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Informal mechanisms for accessing and securing urban land rights: the case of Kampala, Uganda

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1. Nientied, P and J Van der Linden (1985), "Approaches to low-income housing in the Third World: some comments", *International Journal of Urban and Regional Research* Vol 9, pages 311–319; also Pugh, C (2000), "Squatter settlements: their sustainability, architectural contributions and socioeconomic roles", *Cities* Vol 17, No 5, pages 325–337; and Turner, J C (1980), *The Cities of The Poor*, Croom Helm, London.

2. Gilbert, A (1990), "The provision of public services and the debt crisis in Latin America: the case of Bogota", *Economic Geography* Vol 66, No 4, pages 349–361; also Fernandes, E and S Varley (1998), "Law, the city

ABSTRACT There is a growing consensus in research that informal settlements are not as chaotic as often portrayed. The processes through which households in these settlements access housing land are not anarchic but are structured and regulated by some form of social ordering. This paper analyzes and explains the nature of the institutions that actually regulate and underpin land delivery processes in Kampala's informal settlements. Contemporary land access processes are examined in three case study settlements where institutions that are responsive to the local contexts have been developed and utilized. These non-state institutions are shown to be eclectic in nature, drawing on various normative orders including state law, rules of market exchange and customary practices. Their success in delivering large quantities of housing land is attributed to the social legitimacy they command, evidenced by the general acceptance and respect they enjoy from those whose relations they regulate.

KEYWORDS informal / Kampala / land / secure / tenure / Uganda / urban

I. INTRODUCTION

Evidence from much of the developing world has long pointed to the failure of formal systems of land delivery to cope with the demands of rapidly growing urban populations.⁽¹⁾ Most households in the urban areas of the developing world live in informal or irregular settlements,⁽²⁾ comprising between 30 and 70 per cent of the population in the large cities, and up to 85 per cent of the new housing stock is produced in an extra-legal manner.⁽³⁾ This is most pronounced in sub-Saharan Africa, which is characterized by extreme poverty and limited state capacity.

The prevalence of informal processes in the urban areas of the developing world, and in sub-Saharan Africa in particular, has been explained, first, as a response to the failure of statutory and customary tenure systems to meet the needs of lower-income groups; and second, as a reflection of the persistence of traditional practices of land delivery or the continuation of an organic process of human settlement evolution.⁽⁴⁾ Because of the widespread failings of state rules and procedures for land access or use, they have been variously described as inappropriate, alien, expensive and cumbersome.⁽⁵⁾ In most African countries, the existing institutions of land management were inherited from the colonial era and have, for various reasons, undergone little modification to reflect changing circumstances.⁽⁶⁾ It has been argued that attempts to reform dysfunctional

state institutions have been undermined by powerful vested interests that benefit from them.⁽⁷⁾ McAuslan⁽⁸⁾ puts it succinctly: “. . . *illegality in the lives of the urban poor could not survive if it did not suit many in the urban elite.*” Payne⁽⁹⁾ concurs with this assertion and posits that the present systems of land allocation and use benefit the urban elite who either run or have influence over city, and often national, governments.

The responses of governments in different parts of the world to the proliferation of informal developments have ranged from hostility or benign neglect, to tolerance, acceptance and even support of informal actors (mainly the urban poor).⁽¹⁰⁾ More recently, informal mechanisms have also been recognized as being neither chaotic nor anarchic,⁽¹¹⁾ and Fekade⁽¹²⁾ actually refers to the resulting settlements as “self-planned settlements” rather than using the usual derogatory terms. Indeed, recent studies⁽¹³⁾ indicate that various forms of “social ordering”, which regulate and underpin informal settlement processes, exist and evolve to undermine, accommodate, complement or reinforce formal rules. However, the nature of these social institutions remains, for the most part, unexplained.

The study on which this paper is based sought to provide an understanding of the nature of institutions that regulate and underpin informal land access processes in Kampala. These land delivery processes include such activities as land rights acquisition, transfer, sub-division, transactions and the management of relations between the various actors involved in urban land transactions. Institutions, as the term is used here, are “. . . *rules, enforcement characteristics of rules and norms of behaviour that structure repeated human interaction.*”⁽¹⁴⁾ North,⁽¹⁵⁾ like most other New Institutional Economics scholars, holds that institutions shape the structure of incentives and provide the constraints within which actors identify and pursue their interests. Institutions set bounds on rationality by restricting the opportunities and alternatives perceived by actors, thereby increasing the probability of certain types of behaviour. This definition of institutions can be applied to a variety of activities or social arenas but the focus here is on land access processes. A broad variety of social institutions exist in any given arena. Here, for analytical purposes, they are categorized as either formal or informal although in practice there is no such neat dichotomy. Institutions are referred to here as “formal” when they involve state-devised rules of the game, as enshrined in such instruments as national constitutions, statutes and military decrees. Informal institutions, on the other hand, are considered to be non-state sets of constraints and enablers used to regulate and structure relations among individuals or groups.

Section II of this paper offers a brief presentation of the context within which informal developments have evolved in Kampala. This is followed by a discussion of contemporary informal processes of accessing and securing land rights in Kampala and, in the subsequent section, a description of how these are socially structured. The paper concludes by reflecting on the main features of these institutions and what they imply for policy.

II. KAMPALA: BACKGROUND TO INFORMAL DEVELOPMENTS

Kampala is the largest urban area in Uganda and measures about 198 square kilometres. It has an estimated population of 1,208,400, accounting for 39 per cent of the country's total urban population.⁽¹⁶⁾ It is a primate city in

and citizenship in developing countries: an introduction”, in E Fernandes and A Varley (editors), *Illegal Cities: Law and Urban Change in Developing Countries*, Zed Books, London; Yonder, A (1998), “Implications of double standards in housing policy: development of informal settlements in Istanbul, Turkey”, in Fernandes and Varley (editors), as above; and Durand-Lasserve, A and L Royston (2002), *Holding Their Ground: Secure Land Tenure for The Urban in Developing Countries*, Earthscan Publications, London, 264 pages.

3. Durand-Lasserve, A (1997), “Regularizing land markets”, *Habitat Debate* Vol 3, No 2, pages 11–12; also UNCHS (1996), *An Urbanizing World: Global Report on Human Settlements*, Oxford University Press, New York; and McAuslan, P (1998), “Urbanization, law and development: a record of research”, in Fernandes and Varley (editors), see reference 2.

4. McAuslan, P (1985), *Urban Land and Shelter for The Urban Poor*, Earthscan, London, 143 pages; also Rakodi, C (1997), “Residential property markets in African cities”, in C Rakodi (editor), *The Urban Challenge in Africa: Growth and Management of Its Large Cities*, The United Nations Press, Tokyo, pages 371–410; Fekade, W (2000), “Deficits of formal urban land management and informal responses under rapid urban growth, an international perspective”, *Habitat International* Vol 24, No 2, pages 127–150; and Payne, G (2002), “Introduction”, in G Payne (editor), *Land, Rights and Innovation: Improving Tenure Security for the Urban Poor*, ITDG, London, 228 pages.

5. UNCHS (1999), *Reassessment of Urban Planning and Development Regulations in African Cities (Anglophone)*, UNCHS, Nairobi.

6. Muwonge, J W (1978), “Urban planning and the problem of uncontrolled settlements in Kampala”, in G W Kanyehimba and P McAuslan (editors), *Urban Legal Problems in*

Eastern Africa, Scandinavian Institute of African Studies, Uppsala, Sweden; also Simon, D (1992), *Cities, Capital and Development: African Cities in The World Economy*, Belhaven Press, London, 226 pages; Farvacque, C and P McAuslan (1992), "Reforming urban land policies and institutions in developing countries", Urban Management Programme Policy Paper No 5, World Bank, Washington DC; see reference 4, Rakodi (1997); and Berner, E (2001), "Informal developers, patrons and the state: institutions and regulatory mechanisms in popular housing", Paper presented at the ESF-N-AERUS workshop held in Leuven/Brussels, 23–26 May.

7. See reference 6, Farvacque and McAuslan (1992); also Durand-Lasserve, A (1998), "Law and urban change in developing countries: trends and issues", in Fernandes and Varley (editors), see reference 2.

8. See reference 4, McAuslan (1985), page 115.

9. See reference 4, Payne (2002).

10. Hardoy, J E and D Satterthwaite (1993), "Housing policies: a review of changing attitudes and responses to city housing in the Third World", in G C Shabbir (editor), *Urban Management: Policies and Innovations in Developing Countries*, Praeger, Westport, Connecticut, pages 111–160.

11. Leduka, R C (2000), "The role of the state, law and urban social actors in illegal urban development in Maseru, Lesotho", unpublished PhD dissertation, Department of City and Regional Planning, University of Wales, Cardiff, UK.

12. See reference 4, Fekade (2000).

13. Razzaz, O (1998), "Land disputes in the absence of ownership rights: insights from Jordan", in Fernandes and Varley (editors), see reference 2; also see reference 11; and Kombe, W J and V

a country where the level of urbanization is still low; only 12 per cent of the national population live in gazetted urban areas.⁽¹⁷⁾ Because of its position in the national economic and political space, Kampala attracts immigrants from all parts of the country in search of employment and other livelihood opportunities. The current population growth of the city is estimated at 5 per cent per annum and this is projected to rise as the contribution to the population from natural increase grows.⁽¹⁸⁾ As in other cities in the developing world, the majority of Kampala's population (about 70 per cent) live in informal settlements.⁽¹⁹⁾

a. Historical evolution of Kampala

The city of Kampala as it exists today is a product of the 1968 amalgamation of the municipalities of Mengo (Kibuga) and Kampala, which developed alongside each other under different, and often antagonistic, administrative and land tenure regimes.

Mengo municipality (Kibuga) was the royal capital of the kingdom of Buganda and was established before colonial rule, whereas Kampala evolved as a colonial city, initially accommodating mainly Europeans and Asians working for the colonial administration.⁽²⁰⁾ Under the terms of the 1900 Buganda Agreement, which was the basis for colonial rule in the kingdom, Mengo was to remain under the control of the native administration while Kampala was under the direct administrative control of the colonial authorities. A number of rules and regulations were imposed to restrict the indigenous population to Mengo municipality, allowing them only limited and regulated access to Kampala.⁽²¹⁾ In terms of land tenure, the 1900 agreement divided the land in Buganda into two categories. The first, referred to as *mailo*, consisted of land allotments to the *Kabaka* (King) of Buganda and his chiefs. The nature of *mailo* landholding was similar to freehold, although much of the land under this kind of tenure was already occupied by ordinary peasants who, under the agreement, became tenants of the newly created landowning oligarchy. The second category of landholding was Crown land, vested in the British Crown and administered by the colonial authorities in the country. Much of Mengo was located on *mailo* land while Kampala was situated on Crown land.⁽²²⁾ Besides the land tenure duality, significant differences in the nature of urban development also evolved. Formal planning schemes and guidelines were not extended to Mengo municipality as such attempts were bitterly opposed by the native government on the grounds that they violated the terms⁽²³⁾ of the 1900 Buganda Agreement.⁽²⁴⁾ Rules concerning land access in the two municipalities also differed: formal institutions were strictly enforced in Kampala while modified customary practices prevailed in Mengo.

The duality continued even after political Independence in 1962, and was perpetuated by existing political arrangements until the abolition of kingdoms in 1967 when the two municipalities were brought under unified administration by the Kampala City Council. However, even before the amalgamation, independence from colonial rule had made it possible for natives to move freely between the two municipalities, although settling in Kampala was still subject to land access and development rules inherited from the colonial era. The influx of migrants from the countryside and parts of Mengo municipality into Kampala placed severe housing

demands on the national and city authorities. Attempts at public housing provision, mainly for civil servants, were made in the 1960s but, largely because of the economic and political crises that have dominated the country's post-colonial history, these programmes did not achieve much.⁽²⁵⁾ During the 1970s, Idi Amin's rule left the economy completely destroyed and the public sector in shambles.⁽²⁶⁾ The productive sectors of the economy were neglected, foreign investment declined and state support for business ventures was reduced. The majority of the urban population were driven into the informal economy, referred to as *magendo*.⁽²⁷⁾ As the informal sector expanded, the formal economy shrank and the larger towns, like Kampala, stagnated or declined.⁽²⁸⁾ During this period, the Ugandan state was arguably at its weakest and mechanisms for enforcing state regulations virtually collapsed.

A return to political stability in the late 1980s brought fresh waves of migrants to the city, putting immense strain on agencies and structures that were struggling to recover.⁽²⁹⁾ State capacity seems to have been further undermined by the government's neo-liberal economic policies, which significantly reduced its role in housing provision. By the early 1990s, the role of the public sector in the provision of shelter was minimal, accounting for only 7 per cent of the housing stock in Kampala. Since then, the city's population has almost doubled.⁽³⁰⁾ Probably because of the political instability of the 1970s and early 1980s, Kampala did not benefit from World Bank-funded sites and services programmes that were extended to other developing world cities. Access to land in Kampala has, therefore, predominantly relied on the initiative of the households concerned, often undertaken outside the minimally enforced state regulatory framework. In addition, households have to some extent relied on the niches created by the complexity of tenure rules in the city and by administrative turmoil, in order to informally access land for shelter.

b. Current administrative structure of the city

Because of the important role played by local administrators in informal land access processes, the administrative structure of the city is described here in some detail.

The local government statute⁽³¹⁾ provides Kampala with district status, which is the highest level of local government. Being the only city in the country, Kampala has a unique local council structure, with the following hierarchy:

Zone (village)	Local council (LC I)
Parish	Local council (LC II)
Division	Local council (LC III)
District	Local council (LC V)

Kampala does not have a municipal council (LC IV) because it is both a municipality and a district. At the LC I level, the council consists of all persons aged 18 and over who reside in the zone. The LC I chairperson, who is elected by secret ballot by all members of the council, nominates candidates for the various positions on the executive committee, and these are then chosen by the council. This executive committee makes up the council at the LC II (parish) level. Because the chairperson invariably

Kreibich (2000), "Informal land management in Tanzania: final report", UCLAS/IRPUD, Dortmund/Dar es Salaam.

14. North, D C (1989), "Institutions and economic growth: an historical introduction", *World Development* Vol 17, No 9, pages 1329–1332.

15. See reference 14.

16. Uganda Bureau of Statistics (UBOS) (2002), *Uganda Population and Housing Census – Provisional Results*, Uganda Bureau of Statistics, Kampala.

17. See reference 16.

18. See reference 16.

19. Kasozi, D (2001), "Official building standards versus adapted standards in housing – the case of Kampala, Uganda", Paper presented at the ESF-N-AERUS workshop held in Leuven/Brussels, 23–26 May.

20. See reference 6, Muwonge (1978).

21. See reference 6, Muwonge (1978).

22. Low, D A and R C Pratt (1970), *Buganda and British Overrule: Two Studies*, Oxford University Press, Oxford, Second Edition.

23. These terms included putting certain geographical areas (e.g. Mengo municipality) and issues (e.g. those relating to custom) pertaining to the natives under the jurisdiction of the native government.

24. Southall, A W and P C W Gutkind (1957), *Townsmen in the Making: Kampala and its Suburbs*, East African Institute of Social Research, Kampala.

25. Government of Uganda (1992), *A National Shelter Strategy: Volume I*, Ministry of Lands and Urban Development, Kampala.

26. Sathyamurthy, V K (1986), *The Political Development of Uganda: 1900–1986*, Gower Publishers, Aldershot.

27. Maxwell, D G (1995), "Alternative food security strategy: a household analysis of urban agriculture in Kampala", *World Development* Vol 23, No 10, pages 1669–1681.

28. See reference 27.

29. Brett, E A (1994), "Rebuilding organization capacity in Uganda under the National Resistance Movement", *The Journal of Modern African Studies* Vol 32, No 1, pages 53–80.

30. Government of Uganda (1991), *National Population and Housing Census*, Uganda Printers and Publishers Corporation (UPPC), Entebbe; also see reference 16.

31. Local Government Act 1997, Ministry of Local Government, Kampala.

32. Lund, C (2002), "Negotiating property institutions: on the symbiosis of property and authority in Africa", in K Juul and C Lund (editors), *Negotiating Property in Africa*, Heinemann, Portsmouth, pages 11–43.

33. See reference 32.

nominates individuals who are close to him or her, this person often has a domineering role vis-à-vis the other members of the executive.

The functions of a council at each administrative level are, inter alia, to resolve problems identified in the area, monitor the delivery of services within its area of jurisdiction, assist in the maintenance of law, order and security and to carry out any functions assigned by a higher local government council. Through interviews with LC I chairpersons, it was clear that most of them view their role in the zone as being unlimited in scope and, indeed, they intervene in, and are consulted on, all sorts of activities in their areas of jurisdiction. Besides being part of the local government hierarchy, local councils see themselves as the legitimate successors of traditional institutions in these urban settlements that are so heterogeneous that no tribal leader would claim such a role.

III. THE LAND ACCESS PROCESS

As Lund⁽³²⁾ argues, social institutions are best thought of in terms of processes, implying the need to focus upon the social interaction that constitutes regularized patterns of behaviour. This section explores the social institutions that underpin land access in Kampala's informal settlements and examines the key activities, patterns of behaviour of key actors and rule-structuring processes through which households in these settlements acquire land rights that enable them to erect structures for habitation. The land access process can be broken down into a number of stages. Lund⁽³³⁾ points to three stages, as seen from the acquirer's perspective: identifying the interests in property; staking a claim; and having the rights claim recognized. In this paper, the process will be divided into four stages, namely: obtaining information on rights availability; negotiation of a land transaction; plot adjudication and demarcation; and evidencing land rights transfer.

a. The case study settlements

The data presented here were collected from three settlements within Kampala, namely Kamwokya II, Mbuya I and Busega (Figure 1). These case study settlements are on the second rung of the local government administrative hierarchy (LC II, or parish). Within each of the settlements there are 6–10 zones (LC I), which form the lowest tier of local government. Kamwokya, an old established settlement, is one of the most densely populated in the city and is located in the Central division, on *mailo* land. Busega is located on the city periphery and has one of the lowest densities in the city. The two settlements share similar characteristics regarding tenure and both are located in former Mengo municipality, but they differ significantly with regard to their stage of development and population density. They were selected to make it possible to investigate any changes in the performance of social institutions as settlements consolidate. Mbuya is an intermediate, medium density consolidating settlement located on former Crown land (Kampala municipality). The following subsections will discuss the structuring of the stages of land access (outlined above) in the three study settlements, starting with the ways in which information on land availability is obtained.

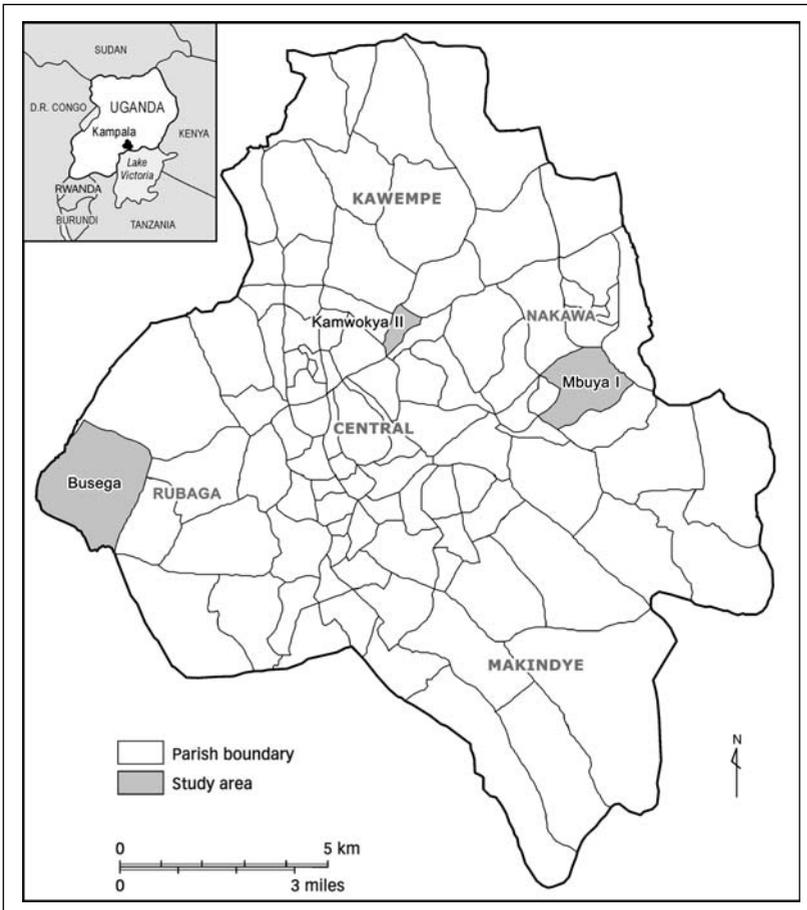


FIGURE 1
Location of study settlements in Kampala district

SOURCE: Adapted from KCC GIS Unit, Urban Planning and Land Management Department, Kampala (2004).

b. Obtaining information on plot availability

Transaction costs, including information costs, are often considered central to the efficiency of land markets. Such costs are part of what informs Benton's⁽³⁴⁾ rule-shopping process, as institutions that minimize transaction costs are generally preferred to more costly ones. Therefore, one of the earliest stages in the land access process involves obtaining information on the availability of a plot of land, or what Lund⁽³⁵⁾ calls "... identifying the interests in property". Access to accurate and less costly information is important both to those seeking to acquire land rights and those intent on disposing of them.

In obtaining information on the availability of plots, potential land acquirers in Kampala are keen to use reliable channels that minimize

34. Benton, L (1994), "Beyond legal pluralism: towards a new approach to law in the informal sector", *Social and Legal Studies* Vol 3, pages 303-317.

35. See reference 32.

transaction costs. In all three settlements, according to householders in our sample, the predominant source of such information is friends/neighbours/relatives. In Kamwokya, more than 92 per cent of the households obtained information about the availability of the plots that they currently occupy from friends, neighbours or relatives; in Mbuya and Busega the figures are 89 and 90 per cent, respectively. Land brokers come a distant second, facilitating transactions for an average of 6 per cent of households.

However, in a focus group discussion with land brokers operating within Kamwokya, participants were adamant that their contribution was greater than that reflected by responses from the households in our sample. The land brokers presented a number of scenarios that might explain their poor showing in our survey. Once they had obtained information on the availability of a plot for sale, they said they "spread the word" by talking to a variety of people within and outside the settlement, just in case they happened to know of a buyer. These people then informed friends, relatives or neighbours who might be searching for a plot. Although land brokers are involved in the conclusion of the transaction, the friends/relatives/neighbours take the credit for passing on the information to the eventual buyer. They also argued that most of them are, first and foremost, part of the community in which they operate, only doing land brokerage as a secondary and part-time activity. Indeed, most of them did not set out to be land brokers but got involved as a result of frequently being contacted by those selling or searching for land. Many were contacted because of their perceived familiarity with the locality or because they operated a business that brings them in contact with many people. They are therefore viewed as friends/relatives/neighbours by some of their clients, rather than land brokers. To them, this is reinforced by the fact that they do not charge buyers a fee as the sellers invariably pay a negotiated fee for their services. How much these particular scenarios could have affected the responses is hard to tell, but the overwhelming reliance on informal social networks for information on plot availability in all three informal settlements is undeniable.

Cost aside, social networks are preferred as channels of information for a variety of reasons, most of which have to do with social norms. Because land sales are often occasioned by financial difficulties within the family, such as the need to pay children's school fees, neighbours and friends of the family are the first to be informed. From focus group discussions in all three settlements, but mainly in Busega, it was evident that selling land is still perceived as "demeaning" to the family and is often the last resort after other options have been exhausted. To prevent the land "going out" of the family, initial enquiries are made within family and kith circles. There is also a tendency to be selective as to who should buy the land, especially if only a portion of the family plot is to be sold and the buyer is to become a close neighbour. Invariably, those households that accessed their land through non-commercial channels got to know about the availability of the plots through relatives and friends.

One mechanism for exchanging information on land availability that was conspicuous by its lack of mention was advertising through print or electronic media (formal channels). While these channels are becoming popular in the more affluent and expensive formal settlements, their use in informal settlements is virtually non-existent. Aside from limited access to newspapers, high levels of illiteracy and expense, there was a

common perception among the landholders who were interviewed that plots of land advertised in newspapers are likely to be problematic and, therefore, unattractive to those who know them closely, which explains why the sellers had opted for the more impersonal formal channels of advertisement.

c. Negotiating a land transaction

Once the seller and the prospective buyer have been brought together, and the buyer is interested in the plot in question, what follows is a process of bargaining, with each party trying to secure the best deal possible. In a minority of cases, landowners, particularly absentee landowners, give land brokers the authority to undertake the bargaining on their behalf as long as they can deliver a reserve minimum at the end of the transaction. Similarly, prospective buyers, particularly those living or working outside the country, may use agents – relatives, friends or land brokers – to negotiate a transaction on their behalf. In most cases, however, negotiations are conducted between the landholders and the prospective buyers themselves. Such negotiations are often discreet until the final agreement is reached, at which point disclosure is made to those intended as signatories to the sale agreement. Bargaining centres mainly on price and the method of payment. It is rare for such negotiations to be concluded at a first meeting; often, the parties will look at alternatives or confer with their families before returning with a final commitment or fresh proposals. What, then, influences the price of a plot of land in Kampala?

While in the past, as Mukwaya⁽³⁶⁾ observes, clan identity played a crucial part in the determination of the price asked for any piece of land, the significance of this factor has greatly reduced. According to Mukwaya,⁽³⁷⁾ the cost of land in Buganda in the 1950s ranged from the price paid by a complete stranger, through a slightly reduced price for a clan relative, to a nominal sum for a close relative. In situations involving brothers, or fathers and sons, the transaction was likely to be a gift.⁽³⁸⁾ The situation has changed significantly although there are still cases of price discrimination on the basis of affection and affinity between transacting parties. This is especially the case when the reason for the sale is a targeted expenditure or is distress induced, in which case the landowner is willing to give up his/her piece of land to whomever among close relatives is capable of providing the money required for the emergency, even if the price obtained is lower than the market value of the land in question.

There are a number of issues that are taken into consideration during the price negotiation process, including the existence or absence of a registered certificate of title, plot size, physical location, level of servicing and tenurial attributes. Titled land is much more expensive than land without a title, the difference reflecting both the cost of processing land titles (including a scarcity premium) and the extra security of tenure conferred by the possession of a title. The first question most prospective land buyers in Kampala ask a seller is whether or not the land in question is titled, in order to be able to estimate the risks involved in buying the land and the value bracket within which the land falls. The difference in value between titled and untitled land in the three settlements was estimated⁽³⁹⁾ to be between 65 and 75 per cent, everything else being equal.

36. Mukwaya, A B (1953), *Land Tenure in Buganda: Present Day Tendencies*, The Eagle Press, Kampala.

37. See reference 36.

38. See reference 36.

39. Estimates were used in the absence of any published data on land prices. Focus group discussions involving land brokers were used to arrive at these estimates. This information was triangulated with estimates obtained from the principal valuer, Kampala City Council, on 15 December 2002.

Given Kampala’s terrain, which is dominated by hills and, often, swampy valleys, there is also a distinction between “wet” and “dry” land. Because of the difficulties associated with developing “wet” land, and the environmental hazards to which inhabitants of such land are exposed, the prices of plots in such areas are much lower. This point is illustrated by a Property Masters estate agent advertisement for two plots of land located in Kisaasi, close to Kamwokya:⁽⁴⁰⁾ “25 dec. residential – 7 M; 25 dec. lower – 4 M”. Both plots were in the same area, measured the same size and were titled. The only distinction was the lower, and hence wetter, location of the second plot, which made it available at almost half the price, at Ushs. 4 million.⁽⁴¹⁾ A similar plot on “wet” land without a land title would cost Ushs. 1–2 million. This is why poor families often choose untitled “wet” land despite the problems of tenure security and the environmental hazards associated with it.

Other pricing factors relate to the physical attributes of the plot, ownership details and neighbourhood characteristics. An obvious factor is the plot size. Most households in the three settlements occupy plots smaller than the minimum standard set by Kampala city council, primarily because they cannot afford larger plots.⁽⁴²⁾ Prices are also affected by the level/quality of infrastructure and social services available. While services were considered important in the three settlements, particularly plot access and water, their absence did not seem to have been a deterrent to households seeking a place for habitation. The heads of household interviewed were less concerned about services than they were about securing a piece of land where they could put up a shelter.

d. Plot adjudication and demarcation

As in the formal areas of the city, plots of land in informal settlements are demarcated and physically delineated to show the spatial extent of individual ownership claims. As shown in Table 1, most landholders in all three settlements had their plots demarcated at the time of acquisition.

The few non-demarcated plots were found to be mostly part of large family *bibanjas* (landholdings), where individual owners found no need to physically delineate their particular holding. Other than these, the rest of the non-physically delineated/marked plots at the time of acquisition were eventually demarcated.

Adjudication and demarcation of plots in Kampala’s informal settlements is carried out by a variety of “authorities”/actors. In Kamwokya and Mbuya, most plots are demarcated by the seller (original holder).

TABLE 1
Plot boundary definition in the three settlements

	Settlement		
	Kamwokya	Mbuya	Busega
Boundaries defined	86%	84%	85%
Boundaries not defined	14%	16%	15%

SOURCE: Author’s survey October/November 2002.

40. The advertisement was in *The Monitor* newspaper, Kampala, 28 December 2002.

41. The exchange rate at the time of the study was US\$ 1 = Ushs. 1,800.

42. Nkurunziza, E (2004), “Informal land access processes in Kampala, Uganda: a legal pluralist perspective”, unpublished PhD thesis, School of Public Policy, University of Birmingham, UK.

This is invariably the case for plots of land informally accessed from private individuals. Only in rare circumstances, such as self-allocation in “wet” lands, does the acquirer undertake the demarcation him/herself. In Kamwokya, about 23 per cent of the households enlisted the services of a professional land surveyor to carry out the demarcation. Acquisition of a registered land title requires that a registered land surveyor undertakes a cadastral survey unless the demarcation has already been done and all that remains is the transfer process at the land registry. It is worth noting that not all who seek the services of a professional surveyor follow the process through to the acquisition of a title. This is partly because of the cumbersome and expensive process involved. Some landholders felt that once a surveyor had been seen on their sites demarcating the boundaries, there was no need to pursue the title since nobody would ever know that they had not obtained it. A surveyor’s beacons in the ground provided enough security and made it not worthwhile to process a land title. Most landholders interviewed considered the acquisition of title as necessary only for protecting their children against future disputes and potential dispossession.

Only in a minority of cases is plot demarcation undertaken by members of the LC I executive or neighbours of the plot in question. While they are often witnesses to demarcation/boundary marking, local councils’ and neighbours’ direct participation in the process occurs mainly when there is a disagreement that needs arbitration. Local councils are also sometimes involved in the demarcation to enforce the decisions of local council courts.

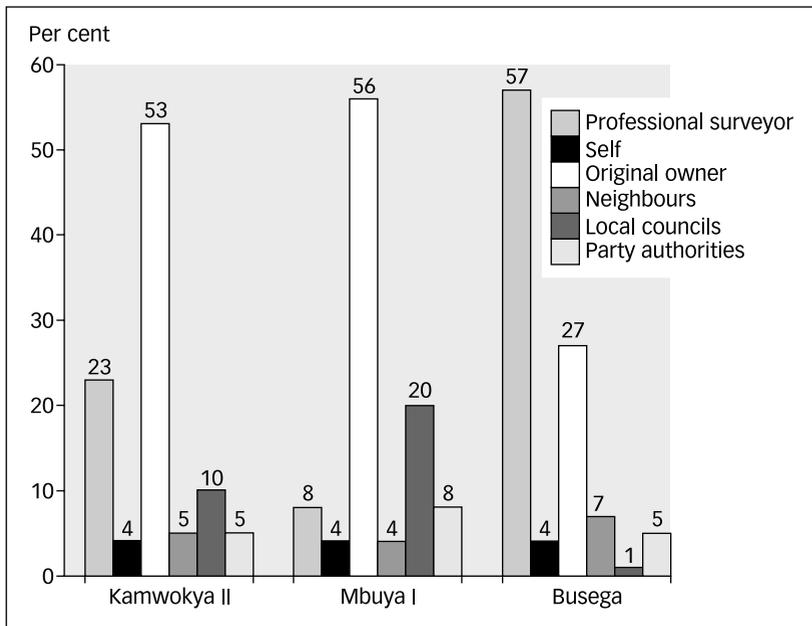


FIGURE 2

Adjudication and demarcation of plots in the three settlements

SOURCE: Author’s own survey, October/November 2002.

As shown in Figure 2, Busega presents a different case from the other two settlements. There is greater use of formal channels of land demarcation, as reflected by the large proportion of plots (57 per cent) demarcated by professional surveyors. There are probably two main reasons for this. First, the socioeconomic situation of most households in Busega is generally better than that of households in the other two settlements, and they can afford the services of a professional surveyor. Second, most plots in Kamwokya and Mbuya are smaller than the prescribed city standards and demarcation of such plots by a professional surveyor cannot be officially sanctioned. Sometimes, landholders make private arrangements with surveyors to undertake demarcations without the prescribed official sanction (technically referred to as Instructions to Survey, or I/S) but such surveys remain illegal and cannot be used to apply for title. Many landholders in the two settlements pointed out this constraint.

In the demarcation process, different types of marks, including survey beacons and plantings, are used to indicate the adjudicated boundaries. Because survey beacons are associated with titled land, and therefore greater security, they are the preferred boundary markers in Kamwokya and Busega. Although legally, survey marker stones are government property, to be used only where a professional surveyor has fixed the boundaries, it is now common for individuals to either purchase or make them for use on their plot boundaries. In Mbuya, most plot boundaries (75 per cent) are marked by planting and, traditionally, the most commonly used plant in land demarcation is *olwanyii*. Focus group discussions in Mbuya were unsure why planting is more common there than in the other two settlements but suggestions pointed to the nature of land tenure. Prior to the enactment of the Land Act 1998, land in Mbuya was public land and because of this, occupants without leasehold titles were tenants at sufferance and had less secure tenure than those on *mailo* land. It was thus less likely for them to use survey beacons to demarcate boundaries; planting was more consistent with their fragile tenure. A few landholders use other boundary markers such as poles and fencing.

Some of the landholders interviewed in Mbuya and Kamwokya pointed to gullies cut in the ground by rainwater as their plot boundaries, while other plots are only as big as the house built on them and therefore building walls mark the boundaries.

e. Documentary evidence of land rights

At the conclusion of a land transaction, some form of contract, invariably in written form, often evidences the transfer of rights from one party to another.

As anticipated, most landholders in the three settlements obtained some form of documentation at the time of plot acquisition as proof of possession. Only a small minority (11 per cent) did not, including those who had allocated themselves plots in the wetlands and those who had started off as squatters before regularizing their occupation with the holders of the ownership rights. In most cases, the documents are recorded in the names of male heads of household. For instance, in Mbuya, 91 per cent of the plots in our sample are “registered” in the name of the husband, 8 per cent in the name of the spouse and 1 per cent jointly. It was learnt from focus group discussions with women landholders that

virtually all the plots registered in women's names were acquired by them personally, either through inheritance or purchase.

The most common type of document used to evidence land transactions in Kamwokya and Mbuya is the "letter of agreement", known locally as *endagaano*, literally translated as "pact". Of all the households that obtained documents at plot acquisition, about 78 and 90 per cent in Kamwokya and Mbuya, respectively, received *endagaano*. In Busega, on the other hand, most landholders obtained registered certificates of title, known locally as *kyaapa*.

There is no standard format for *endagaano* as these documents are often written at the moment transaction negotiations are completed. They are often drafted in the local language (Luganda) although in some instances, English is used. Figure 3 shows a typical *endagaano*. Members of

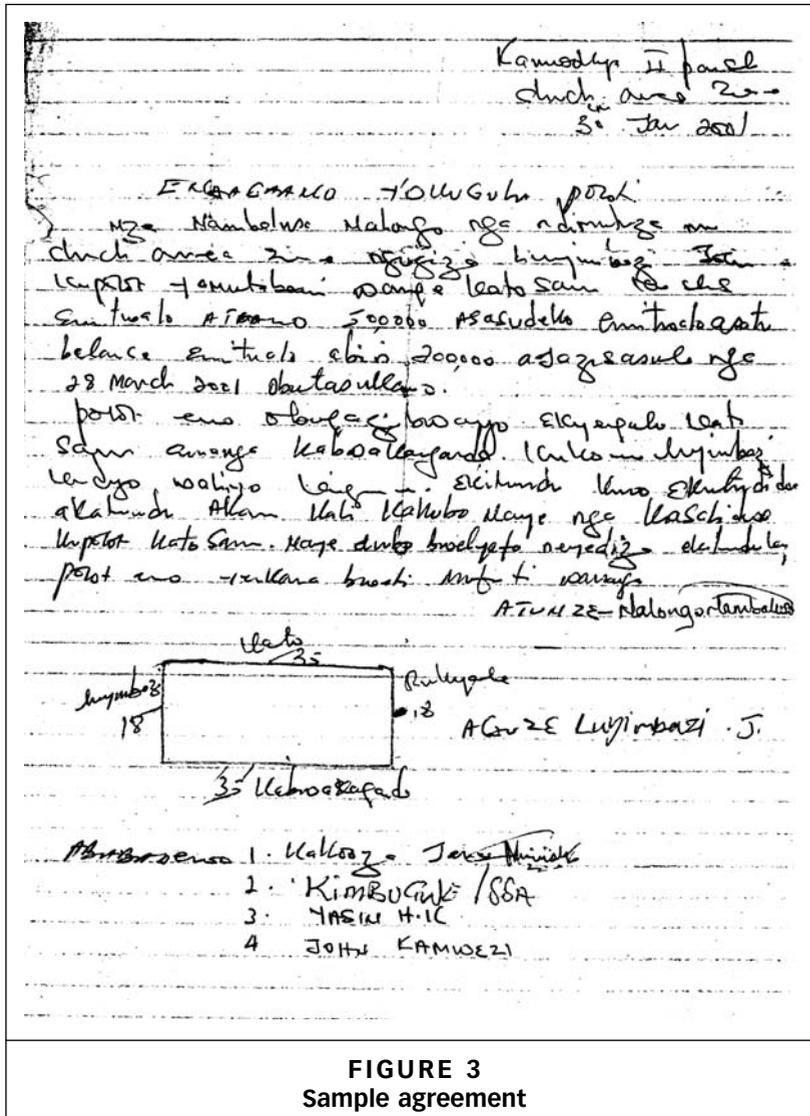


FIGURE 3
Sample agreement

the local LC I executive committee normally witness the agreement, along with two to five other adults who are agreed upon by the principal parties to the transaction. Often, members of high standing in the community, such as elders or religious leaders, are preferred but in most cases, the principal transacting parties use their friends, relatives or neighbours. The buyer and seller receive copies of the agreement, and often a third copy is made and kept by the LC I chairman. Some letters of agreement bear the LC I official stamp.

A translation of the main body of the sample agreement shown in Figure 3 illustrates the contents of a typical *endagaano*:

“I Nambalwa Nalongo, a resident of Church zone, have sold a plot belonging to my son, Kato Sam, to Luyimbazi John at a price of five hundred thousand shillings, 500,000. He has paid three hundred thousand and will pay the remaining two hundred thousand shillings, 200,000 on 28th March 2001, without fail. The extent of this plot is as follows: On its upper boundary is Kato Sam’s land and it stretches downwards up to Kabwakaganda’s land. On the left-hand side, the plot borders with Luyimbazi’s plot while on the right-hand side, the plot shares a boundary with Rukyanda. A small part of the plot that is being sold was a footpath that had been established on Kato Sam’s land but when the paths fell out of use, it reverted to Kato Sam’s plot. The extent of the plot as measured in feet is shown on the diagram below.

Witnesses: 1. Kakooza; 2. Kimbugwe Issa; 3. Yasin H.K.; 4. John Kamwezi.”

This main body of the agreement is followed by a sketch map of the plot illustrating what is described in the text, and the signatures of the seller, buyer and witnesses. The sketch map is an “informal” version of the cadastral map, or deed plan, that is part of a formal land title. The measurements on the sketch are often in feet and are supplemented by written descriptions of the extent of the plot, using neighbouring plots or other physical features as reference objects in a manner not dissimilar to formal cadastral surveying procedures. Anyone seeking to extract information from the kinds of boundary descriptions often used in the agreements would need local knowledge of the area or assistance from those with such knowledge. This is both the weakness and the strength of *endagaano*. It derives its strength from local/social legitimation, but is only capable of passing an equitable interest⁽⁴³⁾ as it lacks universality and cannot be registered under the Registration of Titles Act (RTA) 1965. Nevertheless, despite the fact that Section 51 of the Act forbids the creation or transferral of an estate without registration, it does not deny unregistered documents legal efficacy. The certificate of title remains the indefeasible and unimpeachable evidence of land ownership in Uganda and, in effect, constitutes legal transfer in the absence of registration (Section 56 of the RTA). In Mbuya settlement, in particular, there were reports of individuals taking advantage of this provision by conniving with elements within Kampala city council to prepare land titles for land under occupation in the area without notifying the holders. They would then try to force the occupants off the land because they possessed superior rights by virtue of holding a land title. This was not always successful, mainly because the occupants protected themselves with what

43. In land law, an equitable interest is one that is only enforceable between the parties to an agreement and not third parties, while a legal interest is held against the “whole world”, i.e. it can be enforced against third parties.

could be called “weapons of the weak”,⁽⁴⁴⁾ including their large numbers and support from political godfathers. The practice does not seem to be very prevalent anymore, as illustrated by a quote from one of the focus group participants:

“Those days it was easy for the rich to go to Kampala city council and do their dirt there and then come here to notify us, but they later found it difficult when they realized we are not as ‘green’ as they had hoped . . . an individual has to negotiate with you as a kibanja [land] holder and secure your consent because if I don’t consent he will have to go back to Kampala city council and ask them to show him the land they allocated him. There is now a requirement for a letter from the LCs before allocation by Kampala city council.” (Focus discussion group of landholders in Mbuya held on 8 December 2002).

It should be noted that even on titled land, letters of agreement are used in addition to completed title transfer forms because the transfer process often takes time and costs money. In such situations, the letter of agreement serves as interim proof of land ownership while the transfer process is pursued. Indeed, some people find little urge to pursue the transfer process once they receive the title document, albeit in the original owner’s name, as long as it is accompanied by signed transfer forms and the letter of agreement. That is part of the reason why most transactions in titled land are not reflected in the land registry.

There are also cases where those who received letters of agreement at the time of plot acquisition “upgrade” their landholding status by acquiring additional documents, invariably registered land titles. The motivations for individual households to undertake this process are various, ranging from the desire to buttress their tenure security, to obtaining bank loans and securing planning permission where high value investments are involved. While most landholding households felt quite secure with regard to their tenure, they expressed worries about what would happen when the land passed to their children. However, despite these worries, most landholders were not keen to go through the expense and complications of land registration. A gentleman in Mbuya, who doubled as a land broker and was a member of the local defence personnel, succinctly expressed the sentiments of most landholders in the three settlements:

“It is the likes of you [educated] that are so much bothered about land titles . . . the agreement and my house on the plot are enough security. The lawyers and land officials are there just to ‘eat’ our money and keep tossing us around. The LCs provide additional security for they witness most transactions. The neighbours and the residents who have lived in the area for a long time also know who owns where. You consult in the neighbourhood before spending your money on a plot of land.” (Focus group discussion with land brokers in Mbuya held on 24 November 2002).

Use of the land and recognition by neighbours still serve as the main elements of support to land rights claims, as was the case in pre-colonial Buganda.⁽⁴⁵⁾ Notwithstanding the assertions in the quote above, there was general agreement in this focus group that while the letter of agreement

44. Scott, J C (1985), *Weapons of the Weak: Everyday Forms of Peasant Resistance*, Yale University Press, New Haven and London, 389 pages.

45. See reference 36.

and social recognition of an individual's land rights provide considerable security of tenure, it would be desirable to acquire legal recognition through the attainment of a registered land title. However, very few of the participants viewed land titles as potentially useful collateral for credit but, rather, saw them as a means of ensuring security of tenure for future generations and of obtaining compensation if their land were compulsorily acquired for public purposes. Access to credit is not a big incentive; most landholders argued that mortgaging a piece of land was a sure way of losing it because of the excessive interest charged on such loans.

There remains, however, a desire for land rights registration among most landholders. If land titles are desirable, why then have the majority not acquired them? As indicated above, processing a land title is a lengthy, cumbersome and expensive venture. Most families in informal settlements are also settled on marginal land, which is legally inalienable for development and cannot be titled. Furthermore, most landholdings in these informal settlements fall short of the legislated standards in terms of size and accessibility. Kampala city council also requires that plots be surveyed only in blocks, to allow some planning of the neighbourhood. However, given the nature of sub-divisions in these informal settlements, this is hardly possible. Perhaps also important is the fact that for those who buy land from occupants (as opposed to registered owners), a second payment would have to be made to the titleholder before the latter could sign the transfer form necessary for processing the title. This is, in essence, paying for the land twice and thus a disincentive to land registration.

IV. CONCLUSION

This paper has presented and analyzed the various non-state institutions deployed by different actors to structure and regulate land transactions. In situations where actors are unable to deploy conventional planning and surveying tools and skills, approaches that are responsive to the local context and that minimize transaction costs have been developed and utilized. These institutions were shown to draw from both formal rules and customary practices. For instance, measuring the size of plots draws on conventional land-surveying techniques while utilizing locally available and affordable tools and skills. Actors in the informal land delivery process are also astute enough to use symbols of the formal processes to reinforce their informal institutions. A case in point is landholders using formally trained surveyors to demarcate their land and implant survey beacons, even if they stop short of taking the process through to the registration stage.

This paper has demonstrated, furthermore, that strong linkages exist between formal and informal institutions, as evidenced by public employees operating in the informal sphere (during land demarcations and transactions), selling their services informally to those who can afford them. It is inaccurate to conceive of formal and informal systems as operating in exclusive spheres. The discussion of the key events and activities in the land access process highlighted the roles played by such key actors as members of local councils and land brokers. Local councils and other formal actors such as planners and surveyors have been shown constantly to straddle the formal-informal divide by performing duties

that sometimes violate their legal mandate. They do this in a number of ways, including:

- re-interpreting the law to suit the circumstances of their areas of jurisdiction;
- exercising discretion in the execution of their legal roles, often straying into illegality;
- inadvertently violating the law because of a lack of adequate knowledge of the relevant legislation;
- confusing their official roles and their presumed customary functions; and
- benefiting personally from bribes and other incentives that accrue from participating in illegal activities.

There is certainly evidence that the relative success of informal institutions in regulating land transactions derives from their social legitimacy. It is clear that informal institutions enjoy considerable acceptance and respect from those whose relations they regulate. A number of factors, including trust among actors, were identified as central to the efficacy of informal institutions. Other factors that serve to buttress the performance of these institutions include:

- their relative simplicity;
- their well-understood and relatively low-cost procedures;
- the authentication of informal transactions by locally recognized leaders;
- tacit approval by formal authorities of some of the informal institutions – for example, the acceptance of letters of agreement as exhibits in formal courts;
- political patronage as a result of the large number of people (read voters) involved in informal land transactions; and, not least,
- the limited alternatives, given the disincentives of the formal system.

As alternatives to formal procedures, various informal approaches to adjudication, demarcation and evidencing possession of land rights have been shown to be widely known, acceptable and affordable despite having some weaknesses (for example, breakdown as settlements densify, and limited “durability”). For policy purposes, it would seem useful to explore the possibilities for the formal system to learn from informal processes as a starting point for reforms geared at making state rules appropriate to the situations they are meant to mediate. It seems critical to recognize the role currently played by local councils in informal land access processes and to explore the possibility of enhancing their contribution. Working with local councils would have the additional effect of integrating the larger community in their areas of jurisdiction into the land management process.

Another important area that calls for policy attention is the existing formal institutional framework. A major concern of policy makers is that residents of informal settlements deliberately, or out of ignorance, fail to comply with the law. However, evidence from this study indicates that their behaviour is neither antagonistic to state rules nor necessarily borne of ignorance. Indeed, informal actors borrow from or utilize state rules where appropriate, although they circumvent them when they consider them unaffordable or retrogressive. The formal standards adopted are clearly unaffordable by the majority of Kampala residents. The costs involved

in the adjudication, demarcation and registration of land through formal channels are prohibitive, besides being barely comprehensible to the largely illiterate residents of Kampala's informal settlements. The issue of land registration and the acquisition of land titles are central because the possession of a land title is a pre-requisite to issuing planning permission by Kampala city council. The problem is rather cyclical: households cannot acquire land titles because of the expensive and complicated process and the fact that their plots fall short of Kampala city council's legislated sizes; consequently, they cannot apply for planning permission and thus have little option but to develop illegally, risking the wrath of building inspectors, council agents and enforcement officers.

Planners in Kampala have a generally negative attitude towards informal settlements because, to them, such developments violate city planning norms and hinder the development of a better quality urban environment. Although there have been no aggressive attempts to get rid of these informal settlements, they remain hostage to the predatory activities of some Kampala city council employees, particularly the "street-level bureaucrats" who constantly harass and demand bribes from informal developers. There are serious implications for policy here. Should the state regularize informal settlements, tolerate them, embark on an upgrading programme or resort to the bulldozer? Each of these options has implications that demand serious consideration.

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