

DRIVING TENURE SECURITY IN PERI-URBAN AREAS

JURISDICTION, LEGITIMACY AND COLLABORATION ARE CRUCIAL IN ENSURING TENURE SECURITY IN PERI-URBAN AREAS, WHICH SEEMS IMPOSSIBLE BECAUSE OF THE COMPLEXITY OF THE SITUATION. **KEHINDE HASSAN BABALOLA, SIMON HULL AND JENNIFER WHITTER** EXPLAIN THE WAY FORWARD

Urbanisation is increasing in developing countries. As people move from rural to peri-urban and urban areas, the pressure on land for settlement increases. This increased demand is best met through efficient and effective management and administration of land.

In the past three decades, the state of peri-urban areas has inspired research in land administration and cadastral systems in an attempt to understand the challenges of land management and administration, and to propose solutions. Many of these studies determined how land can be managed and administered efficiently and effectively in the face of complex challenges, particularly in the Global South.

Resolving the land management and administration challenges in such context led to thinking around 'responsible', 'fit-for-purpose' and 'fit-for-people' concepts, as well as the unpacking of the meaning of legal pluralism in land management and administration. In response, a study of three peri-urban areas of Ekiti State,

Nigeria, reveals that jurisdictional, legitimacy and collaboration issues need to be addressed in peri-urban areas for improved tenure security.

Jurisdiction

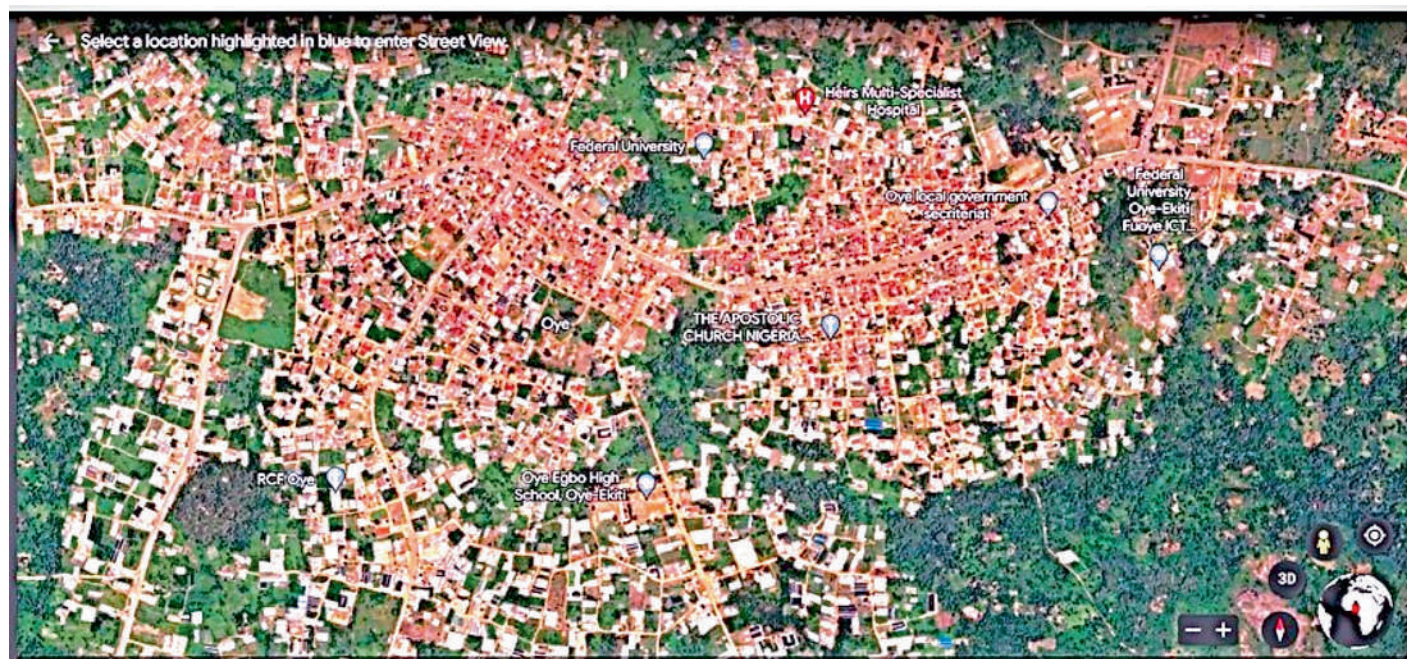
Examining peri-urban land management and administration shows that the policymakers and government neglect these processes and functions in such areas. This could be linked to jurisdictional confusions between urban local authorities and traditional authorities. Identifying the boundaries of peri-urban areas is challenging since they occupy the urban fringes and are in transition from purely rural land uses.

In this context, the geographical boundaries of traditional areas as well as the boundaries/limits of powers of traditional leaders should be defined, along with the boundaries of local government, and the processes and responsibilities that are within the jurisdiction of each, particularly where there is some geographical overlap in peri-urban areas. Failure to do this leaves

vulnerable peri-urban dwellers in a land management and administration gap or in a situation of conflict between authorities.

The study revealed that policymakers and government neglect peri-urban land management and administration. Peri-urban areas occur at the junction of rural and urban areas. The boundaries of peri-urban areas may be ill-defined, with a gradual change from urban to peri-urban to rural. Jurisdiction speaks to allowing autonomy and self-determination of peri-urban areas. In this context, the geographical boundaries of traditional areas as well as the boundaries/limits of powers of traditional leaders should be made distinct.

Government and policymakers should acknowledge customary law, tenure and administration as the dominant mode of management and administration of land in peri-urban areas. The importance of strengthening human-land relationships should be at the forefront of land administration systems (LASs) with their legal framework. Constitutional recognition



Peri-Urban area of Oye-Ekiti (Google Earth Image)

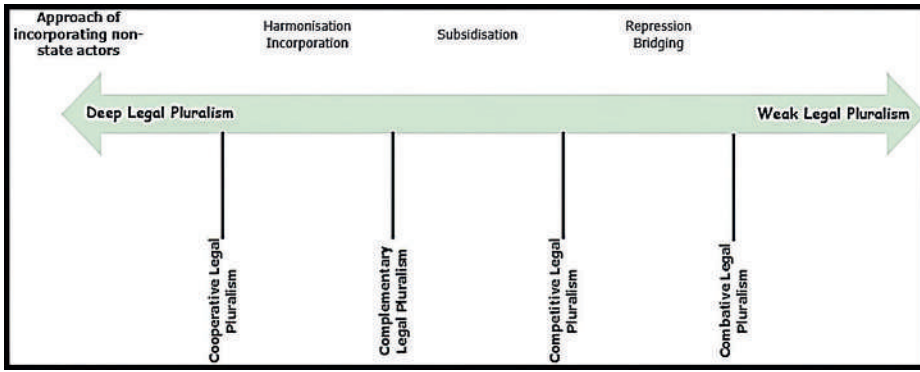


Figure 1. Legal pluralism model in land management and administration systems. © Babalola 2023

of customary law in land administration will strengthen human-land relationships in peri-urban areas and improve the legal status of customary land rights. The customary law justice system should also be acknowledged within peri-urban areas.

Substantive justice could be provided by applying customary law, which acknowledges cultural rights and societal organisation and processes. Human rights (individual and collective) are essential when building a legal framework for land administration. Embedding cultural affiliation in court processes is also likely to be improved. Jurisdictional boundaries may be flexible for cases that are appealed (see Figure 1)

Legitimacy

Legitimacy speaks to general acceptance by society at large. Where law, structures and process are legitimate, this contributes to a robust society. Legitimate systems of land management and administration would allow, where contextually appropriate, a pro-poor approach and recognition of traditional forms of land governance and dispute resolution.

Research has shown that, in Africa, peri-urban areas suffer from inefficient and ineffective land management and administration causing several challenges for land rights holders. The state alone cannot manage peri-urban areas successfully.

Where do we then go from here? Are there other ways to manage land efficiently and effectively? Inherited systems (from colonial times) often fails in the transition to an inherent system. Policies of deconcentration and decentralisation have not resulted in the necessary change. Urgent policy reform is needed to embrace pro-poor approaches to land administration and where the traditional form of land governance and dispute resolution is recognised as legitimate under the law (See Figure 1). This will drastically reduce the pressure on courts of law in the peri-urban areas as well as reduce the costs incurred by land rights holders.

Cultural-cognitive legitimacy should take policy preference over regulative legitimacy in peri-urban areas. It is time to

start a new form of peri-urban society where legitimacy is built on cultural-cognitive aspects. It should be the task of the nations to facilitate this by building peri-urban land policies that address the cultural-cognitive legitimacy of land institutions.

Collaboration

Why have states thought they could single-handedly manage land in peri-urban areas where landholding is primarily derived from customary forms of land tenure managed historically by traditional authorities? This is a question researchers are exploring.

What are the challenges of the state being the sole manager and administrator of customary land? New ways of thinking

about peri-urban land management and administration require embracing a strategy that promotes deep legal pluralism over weak legal pluralism. In this instance, the prevailing law, tenure, and administration require harmonisation and cooperative approaches to incorporate non-state actors which is in contrast to competitive and combative approaches adopted by states. To allow for a meaningful collaboration, a legal pluralism model is developed showing the approaches of incorporating non-state actors (see Figure 2).

Peri-urban land administration and land management can be managed efficiently and effectively by using the three pillars of jurisdiction, legitimacy and collaborations of the legal pluralism model in land management and administration. The policymakers, practitioners, and land administration experts are called to action in the use of the legal pluralism model to develop an inclusive land policy for peri-urban land users.

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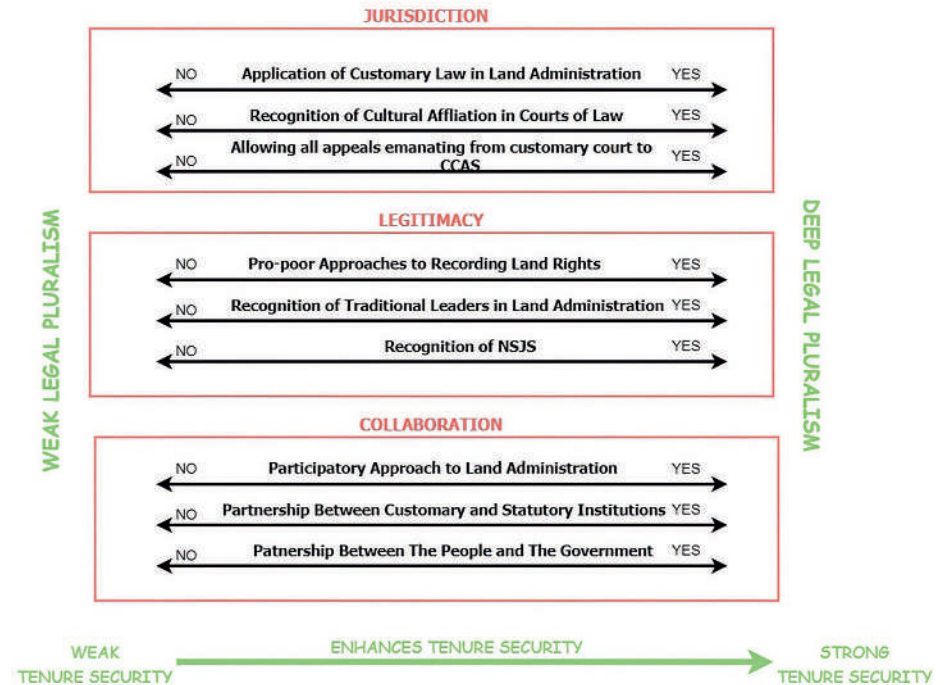


Figure 2. A continuum of understanding legal pluralism theories and practices. © Babalola 2023

Kehinde Hassan Babalola earned his PhD degree in July 2023. FIG Foundation awarded Kehinde with the FIG Foundation PhD grant to assist with the finalisation of his studies. In 2022, he had a peer-reviewed paper prepared for the FIG Congress 2022 that was included as the FIG Article of the Month in August 2022. He will present his studies in more detail at the FIG Working Week 2024 in Accra, Ghana 19-24 May 2024.