



Research paper

Understanding property market operations from a dual institutional perspective: The case of Lagos, Nigeria



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ABSTRACT

This paper examines the Nigeria Land Use Act and considers how provisions of the Act inform and influence traditional landholding systems, the operation of the commercial real estate market, and the activities of the “*omo-onile*.” The research adopts a qualitative strategy and combines analysis of legal statute with in-depth, semi-structured interviews with market participants active in different capacities within the land and property markets of Lagos, Nigeria.

The paper identifies a number of inconsistencies in the provisions of the Act and concludes that the recognition given to the traditional landholding system by the Act has not been effective in tackling informality and illegality in Lagos land and property markets.

The paper provides insight into how informal institutions of norms, culture, and conventions of a real estate market characterize property ownership and affect transaction processes. This study shows how informal institutions may be used to circumvent formal institutions of a market when formal rights to property are poorly delineated and assigned. In these conditions market actors will incur higher transaction costs in the process of policing transactions and enforcing contractual agreements.

1. Introduction

Rapid urban growth across the developing world is driving the widespread adoption of formal systems of urban land management. These systems often seek to unify different historical tenure arrangements to provide more secure land rights. However, inadequate and poorly designed legislation prompts some market actors to operate outside of the new regulations (Fekade, 2000; Kironde, 2000; Toulmin, 2008). These weaknesses have led to the emergence of a dual system of land delivery in most African economies: the formal and informal.

In Nigeria, the Land Use Act of 1978 (LUA or ‘the Act’) is the key formal institution governing the administration of land and the operation of property markets. The LUA is deeply embedded in the basic law of the country and represents an important component of the Constitution (section 274(5)). In fact, Section 47(1) of the Act declares that provisions of the LUA shall take precedent over all other law,

including the Constitution.

Before the creation of the LUA, land administration in Nigeria was guided by informal customary practices and colonial law.¹ A major feature of customary landholding is its communal nature wherein land belongs to the community or family, with no member of the community or family having any separate, alienable or chargeable interest in the land. In this system, the chief, community or family head functions as a trustee and manages the land for the use of the community or family (Fabiya, 1990; Oshio, 1990).

Over time, increasing population and urbanization pressures encouraged a greater exchange of land within the indigenous system, albeit with family/communal ownership maintaining prevalence over individual ownership. As land became more alienable, traditional chiefs, family heads, and other persons soon realized the possibilities for personal enrichment (Oshio, 1990). As restrictions on the sale of group owned lands began to fall away, many chiefs saw in the changes

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¹ Land administration in Nigeria coupled together indigenous, customary practices and the English land tenure system which introduced fee simple and fee tail systems to colonial Southern Nigeria. For social reasons, the colonial government was not able to implement full control and management of the systems of land tenure in Southern Nigeria. Rather, they restricted their involvement to administrative controls through the promulgation of laws designed, ostensibly, to protect land ownership among native communities (Smith, 2008).

new opportunities to access incomes from group holdings for their benefit. Many became land speculators, and this resulted in steep land price increases. The administration of group-owned lands increasingly became characterized by greed and racketeering². A significant consequence of these changes to the traditional land tenure system was land title risk. Insecure title meant a single piece of land could be sold to multiple individuals simultaneously. These fraudulent sales resulted in increased litigation, but with cases often spanning many years some resorted to violence to secure their interests (Oshio, 1990).

Erosion of secure land title and greater incidence of fraud and corruption prompted the drafting of the LUA. The legislation was designed to provide a uniform system of land rights and streamline the various historical land tenure systems prevalent throughout the country. However, while the Act worked to nationalize land and make formal the informal institutions of the market and positively address illegality in property transactions, the recognition given to the informal landholding system within the Act effectively undermines efforts to tackle informality and illegality in Lagos land and property markets.

This paper examines key provisions within the LUA that pertain directly to the customary, indigenous landholding system to better understand how different elements within the Act inform and influence the operation of the market and the activities of a group called the *omo-onile*, or “children of the owners of land” (literal translation).

To uncover and unpack the effects of the *omo-onile* on the functioning of the Lagos commercial real estate market, this paper adopts a qualitative research strategy and includes a series of in-depth, semi-structured interviews with market participants active in the land and property markets of Lagos, Nigeria. From interview responses coupled with an examination of the central precepts of the LUA, the primary formal institution governing land market activity, this study provides new insights into the effects of formal institutions on informal market processes and the functioning of the Lagos land market.

2. Literature

Institutions, both formal and informal, emerge spontaneously or are created, to structure human interactions. They reduce uncertainty by providing a structure to political, social, and economic exchange (North, 1990a). Institutions are the “rules of the game in a society,” or the humanly devised constraints that shape human interactions (North, 1990b). Institutions can also be thought of as infrastructure that both facilitates and hinders social coordination and the allocation of resources (Sjöstrand, 1995).

Formal institutions comprise written constitutions, statute, common laws and property rights. Informal institutions include unwritten traditions, socially sanctioned norms of behavior, internalized ethical codes and conventions as well as extensions, elaborations, and modifications of formal rules that frame the socially shared values of a people and coordinate human interactions (North, *ibid*). Informal institutions can also be viewed as normative behavioural codes which denote the cultural values that legitimize formal institutional arrangements and constrain behaviour (Feder and Feeney, 1991).

Institutions fundamentally enhance certainty in the market by providing regularity and making market behaviours predictable (North, 1990a). However, in market environments where formal institutions (i.e., property rights) are poorly assigned, monitoring of agreements is imperfect and contract enforcement poor, institutions may impinge on market outcomes. Indeed, the costs of exchange depend on the institutions of a country: the legal, political, social, educational systems and culture in place (Coase, 1984). In the case of property investment, institutional weaknesses may increase transaction costs while

negatively impacting risk and the security of financial returns from land and real estate.

Studies that seek to explore the effects of institutional arrangements on land and property markets are still relatively few, while studies of developing countries are rarer still. Early work by D’Arcy and Keogh (1998) notes that real estate markets exist within a broad institutional context defined by the prevailing political, economic, social and legal systems which inform market structures and processes. The authors observe that the property market embeds the institutional arrangements through which real property is used, traded and developed, and the wide range of actors involved in the process. It is, essentially, a human construct which exists and operates within a framework defined by prevailing institutional arrangements. Seabrooke and Kent (2004) concur, concluding that real estate transactions take place within economic, social and political structures that are elaborate, dynamic and complex. These structures form a variety of rule regimes that collectively constitute an institutional framework, and affect the transaction process and attendant costs.

Among the few studies of institutional arrangements in the property markets of Sub-Saharan Africa, Nkurunziza (2008) employs a legal pluralist perspective to explore the informal urban land access processes in Uganda. The study suggests that mechanisms of land access are underpinned by the interrelationship between normative orders, including state law, rules of market exchange, and customary land tenure norms. By examining contemporary land access processes in three case study settlements, and by utilizing semi-structured interviews to develop information from key informants, the author argues that where market actors are unable to follow often expensive and cumbersome formal rules, institutions that are more responsive to the local context are the result. The success of non-state institutions is attributable to the social legitimacy they enjoy in the local community.

Toulmin (2008) chronicles land use rights and succession in parts of Sub-Saharan Africa and identifies five primary origins of land rights: first settlement, conquest, allocation by the government, long occupation and market transaction. The author notes that despite volumes of legislation, both colonial and post-independence, customary authorities continue to play a prominent role in land relations in many parts of Africa. This is primarily due to the proximity and accessibility of traditional authorities to local people, particularly in rural areas. Central governments have shown they possess neither the capacity nor local knowledge necessary to implement and sustain large-scale national land registration systems, the author explains, noting formal land-titling programs are often slow, expensive and usually favour the wealthy. The author concludes that more efficient mechanisms to secure property rights and negotiate disputes are possible by strengthening local institutions to undertake intermediate forms of land registration.

In a related study, Antwi and Adams (2003) query the belief that the haphazard development of neighbourhoods in Sub-Saharan Africa is a consequence of informal land transactions. Drawing from a survey of land sales in five informal neighbourhoods in Accra, Ghana, the authors developed a series of models to test whether urban land transactions are examples of irrational economic behaviour. The authors observe that most transactions can be characterized as representing entirely rational economic behaviour given that the informal land transaction system effectively circumvents the complexities and bureaucracy which characterize the formal land administration system. Moreover, the apparent irrational and illegal behaviour of agents are optimal given constraints imposed by the institutions of the market.

Kironde (2003) examines the New Land Act in Tanzania and its potential impacts on urban land. The author finds that while the explicit aim of the Act is to promote and ensure a secure land tenure system, encourage the optimal use of land resources, and facilitate broad-based social and economic development, it has proven ineffective in dealing with problems of urban land management in the country. Amongst the reasons adduced to the inefficiency of the Act are the concentration of

² The Government of the Western Region of Nigeria enacted the Communal Land Rights (Vesting in Trustees) Law, Ch. 24, 1958, (as amended in 1959) in an attempt to control the worst excesses (Oshio, 1990).

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