Access to Land for Sustainable National Development: Land Delivery Channels and Tenure Security Institutions in Benin City, Nigeria

Justin E. Agheyisi
Department of Geography and Regional Planning, University of Benin, Nigeria

It is increasingly being recognized that secure tenure is the bedrock of sustainable development. Used as one of the indicators for measuring progress in development goals, secure tenure forms the basic framework for assessing sustainable human settlements’ development since its adoption in the 1996 Istanbul Declaration. Since secure land tenure has been recognized to reduce poverty, land conflicts and guarantee property inheritance, it, therefore, forms part of an integrated development approach of the Post-2015 Development Agenda in the context of human settlements. This article, therefore, examines the place of access to land and tenure security in the context of sustainable development with a particular focus on neo-customary land delivery systems and tenure security institutions that underpinned tenure rights in Benin City. Through focus group discussions (FGDs) with key actors and semi-structured interviews of resident home-owners, the customary process and institutions that guaranteed tenure security were identified. The study reveals a number of key tenure security issues in the neo-customary land delivery systems which show that though neo-customary land delivery channels increase access to land, sustainable development will be compromised as long as the customary institutions cannot guarantee secure tenure, particularly for the urban poor.

Keywords: CDA, Community, Neo-customary, Development, Informal

Introduction
The inclusion of sustainable cities and communities in the Sustainable Development Goals (SDGs) underscores the significance of access to land for sustainable national development. Specifically, Goal 11 of the SDGs states as follows: To make cities and human settlements inclusive, safe, resilient and sustainable. This Goal requires the involvement of both formal and informal sectors in urban land delivery. Goal 11 of the SDGs focusing on urban areas and all other human settlements has also underscored the role of geography as a discipline in the achievement of national development in the context of the SDGs. Geography as a discipline is undeniably significant in the achievement of sustainable development everywhere in today’s rapidly urbanizing world.

Secure land tenure was used as one of the indicators for measuring progress in the implementation of the urban target included in the Millennium Development Goals (MDGs). Securing land rights is also recognized as one way of reducing extreme poverty in the Post-2015 development agenda. Goal 1 (Target 1.4) of the SDGs recognizes that “tenure security is crucial for encouraging productive investment, sustainable land management, access to finance, reducing conflict, increased transparency, and generating revenues for public services through property taxes” (World Bank, 2017, p. 6). Secure land tenure, therefore, forms the bedrock of any sustainable national development. Access to land and security of tenure as conditions for sustainable development were adopted by the Second United Nations Conference on Human Settlements (Habitat II) in the 1996 Istanbul Declaration. Since the Istanbul Declaration, the Habitat Agenda has remained the basic framework for sustainable human settlements development (United Nations, 2001).
Rapid urbanization in developing countries fosters increasing demand for land for urban development which the official channels of land supply are increasingly unable to meet. To ensure that urban land supply operates efficiently within the regulatory framework, secure tenure has thus become one of the most pressing issues that have elicited much debate in Third World Countries (UNCHS, 1996). Since official channels of land supply in most developing countries have failed woefully in meeting the demand for land, particularly in urban areas, empirical studies from Nigeria (Ikejiofor, 2009; Butler, 2009, 2012; Agheyisi, 2012) and other African countries (Kironde, 2000; Kombe and Kreibich, 2001; Dinye, 2003; Leduka, 2004; Rakodi, 2007) have substantiated the fact that the informal sector is substituting for the deficiencies of the formal public sector in urban land delivery to a very high degree.

The informal sector of urban land delivery has evolved a wide range of channels that have both strengths and weaknesses (Rakodi, 2007; Ikejiofor, 2009). The strength lies in its ability to supply land to a large proportion of the urban population, particularly the poor. The neo-customary channel is dominant in the informal sector and its effectiveness lies in its flexibility and social legitimacy it enjoys (Rakodi, 2007). But escalating land disputes among customary landholders and tenure insecurity mean that the neo-customary channel is increasingly failing to meet equity concerns as urbanization and development intensify (Ikejiofor, 2006a; Agheyisi, 2012; Agheyisi, 2019).

Actors in neo-customary land delivery have developed their own sets of tenure rights in addition to existing formal titles. Consequently, an intricate set of tenure rights has evolved. The key theoretical significance of this development is the challenge it poses to the conventional bifurcation of urban land delivery channels namely; ‘formal’ and ‘informal’ (Ikejiofor, 2009). It also highlights the tenure security associated with the two channels in terms of ‘secure’ and ‘insecure’ tenures. The dominance of the informal sector in the co-production of land supply with the former sector has made Cousins et al. (2005) suggest that the entire legal and social complex around which the notions of ‘formal’ and ‘informal’ property are constituted needs to be interrogated more vigorously.

Much of the thinking on informality is based on the valorization of tenure security and its links to poverty alleviation and as a prerequisite for development and social inclusion. This view was popularized by Hernando de Soto who argued that certificated security of tenure of individual plots was essential to enable the urban poor to use their land or house as collateral for credits or loans (De Soto, 2000). This view has been contested as various alternative options of customary tenure rights exist, particularly in developing countries, based on traditional institutions (Cotula, 2007; Durand-Lasserve, 2004). The aim of this study, therefore, is to investigate land delivery channels and the institutions that underpinned tenure rights in Benin City with a particular focus on neo-customary channel and institution. Land tenure, as used in this article, refers to the rights of individuals or groups in relation to ownership of land. Secure land tenure refers to the rights of all individuals and groups to effective protection by the State against unlawful evictions (UN-Habitat, 2011). The various types and nature of these rights, the institutions that underpin them and the legitimacy they enjoy in the communities concerned have direct impacts on sustainable national development.

The link between tenure security and sustainable development

It has been reported that informal land delivery channels increase access to land (Kombe, 2007; Durand-Lasserve, 2008). However, De Soto (2000) had argued that as long as the poor are insecure with respect to the legal status of their land, they will never enjoy full access to the prevailing economic and political benefits. Durand-Lasserve (2006) put it more specifically that lack of secure tenure discourages households’ investments aiming to incrementally improve their homes (which constitute their major assets in life) with major impact on poverty alleviation. In other words, secure tenure provides the impetus for the mobilization of households’ resources at the settlement level. It is increasingly being recognized that secure land and property rights lead to sustainable economic development, reduced poverty, land conflicts and guaranteed property inheritance (UN-Habitat, 2011). It is not surprising therefore that secure tenure forms part of an
integrated development approach of the current SDGs (UNDP, 2016).

As most settlement upgrading programmes are tied to tenure regularization (World Bank, 2003b), the urban poor in upgraded settlements will be vulnerable to market pressures which may lead to economic eviction without security of tenure. Lack of tenure security hinders most attempts to improve shelter conditions in informal settlements and also has a direct impact on access to basic urban services as most municipal governments use tenure regularization as a basis for rendering social services and recognition of informal settlements. Tenure security also has a direct impact on the level of tax recovery by the government through property taxation. In fact, without an accurate cadastre upon which property taxation and proper identification of beneficiaries of urban social services are based, cost recovery for public services would be difficult.

**Institutional context of tenure security in Benin City**

Traditional institutions play a prominent role in land administration systems in Benin City. Although all land in the Benin Kingdom is vested in the Royal Majesty, the Oba of Benin, the Dukes (Enigie) and their Chiefs, and Edionwere (the oldest persons in communities without Dukes) and their councils of elders exercise supervisory and administrative functions in land allocation in their various dukedoms and communities respectively. Besides the Land Use Act, which vested all land in the Federation in the State Governors to hold the land in trust for the people in the states, Edo State has its land regulatory framework enshrined in the State Land Law. The State land regulatory framework requires that all land held outside state control must be regularized by acquiring a certificate of occupancy and approved building plan in order to have secure tenure.

The customary land administration in Benin Kingdom, therefore, came to be rested with the Dukes (Enigie) and their chiefs, and Edionwere and their councils of elders who coalesce into strong customary institutions called community development associations (CDAs) in the various communities in Benin metropolis. The formation of Youth Associations within CDAs and their involvement in urban land administration brought about a serious crisis in customary land administration in Benin City. They raised the cost of land transactions and development through collection of development fees and other sundry levies from developers. Their activities, like those of ‘Omo niles’ in Lagos State, create uncertainties in urban land transactions (see Agboola et al., 2017).

Customary land tenure institutions in Benin City are based on customary laws. These ‘laws’ are unwritten rules, traditions, norms, taboos and procedures that are widely understood and respected. Ikejiofor (2009) reports that tenure institutions are not necessarily organizations but social norms, rules and regulations and their informal enforcement mechanisms that determine the behaviour of individuals and groups in their use and ownership of land. They create the sociocultural environment involving the forces of collective actions that influence the behaviour of individuals as members of community (Dinye, 2003). As in other African countries, customary tenure institutions enjoy wide compliance and legitimacy (Dinye, 2003; Rakodi, 2007). Because of this, scholars (see Deininger, 2003; Toulmin, 2009) have variously called for decentralization of land administration to the local level and for empowering customary institutions to enable them manage their own land. The calls have become necessary in view of the fact that customary tenure institutions are flexible, faster, less costly and less cumbersome in land delivery processes (Rakodi, 2007). However, the increasing concerns about transparency, accountability and equity in land delivery processes have made the customary tenure institutions come under public scrutiny.

Several studies on informal land delivery channels in Africa (see Deininger, 2003; Ubink, 2007; Rakodi, 2007; Toulmin, 2009) indicate that when customary land transactions become increasingly monetized and the institutions that regulate them become strained, weaken, or completely broke down, the issue of transparency, accountability and equity in land delivery system are raised. This requires that customary tenure institutions need critical assessment if land administration is to be decentralized to the local level. Arko-Adjei et al. (2010) argue that customary institutions are at the entry point of both the customary and statutory land delivery processes and therefore require a more holistic diagnosis just the same way it is directed at the formal institutions and legislations.
The study area
Two communities in Benin City were purposively selected based on the diversity of the land governance patterns and composition of their customary institutions. Eyaen and Evboerhiarhia communities were used as case studies to explore key tenure security issues within the institutional framework of customary land delivery system. Eyaen Community is headed by a duke (Enogie) and Evboerhiarhia Community is headed by an appointed Ohen (the Chief Priest of the community). Whereas the Evboerhiarhia Community CDA and Youth Association members are elected for every four-year tenure, those of Eyaen Community (without distinction between CDA and Youth Association) are appointed by the Duke (Enogie) based on loyalty and affinity to him. However, the customary land administration systems of both communities which enable land users gain access to land fairly represent the other urbanized communities in Benin metropolis.

Methods
This study adopted a case study approach and utilized qualitative research methods to explore land management system and institutions that underpin tenure security in the study area. Focus group discussions (FGDs) were used to obtain information from the key informants who are members of the CDAs and Youth Association in the selected communities. The use of informants allows the involvement of key community members who have in-depth knowledge of the subject matter under examination due to their position in community (see Marshall, 1996; Rubin & Babbie, 2009).

The two focus groups comprised of eight CDA members in Eyaen Community (N = 8) and 11 participants in Evboerhiarhia Community, four of whom were CDA members and seven were members of the Youth Association (N = 11). For the purpose of anonymity, the 8 participants in Eyaen Community are herein labelled as EYA 1–8 and the 11 participants in Evboerhiarhia Community as EVBO 1–11. The relatively homogenous participants in terms of gender, social and ethnic background, education levels and team mates in land governance helps to eliminate the challenges commonly associated with focus group discussions. Participants in the group discussion in Eyaen Community were in their 50s and 60s years of age while the age bracket of those in Evboerhiarhia Community ranges from 30 to 55 years. All the participants attained no more than secondary education level. The discussions with the two groups were conducted separately.

In addition to the focus group discussions, a total of 20 Street Edionwere (herein labeled as Owere 1–20) were selected for in-depth interviews. The Edionwere (i.e. the first home owner occupiers) of 10 randomly selected streets were interviewed from each of the selected communities. Their selection was based on availability and willingness to participate in the interview. These Edionwere are community leaders at the street level and usually preside over the affairs of their streets. Meetings of home owners (Landlords and Landladies) are usually held in their houses and important information from community head is usually disseminated to the inhabitants of a community through the streets Edionwere.

Semi-structured interview of a top official of Land Use and Allocation Committee in the Edo State Bureau of Lands and Survey (herein labelled as Officer –1) was also conducted in order to get first-hand information on the processes involved in granting legal land titles in the state. The Land Use and Allocation Committee is a government agency that oversees the allocation of land in government layouts and granting of land titles to applicants. Participants in the FGDs and in-depth interviews were asked to explain land acquisition processes, methods of tenure security and processes involved in the acquisition of land titles. Key observational notes were taken by the researcher while moderating the discussions and interviews. The recorded discussions and interviews were content analyzed. Respondents’ quotations are italicized to highlight the voices and views of the participants. To ensure anonymity, the alpha-numeric code of each participant group was used to identify each citation (see Agboola et al., 2017).

Results and discussion
The analysis of FGDs and interviews revealed a number of land management and tenure security issues which are highlighted in the following sub-themes.
Commoditization and commercialization of customary land

A study (Agheyisi, 2012) had earlier revealed that customary land supply forms a dominant part of informal land delivery channels in Benin City. “In the time past, we don’t use to sell land in this community. But since Benin City opened up to this place we began to sell land as a result of high demand” (EYA–1, Eyaen Community). This individualization and commercialization of land were confirmed by another respondent. “Individuals are selling land. But you can also buy from the community and later sell if you like.” (EVBO–5, Evboerhiarhia Community). Land left in communal holding can also be sold by community heads and CDA members. However, serious tenure security problems are usually associated with these land transaction processes which include multiple sales of the same piece of land and land grabbing by the rich and powerful in the society. Studies have shown (see Kasanga and Kotey, 2001; Ubink, 2007) that the pressure from increasing demand and competition for land exacerbated by rapid urbanization in many developing countries have led to tenure insecurity for the disadvantaged groups.

Widespread informal land market

Informal land delivery channels thrive on the existence of informal land market. Several informal land delivery channels exist in Benin City which allowed access to land and transactions to take place between developers and landowning communities and individual land holders (Agheyisi, 2012). Studies have shown that informal land market has created fierce competition for land between members of land-owning communities and non-indigenes (see Amanor, 2006; Ikejiofor, 2006; Arko-Adjei et al., 2009). It has also created high cost of land acquisition (Butler, 2012), complex customary tenure regularization processes in urban areas (Durand-Lasserre, 2004), drives up transaction costs and increase uncertainty concerning title security (Agboola et al., 2017). Acquisition of land in informal market is usually through informants and direct negotiation with the land owner. “If you need a land, just tell some people that you need a plot of land and before a week somebody must surely link you up with somebody that has a land to sell” (EYA–4, Eyaen Community). Tenure insecurity is a major concern in informal land market. “Buying from the wrong persons or middlemen, or when transaction is kept secret from family members could cause trouble in the future” (EVO–3, Evboerhiarhia Community).

Manipulation of customary laws

The fluidity of the customary laws, largely based on oral tradition, gives room for manipulation regarding land tenure security in Benin City. “In Bini tradition, if you are going to start building your house you will cook for the elders in the street or quarter on the day you lay foundation” (Owere-1, Eyaen Community). This cultural practice called Ema-Olu gradually became monetized in modern times and eventually graduated into payment of development fees and levies by developers. “Cooking for the community is part of foundation laying ceremony but nowadays some people prefer to give money to the elders of the community to use to buy drinks instead of cooking” (Owere-6, Evboerhiarhia Community). “Some elders even preferred the money to cooking because the money is big” (Owere –7, Eyaen Community). Community leaders reinterpret customary laws to exploit land holders and developers in their various communities. Similar actions and practices of drink and money offerings to chiefs and elders in Ghana have been reported by Ubink (2007) and Arko-Adjei et al. (2010).

Externalities in customary land management

Customary institutions enjoy social legitimacy derived from socio-cultural legitimation of their formation (Durand-Lasserre, 2004). The role played by customary institutions in urban land management does not mean that they are efficient in checking externalities arising from the informal land market which they had created. Their capability to regulate land use withers as the urban land market heats up. “No road. Some streets are too narrow for motor to pass. Some people built their houses on the moat where water (i.e. flood) supposes to flow into” (Owere – 8, Evboerhiarhia Community). They (i.e. members of CDA) do not reserve land for community uses. Some people are building their houses on public school land which belong to the government” (Owere – 6, Eyaen Community).

As conflicts of land use intensify and spatial disorganization is no longer checked, uneconomical use of land and disorderly development patterns ensue. State guidance and
intervention are therefore indispensable as the local regulation is withering. It has been suggested (Kombe and Kreibich, 2000; Kombe and Kreibich, 2001) that progress can be made in overcoming the wide-spread deficiencies and externalities of informal land management system by a gradual integration of the informal sector into the formal land management administration system. Informal land subdivision and allocation, according to Kombe and Kreibich (2005), mandatorily require public surveillance if the condition of the city is not to worsen in the long run.

Abuse of power and stewardship in customary land administration

The nature of customary land is that land is vested in community heads or a group of community leaders who are entrusted with the responsibility of administering land for and on behalf of the entire community. It is the duty and responsibility of customary leadership to ensure that the proceeds from the sales of communal land are equitably shared among members of the community or used for the provision of community amenities (Ikejiofor, 2006). Unfortunately, this has not been the case as proceeds from sales of land are not used for the benefit of the land-owning community (see Arko-Adjei et al., 2010). “The development fees people pay are always shared among the members of CDAs and Youth Association instead of using it to develop the community” (Owere –10, Evboerhiarhia Community). “Any time they want to grade roads or buy electric poles, they (i.e. members of CDAs) will come and collect the money from us instead of using the money from development fees” (Owere–9, Eyaen Community). Studies have shown that accountability in customary tenure systems diminishes especially where customary mechanisms for holding chiefs or leaders accountable collapse or do not exist (Kasanga and Kotey, 2001; Toulmin, 2009). Under such conditions, customary authorities abuse the power vested in them by exhibiting behaviour and actions which show that they no longer hold a fiduciary position (Kasanga and Kotey, 2001).

Legalization of tenure

“The development fees people pay are always shared among the members of CDAs and Youth Association instead of using it to develop the community” (Owere –10, Evboerhiarhia Community). “Any time they want to grade roads or buy electric poles, they (i.e. members of CDAs) will come and collect the money from us instead of using the money from development fees” (Owere–9, Eyaen Community). The acquisition of certificate of occupancy is characterized by high cost and long delay in Nigeria (see Buttler, 2012; Agboola et al., 2017). The complex process of issuing certificate of occupancy is due to official bureaucracy. “Officially, the processing of certificate of occupancy takes thirty days. But the process can last from three months to three years depending on the prevailing political environment” (Officer–1).

Other factors associated with the acquisition of statutory rights range from exorbitant processing fees and administrative charges to the gubernatorial consent procedures which require that only the State Governor signs the final land title certificate (Buttler, 2012).

Conclusion

This paper highlighted the limited recognition of customary land titles and the clarity of identity of customary tenure institutions; the boundary between the customary and statutory institutions; and the relationship between the two in the coproduction of tenure rights. The strengths and weaknesses of customary land delivery processes depend largely on the capacity of the key actors of the customary land administration, the legitimacy
they enjoy and the land policy environment in which they operate. This is also indicative of what to consider when developing a framework to strengthen the customary institutions for good land administration.

It has been argued in land administration literature that access to security of tenure exclusively through the statutory allocation of real rights and individual property titles is not necessarily efficient or equitable. This is because the diversity of users’ needs requires a diversity of tenure institutions. Tenure as a form of social relation is culture specific. Therefore, social linkages in customary tenure institutions are significant in traditional society like Benin City, and need to be recognized both by the government and financial institutions. This has become necessary against the backdrop that the lending procedures of commercial banks and other financial institutions are not adapted to the use of customary land titles. Statutory land titles alone cannot address the needs of the urban poor. This is especially so with customary title holders. The recognition and acceptance of customary land titles as alternative to statutory titles by the government and financial institutions should be encouraged as part of an integrated land tenure security system.

Land transactions in customary system are largely unrecorded activities. Customary tenure institutions need to modernize land transactions in line with regulatory framework as modern best practices required. Better ways of recording and maintaining land information to ensure efficient land delivery need to be developed. Establishment of information desks at community levels will ensure not only linkages between customary authorities and land users but also the much desired transparency in land governance. This also requires that literate and competent persons are used to handle every aspect of customary land delivery. There should be synergy between the government and customary institutions on the one hand, and customary institutions and professional bodies on the other hand. When this is done, tenure security will improve, and the incidence of land related conflicts between and among individual land holders will be reduced.

References


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