

Secure Tenure for the Urban Poor

Alain Durand-Lasserve, Edesio Fernandes, Geoffrey Payne and Martin Smolka

Secure tenure has been identified as one of the two indicators¹ for measuring progress in the implementation of the urban target included within the Millennium

Development Goals: "By 2020, to have achieved a significant improvement in the lives of at least 100 million slum dwellers as proposed in the 'Cities Without Slums' initiative".²

This paper is a summary of presentations made by four members of the International Research Group on Law and Urban Space (IRGLUS) at a seminar organised by the Cities Alliance and held at the World Bank in May 2002. It addresses the scale and significance of the challenge, with particular focus on the complexities contained within the concept of secure tenure. Different and innovative approaches to tenure are highlighted, before concluding with some of the policy implications.

100 Million: Visionary target, or organised retreat?³

Regardless of how the target of 100 million was calculated or chosen, it remains a figure that has grabbed the imagination of urban practitioners,

politicians, and slum dwellers alike. How achievable is this target, and what sort of difference would it make if the target were achieved? To make any sense of these questions, the starting point must be to determine, first, how many slum dwellers there are, and second, how many are monitored. Globally, there is a dearth of useable statistics, and the result has been a simple usage of the number of the world's urban poor taken as a proxy for slum dwellers.

To a large extent, the map of urban poverty does, indeed, overlap the map of informal or irregular settlements. In cities in developing countries, anywhere between 30 and 80 percent of the urban population is living in irregular settlements; this category includes a range of situations, including squatter settlements, informal commercial land divisions, the occupation of rooms and flats in dilapidated downtown buildings (squatted or rented), and so on.

More recently, UN-HABITAT⁴ has produced the most compelling global estimate, calculating that there were 712 million slum dwellers in 1993, the baseline year of their data. Projected forward, this suggests that the **current total of slum dwellers worldwide is some 837 million**. We have used this figure as the most authoritative, and to make some further projections. It is generally accepted that the urban population in developing countries will double over the next 25 years and, if current trends and policies are not

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¹ The other indicator for Target 11 is "Proportion of people with access to basic sanitation".

² Paragraph 19, The United Nations Millennium Declaration, Resolution A/RES/55/2.

³ The phraseology is Geoffrey Payne's.

⁴ The United Nations Human Settlements Programme (UN-HABITAT) is based in Nairobi, Kenya, and is the UN agency responsible for monitoring the implementation of this target.

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reversed, we may reasonably expect that the total number of people living in slums will be of the order of 1.5 billion in 2020.

From this perspective, the proposed reduction of 100 million becomes modest in the extreme. It also suggests that an equal or even greater effort is needed to reduce the rate at which new slums form and that the present campaign should be balanced with another one to review regulatory and other constraints that prohibit urban poor households from gaining access to adequate and affordable legal shelter. However, recent trends point to the increasing commodification of informal land and housing delivery systems, the even more recent re-emergence of squatter settlements, and an overall increase in the number of market evictions.

This paper highlights how a comprehensive policy framework incorporating land tenure and property rights can play a major part in achieving the objectives of the present campaign and also in helping reduce the rate of new slum formation.

While the expansion of informal urban settlements is closely connected to rural and urban poverty, and to global urbanisation trends, possibly the most significant causal factor has been a failure of national and local governance. Informal settlements and the absence of security of tenure are increasingly the result of an exclusionary pattern of urban development in which land markets and political and legal systems fail to offer suitable and affordable land and housing for the urban poor.

Policy responses, which have been

dominated by a technical rationality and financial logic that have been largely designed by international finance institutions and aid agencies, have not managed to come to grips with either the scale or the complexity of the problem. The diagnoses and responses converge around the increasingly significant role of the city in national economic development, which is a useful – although incomplete – starting point. Less useful has been the associated belief that the unfettered development of the market economy through the general prescriptions of privatisation, deregulation, decentralisation and the consequent reforms in the financial system would necessarily lead to an increase in urban productivity and thus a consequent decline in urban poverty.

Data from Latin America suggests that, despite land regularisation policies, it is often easier and more profitable for private land developers to operate in informal land markets than to operate in formal ones. Many analysts believe that, rather than promoting the proposed social integration, legalisation programmes end up maintaining and reproducing the status quo. Regularisation programmes do not necessarily contribute to lower land prices – indeed, the reverse is often the case. The essential point is that it is often the high cost of formal, serviced land that leads to the process of informal land development. In this context, regularisation programmes are no more than remedial in nature; they should not be dissociated from a broader set of public policies committed to fundamentally altering existing patterns of the urbanisation process, especially those committed to democratising the

conditions of access to urban land and housing. This further underlines the need for regularisation programmes to be undertaken on a city-wide (and national) basis.

Why Secure Tenure?

Regularising informal settlements requires the provision of security of tenure as the essential first step. Households should not be evicted by an administrative or court decision for the sole reason that:

- they are not the owner of the land or house that they are occupying, or
- they have not entered into a formal agreement with the owner, or
- they do not comply with planning and building laws and regulations.

Equally importantly from the perspective of the urban poor, regularising informal settlements is a prerequisite for the provision of basic urban services.

UN-HABITAT provides the following statement on the importance of secure tenure:

*Security of tenure is a fundamental requirement for the progressive integration of the urban poor in the city, and one of the basic components of the right to housing. It guarantees legal protection against forced eviction. . . . The granting of secure tenure is one of the most important catalysts in stabilising communities, improving shelter conditions, reducing social exclusion and improving access to urban services.*⁵

In our view, however, there is far too much emphasis on limiting the extension of secure tenure to access to land ownership. This was typical in World Bank projects over the past decade, and was more recently popularised through the publications of de Soto⁶, the objectives of this approach were:

- to unify land markets;
- to guarantee investments by providing real rights;
- to improve access to mortgage finance; and
- to develop or improve property taxation.

Proper implementation of these titling programmes in most developing countries would require:

- the establishment of unified land registration systems;
- the reform of legal and regulatory frameworks;
- the establishment of a mortgage finance system (with willing lenders);
- the simplification of administrative procedures regarding land management and allocation, with an emphasis on transparency and accountability;
- a responsive and impartial judicial system; and
- political reforms combining decentralisation and democratisation.

Given the diversity of local situations, weak management capacities, inadequate resource bases, poor

governance, and a myriad of other real factors, these conventional approaches have achieved very limited results. It is clear that this approach is now increasingly being questioned and re-evaluated within international finance institutions and aid agencies.

It is important to look at this issue in greater detail, as policy discourse has recently been dominated by the assertion of the primacy of individual title as the preferred form of tenure, and titling is often simplistically equated with property rights. Indeed, our experience leads us to conclude that access to security of tenure for the urban poor through the provision of individual property titles is rarely possible. A number of aspects lead us to this conclusion:

(i) Technical:

In a fairly typical city of 6 million in which 50 percent of the population lives in irregular settlements, it would be necessary for the administration to issue 400 titles per working day, for ten years, to remove the backlog;

(ii) Administrative and Political:

The identification of right-holders and households entitled to tenure regularisation would involve, inter alia., surveying, the adjudication of procedures, effective dispute-resolution mechanisms, and the allocation of property title; these processes require powerful specialised institutions, an appropriate and tested administrative and regulatory environment, and financial and

⁵ UN-HABITAT: Global Campaign for Secure Tenure, Concept Paper (1999).

⁶ See, for example, *The Mystery of Capital*, Basic Books, USA, 2000. A number of useful critiques have been published, including *The Mystery of Credit*, by Julio Calderon Cockburn (Lincoln Institute of Land Policy; Land Lines, Vol. 14 No. 2) and *The Influence of de Soto's The Mystery of Capital*, by Edesio Fernandes (Land Lines, Vol. 14, No. 1).

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human resources, all operating within a stable environment of political continuity;

What is at issue in many cities is the discretionary power of government officials to allocate land, and to regularise tenure. In those countries where the allocation of land remains a state monopoly (particularly in sub-Saharan Africa), and where parallel land markets exist, illicit practices and corruption undermine the administrations responsible for land management;

(iii) Economic:

Another factor is the importance of the informal rental sector in most urban areas in developing countries. The limited resources of most households, which exclude the majority from accessing land at market-related prices, must also be considered. This lack of resources, combined with administrative or subsidy pricing systems, is introducing major distortions in the property market, encouraging corruption and illicit practices;

(iv) Cultural:

A diversity of situations, of cultural background, practice, and preference requires a diversity of responses. This complexity is ignored when emphasis is consistently placed upon a single option, such as the delivery of individual property titles.

Tenure is, first and foremost, a social relation. Social linkages around land usage (whether legal or illegal) are significant in most societies, and need to be acknowledged.

In summary, from the perspective of the urban poor, access to security of tenure exclusively through the allocation of real rights and individual property titles is not necessarily efficient or equitable. The diversity of urban stakeholders' needs, objectives, and strategies requires a diversity of responses.

Local Solutions to a Global Problem: Innovative Approaches to Tenure and Property Rights

Case studies carried out in 16 countries identified a number of legal, customary, religious, and extra-legal tenure systems.⁷ 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.

The research 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.

⁷ Payne, Geoffrey, ed. *Land, Rights and Innovation: Improving Tenure Security for the Urban Poor*. Intermediate Technology Publishing, London, 2002. See also Durand-Lasserve, Alain and Royston, Lauren, eds. *Holding Their Ground: Secure Land Tenure for the Urban Poor in Developing Countries*. Earthscan, London, 2002.

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.⁸

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.

The following examples demonstrate some of the innovative approaches already being implemented in different parts of the world:

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.⁹ 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 under-used 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.

⁸ Whilst freehold titles may be appropriate for the latter group, they may be counter-productive for the first two, especially if titles are only offered in peripheral locations. Even if offered in-situ, they may inflame disputes over competing claims and further intensify existing distortions in urban land markets.

⁹ This interface between communal or traditional patterns of land-holding and the expanding urban periphery is of enormous policy significance, often highly problematic in nature, and needs to be the subject of far more rigorous investigation.

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.

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

Landowners 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 city-wide 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.

Elements of a Tenure Regularisation Policy

While local conditions need to determine final policy choices, the following steps may be considered:

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 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., street 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 socioeconomic 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, etc.) in a range of locations and a range of prices to suit the needs of different socioeconomic 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.

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Cities Alliance
Cities Without Slums

1818 H Street, NW

Washington, DC 20433 USA

Tel: (202) 473-9233

Fax: (202) 522-3224

info@citiesalliance.org

www.citiesalliance.org