

Multiple discourses on local development: Researching land, housing and property

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Securing urban land tenure and property rights¹

Millions of people in developing countries live without adequate security of tenure or property rights. The United Nations expects this group to increase by nearly 37 million a year to reach 1.5 billion by 2020. The problem is particularly acute in urban areas where the costs of access to legal land and housing are high and rising faster than incomes.

In some cases, informal settlements outnumber legally planned developments and are increasing more rapidly. Beyond the effects on the poor, governments are finding themselves in danger of losing control over urban development and the affluent minority are feeling increasingly surrounded by slums and illegal settlers.

Defining tenure and rights

Any discussion of land tenure and property rights needs to recognise the importance of cultural, historical and political influences, as well as those of technical and legal systems. Each of these influences results in subtle differences in the way key terms and relationships are defined. The term 'tenure' can refer to how land is held or owned, or the set of relationships among people concerning the use of land, which can vary considerably between different cultural and economic contexts. Land or property 'rights' refer to what those who hold, own or occupy land may do with that land and any development that takes place on it. Property rights cover several factors, including the right to occupy, enjoy and use; restrict others from entry; dispose, buy or inherit; develop or improve; cultivate or use for production; sublet; realise a financial benefit; and access services. Again, different people or groups may enjoy recognised interests in some or all of these rights.

Not all contexts give equal emphasis to both tenure and property rights. Security of tenure involves the real or perceived protection from forced eviction, whilst property rights may vary within, as well as between, tenure systems. It is therefore possible to have a high level of security, but restricted rights to use, develop or sell land, or a limited level of security, but a wide range of actual rights.

¹ Notes for this and the next lecture are drawn from: "Safe as houses" ID 21 Research Bulletin, October 2003 edited by Geoffrey Payne, Alain Durand-Lasserve and Martim Smolka "Secure Tenure" in CIVIS, September 2002. Geoffrey Payne "Getting ahead of the game" Environment and Urbanization", April 2005. All these are downloadable at www.gpa.org.uk

Additionally, different forms of tenure and rights commonly co-exist within the same settlement and individual plots can change from one category to another over time. Therefore we should not think of tenure strictly as formal or informal, but acknowledge a broader range of systems from squatting, to unauthorised subdivisions and others which may simply fail to conform to official procedures. There may also be more than one legal tenure system operating in the same city, as in the case of Islamic societies or those where customary tenure operates alongside statutory systems.

Identifying existing tenure and property rights

Before making any policy decisions regarding land tenure or property rights, it is advisable to undertake a review of the existing situation and the implications of each tenure category. The typology below covers the main concerns.

To complete the typology requires undertaking a few steps and including whatever information, data or estimates are available. The steps are as follows:

1. Identify the full range of formal, non-formal/unauthorised/semi-legal, customary and/or religious (e.g. Islamic) tenure categories within your selected city. These should include pavement dwellers, unauthorised subdivisions, recognised squatters which are not given formal titles, as well as formal categories.
2. Estimate the proportion of the total urban housing stock represented by each of these categories and represent this by an appropriate width of the horizontal axis on the table (e.g. a category accounting for 10 percent of the total housing stock would take up 10 percent of the distance along the axis). Technically this can be done by clicking on the vertical column lines and moving them left or right to represent the correct proportion.
3. Estimate the degree of de facto (not de jure or formal) security available to households living in each category and represent this on the vertical axis as a proportion in between nil and absolute security. Remember that there is probably no category anywhere which enjoys absolute security in that in almost every country the State retains the right of eminent domain or the right to acquire land or property for public purposes. At the same time, even pavement dwellers often possess rights which entitle them to compensation or alternative housing if forced to move. This means that all categories in practice are somewhere above zero and below full security. When you have completed this section of the typology, you have finished the part dealing with tenure security.
4. Next, identify *all* the rights available to households within each tenure category. For example, households may theoretically enjoy a high level of security, but heavy restrictions on their rights to use or dispose of property, whilst those with lower levels of security may possess more rights in practice to use or dispose, etc of their property. The list of property rights shown includes the right to occupy, use and enjoy; to restrict access by others; to buy, dispose of or inherit; to develop or improve; to use for cultivation or production; to sublet; to sublet and fix the rent; to benefit from any pecuniary increase in property value; to access services and to access formal credit. This list is not exhaustive, so all locally applicable rights should be included. It would be good to also identify the responsibilities or obligations which may be, and often are, tied to particular rights. These terms and conditions will affect the relative security and value of different forms of tenure and property rights. For instance, if a right exposes residents to property taxes or service charges this could more than offset the

- benefit of such increased rights. This added dimension could be commented on in the notes reviewing the typology, rather than included in the typology itself.
5. The final stage involves noting the extent to which each category of property rights is available to households within each tenure category *and* noting if these rights are available to men only, women only or both sexes. For male only, insert a \ for women only insert a / and for both sexes, insert a x. You should indicate the rights which apply in practice rather than in theory or legislation. When the typology is being explained or amplified
 6. In the discussion it is also important to allow for social and cultural variations such as ethnic differences and the social status of women as single, married, divorced, cohabiting or widows. For instance women may be denied property rights if they become divorced or widowed. This variability or conditional right can be identified on the typology with an asterix (*) and then elaborated in the text.

Sources of information include published material, interviews with key stakeholders in government, the private sector, land developers and estate agents, community leaders, NGOs and academics and particularly personal contacts within the settlements studied previously.

The tenure categories listed will not be found in every city, whilst some others not listed will need to be included. The proportion of each category will also need to be adjusted according to local conditions.

Notional Typology of Land Tenure and Property Rights

Proportion of each category to the total stock (indicative)

0%



100%

Degree of security	Proportion of each category to the total stock (indicative)									
	0%									100%
High Security										
Low security										
Tenure category										
	Pavement dweller	Squatter tenant (Partial Possession)	Squatter 'owner'	Tenant in unauthorised subdivision	Urban legalisation	Owner in unauthorised subdivision (Declaration of possession)	Legal Unauthorised construction owner	Tenant with contract	Lease-holder	Free-holder
Property rights										
Occupy/use/ enjoy	/ * \									
Restrict access by others										
Dispose, buy, inherit		\								
Develop/improve				X*						
Cultivate/produce										
Sublet										
Sublet and fix rent					\				*	
Pecuniary			V							
To access services									X	
To access formal credit									X	

Key

- \ Right available to men only
- / Right available to women only
- X Right available equally to men and women
- V Where the situation varies from one case to another

Once the typology has been completed, it will be easier to identify the policy options most appropriate to meet local needs and conditions. For example:

- If the typology reveals a large proportion of the total housing stock to be in non-formal tenure categories, it will be necessary to consider what impact a specific policy option may have on land and property prices, or potentially vulnerable groups such as tenants.
- If there are significant differences in degrees of security between different tenure categories, this might indicate problems for people moving from an insecure to a more secure category
- If security is associated with a specific range of tenure categories, it will suggest that attention needs to be focused on those categories which do not provide adequate security.

If some tenure categories are shown to provide reasonable security but not rights, or such rights are not equally available to women, this will also need priority attention.

What to do about unauthorised or illegal development?

All tenure systems have advantages and disadvantages:

- Customary systems facilitate social cohesion, but may not be able to withstand increasing pressure on land.
- Private land ownership puts land to the most economically efficient use, but often excludes the poor and limits state land management options.
- Public or religious land ownership may facilitate equal access to prime locations, but also lead to bureaucratic inactivity and corruption.

However, by far the most widely adopted and advocated tenure system at present involves the provision of individual land and property titles. This has the obvious advantage of granting permanent and almost complete ownership and is held to offer not only high levels of security but also collateral to enable property owners to access credit and therefore invest in economic development. However, since the situation in most countries consists of a range of formal, informal and semi-formal categories, titles may not necessarily be the most appropriate policy option to solve what are complex problems.

The drawbacks of titling

These complexities have often been ignored by policy-makers. Thus, many governments and international funding agencies have taken the conventional route of providing individual land titles, either within informal settlements or in locations to which settlers are relocated. The intention is to provide high levels of security and property rights in a form which will enable poor households to obtain access to services and work to lift themselves out of poverty. But these expectations do not appear to have been widely realised and there is evidence that the claimed benefits of titling have been exaggerated. However, many households are not interested in obtaining titles because of the costs involved and the risk that they may lose their land if they have to pledge their deeds to obtain a bank loan. Most bank lending is not asset- but revenue-based, so the provision of titles will not necessarily increase access to formal credit.

There are significant drawbacks to titling programmes which have not been adequately acknowledged by their advocates, especially Hernando de Soto. These include:

- Providing windfall profits to squatter 'owners' who sell up as soon as informal tenure is granted,
- The eviction of tenants or imposition of higher rents upon them,
- The resulting growth of new unauthorised settlements by groups hoping formal titles will also be awarded to new areas,
- The heavy burden placed on land registries and
- The potential distortion in property prices caused by the buying up of newly formalised settlements by higher income groups who may capture much of the subsidies.

More seriously, some governments have used titling programmes as an excuse to evict informal settlers from prime inner-city sites and grant them titles on plots outside the city and far from sources of livelihoods and services. It is also expensive for governments to grant titles to settlers on private land, where market values may approach European or American levels. Finally, the costs and complexity of administrative procedures required for titling programmes may reduce demand, though this can also be an indication that people feel secure even without titles.

The public debate on tenure, which de Soto has done much to bring to centre stage, can now be based on a wealth of empirical evidence. For example, international experience shows that even the poor will invest what they can if they have reasonable security. However, titles are not the only means of ensuring security. Many people achieve this through political pressure, collecting receipts for utilities payments, or simply by sheer force of numbers. Interestingly, in its recent publication 'Land policies for growth and poverty reduction', the World Bank now acknowledges that formal titles are not always necessary or sufficient for high levels of tenure security.

What alternatives are there to titling?

Recent research reveals a range of innovative approaches world-wide which seek to increase security and rights and provide access to services and credit. Formal and informal rental tenure systems in meeting the needs of poor households for security and mobility, whilst Rakodi asserts the importance of semi-formal and customary tenure systems in current land delivery systems. Such intermediate, incremental options which emphasise an increase in land rights appear to offer improved security, increased public sector influence over land development, modest increases in tax revenues and practical options for financing land development. They are also simpler and cheaper to implement.

The primary objective of tenure policy should be to ensure protection for all households from forced eviction. This need not involve public sector agencies losing long-term control, or private landowners losing their land, but that people are given due notice and reasonable options for alternative accommodation. The secondary objectives involve improving access to livelihoods, services and credit, usually in that order.

The most effective way of increasing security for many households may be to increase property rights, rather than changing the form of tenure as such. This has the advantage of reducing land and property market distortion and placing less pressure on land administration agencies.

Innovative Approaches to Tenure and Property Rights

Case studies carried out in 16 countries² identified a number of legal, customary, religious, and extra-legal tenure systems. Legal plurality exists in many countries, is a major influence on tenure systems, and influences both perceptions and practices. In addition, there is a continuum of extra-legal and semi-legal categories, which have been introduced or adapted by governments, customary systems, NGOs or communities themselves, in order to increase security of tenure and property rights, as well as access to public utilities.

Their search has revealed that security of tenure often depends not so much on legal status as on residents' perceptions of past and present government policy. For example, in South Africa, where generations were denied any rights through the policies of apartheid, individual titles are now considered the only form of tenure worth having. However, in Bogotá, Colombia, forced evictions are rare and residents are constitutionally entitled to receive public utilities on the sole condition that they can pay for them; formal tenure is therefore not a subject of concern or even interest for most people in informal settlements.

The situation in most countries is somewhere between these two extremes, revealing a wide range of tenure categories and sub-categories, each of which provides varying degrees of security and entry costs. It is becoming increasingly clear that priorities for tenure and property rights vary between sub-groups of the urban poor. For example, the priority for the poorest groups is to achieve easy access to places in which they can obtain a livelihood. Since these are invariably inner city locations where land prices are highest, they are generally forced to accept informal and insecure accommodation as a price of such access. Those on low, but less uncertain, incomes are able to accept slightly longer travel distances to employment areas and afford a more secure form of tenure, though probably not at full market rates. For the upwardly mobile or less poor, residential mobility is higher and distances to work are less critical than the need for longer-term and more formal tenure.

There are many examples of "intermediate" tenure systems that fall short of providing full titles, but increase tenure security and facilitate access to livelihoods and services. Some of these can be upgraded to full titles over time; some offer improved rights to individual families; and others provide communal forms of tenure. All enable households to retain housing in certain areas in order to improve their economic situation without adversely affecting the operation of urban land markets.

For examples of innovative approaches already being implemented in different parts of the world, refer to the notes at the end of this lecture.

Elements of a Tenure Regularisation Policy

While local conditions need to determine final policy choices, the following steps may be considered as a means of moving incrementally towards a more formal tenure system which improves the efficiency of land and property markets:

1. Prioritise occupancy rights and security of tenure

Announce a stop to forced evictions and relocations where these are presently part of government policy or practice. Such approaches waste scarce public resources and increase poverty due to increased costs and times of travel to places of employment, in addition to the huge costs of human suffering. A simple statement by the relevant Minister is often sufficient to

² See Payne, G (Editor) 'Land, Rights and Innovation: Improving tenure security for the urban poor' Intermediate Technology Publications, London 2002.

reduce uncertainty and stabilise situations.

2. Promote records of land rights (including use rights) at the local level involving concerned communities

Survey all extra-legal settlements and identify any that are environmental hazards (e.g. floods, landslides, etc.) or required for strategic public purposes. These should be subject to review by independent experts. Offer residents of all such settlements priority for relocation to sites that offer equally close access to existing livelihood opportunities (e. g. s t r e e t trading) and services (e. g. , not out of the city). Temporary Occupation Licences or Permits should be provided for a limited period, depending on how long it takes to agree with the local community on moving to alternative sites.

Designate all other extra-legal settlements as entitled to other forms of secure/intermediate tenure with increased rights, but not full titles. Where possible, the precise form of such tenure and rights should be based on tenure systems already known to local communities. This will allow such areas to receive services and environmental improvements through a participatory process of physical and socio-economic development (e.g. the Kampung Improvement Programme in Indonesia, the Orangi Pilot Project in Pakistan, etc.). It will also increase security without stimulating rapid increases in land prices, which could attract downward raiding by higher income groups and the displacement of very poor tenants. Finally, it provides urban development agencies, communities, and the private sector with time to develop a range of viable and acceptable alternatives.

3. Develop appropriate regulatory frameworks for the regularisation of existing settlements and the development of new settlements for the urban poor

Simultaneously undertake a regulatory audit of planning and building regulations, standards, and administrative procedures to identify options for reducing costs and time required for developing legal shelter options. Options may include reducing the proportion of land allocated to roads and public open space, relaxing restrictions on plot use and development, and simplifying administrative procedures. Such audits should be undertaken and changes implemented on a regular rather than on a one-time basis.

4. A wide range of tenure options should respond to the diversity of needs within the broader community

Increase the supply of legal urban land developments with full titles and other tenure options (e. g. public or private rental, leasehold, co - operatives, e t c.) in a range of locations and a range of prices to suit the needs of different socio-economic groups.

Promote multi - stakeholder partnerships (not just public - private partnerships) and joint ventures to extract a public benefit from private sector investments and developments. Such projects can also help generate internal cross subsidies to facilitate low-income access.

5. Upgrading processes should be incremental in order to limit the effects of formal market pressure and market evictions on informal settlements

Start with pilot projects at as large a scale as possible, as the first phase of a city-wide approach. Provide for the option to upgrade to real rights when affordability allows and the administration can process such claims. At all costs, avoid the creation of parallel (and inherently second-class) titling programmes for the poor.

Maintain and accelerate institutional reform so that changes penetrate the institutional bloodstream and culture of public agencies, not merely train individuals whose increased expertise and awareness has little chance of being applied. This could be achieved through

accelerated promotion, or career fast tracking options for young talented professionals who otherwise may not seek employment in the public sector.

A central feature of any urban land tenure policy should be to provide a range of options as part of a diverse and responsive urban land and property market.

Improving tenure security and rights for existing communities will not be easy. Nor will it be sufficient, unless parallel measures are taken to reduce the need for the growth of new informal settlements. This requires a parallel approach to increase the supply of planned, legal and affordable land on a scale equal to present and future demand.

Information for further reading:

Examples of innovative, intermediate tenure systems in different countries:

Botswana: Certificates of Rights

This tenure system was introduced in the 1970s to cater to the needs of the urban poor. It provides holders with the right to use and develop land, whilst retaining ownership by the state. This system is estimated to have benefited well over 100,000 people to date. Certificates can be upgraded to Fixed Period State Grants on payment of survey and registration fees.

One limitation of this system, however, is that it has not been accepted by formal private sector finance institutions as an acceptable collateral for loans. In addition, the administrative work involved is about the same as that for allocating full titles, although computerisation has reduced this. The system also has to compete with customary land allocation procedures that are already well known and active in peri – urban areas. Given the limited population growth of urban areas and these alternative options, Certificates of Rights have been discontinued. They may come into their own again, however, if demand increases.

Kenya: Temporary Occupation Licences

Temporary Occupation Licences were introduced in Nairobi to promote investment in small businesses and the efficient use of idle public land in strategic locations. Licences are allocated annually on a renewable basis for a land rent and entitle licensees to construct semi-permanent structures. Typical uses include pavement restaurants and kiosks, although some people also live on their sites. The system has several advantages, including the simplicity of the administrative procedures (no surveys are involved), payment is spread over the year, building standards are flexible, and the authorities retain control of the land.

The system also has considerable potential for application in other cities where pockets of un-or underused land exist in central areas.

Kenya: Community Land Trusts

Community Land Trusts have been used in secondary towns in Kenya since the mid-1990s as a means of accessing land for housing and related activities. The aim is to combine the advantages of communal tenure with market - oriented individual ownership. By retaining ownership in the hands of a group and allowing members to hold long-term leases, it is possible to control transfers and discourage speculation. The basic principles of trusts are to make the best use of the collective strengths of local communities in obtaining permits and infrastructure, keep all land under one simple title, and encourage members to invest in home and environmental improvements. They also enable communities to remain in areas that might otherwise be too expensive if conventional individual titles were provided.

The major limitations of the system are that it is not yet well understood by administrators and requires lengthy documentation. Communal land ownership may also be a disincentive to invest, especially when people are not free to sell directly.

Bolivia: The “ Anticretico ” (“Against a Credit”) Tenure System

An unusual tenure arrangement has evolved in Bolivia in response to sustained high rates of domestic inflation and weak formal private sector finance institutions. It involves the owner of a house receiving money (in dollars) in advance, in return for allowing a low income household to occupy the property for an agreed period, normally two years. What makes the “anticretico ”

system different from conventional rental agreements is that at the end of the contract period (or any agreed extension), the occupants return the property to its owner and the owner returns the full amount received initially from the occupants. For the owner, this is an effective way of raising capital without incurring high interest rates, while for the occupants it represents an effective way of living at low cost. The occupant is required to return the property in the same condition as it was received and may even be able to purchase the property if the owner agrees.

The system is widely used in Bolivia, but depends for its success on a degree of trust between the parties. The government has formalised the system in order to increase security for both parties; however, it has also increased taxes on such agreements, which discourages them.

Egypt, India, Colombia: Tenure through acquired documentation

In many countries (e.g. Egypt, India, and Colombia), tenure security is achieved over time through the accretion of various documents relating to property taxes, utility charges, voter registration forms, ration cards, etc. This form of de facto tenure is possibly the most common of all urban tenure systems and, by sheer weight of numbers, can significantly increase perceived levels of security and stimulate substantial levels of investment in home improvements, local businesses, and infrastructure. By ensuring that land and property held under such tenure systems cannot command the full price which formal tenure would entail, low income households are able to live in areas which would otherwise be beyond their reach. The main limitation of the system is that it is vulnerable to changes in government policy, and programmes of forced eviction or relocation can seriously erode its advantages.

Thailand: Temporary Land Rental

Land owners and low-income groups in Bangkok have evolved a mutually beneficial system of land tenure which enables the poor to live for a short to medium period in inner city areas which would normally be far too expensive for them. This not only enables the poor to obtain easy access to employment centres, but also provides landowners with an income until they decide to develop their site for its maximum commercial potential. Although many arrangements are informal, the system is increasingly recognised and some agreements are legal contracts. Local authorities are willing to provide services according to the rental period, and when this expires the communities are given enough notice to negotiate a similar arrangement with another landowner. In this way, the urban poor are able to move ahead of the tide of urban expansion without detracting from the efficiency of the formal land market.

Brazil: The City Statute

On 10 July 2001 a groundbreaking legal development took place in Brazil with the enactment of Federal Law number 10.257, entitled "City Statute", which aims to regulate the original chapter on urban policy introduced by the 1988 Constitution. The new law provides consistent legal support to those municipalities committed to confronting the grave urban, social, and environmental problems, which directly affect the living conditions of the 82 percent of Brazilians who live in cities.

In conceptual terms, the City Statute broke with the long-standing tradition of civil law and set the basis for a new legal-political paradigm for urban land use and development control: the right to urban property is ensured, provided that a social function is accomplished, which is determined by municipal urban legislation. Municipalities are tasked with formulating territorial and land use policies balancing the individual interests of landowners with the social, cultural, and environmental interests of other groups, and the city as a whole.

Municipalities are required to integrate urban planning, legislation, and management so as to democratise the local decision-making process and thus legitimise a new, socially oriented urban-legal order. The City Statute also recognised legal instruments to enable municipalities to promote land tenure regularisation programmes through a combination of individual and/or communal adverse possession rights in private land and leasehold rights in public land; this will help to democratise the conditions of access to urban land and housing.

Policy Implications

The preceding examples illustrate practical approaches, which help the urban poor, obtain access to housing near sources of livelihoods and services. They are flexible, simpler to administer, and help to compensate for the rigours of the formal land market without detracting from it. This is not to say that they are without limitations. In fact, no tenure system is without limitations, and therefore a central feature of any urban land tenure policy should be to provide a range of options as part of a diverse and responsive urban land and property market. Successful implementation of such systems will also be greatly facilitated through the sensitisation of some of the professions, particularly those operating in the legal and banking sectors.

The research demonstrated that -at least in the short to medium term improving rights is the key to increasing security and stimulating improvements in housing and living standards. It also strongly suggests that tenure regularisation must be part of a package of measures, not a stand-alone programme. In particular, it should be combined with increased access to existing livelihood opportunities, the provision of services, and the increased supply of affordable legal shelter options which meet the needs of all sections of the population, especially the poor. This requires citywide measures to link tenure policies with regulatory regimes which stimulate employment opportunities and with physical planning measures which permit mixed land use and basic services.