

**RESEARCH REPORT
R8252 HOUSING THE POOR THROUGH AFRICAN NEO-CUSTOMARY
LAND DELIVERY SYSTEMS**

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Background and Objectives

Housing fills an essential need that claims a critical portion of the resources of those who are poor, and the land it occupies can be a major capital asset upon which to build income-generating activity. Excluded from formal government and private sector systems, those urban dwellers who are poor in Sub-Saharan Africa increasingly take shelter on land to which they have little formal recognised claim. In many cases, they do this through transactions derived from traditional rural customs of land management that are not legitimised by government, but that are accepted by the social networks within which they live. These new customary processes – which blend pre-colonial communal land management procedures, low-income household strategies for securing access to land, and the production of “informal” settlements - have their own actors and procedures. However, these neo-customary processes are commonly viewed as generators of problems, giving rise to policies whose unintended impacts may instead reduce the access of poor households to shelter, as well as reduce the security and capital assets of those already housed.

The ability of neo-customary systems to deliver land for housing in Sub-Saharan Africa has often been noted in the literature regarding the emergence of informal settlements. Research projects funded separately by the British, French and German governments on land tenure for the urban poor have all considered informal claims to land in Sub-Saharan Africa. UN-Habitat began its two Global Campaigns in 2000 on (a) governance and (b) land tenure security, both of which raise the issue of the role and function of new urban land delivery systems based on customary procedures. The World Bank has followed with several discussion fora on the management of land for urban housing in developing countries, which acknowledge the delivery through systems that use customary practices.

Nevertheless, little of this analysed the dynamics and sustainability of urban-oriented neo-customary practices and their capacity to perform. Comparisons between various countries in the region have not been attempted. Moreover, it was rare for analysis to examine the emerging role, legitimacy and functions of neo-customary decision-makers in land management and development.

Low-income demand for housing land in Africa is overwhelmingly met by informal systems, including those that can be called neo-customary. It is probable that, in many countries, the failure of the formal land delivery systems – both public and private – strengthened the attractiveness of procedures derived from rural customary practices. The resulting procedures appear to have a surprising ability to adapt to change. They seem to have adapted to the new economic and social context introduced by the

globalisation of national economies, and to have more often gained vitality than lost it.

This background gave rise to hypotheses that:

- neo-customary processes deliver a substantial amount of the land that provides shelter to poor urban households in Sub-Saharan Africa;
- these processes are able to adapt to changes and thus can be expected to survive and continue to expand their coverage;
- the neo-customary systems can be sufficiently effective to serve as alternative systems to formal ones in providing people access to urban land, yet provide major advantages to those who are poor.

The **objectives** of the research became those of testing these hypotheses.

The SSRU provided matching support that allowed a project unexpectedly under-funded by the French agency PRUD to achieve its intended scope and depth of investigation. The number of cases was increased, some primary data collection became achievable, and the potential for dissemination of findings was enhanced. With the full participation of a British researcher, it was possible to adequately examine cases in both English and French speaking sub-Saharan Africa.

Methods

A mix of nine French-speaking and English-speaking countries in Sub-Saharan Africa were selected for this research in order to present a diversity of neo-customary processes for housing land delivery and a range of government responses to land claims arising from their neo-customary practices. The choices of urban cases from each country were made after consultations with collaborators in those countries. A major concern in this choice was that there exist a body of recorded information and commentary upon informal land delivery within the location. The cases selected were the following:

- South Africa: Durban, Kwazulu Natal and Greater Nelspruit, Mpumalanga District
- Benin: Cotonou and Porto Novo.
- Cameroon: Douala.
- Ghana: Kumasi.
- Kenya: Nairobi.
- Senegal: Dakar.
- Tanzania: Dar es Salaam.
- Uganda: Kampala.
- Namibia: Oshakati.

A basic assumption of the approach was that past studies have produced substantial documented information – and some analysis – which has not been explicitly examined in terms of these research questions. Where the existing information was thin, primary data collection was performed to augment it. A selection of government officials were questioned in semi-

structured interviews about their perceptions and treatment of neo-customary systems, and traditional leaders and other recognised land agents were interviewed about their institutions, procedures and achievements, as well as about their relationships with government and their views of the formal land delivery systems. Interviewees were identified using snowballing techniques, started through the networks and knowledge of the local collaborators.

The local collaborators followed a common terms of reference aiming to obtain responses for all cases to the same research questions. This permitted comparative analysis among the cases with reference to the hypotheses.

Systematic analysis of the contents of interviews produced most of the findings, and there was no use of correlation analysis. Interaction among the local collaborators and the principal researchers was emphasised, thus maintaining a collaborative network of professionals that merged several disciplines, skills and bodies of experience among the researchers. Two workshops – one in Nairobi in September 2003 and the other in Johannesburg in February 2004 – heightened the collaboration and critically assessed the work performed in both the individual case studies and the synthesis of them. These two workshops also supported the development of a network of relationships among African urban land researchers that was, in the making, entirely new.

Country collaborators drafted individual case study reports that were reviewed by the principal researchers. These were then integrated into a single report with additional analysis from an overall perspective through a process lead by the principal researchers and involving the collaborators. After the workshop in South Africa, a version was produced that is still undergoing refinement and adaptation for various dissemination modes.

Although French funding for the research was announced some 15 months before matching British support was provided, the start of any investigations was postponed on several occasions because of administrative problems and the temporary ill health of the French co-director. As a consequence, most of the case studies were prepared and the synthesis of all of them was performed during a period of nine months from June 2003

Findings

Customary and neo-customary land delivery: current dynamics and trends

Customary land "ownership" refers to the communal possession of rights to use and allocate land by a group sharing the same cultural identity. In urban areas, customary land delivery in the strict sense of the term does not operate according to this model: land for housing is provided by informal processes that are combining customary practices with other informal and formal practices. This is what we call neo-customary practices. It works through individuals who sell, as market commodities, more rights that they have received through a customary system. Alternatively, these systems may

operate through groups that replicate familiar elements of customary systems that inspire confidence among those obtaining land.

Neo-customary systems are based on trust that assures that others will support an individual's claim to land rights. 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. Neo-customary land delivery systems work through individuals who usually sell to others, as market commodities, more rights than they have obtained through a customary system. Alternatively, these systems may operate through groups that replicate familiar elements of customary systems. These systems have the advantages of being able to permit cheap and fast access to land and often provide a better security of tenure than other informal land delivery systems.

Two converging dynamics that narrow the gap between formal practices and neo-customary practices can be observed. On the one hand, government institutions are adopting more flexible attitudes regarding the integration of informal settlements in general and those created by neo-customary systems in particular. This includes, in some countries, the recognition of customary rights by national constitutions (as in Uganda and South Africa) and, in some countries the introduction of new governmental land management procedures that allow claims originating from customary practices to become formally recognised (for example, in Uganda, Ghana, and Namibia). There are also programmes to strengthen tenure or to improve land planning and service provision that are undertaken in partnership with neo-customary actors. On the other hand, neo-customary actors are increasingly operating according to minimum rules and procedures regarding registration of land rights (for example, transactions are witnessed, sometimes by officials, and records are made of transactions), as well as incorporating elements of planning and the delivery of some basic services.

All case studies confirm that neo-customary systems deal with land rights that have been commodified. It may happen that as soon as a piece of customary land is subject to a monetary transaction to bring it into urban use, it is embraced by the neo-customary logic. However, commodification may have occurred already, as in the case of land buying companies in Nairobi, Kenya.

In all the cases, a significant proportion of the urban population was found to have been relying on neo-customary practices. Drawing from a familiarity with the situations studied, nearly all the collaborators considered the amount of land delivery to be substantial. Because available data does not distinguish neo-customary land delivery from other informal forms, it was not possible to describe with evidence the extent of the practice. This hindered attempts to assess if neo-customary systems were being used increasingly. Yet there were no notable indications of a reduction of neo-customary activity in any of the situations studied, although new legislation affecting land rights throughout Uganda may have this result in and around Kampala. Most housing land in the places studied is provided by systems that are informal.

Because evidence shows that informal land delivery systems are increasingly used and that neo-customary delivery has been important among them, it is therefore probable that the use of neo-customary systems is also growing.

Neo-customary land delivery systems continue to be used for a variety of reasons. Serviced public land is not accessible, and private land is not affordable, to those who are poor in cities and towns. Formal private sector housing is limited in reaching poor households by existing restrictive regulation (for example, rent control in Nairobi) and inappropriate norms and standards of land development. The State is unable to provide alternative land delivery that is adequate to those with low incomes. Overcomplicated, extremely slow, and too rigid procedures of State systems exclude poor people. Public procedures for servicing land are not compatible with the strategy of progressive improvement of housing that is favoured by poor households. Public land delivery undermined by corruption and illicit practices.

Viability and sustainability of neo-customary land delivery systems

There is evidence that neo-customary systems are effective enough in terms of the quantity delivered to be alternatives to formal urban land delivery systems. They are less bureaucratic and more flexible than formal systems, for they require low transaction costs and their time for delivery is short. They are more effective in reaching poor people. Open conflicts between neo-customary actors and public authorities are rare.

However, the viability and sustainability of neo-customary land delivery systems can be questioned because:

- Neo-customary legitimacy is based on historical tradition and continuity and not on democratic processes. It seemed possible that this might create differences in governance. Women might be excluded. There might be less accountability and transparency of operation that would bring demands for more inclusion. However, there was a lack of evidence pointing to exclusion or poor responsiveness. Perhaps neo-customary systems may, to a large extent, escape these limitations by utilising market systems of allocation that are more responsive to the needs of poor people than the formal systems that exclude them because of their relative lack of wealth and political influence.
- Eventually the supply of customary land rights will probably dry up. Although this will not necessarily put an end to customary claims on land and to neo-customary practices, it may result in the progressive disappearance of neo-customary land delivery systems. Perhaps the regulatory roles of neo-customary institutions in land allocation and in land dispute resolution will not be preserved. Yet, the case of Nairobi demonstrates that neo-customary practices can thrive even when there is no supply of customary land rights or recent history of customary land allocation.
- The lack of planning, inappropriate layout and lack of access to basic services that characterise land development initiated by neo-customary actors result in unsustainable conditions that have proven very difficult to erase. These actors do not have the required financial resources for providing basic urban services, nor can they provide the kind of tenure that compels governments to provide services. Moreover, neo-customary actors impose on

public authorities land use and spatial growth patterns that are not necessarily compatible with long term planning objectives.

- When claims delivered by a neo-customary system are formally recognised, for example through the delivery of individual property titles, the upward impact on land prices may result in market eviction of the poorest beneficiary households. Although the effects upon the demand and supply relationships within the neo-customary land delivery system are demonstrated in several case studies (Benin, Cameroon, Ghana, and Uganda), the numbers moved by force or by market opportunities are not known.
- Recent observations show that some neo-customary land delivery systems are responding to the demands from middle and low-middle income groups. This could mean that poor people are increasingly excluded from the benefits of the systems, which have been for decades, the main providers of land for housing the poor. This may illustrate the future of neo-customary systems in other cities that currently serve only poor households.

The way forward

Neo-customary land delivery may be a sound and sustainable alternative for providing land for housing for the low incomes if certain conditions are met.

Considerations for policy-makers include:

- Land policies that attempt to destroy neo-customary informal systems may reduce the ability of the poor to access land.
- It may be easier and more effective to serve the land needs of poor people by strengthening neo-customary systems than by attempting to improve formal systems of land delivery. The viability and sustainability of neo-customary systems may depend on the capacities of public authorities to encourage neo-customary practices to be compatible with formal procedures while making formal procedures more accommodating to neo-customary practices

The research questions the relevance of land management models put forward in the name of modernisation by international finance institutions - such as the World Bank - with the support of local government officials in charge of land management. These models fail to take into account the diversity of tenure rules established under different property systems that coexist in a given place, thus worsening the exclusion of the majority of the African urban population.

Dissemination:

Although local dissemination figured in the activities by collaborators of gathering information and discussing its meaning, the principal actions to deliver the research knowledge products are still underway. This is mainly because the postponement of the workshop in Johannesburg until February 2004 left too little time for the preparation of research products before the initially agreed project termination date. The carryover of some funding beyond the termination date was agreed by the SSRU for this reason.

The major potential users of this knowledge that are targeted for dissemination are those that have key roles in shaping policy affecting both informal and formal systems that deliver land for urban housing use. They include national, regional and local government officials, their professional consultants, local NGOs involved pursuing housing missions, the foreign government and international donor agencies that provide technical assistance and/or financing for such policies, the national and international NGOs that promote housing policies, and those academics who are engaged in investigating urban housing phenomena in their research and teaching or training those who take positions in the other institutions targeted.

To reach them, use of the following modes of communication is planned or has been made:

- a website in English maintained by the Development Planning Unit (DPU), University College London, presenting the case studies and the synthesis of them. This is accessible to all of the targeted recipients except the declining number of local organisations in Africa that lack adequate computer facilities to easily read and download what is presented. (A description of the research is already available).
- the French language website of ISTED, which will post a description of the research and its findings that is linked to the DPU website
- the website of UN Habitat, which will post a description with a link to the DPU website
- a presentation in Johannesburg (made in February 2004) to an invited audience of national and local government officials, researchers from the academic community, and representatives of bilateral cooperation agencies in South Africa. Participation was invited from the full range of targeted recipients in order to raise awareness of the research.
- a presentation to an international symposium of urban development researchers conducted by the World Bank in Washington (in December 2003).
- publication as a chapter in edited book on recent urban development research being produced by ITDG Publishing
- 2 or 3 articles in English for professional journals, such as *International Development Planning Review*, *Land Use Policy*, *Habitat Journal*, *Environment and Development*
- at least one article in French for publication in an academic journal, for example, *Études Foncières* and *L'Information Géographique*.
- presentation of a paper at to the annual meeting of Network-Association of European Researchers on Urbanisation in the South to be held as an event in the Barcelona World Development conference, September 2004
- a printed monograph or CD-ROM that will be distributed to users in Africa, with case studies and the synthesis of them.

Publications:

No publications have yet appeared. As noted above, the research will be reported in a chapter of *Urban Futures: Economic Growth and Poverty Reduction*, edited by Nabeel Hamdi, to be published in September 2004.

Appendix:

In response to the request for “Evidence that DFID can use to verify the methodological quality of the research”, an annex is provided containing a draft synthesis report and five of the case studies. Appending all nine case studies would create an unwieldy file to little advantage.

Highlights

RURAL LAND DELIVERY CUSTOMS HELP TO HOUSE AFRICA’S URBAN POOR

Many of the urban poor in Africa house themselves through transactions that borrow features from traditional rural customs of land management. This is done so that their claims to use land can be identified, legitimised and defended, even though these claims are not legally recognised. Such transactions are used because they permit cheap and fast access to land compared to formal land delivery systems. Often they seem to provide better security of tenure than other informal systems.

Moreover, case studies by collaborators in nine countries revealed that:

- The major reasons why these land delivery systems are used continue to exist. On the one hand, land in the formal market is too expensive. On the other, government allocations are too slow, too bureaucratic, and too meagre and are co-opted by the politically powerful.
- Such systems may be more open to poor people than the formal alternatives, despite their reliance on support from groups that are exclusive.
- Customary social practices can be used in land delivery systems even when there is no supply of customary land rights or recent history of customary land allocation
- Poor quality living conditions may be produced that are very difficult to improve. This is the result of insufficient planning, inappropriate site layouts and lack of access to basic services
- When claims delivered by these systems are formally recognised, land prices are usually driven upward. This can happen, for example, when individual property titles are delivered. As a result, the poorest of the benefiting households may leave the area.
- Some of these land delivery systems are serving middle and low-middle income groups. If this practice spreads, it may exclude poor people who have for decades found these systems a major source of housing land.
- The gap between formal practices and neo-customary practices appears to be narrowing. Some governments are attempting to normalise settlements created by these systems. At the same time, these systems increasingly use rules and procedures like those of governments, especially for land registration, planning, and basic service delivery.

These findings challenge the appropriateness of the urban land management models currently favoured by governments and the international donor community. They do not sufficient consider the diversity of tenure rules and property systems that can coexist in a given place. As a result, the favoured models may increase the exclusion of the majority of the African urban population.

Considerations for policy-makers include:

- Drawing on customary practices may be a sound and sustainable way for providing urban land for housing for those with low incomes. However, certain conditions have to be met.
- Urban land policies that attempt to destroy informal delivery systems that draw upon customary practices may reduce the access of the poor to land.
- Strengthening this kind of informal system may be a better strategy than imposing formal systems of land delivery. It may be an easier and more effective way to serve the land needs of poor people.

Contributors

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Sources

Urban Futures: Economic Growth and Poverty Reduction, edited by Nabeel Hamdi, to be published by ITDG Publishing in September 2004.

http://www.ucl.ac.uk/dpu/research/housing/neo_customary.htm

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