

Planning within a Context of Informality: Issues and Trends in Land Delivery in Enugu, Nigeria

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Uche Cosmas Ikejiofor¹

Introduction

By exploring the nature and extent of informality in land markets and the ways in which land, and, to a lesser extent, services are delivered and managed in situations where the public sector is unable or unwilling to fulfil this function, this case study of Enugu in Nigeria aims to deepen understanding of how informal (customary) land delivery is organized and the roles of the various actors involved. In this introductory section, the paper begins with a broad overview of the literature on the various issues that underlie the enquiry. This is followed in Section 2 by a review of the origins and geographical context of Enugu, government arrangements, provisions for urban plan preparation and development regulation, and the supply of land through the 'formal' process. The main body of the paper, which comes next, begins with an analysis of the concepts, actors and roles involved in customary landholding in Enugu, followed by an attempt to classify the customary landholders. The underlying dynamics and motives involved in bringing customary land into the market are then explored, followed by an examination of the practices and potentials in the evolving articulation between formal and informal land management. The paper concludes by highlighting the key findings and lessons learnt.

At the root of the tremendous upsurge in informal land development in the cities of most developing countries is the rapid rate of urban growth. The World Bank (1996) projected that Nigeria's urban population of about 40 million at that time would double in 13 years if the then urban growth rate of 5.5 per cent per annum persisted. Rapid urbanization means increasing demand for urban land, particularly for housing, but also for various other urban uses. Ensuring that urban land markets operate efficiently to serve the economic and social needs of urban inhabitants and enterprises has thus become one of the most pressing issues in cities throughout the third world (UNCHS, 1996). However, public authorities have generally failed to provide the rapidly growing urban population with services and infrastructure, including planned land for orderly development.

Ikejiofor (2007) and Egbu et al. (2008) identify the costs of 'legal' property development in Nigerian cities as including direct costs associated with minimum land use planning standards; costs in money, time and manpower of fulfilling the requirements for obtaining official land and development rights; as well as informal costs (bribes and gifts). These and other costs constitute a threshold below which land cannot be developed legally. Individual private property developers able and willing to develop houses above the threshold costs become part of the formal sector of the urban land market, while others become part of the 'informal', 'illegal', 'unplanned', or 'unauthorised' developments found across the cities of Nigeria and sub-Saharan Africa (Egbu et al., 2008, p. 130). Arimah and Adeagbo (2000, p. 287) found that 83 per cent of housing developments in a middle-income neighbourhood in Ibadan Nigeria were 'unauthorised' because they had contravened various aspects of the

1. This report draws substantially on the results of research funded by the UK Department for International Development (DFID) (Ikejiofor et al., 2004) and follow-up research funded by the US-based Lincoln Institute of Land Policy (Ikejiofor, 2007), supplemented by limited additional field work funded by the United Nations Human Settlements Programme (UN-HABITAT) in 2008. The views and opinions expressed in the report remain those of the author alone.

planning legislation. This demonstrates the overwhelming dominance of the urban landscape in Nigeria by informal (unauthorised) development.

Formal land delivery processes in many developing countries, based on legal concepts and administrative systems introduced by colonial and post-colonial governments, have proved unable to cope with the demands of rapid urban growth in contexts of extreme poverty and limited state capacity. In practice, most land for urban development, especially that occupied by the poor, is supplied and developed outside state regulatory frameworks. The alternative (informal) land supply system that has evolved involves a range of channels: squatting, customary allocation and illegal subdivision, mechanisms that have both strengths and weaknesses. Informal land allocation and housing is, therefore, the prevailing mode of settling virgin land in the urban periphery and of densification of the already built-up city in most countries in sub-Saharan Africa. It is a response to the deficits of statutory land management and is made possible in many cases by land reserves held by the customary sector. Ikejiofor (2006a) reports, however, that escalating costs and resistance from some customary actors mean that customary channels of land delivery are increasingly failing to meet equity concerns in providing access to land in cities, and that poor in-migrants and other vulnerable groups, especially women, are particularly disadvantaged. In Enugu, indigenous customary landowners linked by communal and familial affiliations control the bulk of peripheral land where active conversion from rural to urban uses is occurring, with family landholding being the dominant form of ownership and control (Ikejiofor et al., 2004).

Subdivision of such land can be the cause of congestion, land use conflicts and excessive costs of land servicing (Rakodi, 1997). It is noteworthy, however, that actors in the informal (customary) sector have begun to develop practices that may have the potential to overcome some of the problems of informal land supply. These include attempts by community leaders to foster orderly layouts, register land transfers, develop guarantees of tenure security and service land, some of which are evident in Enugu, as will be shown subsequently. In addition, an intricate set of relationships between government structures, formal land institutions and indigenous landowning groups has evolved. The key theoretical significance of these developments is the challenge they pose to the conventional conceptualization of urban land delivery systems in African cities in terms of two distinct categories: 'formal' and 'informal'. They also highlight the problems associated with the current practice of employing dichotomist terms (such as legal/illegal, formal/informal, regular/irregular, planned/unplanned, secure/insecure) in describing these systems. From their analysis of experience and evidence from South Africa, Cousins et al. (2005) conclude that the entire legal and social complex around which notions of "formal" and "informal" property are constituted needs to be interrogated more vigorously.

The African experience of rapid urbanization under conditions of widespread poverty is, in practice, based on a delicate amalgam of individual interests, social control by local communities, passive tolerance by the "absent" central state, and active tolerance or outright assistance by local government, the legal sector (e.g. courts of law), public and private utility companies, foreign donors and NGOs (Olima and Kreibich 2002, p. 4). Royston et al. (2005, p. 13), calling for a review of tenure terminology and concepts, observe that any dichotomy is problematic, as it indicates false polarization, when reality is more appropriately represented as a dynamic continuum in which the situation is moving towards more informality or formality.

Views on how best to manage African land markets range from arguments in favour of maintaining communal tenure to arguments for its abolition and a transition to individual titles. On the one hand, some of the literature argues that informality and illegality reduce the costs of land and housing for the urban poor (Durand-Lasserve, 2008). Others, however, argue that as long as the poor are insecure with respect to the legal status of their homes (their major assets in life), they will never enjoy full access to prevailing economic and political systems (De Soto, 2000).

In the next section, we shall take a closer look at the geographical and institutional context of Enugu.

Enugu: The coal city

Enugu is an important administrative, industrial and commercial centre in the eastern part of southern Nigeria. It has served, at various times, as the headquarters of the Central, Southern (1929) and Eastern Provinces (1939), capital of the Eastern Region (1951), the East Central State (1967), Anambra State (1976), and Enugu State (1991). In 1967, a series of political crises led to the secession of the Eastern Region from the rest of Nigeria and the declaration of the independent state of Biafra, with Enugu as its capital. Civil war broke out and lasted for nearly three years, at the end of which the Biafran resistance was crushed. Enugu has therefore been a major administrative centre since colonial times. Its administrative hinterland has, however, been reduced in size over the years as a result of the creation of nine states out of the former Eastern Region (Figures 1 and 2).

The origin of Enugu dates back to the discovery of a rich seam of coal in the area in 1909. In 1914, a British mining engineer arrived with a group of labourers from Onitsha and the first two coal mines were opened in 1915 and 1917. Most of the workers were recruited from the surrounding settlements (Nnamani, 2002, p. 68). Also in 1917, Enugu became a township under Lord Lugard's Township Ordinance. The importance of coal in the settlement's growth and development earned for it the appellation 'coal city', which it has retained despite the diminished importance of coal in its economy. A railway to Port Harcourt started operating in 1916 and stimulated the development of transport links to all the major population centres in Eastern Nigeria, enhancing Enugu's role as the economic, social and political headquarters of the region. Commerce (mostly retail trade), public administration and, more recently, some industrial activities dominate the city's economy.

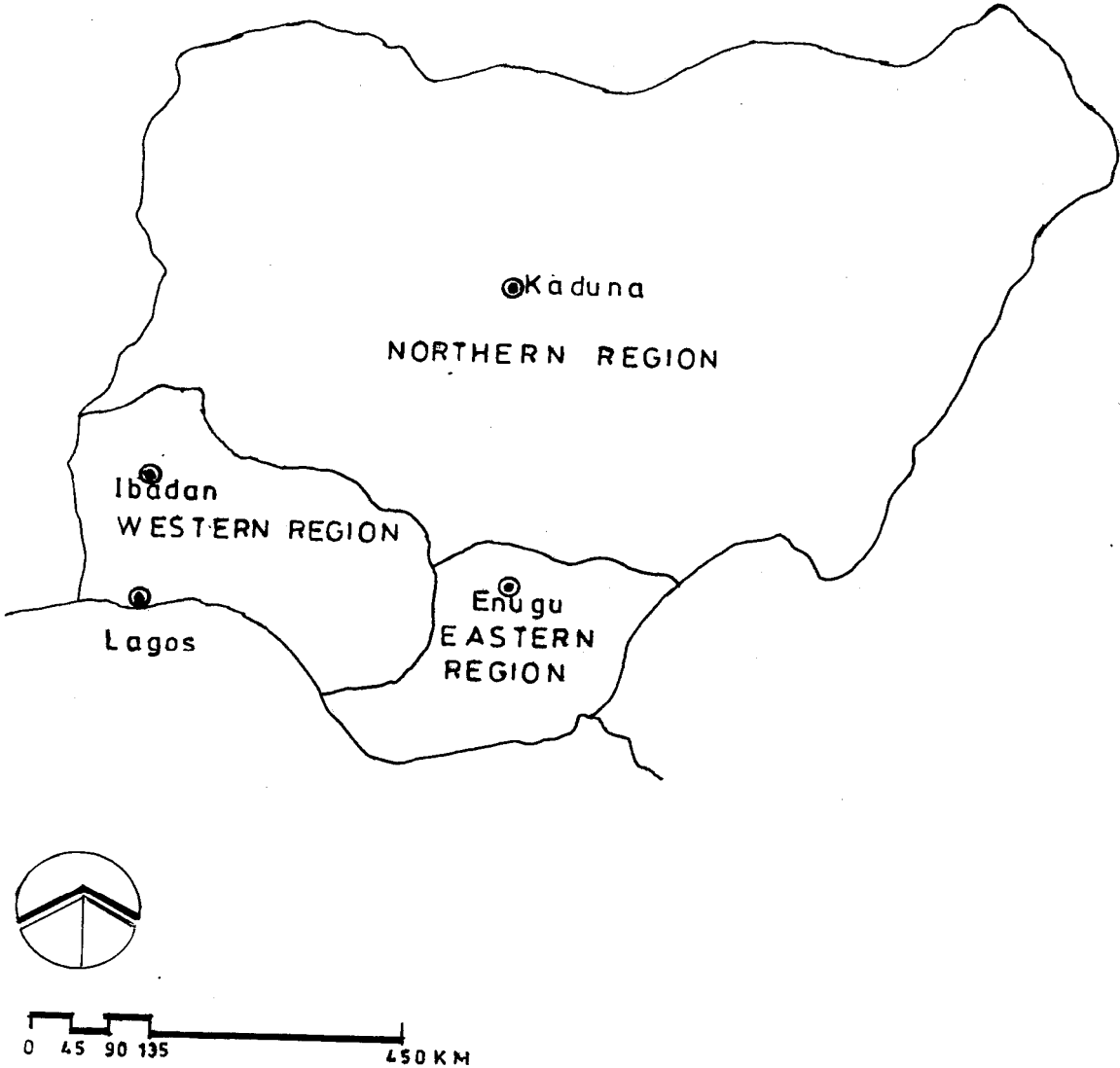
Population growth and the urban economy

The most recent population census showed that Enugu's population in 2006 was 722,664 (348,902 males and 373,812 females). It had increased from 3,170 in 1926 to 138,457 in 1963, 166,541 (1978), 342,786 (1986) and 465,072 (1991 census), or about 3 per cent p.a. between 1991 and 2006. The population shows an overwhelming dominance of the Igbo ethnic group. As in much of urban Nigeria, the dominant culture is essentially a hybrid of indigenous and Western/colonial socio-cultural practices.

As in other Nigerian towns and cities, the urban economy is dominated by informal enterprises in retail trade, small-scale industrial production, utility and financial services provision and urban agriculture. A study carried out by Umeh (1993, p. 110) in Ogui Nike (a typical high density residential neighbourhood) showed mixed land uses and congestion. In some of the streets surveyed, it was found that more than 80 per cent of the buildings contained a mixture of residential rooms and such other uses as craft shops, small hotel buildings and bars, grocery and drug stores, carpentry, watch repairing and other workshops.

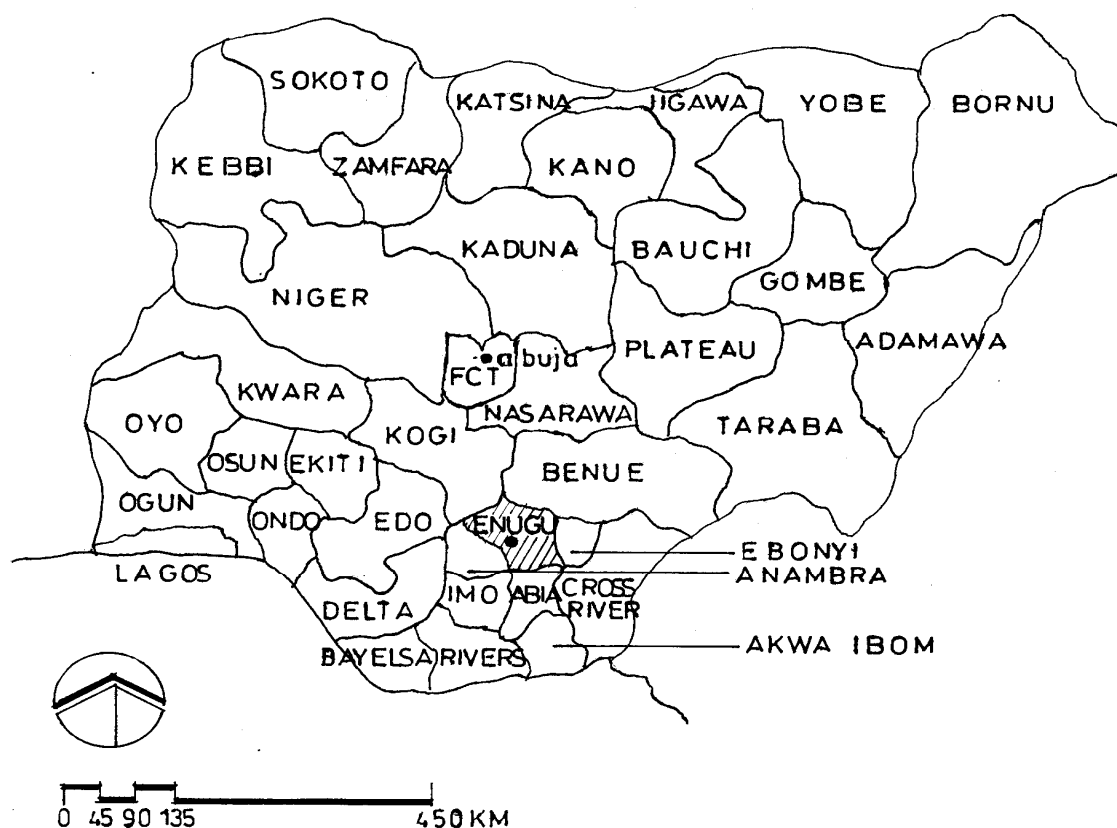
Onyebueke (2000) found that despite their poor infrastructure, high-density neighbourhoods have the highest concentration of informal businesses.

Figure 1. Political Map of Nigeria showing defunct regional structures



Source: Barbour et al. (1982, p.29)

Figure 2. Political map of Nigeria showing State Boundaries and the Location of Enugu in Enugu State



Source: Modified from Barbour et al. (1982, 29)

Political and administrative arrangements for local and State governments

Enugu was a single local government council until 1991, when it was split into two: Enugu North Local Government Council (with headquarters in the CBD) and Enugu South Local Government Council (with headquarters at Uwani). In 1996, an additional council – Enugu East, with headquarters at Nkwo Nike – was carved out of the two. The functions of these councils include primary healthcare, primary education, commerce, culture, social development and town planning. Their main source of funds is a statutory allocation from the Federation account, which is supplemented by whatever a local government is able to generate internally through levies on market stalls, business premises and motor parks, as well as property rates, etc. A directly elected chairman heads each council, which is comprised of

elected ward councillors, some of whom are assigned portfolios by the chairman, thus there is generally a supervisory councillor for Works, Education, Town Planning, Commerce, etc.

In theory, the local government should be responsible for the provision and maintenance of local roads, water supply, and solid waste collection. But in reality, the lack of capacity of this tier of government (attributable largely to poor staffing, poor funding and corruption) makes it incapable of playing any major role in infrastructure provision and maintenance. In practice, the State government takes up the bulk of this responsibility through its various boards, authorities and agencies. Capital and recurrent costs are paid for by the State government, which also collects user charges. Federal government agencies also play a role (e.g. in the provision of electricity and telephone services). In recent times, a significant level of private sector participation (particularly in the provision of telephone services and solid waste management) is emerging.

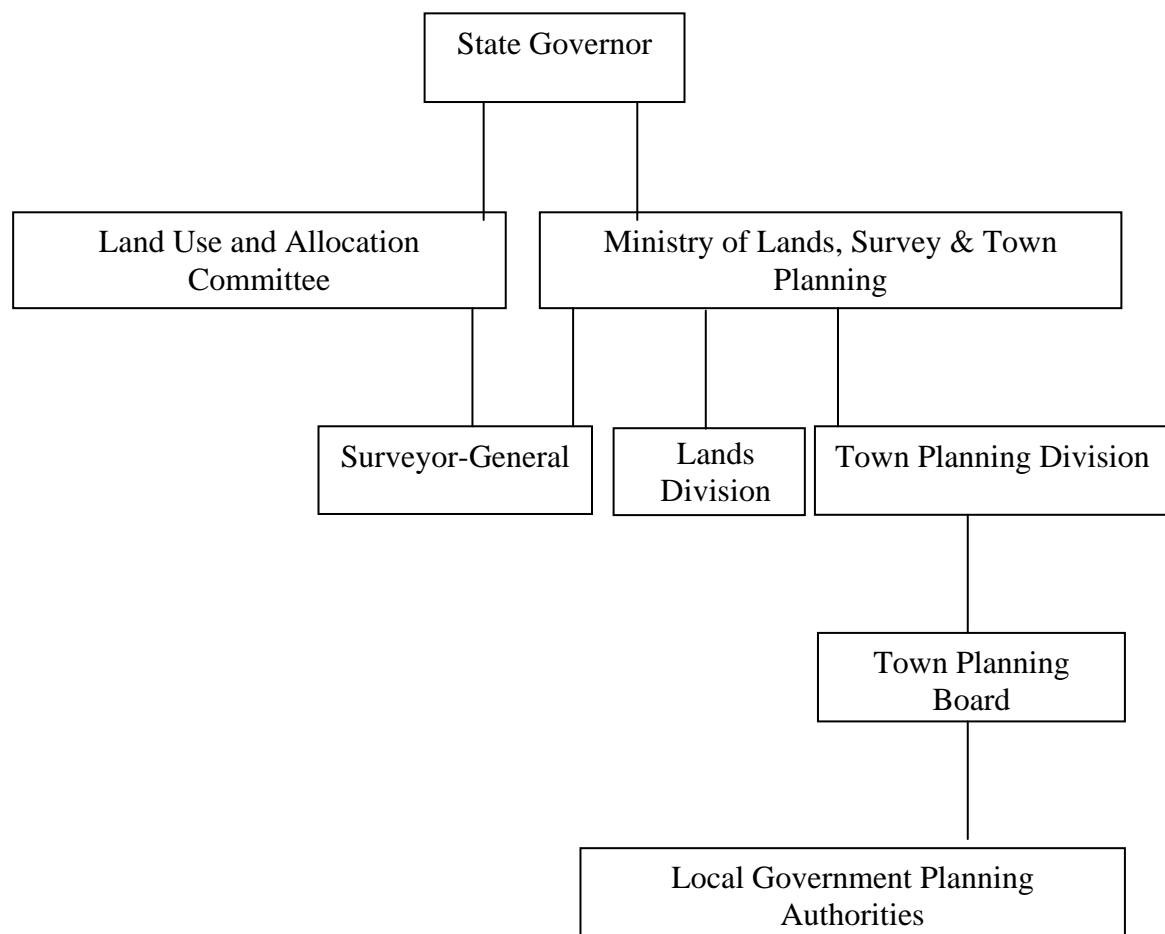
In Enugu State, like in all the other states in Nigeria, government has two levels: the State government and the local governments. An executive governor, elected directly by popular mandate, exercises overall political authority at the state level. Government is via the instrument of ministries headed by commissioners appointed by the governor, often on the recommendation of the ruling political party. Each ministry is responsible for a specific portfolio, including Works and Housing; Lands, Survey and Town Planning; Education; Health; Local Government and Chieftaincy Matters, etc. The governor and the commissioners constitute the State Executive Council, which decides the policies and programmes to be pursued at the State level. There is also a popularly elected legislature – the State House of Assembly. There are obvious cases of overlapping responsibilities between the local governments and State ministries/agencies, with lack of coordination often resulting in confusion.

Development planning and regulation in Enugu

Formal administration of urban land in Enugu is the responsibility of both the State and the local governments. The organ of the state government involved is the Ministry of Lands, Survey and Town Planning, while at the local government level it is the Local Planning Authority. Although there are areas where responsibilities overlap, as mentioned previously, it is substantially correct to say that planning and development control functions for all land acquired by the State (state land) are treated at the level of the ministry, while development control functions for all other land is the responsibility of the local planning authority in which they fall (Figure 3).

Planning legislation has been in place since colonial times, but it has never been effective as shown, for example, by Arimah and Adeagbo's study of Ibadan (2000). The only plan for the overall development of Enugu is an out of date master plan (Government of Anambra State, 1978). The legal basis for development regulation is provided by the Enugu Urban District Bye-laws of 1954 (amended 1962, 1973 and 1975) and also the procedure for obtaining building plan approval. A layout or planning scheme is prepared for formal areas by the government or, in some cases, indigenous communities, and approved by government. Compliance with this plan, including land use zoning, building height and density regulations, is one of the conditions to be met before a building plan can be approved, although the conditions are generally only enforceable in government layouts. The procedure for approval of building plans by the local government planning authorities in Enugu is as follows:

Figure 3. Organogram of formal land administration in Enugu



Source: Ikejiofor et al. 2004

- Ten copies each of both architectural and structural plans of the proposed building are submitted to the local government council.
- The Planning Authority of the council assesses the plans for inspection fees (levies paid by applicants to enable the planning authority to provide logistical support for its staff to visit the site of the proposed building) and planning rates (levies paid by applicants as revenue to the local government, calculated on the basis of type of development and status of the neighbourhood).
- The plans are vetted in turn by the medical officer in charge of health, the chief engineer and the supervisory councillor for works, to ensure that they comply with minimum plot size requirements (600 m²), maximum plot coverage (35 per cent in low, 40 per cent in medium and 50 per cent in high density areas), building lines, minimum room size, ventilation requirements and septic tank and soakaway pit construction requirements. Approved plans are returned to the Planning Authority for collection by their owners. If any of the requirements are not met, the plans must be amended and re-submitted.

Accessing planned land in Enugu

Getting planned land in Enugu, and for that matter in all urban areas in Nigeria, is a major problem. One indicator of this is the large gap between the number of applications for planned plots, and the number that are surveyed and allocated. Poor record keeping, a complete absence of any meaningful analysis of data, and the multiplicity of agencies receiving applications make it extremely difficult to ascertain the actual number of applications for government plots that are received in any given year in Enugu. The glaring lack of transparency in government land allocation procedures may explain the nonchalant attitude by officials to applications, particularly those that come from members of the general public who have not been recommended by prominent politicians or top-ranking bureaucrats. It was found in the course of this study that available plots in state government layouts have not been advertised for sale since 2005, but are allocated through secretive bureaucratic procedures.

The Land Use and Allocation Committee in the office of the governor, the office of the Commissioner for Lands, Survey and Town Planning, and the Federal Ministry of Environment, Housing and Urban Development field office in Enugu receive the bulk of applications for government plots. Available records show that from 2000 to 2007, these agencies received a combined total of about 12,000 applications for planned residential plots, an average of 1,500 per year. Because, as found in the course of this study, these agencies do not process the bulk of applications they receive (except allegedly those emanating from, or recommended by, top ranking government officials, bureaucrats, politicians and their cronies), it is not possible to determine how many are multiple applications or to ascertain the socio-economic characteristics of the applicants.

Between 2000 and 2007, the state government created six new residential layouts in Enugu containing a total of 1,234 plots (Town Planning Department, Ministry of Lands, Survey and Town Planning, Enugu, 2008). The only sites and services programme executed by the Federal Ministry of Environment, Housing and Urban Development in Enugu within the period produced 576 plots. None of the local governments in Enugu engaged in any land delivery activities. It follows that the total number of public sector plots that were surveyed and allocated in Enugu in the period under review was about 1,810 (an average of about 226 plots per year).

The major inference one can draw from the above figures (assuming there were no duplications in the applications received) is that the current supply of planned public sector plots in Enugu meets only about 15 per cent of the applications submitted. This has led to most households, in both low and high income categories, including government officials, academicians, and businessmen, getting land from the informal (customary) sector and building in unplanned areas. As mentioned earlier, the population of Enugu was 722,664 in 2006. If the growth rate of 3 per cent per annum is maintained, the population will be 813,364 in 2010, representing an additional 90,700 people. At an average household size of 6.4 (Arowolo and Onibokun, 1990, p.43), this means about 3,543 new households per annum. If it is assumed that half of these households will require new land for construction, the demand for new plots will be about 1,770 annually. If the supply of planned plots continues at the average rate in recent years, it will meet only about 12 per cent of the demand.

Allottees of plots in government layouts in Enugu are required to pay 15 different categories of fees. As at December 2007, these included a non-refundable application fee of N1000, an approval fee of N5000, a deed registration fee of N4000, a consent fee of N5000 (minimum) for preparation of a certificate of occupancy, a survey fee of N25000, and a development premium (meant to enable the government to provide local infrastructure) calculated at a rate

of N175 per square metre (US\$1 = N130 as at December 2007). The property rate (which is calculated on the basis of status of layout and type of development) also has to be paid annually to the local government and the ground rent of N7500 per hectare annually to the State government in acknowledgement of the leasehold tenure. The latter is periodically reviewed upwards. The sites and services principle underlies most of the ministry's land delivery programmes, but none has specifically targeted low-income people. Shortages of funds have meant that the emphasis has always been on cost recovery, which puts low-income people at a disadvantage.

In Enugu, the annual take-home pay of an upper low-income civil servant as at December 2007 was about N120,000, which is far less than the total of the official fees charged for a standard plot in a 'high density' area. Added to the excessive amount charged as official fees are the political and human barriers introduced by policy and endemic corruption in the plot allocation process. The absence of functional land/housing finance institutions and most Nigerians' limited incomes, which prevent them from saving, mean that the obstacles are indeed insurmountable for most small developers and the vast majority of the population who fall into the low and middle income brackets.

Having described the origins, geographical and institutional context of Enugu, we shall in the next section explore in some detail the dominant customary land delivery system, with a view to highlighting the ways in which land and services are delivered and managed in situations where the public sector is unable or unwilling to fulfil this function.

The nature and dynamics of customary landholding in Enugu

Customary landholding: Concepts, actors and roles

Some explanation is needed at this juncture about how much land has been taken from customary owners by public authorities in Enugu and through what channels. From 1909 to the early 1920s, the mines, railway and colonial administration bought what land they needed from the indigenous owners. The colonial government subsequently introduced the power of eminent domain, which it used to acquire more land as its needs grew. Postcolonial governments inherited this power to expropriate land and have used it quite extensively both within the city and on its outskirts. Compulsory acquisition of peripheral land is facilitated by its predominant mode of use, which is peasant agriculture.

The three Local Government Councils into which Enugu is divided include an area of about 200 square kilometers. The developed area of the city covers an area of about 72 square kilometres in the foothills of the Udi escarpment, while villages in a wider rural area of about 200 square kilometres, some of which lies beyond the city's administrative boundaries, are now being transformed into urban settlements (Ezeh 1998, p.3; Government of Anambra State 1978, p.39). It has been estimated that customary land accounts for up to 80 per cent of all land within the three LGCs: at least one third of the land within the developed area of the city (including large areas in Ogui Nike and Awkunanaw) is still under customary ownership, as is all the land in the surrounding villages (Ikejiofor, 2006a, p.454).

Three systems of customary landownership are evident: communal, family, and individual systems. The traditional ruler of Ogui Nike (one of the indigenous landowning communities in Enugu) observed in an interview in 2003 (Ikejiofor et al. 2004) that, long before the creation of Enugu, most land was held by communities as communal land, but with increasing population and allotment of communal land to families, a gradual transformation of land held under customary tenure from communal into family landholding has occurred. In the rest of

this section, the terms and concepts used to define the categories of customary land ownership will be explained and the amount of land held under each category will be considered.

Communal landholding implies that land is vested in the community, which in the context of traditional governance, refers to a group of people, usually related by blood, who claim a common ancestry but cannot make specific genealogical links. In some cases the common ancestor may be represented as a mythical person or totem. Within such a community, there is often a ruling family or lineage (a group of closely related families who trace their descent to a common known ancestor) that produces the community ruler. Where such a ruling family does not exist, community leadership functions (which include supervisory and administrative authority over communal land) are performed by a council of elders, which is usually comprised of adult male members selected from each of the community's constituent families. To effect a valid sale of communal land, the consent of the community is required. How this consent is given varies from one community to another - in some places, a general meeting of all adult males is required, while in others, it is obtained through the principal chiefs.

Family landholding implies that 'title' to land is vested in the family. As mentioned previously, this represents the dominant form of customary landholding, particularly in the rural areas of Nigeria today. 'Title', in this context, is not necessarily supported by documentary evidence. All that is required for such 'title' to exist is the verbal consent of the recognized community leader (or council of elders) to the effect that a specific piece of communal land has been allocated to a particular family in perpetuity. Indigenous families rarely consider it necessary to formalize their 'title', but if they do, they first have to obtain written verification of their entitlement to the land. This written consent, together with a map of the plot prepared by a licensed surveyor, constitutes 'proof' of rights to the land, which is presented to the relevant government agency for the issuance of a statutory lease (or certificate of occupancy) under the 1978 Land Use Decree. A certificate of occupancy issued in such circumstances can be inherited or transferred to a person outside the family/community for cash.

Family, in the Nigerian context, includes a father, mother and their children, and also uncles, aunts, brothers, sisters, nieces, nephews, grandparents and grandchildren. Ikejiofor (2007) found that 90 per cent of respondents in a questionnaire survey of heads of customary landowning families indicated 'same grandfather' as the biological connection among members of their family (and 8 per cent 'same great-grandfather'). All the respondents in the study identified inheritance as the means through which land owned by a family in common is passed down from the progenitor to the present generation of family members.

Land belonging to a family is normally held in trust for the members by the family head, who must be the oldest male member of the family. Landownership here is seen as part of the Nkolo (symbol of family unity), with the eldest male member, who is also in charge of the Ofo (symbol of authority), exercising control. The rights to family land are held by the male members of the family as a corporate group; it is joint and indivisible, no part capable of being alienated absolutely by an individual male member without the consent of the other male members of the family (usually the adults). It thus shares some similarities with joint tenancy under English law. However, no male member can claim any portion of the family land as his own and each member is as much entitled to possession of any part of the land as the others. Thus a family member has no alienable share in family property.

Individual ownership of customary land can occur as a result of inheritance, pledge of customary land to an individual (benefactor) by a family or community, or purchase. As will be shown below, this form of ownership is rare. It usually occurs when land has been

purchased but the formal registration has not yet been completed, and so is transitory. McAuslan (1998, p. 543) notes that the creation of an individual right of occupancy and its allocation to an individual or group through a statutory process ipso facto breaks the link between the land and customary tenure, even if the same people occupy the land. Cousins et al. (2005, p.3) corroborate this view by observing that there is often a fundamental incompatibility between property rights in community-based systems and the requirements of formal property. Formalization (individualization) of communal property rights, they note, will transform and alter both the nature of the rights and the social relations and identities that underlie them. This, according to McAuslan (1998, p. 543), poses the greatest challenge to the evolution of customary tenure.

Classification of customary landholders in Enugu

Farmland, community squares/ playgrounds, markets and burial grounds on land in customary ownership are held communally and account for about 20 per cent of all customary land in the three Local Government Council areas (Ikejiofor, 2007). Family landholding accounts for most of the remainder since, as mentioned above, individual ownership of customary land is negligible.

Customary land ownership can also be classified in terms of the identity of the landholder. Two broad categories of landholder can be identified: indigenous and non-indigenous. Indigenous customary landholders can further be broken down into two groups (Table 1):

- Those who own only customary land that has been inherited from their forebears; and,
- Those who have acquired additional land from other customary holders by way of purchase or pledge, including entrepreneurs (individuals or families) who demand land in exchange for financial or other forms of assistance they render to their kinsmen.

Table 1. Classification of indigenous customary landholders in Enugu

Landholding Family	No. in Sample	Percentage	No. of Plots* Held	Average No. of Plots per Family
Inheritor-only	52	87	592	11.4
Inheritor-purchasers	8	13	107	13.4
Total	60	100	686	

Source: Ikejiofor (2007)

* 'Plot' refers to urban plots that have been measured out of farmland held under customary tenure.

From Table 1, it is clear that the overwhelming majority of indigenous customary landholders in the survey sample (87 per cent) are families who own only customary land that has been inherited from their forebears. Another significant finding from the survey is that the ownership structure of customary land in Enugu is broad-based: the number of plots per inheritor-only family does not differ significantly from that for inheritor-purchaser families. This may be due to the small number of land transfers arising from pledges or purchases that occur among members of the indigenous society. Indigenous landowning families or individuals who want to sell land prefer to sell to non-indigenes because the sale price is determined by market forces, rather than social considerations, and so they can sell at a higher

price. Because there is no small group of dominant customary landholders and there are seldom so few customary landholders who want to sell land that they can control the process, prices cannot be dictated by monopoly landholders. Rather, customary landholders respond to the market, and they gear the location, size and price of plots they sell to what people demand.

Non-indigenous customary landholders are owners of customary land that has been acquired, mostly through purchase, from customary holders, but who have not obtained a formal title. This category includes mainly non-indigenous entrepreneurs, who have acquired land for speculative purposes or to build a house (or houses) for owner-occupation or renting out. Because of the precariousness of market transactions in customary land, the prevalent practice is for non-indigenes who acquire it to quickly obtain a formal title (recognition by government of the ownership status of a piece of land, usually expressed through issuance of a title deed or certificate of occupancy). The effect is that customary landholding by non-indigenes, just like customary landholding by individual members of the indigenous community, as described earlier, is usually transitory (while awaiting issue of the title or certificate) and, as a result, landholders in this category are few at any point in time. This was confirmed in a separate questionnaire survey of those who have purchased land from customary owners carried out as part of the study².

Bringing customary land into the market: Underlying dynamics and motives

The emergence of a market in land (probably dating back to the opening of the first coal mine in 1915) provides the channel through which ‘strangers’ get land in Enugu. Ikejiofor (2007) found that 70 per cent of respondents in the questionnaire survey of heads of indigenous landowning families had sold part(s) of their family land in the past. The survey aimed to identify the factors that had prompted each decision to sell, the uses to which family members usually put the proceeds from alienated family land, and also the relationships between buyers and sellers of land on the one hand, and formal administrative structures (State and local government authorities) on the other.

90 per cent of the sales were found to be to raise money for urgent needs. Three main uses to which proceeds from sales were put were identified: an urgent need to raise money for children’s education (40 per cent), extension/maintenance of an existing family house (30 per cent), and to capitalize micro-enterprises (20 per cent). The remaining sales were to enable a family to fulfill a one-time social obligation (e.g. marriage, title-taking, etc.). All the respondents indicated that only adult male members of the family took part in making the decision to sell. None of the respondents had experienced a problem reaching agreement to sell with other family members, probably because the children that needed money for education were not just those of the head and the family houses that needed extension/maintenance provide free accommodation for an increasing population of family members, particularly those with little or no income and who can not, as a result, build houses of their own. It is instructive that the decision to sell is made mostly because of the need to deploy family wealth (land) into new areas of investment. All the respondents believed it had been a correct decision - if their children acquired good education, they believed, they could get good jobs and that would more than compensate for the loss of part of their land.

² The sampling frame for this study consisted of a list of all those who had purchased land from indigenous landowning families/communities between January and December 2005, drawn from the register of alienated family/communal land maintained by these communities. A total of 60 land purchasers, representing about 5 per cent of the total, were randomly chosen for the survey.

The study also found that none of the customary landowners had provided any form of infrastructure or services to the land before its sale. Subsequently, at the instance of the purchasers, licensed surveyors usually surveyed the land. Extension of access roads and public water mains to a new plot, connection of the plot to the public electricity grid, construction of drainage, and such other basic infrastructure/services are all undertaken by the land purchaser, usually on an incremental basis. Because landowners were usually only willing to sell a small area at any one time, subdivision of plots by land buyers for resale after purchase rarely occurs. Apart from a few speculators, most of those who buy land do so with a view to developing the plot as an investment during their lifetime and bequeathing it to their offspring thereafter. Only five percent of the respondents in the questionnaire survey of land purchasers had subdivided their plots since purchase. Enquiries into whether the near-absence of a second-hand land market in Enugu constrained the evolution of an efficient urban property market in general fell beyond the scope of the study.

None of the customary landowner respondents had sought any form of permission from government before embarking on the sale of their land, because of their belief that it was not the business of government what they did with their land. Because customary owners both within and outside the city's boundaries sell their land without reference to the public authorities, changing urban boundaries have limited impact on the process of customary land delivery for urban uses. Nevertheless, the size of a 'standard' plot offered for sale was usually about 20 x 30 square metres – the plot size specified in the development regulations. This can be traced to the precariousness of market transactions in customary land (resulting mostly from lack of trust between the parties), which creates a strong desire in most purchasers to obtain a formal title from the appropriate government agencies. Such a title is perceived by a purchaser as being capable of affording its holder the protection of the formal courts of law in the event of a dispute. Hence, most purchasers of customary land insist that the plot they purchase meets the minimum size required for formal registration/titling. Moreover, it became clear from the study that customary landowning families, from long practice, had become quite astute in estimating their landholdings as multiples of the 'standard' plot. It would seem, therefore, that the cost barrier to land acquisition faced by the poor is a product both of high land prices and the desire of purchasers for their ownership to be regularized (Ikejiofor, 2006a). Nevertheless, the incremental and unplanned subdivision of land held under customary tenure poses problems for land use planning and constitutes one of defects of customary land delivery in the Enugu context.

Data from the study also showed that proceeds from land sales are not taxed by either the State or local governments, since these formal administrative bodies do not usually get involved in private land transactions and are almost always unaware of them. This differs from what obtains in Ghana, where the traditional system is formally recognized and incorporated into the formal system and a formula laid down for sharing revenue from "stool" land between the relevant "stool" and different layers of formal government (Gough and Yankson, 2000, p. 2489). 70 per cent of customary landholders who had sold land believed that proceeds from land sales were not taxable, while 20 per cent said they were not aware of any requirement to pay tax.

However, those who buy land within the urban administrative boundaries are not only required to pay development levy/property tax at rates fixed by the local government, but also to obtain a building permit from the local planning authority. Development levy is the fee charged by the local government through its planning authority for all new developments in its area of jurisdiction, to finance infrastructure installation. It is often required that this levy be paid before a building permit is issued. Property tax is paid annually to the local

government by all owners of developed property. All those who buy land, whether from state, customary or other private sources, are liable for both payments. What happens in most cases is that officials of the relevant local planning authority, on one of their regular patrols, spot that construction work has started and issue an order to stop work until the levy and tax are paid. It was reported that this had been the case even before 1991, when Enugu metropolis was still a single local government area.

In the past, indigenous communities sought permission to formally subdivide part of their land as a residential layout. Today, as noted above, the customary land reserves still under communal ownership are limited, meaning that the practice of submitting tracts of communal land for formal planning and subdivision is no longer feasible for most of the indigenous communities. Where communities still have areas of farm or other land, it may still occur (for example in Ogui Nike where, in 2007, the community was awaiting official approval of a planning scheme) and formal planning standards are observed. Today, as described above, the bulk of land sales are by indigenous landowning families of family land and are informal. Because most families do not own sufficient land to embark on a planning scheme, subdivision has a leapfrog pattern, as families sell plots in different locations and at different times, both within and outside the city's administrative boundaries. Because no infrastructure is provided prior to sale, but access is needed, plots are located alongside dirt access ways, with the roads, electricity lines and water supply pipes often terminating at the last building on a particular road. Decisions on such issues as how much of each plot is to be reserved for road access and services, building lines, plot coverage, etc are made by a purchaser, often guided by the practices of earlier developers in a particular neighbourhood. Government agencies seem to lack the will or capacity to adopt a more proactive approach, despite the deficiencies of this unplanned approach to subdivision and infrastructure provision.

Articulation between formal and informal (customary) land management in Enugu: Practices and potential

There is evidence that, as far back as the 1930s, aboriginal communities in Enugu had started to formally subdivide their land and sell plots to private buyers. This was done in the hope that it would lead to the socio-economic development of the community, but it also reduced the probability of their land being compulsorily acquired by the colonial administration. The land was surveyed, generally at the expense of the community concerned, under the supervision of the Surveyor General. Thus a close relationship existed from a very early stage between formal and informal land delivery and management processes in the city, explaining the existence of many formally laid out areas for which the land had been provided by customary landowners.

Adaptation and accommodation between formal and customary land delivery and management systems can therefore be viewed, at least in part, as fallout from the development of a market in land. As described above, market transactions between customary landholding families and buyers have become the dominant mode of gaining access to land for 'strangers' (i.e. all those who do not have a customary claim to land). In initial transactions, customary rights to undeveloped land are sold. These, as noted above, are then often converted to statutory leaseholds and transactions may subsequently occur between leaseholders.

The institutions (social rules and their formal or informal enforcement mechanisms) associated with the development of a market in land did not exist in the pre-colonial context and the state institutions intended to regulate land markets have been demonstrated to be cumbersome and ineffective. Thus, the institutions and procedures upon which contemporary market transactions in Enugu might rely are fraught with problems. These potentially include

customary institutions (such as the socio-cultural norms governing trust and trust relations), institutions associated with the development of a market in land (such as land law and financial institutions), and state institutions (including the 1978 Land Use Decree and planning regulations). In the first place, transactions are between non-intimates, bringing to the fore the issue of trust.

The institutions regulating transactions in land between indigenous communities and non-community members are evolving and adapting to new realities. Nevertheless, challenges to them can sometimes undermine purchasers' confidence and erode trust between parties to land transactions. That only minimal or conditional trust characterizes market transactions in land is demonstrated by evidence, not just from Enugu but from across Nigeria, that people are no longer satisfied with merely signing agreements and performing traditional rituals when they acquire land from customary sources (Ikejiofor, 1997). This lack of confidence between parties in informal land transactions has also been reported in Cebu City in the Philippines (Thirkell, 1996, p.79) and occurs mostly because the parties hardly know each other (Lyon, 2000). Because of the erosion of trust, each party in a land transaction in Enugu looks for measures to protect itself, although many customary land rights owners sounded fatalistic, expressing the need for someone involved in a transaction to trust in God and hope that no problem arises. It explains the desire of many purchasers to obtain a formal title that can be defended in the formal courts. Although the courts generally recognize transactions backed by written agreements, those transacting in land realize that the only way they can be certain of legal recognition of their rights is by formalizing transactions that occur outside the law and acquiring title. Thus increasingly titles are becoming the only form of guarantee land purchasers consider safe and secure. The quest for formal titles over land acquired from traditional sources has created an important interface between informal and formal land administration systems. Payne et al. (2008) also found that the opportunity to appeal to external agents or authorities when property claims are contested (thereby reducing households' vulnerability to arbitrary eviction and loss of property) is perceived to be one of the most powerful benefits of possessing a title deed.

In Enugu, what an individual who wants a formal title on land acquired from customary sources does depends on whether the land in question is in an approved layout or not. If it is in an approved layout, the individual applies to the Lands Division of the Ministry of Lands, Survey and Town Planning; otherwise the application is made to the Land Use and Allocation Committee in the Office of the Governor. In either case, the Surveyor General is required to check and authenticate the plan of the plot before the status of the land can be verified. In carrying out this verification, the Lands Division or the Committee, as the case may be, often consults the landowning community from which the applicant obtained the land and refers to the written but informal land register that most communities keep. Sometimes the feedback from the landowning community is conflicting, introducing delays into the formal registration process. Ultimately, the authentication is followed by title registration and/or a recommendation to the Governor for issuance of a Certificate of Occupancy. A title deed is evidence of formal recognition of ownership issued by the Lands Division of the Ministry of Lands, Survey and Town Planning following registration of land that is in an approved layout, while a Certificate of Occupancy (which can only be issued by the Governor on the recommendation of the Land Use and Allocation Committee in accordance with the 1978 Land Use Decree) similarly provides evidence of formal recognition of ownership of land that is not in an approved layout. Verification of land status thus represents another area where a functional interface between the formal and informal (customary) land management practices has emerged (Ikejiofor, 2006b).

Where building permission has not been obtained in advance, as noted above, informants reported that, when a plot purchaser starts to build, officials of the local planning authority arrive at the site with an order to stop work. However, once the developer has paid the required fees, work can re-commence. In most cases, it appears that the planning authorities are only interested in collecting the fees and will continue to halt development until the fees are paid, although the use to which the revenue is put is unclear given the lack of transparency and their failure to provide infrastructure and services. However, once the levy and tax are paid, no one from the planning authority visits the site again to check whether the building has complied with the approved plans, accounting for the proliferation of buildings that violate official regulations. Although the outcomes in planning terms may be less than desirable, the revenue generated as a result of collection of development levy from informal developments is probably considerable.

How to deal with the impact on land values of customary land transactions and the existing process of formalizing such transactions remains a major challenge. The preceding sections have described how a purchaser usually registers customary land obtained at a market price with the relevant public sector agency, with a view to obtaining formal title, which is perceived to enhance tenure security. Additional costs are usually incurred in the process of registration, driving up the total cost of the land to the purchaser. Such additional costs include official taxes, levies and administrative costs (such as fees for the title deed, survey check, inspection, stamp duty and publication). Illicit payments and bribes are often demanded by government officials, in some cases exceeding the legitimate payments. Hence, the total cost of land to a purchaser has two components: the price paid to the customary rights owner plus the costs (both official and illicit) incurred in registering the land. The purchaser of a plot who decides not to register his land may be able to defend his claim if he is lucky or has the right contacts. He may, on the other hand, incur considerable additional costs, especially if there is any dispute over the ownership of the plot. The survey of land purchasers demonstrated that the cost of registering the land is willingly incurred by most purchasers to take care of this risk.

The Federal government of Nigeria proposed in the 2002 National Housing Policy a number of measures to facilitate land registration. These are mostly intended to eliminate unnecessary bureaucracy in processing applications and are certainly needed - the involvement of multiple layers of bureaucracy creates avenues for corruption, increases the opportunities for delay, and increases the opportunity costs incurred by applicants (Ikejiofor, 2005). Implementation of the policy at the state level has, however, been stalled, largely by lack of political will.

Conclusions

This paper has attempted to contribute to deepening understanding and documenting the complexity of the customary land delivery system, which is a key part of the informal systems that deliver land and services to the majority of inhabitants of African cities. The main conclusion is that, in the light of limited public sector capacity to supply land for housing and enforce regulations governing new development, an approach different from the conventional one enshrined in government procedures is needed.

The paper has shown how, in the absence of any substantial volume of serviced plots made available by public sector agencies, most of the land for urban residential development in Enugu is delivered by indigenous landowning communities and families through more or less formal processes of subdivision and sale. Most of those seeking undeveloped land can only obtain it through the market in subdivided customary land, since little undeveloped land is publicly owned. Even though these communities have not been able to service land and

guarantee acceptable tenure security for all land purchasers, an intricate set of relationships between government structures, formal land institutions and indigenous landowning groups has evolved to compensate. The contribution of this channel to land delivery is significant and in many respects it works more smoothly than the supply of plots by the public sector. However, it is not without contradictions. Enugu is unique in the sense that land invasion/squatting as a source of land supply hardly occurred in the past and certainly does not occur at present. The absence of squatting means that the usually complex varieties of non-formal tenure systems associated with it are largely absent. This has adverse implications for market access, price trends and affordability, particularly for those in the lower income brackets. Those who are able to purchase land are the affluent. The only option open to the poor (particularly the non-indigenous poor) is to rent accommodation. Moreover, as Durand-Lasserve (1990, p. 52) observes, an urban land production and delivery system dominated by non-formal submarkets, which does not operate within a framework of urban development plans, can be extremely costly for the economy because of the additional costs of retrofitting infrastructure in unplanned areas.

It is noteworthy, however, that some of the indigenous communities in Enugu have begun to develop practices that may be able to overcome some of the problems by, for example, borrowing from formal rules. Specific examples include the attempts of such communities to foster orderly layouts and register land transfers to individual buyers. Instead of condemning the main contemporary processes of land delivery as illegal, deficient and unsuitable for modern urban development, they should be reviewed, encouraged where possible, and their weaknesses addressed through mutual adaptation on the part of the government and private landowners. This paper has begun to address the relevant issues by developing a better understanding of the roles and practices of the actors and institutions involved.

How does the evidence from Enugu contribute to the on-going debate on the future of customary land tenure in urban Africa? Payne et al. (2008) found that perceptions are important in determining tenure security. Despite its significant contribution to land supply, the deteriorating perception of the tenure security conferred by customary land rights by most non-indigenous land purchasers in Enugu seems to buttress the argument that a workable registration system is needed to ensure tenure security. It can be argued, therefore, that evolving practices related to the sale of customary landholdings in an urban context demonstrates a transition in Nigerian land ownership from a reliance on customary land rights, which are perceived as insufficiently secure, to acceptance of the need for more formal registration of rights.

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