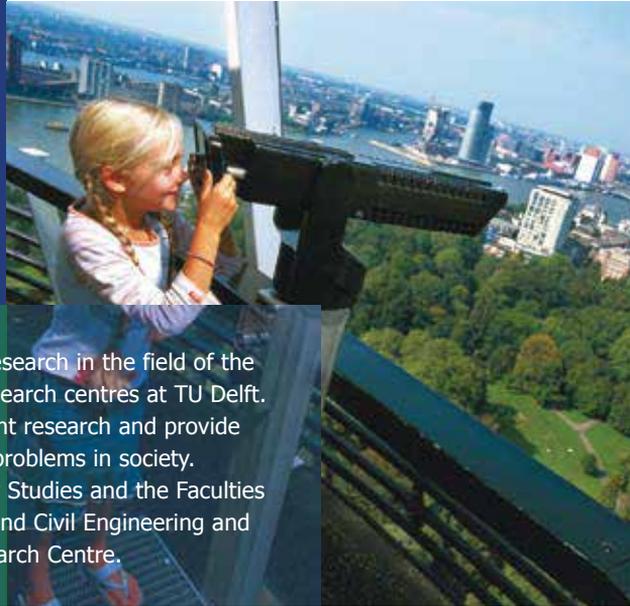
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Sub-Saharan Africa is urbanizing rapidly, but most countries lack appropriate tools to manage their urban growth. This creates both risks and opportunities for prospective land holders, resulting in a tangle of insecure land rights and claims under multiple tenure systems. Recently, innovative land tools have been proposed and implemented to formalize land tenure. It is envisaged that tenure security for land holders will increase and in turn contribute to poverty reduction. This study evaluates such tools in three peri-urban areas in Lusaka (Zambia), Oshakati (Namibia) and Gaborone (Botswana), with a focus on the perspective of the land holders. The author concludes that the tools are to some extent pro-poor, and makes recommendations for further improvements. These innovative land tools are also considered a necessary addition to conventional land administration tools.

This study makes valuable reading for academics, policy makers and practitioners within the land administration domain and related disciplines.

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