

**Expert Group Meeting on Secure Land Tenure:
'New legal frameworks and tools'
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**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?**

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**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)

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**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-crowded 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**

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**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