

Can Neo-customary Land Delivery Systems Provide Land for the Low-incomes in Sub-saharan African Cities

Alain DURAND-LASSERVE, CNRS, France

SUMMARY

This paper refers to some of the main findings of a French-British research project on «Current changes in customiser land delineavit systems in sub-Saharan Africa cities», carried out in 2003-2004 jointly with national research teams in the 9 following countries:

- Benin (Cotonou & Porto Novo)
- Cameroon (Douala & Yaounde)
- Ghana (Kumasi)
- Kenya (Nairobi)
- Namibia (Windheok)
- Senegal (Dakar)
- South Africa (Mandela Village, Gauteng Province)
- Tanzania (Dar es Salaam)
- Uganda (Kampala).

It focus on three sets of issues:

- What is the role of neo-customary land delivery systems regarding access to land for housing the poor in sub-Saharan African cities?
- What are the current changes and trends regarding neo-customary land delivery practices in urban and suburban areas?
- Are customary land delivery systems viable and sustainable alternatives to formal systems in providing the poor access to urban land?

1. WHAT IS THE ROLE OF NEO-CUSTOMARY LAND DELIVERY SYSTEMS REGARDING ACCESS TO LAND FOR HOUSING THE POOR IN SUB-SAHARAN AFRICAN CITIES?

1.1 Regional Context

According to UN estimates, between 2000-2020, nearly 90 % of the population growth in Sub-Saharan Africa will take place in urban areas

The urban poor, as well as low-middle and middle income groups, do not have access to land provided by public sector and formal private sector:

- In most countries studied (excepted in South Africa), public provision of serviced land and housing is steadily declining
- There is no contribution from the formal private sector unless it is heavily subsidised

The African continent has the largest proportion of the urban population living in informal settlements . It is estimated that more than 70% of the urban population is living in “slums”, as defined by the UN, with no proper access to basic urban services, and less security of tenure than in formal settlements

One can observe that, at the periphery of sub-Saharan African cities, informal land delivery processes are strongly influenced by actors referring to customary legitimacy.

1.2 What are the Emerging Forms of Customary Land Delivery in Urban Areas

1.2.1 Customary and neo-customary land delivery systems: definitions

- Customary land management practices shows a surprising capacity to adapt to the new economic and social conditions and to the rapid spatial extension of urban areas
- In rural areas, customary land "ownership" refers to:
 - communal possession of rights to use and allocate land by a group sharing the same cultural identity.
 - social institutions within the group defend/protect these rights against other claims to the land
- In urban areas, customary land delivery is being progressively replaced by “neo-customary practices”, a combination of reinterpreted customary practices with other informal and formal practices. This is what we call “neo-customary land delivery system” (NCLDS)
- Neo-customary land delivery systems are distinguished from other informal land delivery systems in that they transfer land rights through practices derived from customary land delivery systems.

- Neo-customary land delivery systems include all the stakeholders and all the practices, which claim to be rooted directly or indirectly in the custom.

They work through individuals who sell as market commodities, more land rights that they have received through a customary system. (commodification of land).

In many cases, neo-customary systems operate through groups that replicate, at settlement level, familiar elements of customary systems. Neo-customary systems are based on trust that assures the user of the land that others will support his/her claim. This trust arises from a confidence in the customary social relationships that have been embedded in the land delivery process, because the land rights were first obtained directly from a customary delivery system or because they came through a system that used customary practices or both.

This trust provides a rather sound degree of security of tenure that may not be given through other informal land delivery systems.

Neo-customary land delivery usually permits a cheap and fast access to land.

1.2.2 Neo-customary and informal land delivery systems

The main distinction between neo-customary and informal land delivery systems is the status – the primary tenure right – of the land

- Land originally delivered was – and usually still remains when not formally registered – under the customary regime (example: Cotonou, Benin)
- When the land was not originally delivered by customary system customary practices can still be identified (example: Nairobi): informal rights on land divided among members of a group, and members of the group defend claims to the land by reference to social practices that imitate familiar customary practices

1.3 Scale of the Population in Cities Area Relying on Customary Practices for Access to Land

- According to case studies, between 50% and 90% of the African urban population rely directly or indirectly on neo-customary land delivery systems to have access to land for housing.
- This figure is much lower in South Africa: customary and neo-customary practices are concentrated in the periphery of towns and cities that are close to former homeland, and in cities surrounded by land under tribal authority (Durban)

2. CURRENT CHANGES AND TRENDS REGARDING NEO-CUSTOMARY LAND DELIVERY PRACTICES IN URBAN AND SUBURBAN AREAS

2.1 Three Main Types of Situations Regarding Customary Rights Can be Identified:

- Formal government recognition of customary land management (by law and in the Constitutions). It is usually limited to particular types of lands and/or to particular areas/regions (Uganda, Ghana, South Africa).
- Legal recognition of customary system limited to rural areas, but customary land management practices are tolerated in suburban areas (Benin, Cameroon, Namibia).
- Customary land management is not recognised or strictly limited to rural areas
Usually, customary actors can still operate but at their own risk, given the discretionary power of central government regarding land administration (Tanzania, Cameroon, Senegal).

Trends observed over the last decade in sub-Saharan African cities suggest that customary rights and practices are *de facto* increasingly recognised.

2.2 Failure of the Formal Sector Public and Private Sectors to Provide Land for Housing the Low and Low-middle Income Groups is Contributing to the Development of NCLDS

- The State is unable to provide alternative LDS for the low-incomes. Public land development projects are not or rarely affordable to the poor.
- Overcomplicated and too rigid land delivery procedures exclude the poor.
- Market oriented approaches of public land development agencies are excluding the poor from cheap access to land for housing (Kampala)
- Formal private sector development is limited by existing restrictive regulation (ex. rent control in Nairobi) and inappropriate development and constructions norms and standards.
- Timeframe imposed for development to beneficiaries of plots of land allocated by public authorities is not compatible with incremental development processes on which poor households have no choice but to rely on.
- Public land delivery is undermined by corruption and illegal practices

2.3 Converging Trends and Dynamics in the Provision of Land for Housing over Last 15 Years (Except in South Africa)

- State disengagement from the urban land and housing sector
- Public land reserves in urban and suburban areas are drying up
- Emergence of urban middle classes and corresponding demand for urban land

- Re-emergence of customary claims since the 1980s, especially in Francophone West African countries.
- Greater tolerance from the State regarding customary practices

As a result:

- Improved security of tenure;
- Increased demand for land – including for customary land – from middle-income groups;
- Steady increases in market price of customary land;
- Scarcity of customary land in the nearer urban fringe areas.
- In this context, access to neo-customary land is increasingly difficult for urban poor in suburban areas
- Low income urban households have few alternatives:
 - Squatting, usually on public land;
 - Rental accommodation in formal and informal low income settlements in the peripheries of the cities or in over-crowded areas in city centres.

2.4 Two Converging Dynamics are Currently Narrowing the Gap Between Formal Practices and Informal/Neo Customary Practices

2.4.1 Dynamics of government institutions

- Contribution of neo-customary actors in the provision of land for housing progressively acknowledged;
- Involvement of local counsellors together with customary actors ;
- Simplification of conventional registration and titling processes and new forms of evidence regarding customary land rights;
- Introduction of new tenure types under new land laws codes(Uganda, Ghana, and South Africa). Occupancy rights, anti-eviction rights and family or group rights;
- As a result, neo-customary actors are now providing land for housing with rather sound de facto security of tenure

2.4.2 Dynamics of neo-customary actors and of communities living on land delivered by neo-customary systems

It is characterised by their increasing acceptance to comply with a minimum set of rules

- Land transactions are being progressively formalised:
 - The use of witnesses in land transactions are being institutionalised;
 - Transaction are authenticated by local/central government administrations;
 - Records of land transfers and transactions are kept, usually at local level.
- Elements of planning are being progressively incorporated by neo-customary developers:
 - Compliance with layout plans (Uganda, Kenya)

- Intervention of professional surveyors (Francophone countries)

2.4.3 However, these converging trends are limited by

- The resistance of government institutions.
 - Centralist administrative tradition and resistance to decentralisation;
 - Widespread corruption and illicit practices in land administration;
 - Conventional land registration and titling systems are still too complicated and too expensive (especially for the poor);
 - Lack of appropriate LIS and cadastres
- The erosion of neo-customary system.
 - Drying up of customary land reserves in inner fringes of cities;
 - Planning and environmental problems due to lack of resources, technical culture, skill and know-how;
 - Marginalisation of neo-customary owners by intermediaries, brokers, and informal land developers.

3. ARE CUSTOMARY LAND DELIVERY SYSTEMS VIABLE AND SUSTAINABLE ALTERNATIVES TO FORMAL SYSTEMS IN PROVIDING ACCESS TO URBAN LAND FOR THE POOR?

3.1. Viability of Neo-customary Land Delivery Systems and Practices is Debatable on the Following:

- Quantity delivered suggest that NCLDS can be strong and effective enough to be an alternative to formal systems.
- However, the long-term viability as well as their effectiveness of the NCLDS for reaching the poor must be questioned in the absence of appropriate public policies.
- Supply of land is not guaranteed in the long-term: remaining customary land reserves further and further away from cities
- Provision of basic services
 - Severe shortcoming: neo-customary developers are unable to provide land with adequate services : they keep land development costs as low as possible, and proceed as rapidly as possible;
 - NCLDS do not have sufficient resources to plan and service land. Land is provided without basic infrastructures and services (Kumasi, Dar es Salaam, Kampala, Yaounde, Dakar, + ...). However, some NC developers are moving toward more co-operation;
 - Urban services providers reluctant or not permitted to intervene (however, in some cases, basic services can be provided, water in Dakar).

3.2 Sustainability of neo-customary land delivery systems ?

- Layout and planning
 - Land use and spatial growth patterns are not compatible or contradictory with long term planning objectives;
 - As a consequences major physical planning and environmental problems are encountered with serious implications for housing development and infrastructure provision, at settlement as well as at city levels.
- Accelerated urban sprawling is clearly associated with neo-customary land developments. It is ncouraged by:
 - The steady increase in the price of urban land close to cities boundaries;
 - The absence of constraining regulations in areas that are not included within municipal boundaries

3.3 Accessibility to the Urban Poor

- Increasing commodification of customary rights has been observed in all case studies.
- Increasing demand for land provided by customary and neo-customary owners by informal land developers
- Neo-customary systems is increasingly respond to the demand from middle and low-middle income groups, which have no access to public land and housing development projects
- In this context, NCLDS provides land at a price that is rarely affordable to the lowest income groups: they are less and less effective in reaching poor people in urban areas
- More positive government attitude results in improved security of tenure, but few cases of formal tenure regularisation have been observed (Kumasi). This change in governments attitude has a major drawback : improved security results in a rapid increase in land values and increased housing-related expenditures for beneficiaries
- As a result : lowest income groups settle far away from city boundaries, in informal settlements (including NC ones), or in areas not suitable for construction, or rent rooms in city centres or in informal settlements, Cotonou and Porto-Novo).

3.4 Dealing with Neo-customary Land Delivery Systems: Current Shifts in Public Policies

- There is a basic contradiction of all policies aiming to improve the performance of neo-customary land delivery systems:
 - If public authorities chose to recognise these areas, and therefore impose standards, the advantages that these system have for reaching low-income households (fast, simple, cheap delineavit) would be lowered.
 - However, if public authorities do not recognise NCLDS, they deny themselves the possibilities to influence neo-customary practices and dynamics, and their major shortcomings

3.5 In this Context, Public Policies Should Pay Particular Attention to the Following:

- Obstacles posed by non-adapted land information systems and surveying, land records and registration should be removed. Conventional land registration systems are not adapted to neo-customary land delivery, especially in the absence of land-related information systems such as cadastres.
- Inclusive administrative practices are more important than formal legal recognition of neo-customary land delivery practices. Benin is a good example of such an approach: the law ignores neo-customary transactions but permits them. This gives to households living in informal settlements a sense of tenure security. In return, households concerned do comply with administrative requirements.
- There is an urgent need for ad hoc institutions or administrative procedures and practices, especially at local/municipal levels, in order to ensure compatibility between formal and neo-customary land management. The main objective of such is to limit the impact of neo-customary land delivery shortcomings on planning, environment and provision of services (advisory planning, conflicts resolution, incremental service delivery). South Africa, Ghana and Benin case studies provide good examples of this.
- Co-operation between CBOs, public authorities and other stakeholders are essential for increasing access to services and improving environmental conditions. Such a co-operation is essential for conflicts resolution, advisory planning and the incremental delivery of services.