LAND FOR HOUSING THE POOR IN SUB-SAHARAN AFRICAN CITIES.

ARE NEO-CUSTOMARY PROCESSES AN EFFECTIVE ALTERNATIVE TO FORMAL SYSTEMS?

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FINDINGS OF A RESEARCH ON:

CUSTOMARY LAND DELIVERY SYSTEMS IN SUB-SAHARAN AFRICAN CITIES

9 countries covered in 2003-2004:

* 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).
Focus on three issues:

1. What is the role of neo-customary land delivery systems regarding access to land for housing the poor in sub-Saharan African cities?

2. What are the current changes and trends regarding neo-customary land delivery practices in urban and suburban areas?

3. Are customary land delivery systems viable and sustainable alternatives to formal systems in providing the poor access to urban land?
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

* 2000-2020: nearly 90% of the population growth in Sub-Saharan Africa will take place in urban areas

* The urban poor (+ low and middle income groups) do not have access to land provided by public sector and formal private sector:
  - public provision of serviced land and housing in steady decline (excepted in South Africa)
  - no contribution from formal private sector unless heavily subsidised

* African continent: the largest proportion of the urban population living in informal settlements. 73% in “slums”
  - no proper access to basic urban services
  - less security of tenure than in formal settlements

* At the periphery of cities, informal land delivery processes strongly influence by actors referring to customary legitimacy
1. 2. Emerging forms of customary land delivery in urban areas

1.2.1. Customary and neo-customary land delivery systems

* Customary land management practices: surprising capacity to adapt to the new economic and social conditions and to the rapid spatial expansion 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 replaced by “neo-customary practices”: a combination of reinterpreted customary practices with other informal and formal practices
* 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 land delivery systems permit a cheap and fast access to land, and often provide a better security of tenure than other informal land delivery systems
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)

* When land not originally delivered by customary system customary practices can still be identified (example: Nairobi):
  - Informal rights on land divided among members of a group
  - 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

* Between 50% and 90% directly or indirectly

* Figure is much lower in South Africa.
  - Concentrated in periphery of towns and cities that are close to former homeland
  - In cities surrounded by land under tribal authority (Durban)
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:_

* Formal government recognition of customary land management (by law and in the Constitutions)  
  I 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 tolerated in suburban areas (Benin, Cameroon, Namibia)

* Customary land management 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)

_Trend over the last decade: de facto recognition of customary rights and practices_
2.2. Converging trends and dynamics in the provision of land for housing over last 15 years (except 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 (Francophone West African countries)

* Greater tolerance from the State regarding customary practices

As a result:
- Improved security of tenure
- Increased demand from middle income groups
- Increases in market price of land
- Scarcity of customary land in the nearer urban fringe areas
* Increasingly difficult access to neo-customary land delivery system for urban poor is in sub-urban areas

* Few alternatives:
  - Squatting, usually on public land
  - Rental accommodation in formal and informal low income settlements
    - peripheries of the cities
    - in over-crowed areas in city centres
2.3. Two converging dynamics narrowing the gap between formal practices and informal/neo customary practices

2.3.1. 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

* Result: neo-customary actors are now providing land with rather sound de facto security of tenure
2.3.2. Dynamics of neo-customary actors and of communities living on land delivered by neo-customary systems

Increasing acceptance to comply with a minimum set of rules

* Land transactions being progressively formalised:
  - Institutionalising the use of witnesses to land transactions
  - Transaction authenticated by local/central government administrations
  - Keeping records of land transfers and transactions

* Elements of planning being incorporated:
  - Compliance with layout plans (Uganda, Kenya)
  - Intervention of professional surveyors (Francophone countries)
2.3.3. Limits of these converging trends.

* 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

* 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
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
  - Strong and effective enough to be an alternative to formal systems

* Long-term viability as well as their effectiveness for reaching the poor
  - Must be questioned in the absence of appropriate public policies

* Supply of land
  - Remaining customary land reserves further and further away from cities

* Provision of basic services
  - Severe shortcoming: inability to provide land with adequate services (keep land development costs as low as possible, and proceed as rapidly as possible)
  - Only some are moving toward more co-operation
3.2. **Sustainability of neo-customary land delivery systems**

* **Layout and planning**
  - Land use and spatial growth patterns not compatible with long term planning objectives
  - Consequences: spatial planning and environmental problems with serious implications for housing development and infrastructure provision, at settlement as well as at city levels

* **Accelerated urban sprawling**
  - Clearly associated with neo-customary land developments
  - Encouraged by:
    - steady increase in the price of urban land close to cities boundaries,
    - absence of constraining regulations in areas that are not included within municipal boundaries
3.3. Accessibility to the urban poor

* Neo-customary systems increasingly respond to the demand from middle and low-middle income groups, which have no access to public land and housing development projects

* They are less and less effective in reaching poor people in urban areas
3.4. Dealing with neo-customary land delivery systems: current shifts in public policies

* Basic contradiction of all policies aiming to improve the performance of neo-customary land delivery systems:

* Formal recognition, not only tolerance, will probably cause loss of main advantages to low-income people
  - fast
  - simple
  - cheap delivery

* Through non-recognition, public authorities deny themselves the possibilities to influence neo-customary practices and dynamics, and their major shortcomings
3.5. What public policies should pay particular attention to

* Land surveying, land records and registration
  - Remove the obstacles posed by non-adapted land information systems

* Inclusive administrative practices are more important than formal legal recognition of neo-customary land delivery practices
  (Example: Benin)
* Need for ad hoc institutions or administrative procedures and practices are needed, especially at local/municipal levels,
  - to ensure compatibility between formal and neo-customary land management
  - to limit negative impact of neo-customary land delivery shortcomings on planning, environment and provision of services (examples: South Africa, Ghana and Benin)

* Co-operation between CBOs, public authorities and other stakeholders essential for increasing access to services and improving environmental conditions
  - conflicts resolution
  - advisory planning
  - incremental service delivery
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THANK YOU