

Proposed incremental approach to tenure and property rights

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International research has confirmed that there is no one-size-fits-all solution to the diverse tenure situations existing in different parts of the world and in countries with different legal traditions, levels of economic development and institutional capacity. The best approach to stimulate investment and pro-poor economic development is a diverse range of tenure options. These can provide a choice of ways to access land, housing and commercial property for small-scale as well as large corporate investors and developers.

Time to implement new approaches and enable both residents and government agencies to adjust to change is vital. An incremental approach to land tenure and property rights is therefore recommended. A five-step approach is currently being encouraged in Cambodia and is outlined below as a basis for discussion.

Recommendations for tenure policy:

The following steps can help to stabilise the existing situation and provide a foundation for longer-term options.

1. Provide basic short-term security for *all* households in slums and unauthorised settlements. This can best be achieved through land proclamations or moratoriums. A simple statement by the relevant Minister is often sufficient to reduce uncertainty and stabilise situations. The proclamation or moratorium should last for a specified period in order to provide basic security and enough time to survey all extra-legal settlements and identify any that are in areas subject to environmental hazards, (e.g. floods, landslides, etc) or required for strategic public purposes. A period of 6-9 months should be sufficient in most cities, though it could be extended if necessary. Decisions on which settlements are to be relocated should be subject to independent review.
2. Offer residents of all such settlements priority for relocation to sites that offer close access to existing livelihood opportunities (e.g. street trading) and services (i.e. not out of the city). Temporary Occupation Licences or Permits can be provided for a limited period, depending on how long it takes to agree with the local community on moving to alternative sites. Again, these can be extended if required.
3. Designate all extra-legal settlements considered acceptable for in-situ upgrading as entitled to medium term forms of tenure with increased rights, but not necessarily full titles. Where possible, the precise form of such tenure and rights should be based on tenure systems already known to local communities. Customary or communal tenure options, such as communal leases, or communal land rights (CLR) may be acceptable to residents and can reduce the administrative burden on land management agencies. This will allow such areas to receive services and environmental improvements through a participatory process of physical and socio-economic development. 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. For unauthorised settlements on private land, options can include land sharing, under which settlers may be provided long-term tenure on part of their site and the landowner develops the remainder. Local authorities can assist this approach if they permit relaxation

on planning or building restrictions so the landowner can recoup any lost profit or income. Temporary land rental is another way of reconciling conflicting interests. The duration of such forms of tenure should be based on local conditions but may reasonably be expected to be between 3-10 years. During this period, communities would be encouraged to form representative community organizations that would be qualified to meet specified standards of good governance. Those communities able to demonstrate this would be eligible to proceed to Stage 4. Those that failed to meet the criteria would be entitled to renew their CLR for a further period.

4. All communities that meet the good governance criteria will be eligible to receive Communal Land Titles (CLTs). These will be based on accurate surveys of the settlement and will record all properties and residents in the area, but do not need to distinguish between owners or tenants. The titles can be made available at a nominal cost and will therefore provide permanent security to all residents. Finance institutions should be encouraged to offer loans to residents in such settlements.
5. Households seeking individual titles would need to obtain the agreement of the community and be responsible for agreeing plot boundaries with their neighbours and resolving any conflicts between owners and tenants, etc. They would also be responsible for financing and completing the necessary administrative procedures, including the appointment and payment of surveyors and lawyers.

These measures can provide a sustainable, practical and socially progressive way of improving the tenure security and rights for millions of the urban poor. They can also improve the functioning of urban land and housing markets by gradually reducing the land value disparity between formal and informal areas, stimulate economic development and improve the effectiveness of government in urban management. They can also operate in conjunction with other forms of tenure, such as private and public rental, leasehold or co-operative housing.

We would be pleased to receive comments on this approach, and discuss opportunities to apply it in other contexts.

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