

## **What to do about unauthorised settlements?<sup>1</sup>**

### **Securing urban land tenure and property rights**

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.

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,

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<sup>1</sup> These notes are drawn from: "Safe as houses" ID 21 Research Bulletin, October 2003 edited by Geoffrey Payne, and an article by 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](http://www.gpa.org.uk)

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.



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.

## **Pros and cons of different tenure systems**

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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 countries<sup>2</sup> 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.

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

## **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 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<sup>3</sup>**

#### **Examples of innovative, intermediate tenure systems in different countries:**

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##### **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

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<sup>3</sup> Examples are from Payne, G (Ed) (2002) 'Land, Rights and Innovation: Improving tenure security for the urban poor' Intermediate Technology Publications, London.

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.

The following article by Geoffrey Payne is reproduced with permission from Urbanization and Environment journal April 2005:

## Getting ahead of the game: A twin-track approach to improving existing slums and reducing the need for future slums

*SUMMARY: While many of the Millennium Development Goals (MDGs) represent an ambitious attempt to reduce global poverty and improve the quality of life for the world's poor, this cannot be said for the goal that concerns urban development. Goal 7 of the MDGs aims to improve the living conditions of 100 million slum dwellers by 2020. However, current estimates suggest that, at present, there are nearly 1 billion people living in slums, and that this number is projected to increase to 1.5 billion by 2020 and to 2 billion by 2030. Thus, even achieving the MDG would be to manage a retreat rather than achieve significant progress. The important policy objective for governments and the international community, therefore, is dramatically to exceed, not just meet, this MDG. This can best be achieved by adopting a twin-track approach towards existing and potential future slums. Innovative approaches to improving tenure security in existing unauthorized settlements can improve living conditions for current slum dwellers, while revising regulatory frameworks can reduce the need for future slums by significantly improving access to legal land and shelter. This paper provides evidence from recent research, which suggests that intermediate tenure options, combined with regulatory audits of planning regulations, standards and administrative procedures, can significantly improve living conditions within the human, technical and financial resources available. The approach is illustrated by a case study in Cambodia.*

### I. INTRODUCTION

THE FIRST STEP in solving a problem is to define it correctly. After much debate, the international community and member states have declared that the main objectives driving development policy for the coming decades are to be defined by a set of goals and targets, collectively known as the Millennium Development Goals (MDGs). These set global targets for different sectors, to be achieved by specified dates. While many would go a long way to reducing global poverty and improving the quality of life for the world's poor, this does not apply in the case of urban development, for which there are two key targets. The most significant is Goal 7, in which target 10 seeks to halve by 2015 the proportion of people without sustainable access to safe drinking water and basic sanitation; and target 11 seeks to have achieved by 2020 a significant improvement in the lives of at least 100 million slum dwellers.

These targets have to be seen in the context of the present and projected reality. Despite decades of slum upgrading programmes by governments and the international community, UN-Habitat estimates that there are currently 924 million slum dwellers in the world and that, without significant intervention to improve access to water, sanitation, secure tenure and adequate housing, this number could grow to 1.5 billion by 2020. Another UN estimate<sup>(1)</sup> indicates

that the total could increase to 2 billion by 2030 if no firm and concrete action is taken. While such projections are open to dispute, they suggest that even if MDG target 11 is achieved, it may meet only 11 per cent of existing needs and only 7 per cent of future estimated needs by 2020. In other words, by 2020 there could be 1.4 billion people living in slums and squatter settlements compared to the 924 million at present, an increase of 162 per cent. While the target may therefore be achievable, it does not represent an appropriate or adequate definition of the challenge facing the international community, national governments, civil society groups and professionals. In fact, it suggests that a target-driven policy agenda is detracting attention from the real issues that need to be addressed. Since the MDGs are also global targets, they have yet to provide a detailed basis for policy at national or local levels.

The real challenge is two-fold. First, there is a need to improve the living conditions of far more than 100 million people living in slums and various types of unauthorized settlements. And second, there is an equally urgent need to create conditions in which all sections of urban society, especially the poorest and most vulnerable, can obtain access to legal, affordable and appropriate shelter in ways that prevent the need for future slums and unauthorized settlements. To add to the challenge still further, both of these objectives need to be achieved in ways that provide adequate levels of security, and access to livelihoods, services and credit. Even if the MDG target is achieved, it will not resolve the first of these two challenges and will do nothing to address the second.

## II. A TWIN-TRACK APPROACH

MEETING PRESENT NEEDS to improve living conditions for existing slum populations will, in itself, be a daunting task. However, it will be inadequate unless equal efforts are made to reduce the need for future slums. A twin-track approach is therefore vital if we are to turn things around and get ahead of the game.

What are the available options? First, it is important to identify the existing and potential roles of the key stakeholders – the poor themselves, national and local governments, civil society groups, the private sector and the international community. Second, it is important to assess ways in which the relative strengths of each stakeholder group can be combined to maximize synergies between their contributions.

In terms of upgrading existing settlements, a major issue is that the poor, especially the very poor, need to live close to locations where they can earn a living. As Turner noted many years ago,<sup>(2)</sup> this is more important than having permanent security of tenure or formal credit. Yet the locations where employment prospects are greatest are invariably the locations where competition, and therefore land prices, are greatest. To upgrade such settlements therefore raises two issues. If the upgrading is undertaken in ways that grant full titles, the residents will acquire, freely or at a nominal cost, an asset

that can command a high price in the formal land market. Experience shows that such conventional approaches encourage many households to sell the newly acquired asset, realize its capital value and re-squat, hoping to repeat the process. Such actions may therefore actually result in an increase in informal settlements rather than a decrease; they may also result in the eviction of tenants and increased litigation, especially where land records are unclear.

So how are poor households able to remain in areas where they can find a livelihood? How can this be achieved without distorting land markets and creating ghettos of the poor within urban centres? There are no universally applicable answers to these questions; however, experience suggests that an important ingredient is to provide a form of tenure to the residents of existing unauthorized settlements that is sufficient to ensure protection from eviction, together with property rights and regulatory frameworks that entitle people to use their dwellings for a range of purposes and allow them to obtain basic services. In some cases, this might also facilitate high-density forms of multi-occupancy rather than individual houses on individual plots.

The provision of secure tenure can take a variety of forms, from a simple moratorium on relocations and evictions, to temporary occupation licenses, communal or individual leases, community land trusts, communal ownership, customary tenure, etc. The duration of such tenure forms may be short in some cases, or almost permanent in others. They may provide the option of extension or upgrading to more formal tenure systems over time, or compensation for investments made. The key objectives should be to provide adequate security and maintain or increase access by the urban poor to locations where they can increase their incomes. It is also important to reduce the attraction to higher-income groups of buying out low-income residents. If such measures are combined with modest planning and building regulations and standards, the subsidy burden or opportunity cost of such measures can be further reduced, and a virtuous cycle established between tenure and regulatory regimes. These can be reinforced still further if administrative procedures can be revised to lower the cost of entry to legal shelter, thus reducing the need for new slum formation.

The complementary component to tenure upgrading in a twin-track approach is to reduce the need for future slum formation. Among the constraints to accessing affordable legal shelter, the key factors are invariably cost and regulatory frameworks, especially planning and building regulations, standards and administrative procedures. Unfortunately, these often tend to be combined, in that high standards impose higher costs, and complex bureaucratic procedures impose delays that require informal payments to facilitate progress. In his influential publication on regulatory frameworks, de Soto noted that it took 159 bureaucratic steps to legalize informal settlements in Lima, and that this took, on average, 20 years. In a similar vein, Struyk, Hoffman and Katsura found that in the course of land transfers, it took an average of 32.5 months for a title to be issued in West

Java, and estimated that this added 10–29 per cent to the cost of land acquisition.

Such procedural constraints were also found in other countries, though high planning standards, often based on inherited or imported norms rather than on local needs or realities, provided further barriers. For example, the minimum official plot size in many countries is significantly higher than the size of plots regularly occupied in informal settlements, and requires a higher land price than many households can afford. It also discourages the private sector from being able to meet the needs of lower-income households on a financially viable basis. Another key cost factor in official standards relates to road reservations. These are often more demanding of land area than in the capital cities of Europe, where car ownership levels are dramatically higher than in the suburban areas of developing countries. Such land areas are not only expensive in terms of capital (or opportunity) costs, but also impose high maintenance burdens on local authorities, which many are unable to meet.

Finally, planning and building regulations add a third tier to the barriers obstructing access to legal shelter. As McAuslan has noted in the case of Chennai (previously Madras), India:

*“...so concerned have the authorities been to close every loophole against illegal development, corruption, exploitation of scarce resources, the exercise, and therefore the possible wrongful or non-exercise, of discretion, that the principal aim of the Madras Metropolitan Development Authority – to get orderly and equitable development underway in Madras and its environs – has been lost sight of.”*

McAuslan also argues that planning itself has all too often been based on the needs and interests of the political elite rather than the majority, a tendency that can actively discourage low-income households from living in close proximity to more fortunate groups except, of course, to provide them with services.

As globalization increases the role of market forces in key economic sectors, including land markets, the role of the regulatory framework in managing urban growth takes on greater importance, especially as it is one of the few policy instruments determined and controlled by government. However, recent research in six countries has provided similar evidence of the extent to which regulatory frameworks raise the barriers to accessing legal shelter to levels that most poor households, and an increasing proportion of middle-income groups, are unable to overcome. The irony is that regulatory frameworks established to achieve planned urban development have widely become a means of preventing this.

### III. APPLYING NEW APPROACHES IN CAMBODIA

SEVERAL URBAN PROJECTS in Cambodia are contributing at present towards a twin-track approach. One of these has sought to increase tenure security for residents in informal settlements in Phnom Penh, and facilitate access to affordable, legal housing in new developments. The project has been supported by Cities Alliance, GTZ and UN-Habitat, and was undertaken in 2003–2004.

Previous research in Cambodia and elsewhere on tenure security and regulatory frameworks reinforced the conviction that both subjects are central to the effective implementation of a twin-track approach to upgrading existing settlements and developing new ones. They are, after all, two of the major policy instruments directly controlled by central and local governments, and are enforceable even where market forces are otherwise pre-eminent. Tenure and regulatory reform also offer the prospect of achieving change at the scale required.

Tenure issues in Cambodia have to be seen in the context of the country's turbulent past. After the Khmer Rouge regime collapsed in early 1979, people returned to Phnom Penh and other urban centres, and occupied existing housing or vacant land on a first-come, first-served basis. All formal titles or other evidence of formal tenure status prior to January 1979 were declared null and void. A high proportion of land in Phnom Penh was subsequently registered as privately owned, with the remainder being in either state public ownership (e.g. all roads, railways, ports, schools, etc.) or state private (land belonging to state institutions). State private land can be privatized, but state public land is considered inalienable.

As urban growth increased pressure on available properties, households were forced to share existing dwellings or occupy land informally. Such settlements steadily increased in number during the 1990s, and now exist along the sides of main roads, rivers and railway lines, and even on top of existing apartment buildings.

The initial priority for improving tenure security in Phnom Penh was to stop the forced evictions that the authorities had been undertaking on a regular basis. Relocated households were normally allocated plots with titles on the outskirts of the city, with basic services but with poor connections to places of employment and with minimal facilities. Sometimes, the infrastructure was inadequate for long-term settlement. As a result, many households either abandoned their new plots and returned to the city, or failed to occupy them in the first place. A viable alternative approach had to be found to provide short-term security to all vulnerable households in ways which did not impede the implementation of longer-term urban planning objectives. Discussions to identify practical tenure options were held with representatives of central and local government agencies, local NGOs and other stakeholder groups.

At the same time, a regulatory audit was undertaken of planning regulations, standards and administrative procedures to identify options for reducing the costs of new legal housing developments, and thereby reducing the need for

informal settlements in the future. This revealed a number of areas where modest short-term changes and more substantial longer-term reforms could be beneficial.

The audit confirmed that many of the planning regulations determining acceptability were based on conditions applicable when Cambodia was a French protectorate and there was no significant pressure on land. Thus, setbacks from railway lines, levels of ground-floor plot coverage, land-use restrictions, road reservations and complex administrative procedures for obtaining permissions and certificates, etc. were excessive given current realities. The gap between regulations and realities has inevitably been filled by the people themselves, and land not allocated for productive use has been extensively settled throughout Phnom Penh. As a result, only a small proportion of the population even attempts to follow official procedures, thereby adding to the national proportion of officially unplanned settlements, and offsetting efforts to upgrade existing ones.

With widespread insecurity in existing informal settlements, and access to affordable legal housing increasingly difficult to obtain for the urban poor, the project sought to identify measures to address both issues.

#### IV. PROPOSALS FOR TENURE

IN THE EVENT, things moved rapidly and, in May 2003, the prime minister announced a plan to upgrade 100 settlements a year in Phnom Penh for the next five years. This was the result of an effective campaign by the Asian Coalition for Housing Rights (ACHR) and local NGOs, particularly the Solidarity for the Urban Poor Federation (SUPF) and the Urban Poor Development Fund (UPDF), which were collectively preparing a community-driven city development strategy to replace widespread evictions in favour of upgrading. This approach was based on the provision of individual freehold titles to all selected households. However, assuming a notional 100 families in each settlement (most have many more than this), this involves improving the conditions of 10,000 households annually, and issuing an average of one title every 12 minutes for five years, assuming a 50-week working year and a 40-hour working week. The administrative burden this entails, together with uncertainty regarding the status of land ownership in some areas, may partly explain why the programme is well behind schedule, with only about 20 settlements upgraded even partially in the 20 months since the programme was announced.

In the absence of clear criteria for determining which settlements should be upgraded and which should be relocated, there was a risk, even under the new upgrading programme, that pre-emptive action would be taken to remove some settlements, and that others would be selected for upgrading according to political, rather than more objective, considerations. The team's recommendations for tenure and property rights in Phnom Penh and other urban centres in Cambodia therefore centred on stabilizing the existing situation and providing a sound administrative basis for implementing longer-term options to improve tenure security and the functioning of a dynamic and responsive land and housing market accessible to all sections of the

population. An initial proposal was therefore to provide all households in informal settlements with a temporary occupation licence similar to that used for informal businesses in Kenya. However, it was pointed out that the administrative burden of identifying eligible families and issuing them all with temporary occupation licences would have been excessive. It was therefore proposed that the authorities announce a moratorium on relocations and evictions for a provisional period of six months. It was hoped that this would be sufficient to allow people to go to work in the morning secure in the knowledge that their homes and possessions would still be there when they returned. The authorities could then use the time gained to agree on criteria for determining which settlements could be regularized and upgraded on a long-term basis, and identify sites to which families could be moved from settlements considered unacceptable. Finally, longer-term tenure options could then be introduced at the end of the moratorium period.

Evidence from previous research has demonstrated that low-income households are generally modest in their tenure needs, and do not necessarily require titles as long as they can be guaranteed reasonable security and access to employment locations. The research also demonstrated that the best way to stimulate investment and pro-poor economic development is through a diverse range of tenure options. The project team therefore proposed that communal land rights be provided in all settlements selected for upgrading. Feedback from local communities and NGOs suggested that this option would be acceptable and would minimize the administrative burden on land management agencies. It would also allow such areas to receive services and environmental improvements through a participatory process of physical and socioeconomic development, as proposed by the government's ambitious upgrading programme. Finally, it was hoped that communal land rights would 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 unauthorized settlements on private land, the team also proposed land sharing, under which settlers could be provided with long-term communal land leases on part of their site, leaving the landowner free to develop the remainder. Local authorities could assist this approach by relaxing planning or building restrictions, so that the landowner could recoup lost profits or income.

The duration of such forms of tenure was discussed with key stakeholders, and a period of 3–10 years was proposed. It was suggested that during this period, communities should be encouraged to form representative organizations that would meet specified standards of good governance. Those communities able to demonstrate this would then be eligible to apply for communal land titles, which would provide permanent security of tenure. Those that failed to meet the criteria would be entitled to renew their communal land right for a further period.

For those informal settlements where relocation was considered necessary, the city development strategy land availability study indicated that 21

per cent of land currently vacant would be suitable for relocation purposes, and that much of this land would not involve people moving long distances.

The intention was that an incremental approach would increase tenure security in line with needs and the administrative ability to provide formal tenure rights and upgrade public services. This would gradually reduce the disparity in prices between formal and informal settlements, thereby reducing speculative pressure and protecting existing tenants. Any 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.

It was also recommended that tenure policy be integrated more closely with other related initiatives such as the draft national housing policy, the land management and administration project, the 100 slum settlements upgrading programme and the national secure tenure campaign. Where necessary, enabling legislation will need to be put in place.

## V. PROPOSALS FOR REGULATORY REFORM

AS NOT ALL informal settlements are likely to be acceptable for long-term upgrading, it is important that all affected communities be informed of this fact as soon as possible. This will enable them to appeal against such decisions to the relevant authorities. This is where the regulatory audit becomes relevant as a basis for revising urban planning regulations and standards. For example, the current requirement that a reservation of 25 metres be provided either side of the middle of a railway line in urban areas effectively “sterilizes” almost one hectare of land for every 200 metres of track, which would otherwise be perfectly acceptable for urban housing. Given that there are already several hundred residential plots developed along the main railway line serving Phnom Penh, relaxing this arbitrary requirement could at a stroke make these settlements eligible for upgrading rather than relocation.

In cases where appeals against relocation are rejected, it is important to provide both the affected communities and the authorities with sufficient time to make alternative arrangements. In the past, relocation has involved moving families to sites well outside the urban area (Photo 2), where many were unable to settle due to the lack of income-generating opportunities and even basic services. A vital component of future relocation projects is therefore finding sites that are within reasonable distance of existing employment areas and public utilities. Identifying such unused land within the urban area is therefore a priority task for the municipality.

Given the limited availability and increasing cost of urban land in Phnom Penh, it is clearly important to put all undeveloped sites to efficient use, and work is currently underway by the Bureau of Urban Affairs in Phnom Penh municipality to identify and survey undeveloped sites suitable for in-fill

development. A UN–Habitat study has also been undertaken to assess the potential application of land-sharing approaches to the development of sites in private or state private ownership. This is now being conducted by local authorities with little participation from communities. However, it is hoped that some pilot land-sharing projects can be developed and combined with innovations in tenure and regulatory frameworks. Lessons learnt as a result will then provide a basis for changes at the urban scale and in other cities.

The regulatory audit can be of use in this respect by indicating which aspects of the regulatory regime are at present impeding access to affordable legal shelter based on current costs. Table 1 indicates the relevant planning standards, regulations and administrative procedures that are at present constraining such access, and which therefore need to be relaxed or removed. Understandably, many officials who are trained to assume that the existing standards and regulations exist to protect the public interest may resist any change, but since the public interest can best be satisfied by maximizing access to legal shelter, it is hoped that selected changes can be introduced within a limited number of pilot relocation projects. These can then be monitored over a five-year period and, if considered acceptable by all key stakeholders, including the residents, can be gradually incorporated into the city-wide regulatory framework.

The key point of regulatory reform should be to reduce entry costs to new urban housing in ways which provide sufficient security and options for long-term incremental improvements. This involves permitting the most efficient use of available land, and relaxing constraints on the forms of development and uses to which people can put their plots. Based on previous research at neighbourhood level, project planners should aim to achieve 65 per cent of developable land within private use, i.e. as residential, commercial or industrial plots. Another 15 per cent can then be allocated for public or communal facilities, such as schools, health clinics and religious centres, etc., leaving 20 per cent for local roads and public open spaces. Since private land areas will be self-financing, and public amenities should also be paid for by the agencies providing them, only the 20 per cent of public land will need to be funded by private land users. This yields a ratio of about 30 per cent of “unproductive” to “productive” private land. In cases where the total area of private land is 55 per cent, and roads and public open spaces amount to 30 per cent, a situation common in many planned urban developments, the ratio of “unproductive” to “productive” land increases to about 54 per cent, a substantial financial burden on residents, developers or the public sector. How this objective is achieved will vary according to cultural, climatic and other local considerations and the skill of developers or project planners. If sites selected for new in-fill development can be planned according to these objectives, it is hoped that the majority of all households that may need to be relocated can be re-housed in areas near places of employment and with good access to services.

## VI. CONCLUSIONS

AT THE TIME of writing, recommendations for new temporary and communal forms of tenure in Phnom Penh are being considered for testing in pilot

projects for upgrading and new development. However, the governor of Phnom Penh has decided not to introduce the moratorium on evictions on the basis that people in informal settlements throughout the city might consider that it gives them long-term or permanent tenure rights. The Ministry of Land Management, Urban Planning and Construction considers that a sub-decree to the land law may be necessary before communal land rights can be allocated, so that it is clear which communities are eligible.

There is considerable support within central and local government agencies and civil society groups for practical, progressive approaches to increasing security of tenure in selected informal settlements and making access to legal housing in the future easier for the urban poor. It is hoped that progress can be made shortly in implementing the tenure and regulatory proposals, possibly in provincial cities where the problems are slightly easier to address. This would help build confidence in applying innovative approaches to tenure in Phnom Penh itself.

When promoting the option of communal land rights or leases, it was assumed that there would be many examples in other countries from which the project team and local officials could learn. Surprisingly, examples of communal tenure being implemented in urban areas elsewhere proved difficult to find. It has therefore proved difficult to reassure officials and communities that the approach is sound. It seems that most stakeholders, whether officials or residents, are reluctant to put themselves in a position of risk. To help overcome this fear of the unknown and the potential costs to all involved if new approaches fail to deliver what is expected of them, it would be helpful if UN–Habitat could strengthen its role in disseminating information on innovative tenure options as part of the global campaign on secure tenure. It is understood that this is being actively considered.

Prospects for increasing tenure security and access to affordable new legal housing in Cambodian cities appear hopeful. The idea for the tenure moratorium was made by a local official and taken up by the research team. The prime minister and the governor of Phnom Penh have both expressed support for initiatives that can be seen to improve living conditions for the majority while also increasing local and international investment in the local economy. Local offices of international agencies, particularly UN–Habitat and GTZ, have supported efforts to transfer innovative practices from international experience. Likewise, local and international NGOs have combined to exert pressure on government, but have also agreed to work with government in order to effect change. There is everything to play for, and the ball is now in the government's court.