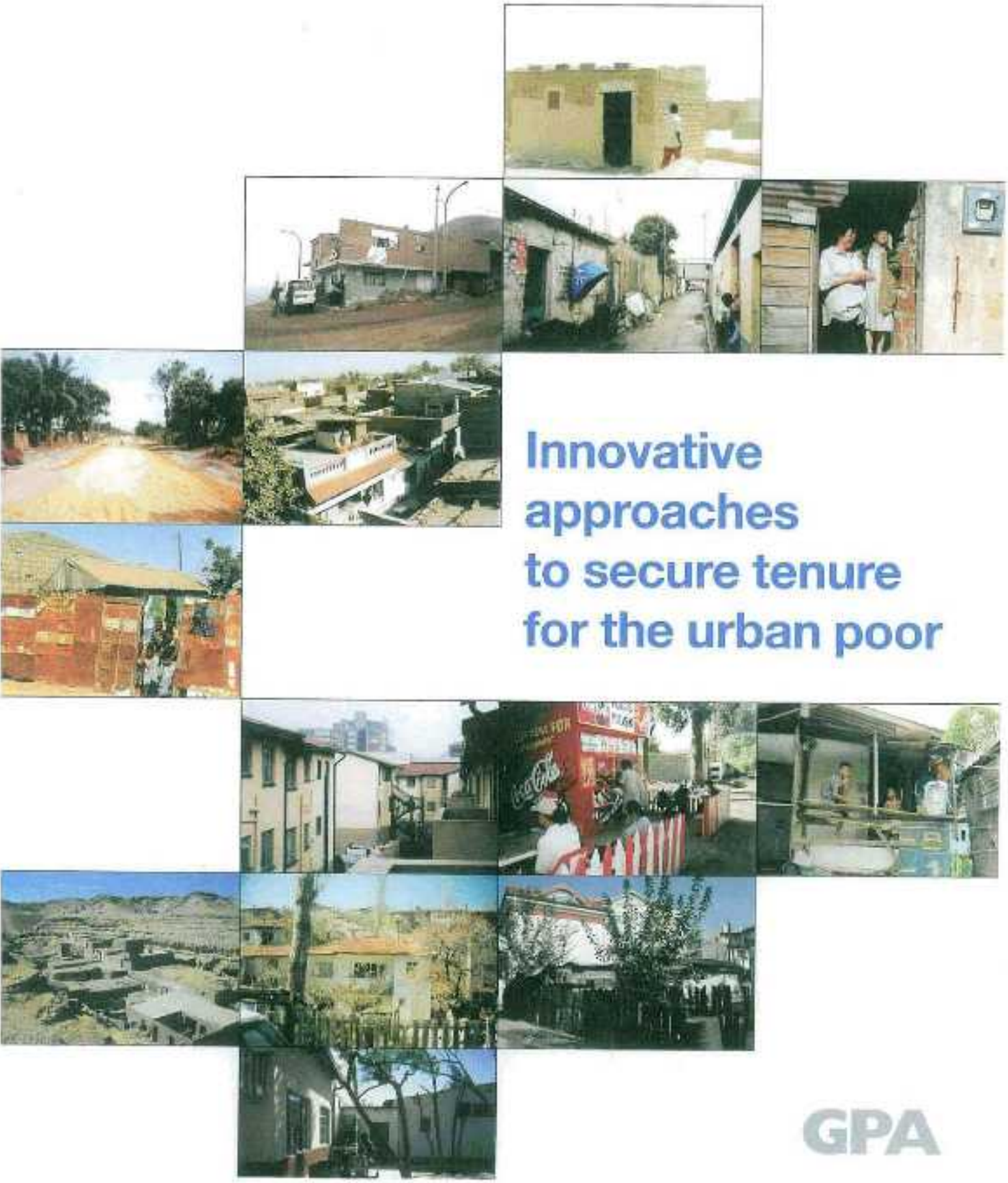
Land rites



Innovative approaches to secure tenure for the urban poor

GPA

Introduction

Every day, millions of people around the world spend their hard earned cash improving houses which they don't legally or officially own. The vast majority of them are poor households in the urban areas of the South or transition economies of Eastern Europe. In some cities, more than half the entire populations live in various types of unauthorised housing and the numbers are increasing faster than other forms of development.

Why do people risk investing in an activity which many urban authorities seek to prevent or remove? The answer is partly that most have little choice. Land in urban areas tends to be expensive, especially in areas near employment centres where the very poor need to live. Globalisation has accelerated the commercialisation of urban land markets in developing countries to the point that in the mid 1990s, land in Mumbai, India was the most expensive in the world, despite the fact that a large proportion of the population live below the official poverty line. The only practical answer for many people was therefore to occupy unused government land, or purchase agricultural land from farmers and build a house without permission to meet their immediate needs, improving it over time as resources permitted.

In some cases, people do not consider that they are acting illegally, even though they do not possess a title deed to their property. In many parts of Africa, for example, customary tenure systems have existed for centuries before colonialisation introduced the notion of private property in the new urban settlements. However, customary tenure continued unchallenged in the rural areas where the native population lived. After independence, however, the settlements expanded into areas of customary tenure when migrants swelled urban populations. This led to ambiguity and conflict over the role of local chiefs, who traditionally allocate land to members of their community under well established and officially recognised arrangements. People living in such areas understandably object to being considered illegal occupants of their land, even though they lack statutory titles to prove ownership.

In yet other cases, people may act in ways that are based on historical precedents which have not been repealed and can therefore claim a degree of legitimacy. The Ottoman Land Law of 1858, for example, entitled any citizen to claim unused State land and occupy it for as long as they used it. Naturally, when migrants from rural areas arrived in the big cities, they did not consider they were acting outside the law by applying this traditional approach, though the local authorities responsible for implementing a master plan saw things very differently.

These examples demonstrate that urban land tenure issues in the South are highly complex. It is not a subject that can be defined in terms of legal or illegal, formal or informal. In fact, most people live at some point on a continuum, in which they may be the recognised owners of the land, but have constructed a house in an areas not zoned for residential use, or they may simply have failed to conform initially to official regulations or procedures.

Unfortunately, the response of many authorities has been to act without understanding this complexity. In Delhi in the 1970s, and to some extent also today, the authorities have conducted a campaign of removing residents who they consider illegal occupants, even though many claim rights dating from Mughal times. Such draconian responses to massive informal development may be understandable, but they do not resolve the problems of enabling people to obtain access to secure land in which they can build their lives and contribute to society.

However, many examples do exist both in India and other countries, whereby the authorities have recognised the complexity of the problems and evolved innovative approaches to providing tenure for the urban poor. These widen the choices available, encourage local investment to reduce poverty and facilitate the development of more equitable and efficient urban land markets. Research funded by the UK Department for International Development (DFID) and carried out in close collaboration with the UN Centre for Human Settlements' Campaign for Secure Tenure has identified examples from around the world, a selection of which are described in this media pack.

It is hoped that these practical, innovative approaches, will be of interest to all those responsible for formulating and implementing urban land tenure policies in the rapidly changing and expanding cities of the South and transition economies. However, it is also important to raise public awareness of the issues and options available. The project and this media pack is a small contribution to the debate.

Geoffrey Payne
Geoffrey Payne and Associates
June 2001

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Benin: Combining customary and statutory tenure

Alain Durand-Lasserve in collaboration with Jose Tonato

Road widening following land readjustment of a customary land development on the urban fringe of Cotonou
photo: Jose Tonato

Context

In most countries of sub-Saharan Africa, access by the poor to urban land relies mainly on customary land delivery channels which are tolerated, but not formally recognised. The consequences of this are twofold – unplanned low-density settlements which spread throughout the urban fringe, and residents who suffer insecurity of tenure.

Benin's capital, Cotonou, and the second largest city, Porto Novo, have grown rapidly since 1979. In the mid 1980s, Cotonou covered 10,000 hectares, but only 1,500ha had sewerage and drainage systems. However, despite these problems, poor urban households enjoy relatively secure tenure and construct better houses than in many other countries of the region. This is partly due to the policy of retaining customary tenure practices in urban and surrounding areas and integrating it with modern statutory tenure practices.

Urban land in Benin falls into four main categories (i) customary, (ii) privately owned, (iii) land for which a housing permit has been issued, and (iv) State land. All land that has not been registered under the name of the State, or land for which a freehold title or a housing permit has been issued, is considered as customary land.

The role of customary tenure in Benin

Access to urban land in Benin is characterised by the existence of a very dynamic informal land delivery system that is partly controlled by the State.

The current approach attempts to integrate customary tenure practices into the sphere of modern law and planning regulations. This involves procedures which combine land readjustment, or re-plotting, the re-allocation of plots, and the provision of 'housing permits' to occupants.

This land delivery system has two main advantages. Firstly, the State does not intervene in the allocation of land, at least in the initial stage. Instead, customary owners play a key role in the provision of land for housing in all urban and suburban areas and negotiate directly with households seeking a plot. Secondly, the system offers reasonably good security of tenure, after the land readjustment and redevelopment process has been completed. The process requires communities to participate in identifying rights holders, resolving land related disputes at settlement level, and organising themselves in order to negotiate with public authorities. This opens the way for further innovative approaches to tenure, provided that minor adjustments are made regarding both administrative procedures (eg the need to simplify existing procedures) and participatory processes (e.g. the need to unify and formalise the negotiation rules between communities and public authorities).

Effectiveness/ineffectiveness of the approach

The urban land delivery process in Benin can be divided into two stages. Initially, public authorities do not intervene:

- Customary owners subdivide the land they own into plots that are sold to individuals.
- Administration officials usually authenticate the land sale.

However, this practice is not considered legal and, at this stage, security of tenure is not guaranteed to the plot owner.

In the second stage, when all or most of the plots have been sold, government planning agencies undertake detailed surveys, identify 'presumed owners', prepare new layout plans and undertake land readjustment at the scale of the whole scheme, in order to free land for services. Each 'presumed owner' is then re-allocated a plot, which is smaller in size and may be located in another part of the scheme. Plot owners usually wait until the land readjustment has been completed before building a permanent structure. Those who need to build before land readjustment do so in a way that permits the house to be moved if necessary. Beneficiaries are then granted a temporary 'Housing Permit' by the State ('Prefecture'), which will be converted into a permanent permit after the house has been completed.

In a later stage, this permit can, in principle, be converted into a freehold title. In practice, this is rare – although the permanent permit provides a good level of security of tenure, the process can take between one and ten years, depending on problems encountered (identifying right holders, resolving land disputes and overcoming resistance from communities opposed to land readjustment).

Land readjustment operates in all informal settlements on the urban fringe of the main cities in Benin (Cotonou, Porto Novo, Parakou). Intensive speculation on plots for housing during the last two decades has induced a rapid increase in the price of land. Land that remains accessible to the low income is now located far away from the city boundaries. The poorest segment of the population (about 10% of urban households) has now no choice but to settle in remote areas, on unserviced plots, or in squatter settlements in areas not suitable for urbanisation (areas subjected to floods). However, some preliminary conclusions can be drawn from the experience of Benin:

- Public intervention in customary informal land subdivision guarantees a reasonable level of security of tenure to occupants.
- The good level of tenure security following ex-post public intervention in customary initiated land development has had an impact on the quality of the build environment. In redeveloped settlements in the capital Cotonou, the quality of housing and services is much better than in tolerated informal settlements initiated by customary owners in other countries of the sub-region in terms of layout plan, the use of permanent building materials, land reserves for infrastructures and services at settlement levels, in particular.
- De facto security of tenure facilitates permits better access to credit.

Conditions that make the approach effective

This unusual form of public intervention in formal land subdivision is particular to Benin. It could be rapidly improved if minor adjustments of the legal and regulatory framework are carried out. Current land policy is attempting to improve this procedure by making the best use of its positive aspects. This requires:

- The reassessment of the role of the State regarding land management and allocation.
- The exhaustive inventory of government-owned land.
- Clarifications regarding the respective role of central government planning institutions and regional institutions, and the consolidation of local planning commissions.
- The replacement of 'housing permits' by 'freehold titles' (the 'housing permit' step could be simply avoided).
- The simplification of registration procedures.

left to right (photos: Jose Tonato)

Opening of an access road in a settlement just after land readjustment. Few plots have been built up and non-permanent building materials still predominate. This situation will change rapidly after land readjustment and tenure regularisation.

Opening of a new access road in a settlement after land readjustment and tenure regularisation. Dwelling units are being reconstructed with permanent building materials.

Informal development on customary land on the fringe of Cotonou. The layout plan which accompanies the land readjustment scheme and tenure regularisation imposes new building lines.

Constraints

Many observers consider this land delivery system as a relatively efficient one. However, it has some major limitations:

- Identification of 'presumed owners' can be difficult in a context where customary land sales are not recorded in a single 'land book', and where diverging interpretations of customary rights and practices give rise to a series of land related disputes;
- Land readjustment procedures are not transparent and leave the door open to corruption and clientelism.
- Without updated land information and land record systems, public authorities cannot keep the speculative process under control (the same person can buy as many plots as he/she wants and can afford);
- The cost of the land subdivision-readjustment procedure is relatively high and out of the reach of the poorest segment of the urban population: beneficiary households have to pay for the cost of development studies (about US$18), re-surveying and plotting (US$80), the construction costs of road and basic infrastructures (US$7-30), the delivery of the housing permit (US$220) and, if required by the beneficiary, for the freehold title (at least US$430).

Comparative analysis

The way public authorities in Benin are combining customary practices with public intervention for redeveloping informal settlements opens the way to innovative tenure approaches in other countries of the region.

Policy recommendations

Benin's urban land and tenure policy is a good example of how customary practices can be integrated into the sphere of modern law and also provide a reasonable level of tenure security. In addition, the decentralisation policy initiated under the 1990 Constitution, which saw the emergence of local authorities and the ongoing democratisation process in Benin, all offer an appropriate framework for implementing these measures.

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Land rites

Innovative approaches to secure tenure for the urban poor

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Bolivia: The 'anticretico' tenure system

Fabian Farfan

Bolivia is one of the poorest countries in Latin America, with more than half of the population living under the poverty line and suffering from a lack of infrastructure, services and poor environmental conditions. However, strong cultural traditions and social values, such as solidarity and self-help enable people to join together to develop rotating savings credit associations, known locally as *pasanaku*. These started as a response to the impossibility of poor people to access 'formal' bank credit and represent an 'informal' means of helping people to earn money independent of time consuming bureaucratic procedures, or high interest rates.

Another 'informal' initiative in Bolivia, and some other Latin American countries, is the tenure system known as 'anticretico' or *anticresis*. This was a response to structural adjustments in Bolivia's economy during the 1980s, which saw the closing-down of Bolivia's mines and reduced productivity of the agricultural sector. These changes led to massive migration from rural to urban areas, which in turn led to a rapid growth of informal settlements around the major cities.

During 1993 and 1995, the government prepared several laws to address the critical situation facing the country, including the Community Participation Law No 1551 (LPP – Ley de Participacion Popular – 04/20/1993). This became an important tool for the development of both rural and urban areas and the participation of communities in the decision making process within municipalities.

Anticretico means 'against a credit'. It is a term widely used in Bolivian society, which has a strong attachment to the system due to the flexibility of its procedures and the high degree of social acceptance it enjoys among actors involved in the process. Nowadays, it is becoming 'legal' or 'formal' and is recognised by national legislation, due to its importance for peoples' livelihoods.

Table 1 **Tenure categories in Bolivia**

Description	1996 %	1997 %	1998 %	1999 %
Property	52.5	57.8	56.4	51.5
Rent	19.8	19.1	21.7	21.0
Anticretic/Anticresis Contract	5.9	6.9	7.8	7.5
Mixed Contract	0.3	0.1	0.1	0.0
Given for Services	3.3	3.2	3.2	3.6
Given for Partnership	17.1	12.9	10.7	16.3
Others	0.2	0.0	0.1	0.4

Source: National Statistics Institute 1999

Main tenure categories in Bolivia

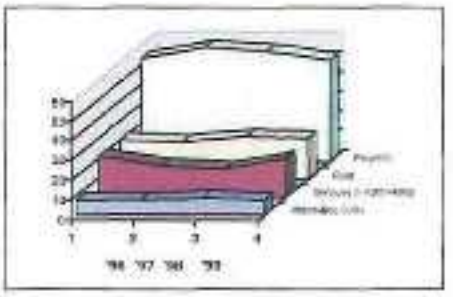

Table 1 shows that *anticretico* and 'mixed' contract systems are the third and fourth most common categories in Bolivia respectively. In reality, these percentages should be greater, due to the 'informal' use of the system and its under-representation in official statistics.

Anticretico is a mechanism involving two parties, the *owner of a house* on one side and the *person who needs a shelter* on the other. They make a legal contract between them, in which the former receives an amount of money in advance from the latter for the right to use the owner's property. For example, a household needing a house would find a property owner who wanted to rent out a house or part of a house and agree to pay a lump sum in hard currency (ie dollars), to use the property for a period of normally two years with possible extensions. After the agreed amount has been paid, the user household would live in the property without further costs, other than service charges.

What makes the *anticretico* tenure system different from simple rental agreements is that at the end of the contract period, the owner returns *the full amount* deposited to the property user. For the property owner, this is an effective way of raising capital sums without incurring high interest rates from the banks, whilst for the user, it represents an effective way of living at low cost for those able to raise the deposit. The owner is required to deliver the property in good condition, pay all property taxes and return the lump sum at the end of the contract. The user must return the property in good condition at the end of the contract period.

Although the economic situation has been improving since the structural adjustments in the 90s, all contracts are made in US dollars, as the official currency for agreements, in order to keep the monetary value and diminish the impact of economic inflation.

The *anticretico* system also encourages property users to maintain their houses, due to special contractual clauses that entitle them to be able to purchase the property after the contract period has expired. This usually happens when the agreement has been in force for longer periods of 4 to 8 years, or if the owner is unable to return the original sum when the deadline arrives. Any house improvements have to be agreed by both parties with a specified amount of money, and must also be given back at the end of the contract.

Advantages and disadvantages of the *anticretico* tenure system are summarised in Table 2.

Table 2 **Advantages and disadvantages of the *anticretico* tenure system**

ADVANTAGES		DISADVANTAGES	
Property's Owner	**Property's User**	**Property's Owner**	**Property's User**
[illegible]	[illegible]	[illegible]	[illegible]
The capital raised by the contract can be used for commercial activities, new house construction, etc.	The money given to the other party can become the basis for property purchase.	Lack of cash at the end of the contract period will involve additional costs to meet obligations.	The money invested does not gain any interest during the contract period.
[illegible]	All the investments in repair, maintenance and improvements will be returned at the end of the contract period.	[illegible]	[illegible]
The money becomes a collateral in the case of property damage.	The legal framework puts the house as a collateral to secure the property user's money.	After a long use of the system, the government made a legal framework to increase security for both parties, but also put up taxation fees, which in turn discourage people from going through the legal procedures.	
[illegible]		The system does not have strong support from the financial sector of the economy.	

Under the *anticretico* contract, there is no communication between the owner and the user during the compulsory period, nor the additional optional period, if applicable. This can be seen as an advantage (no social and living interference) and also a disadvantage (lack of property use control or property damage).

Anticretico is not only a mechanism to access shelter for a certain period of time; for many poor households, it has become the starting point on the housing ladder and can also lead to eventual ownership of the house occupied, or another. It is also particularly popular among households moving abroad for work, since they can obtain a substantial capital amount in advance and not have to worry about routine maintenance.

A variation of the *anticretico* system is also being used in Bolivia. This applies when people cannot afford to pay the amount of money required under the normal contract and involves the property's user paying half of the *anticretico* value and instead of the other half, paying a normal rental fee.

Conclusions

In the early years, this system was very flexible, well known and popular. However, when the government legalised the procedures in the 1990s, the system became very bureaucratic. Nonetheless, the little research that has been undertaken suggests it is an important bottom-up approach that can be used in other parts of the world in order to reduce poverty and increase the quality of urban life.

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Land rites

Innovative approaches to secure tenure for the urban poor

3

Botswana: Certificate of Rights in the urban land market

Saad Yahya

Photos: Saad Yahya

Botswana is a big country with a small population. The total number of people living in towns is not more than 850,000. However, although the urban land market is small, it is well organised and there are policy measures to facilitate poor people's access to land. For instance, every family is entitled to at least one plot in town and another in the rural areas for cultivation or keeping livestock. In urban areas, there are two main types of ownership:

- A long leasehold known as the Fixed Period State Grant (FPSG)
- A Certificate of Rights (COR) meant to grant land to low-income households using simplified and inexpensive procedures.

The Certificate of Rights was developed in the 1970s to cater for the needs of the urban poor. Thus, the majority of plots in low-income residential neighbourhoods are on COR. The holder has the right to use and develop the land, but ultimate ownership belongs to the State. In theory, the COR is mortgageable but most financial institutions will not accept it as collateral. The reason is that lenders are wary of the possibility of revocation and municipal councils' right to enforce collection of the service levy. However, a COR can be converted to a FPSG on payment of survey and registration fees and some owners are choosing that option. The conditions for converting COR to FPSG are:

- On-site water connection
- Survey of the plot
- Payment of conversion fee
- Registration of the plot

Until recently, the COR was an integral part of the Self-Help Housing Agency programme (SHHA). This is by far the most successful low-income shelter programme (in terms of number of beneficiaries) introduced by the government. It has provided housing for about two-thirds of all urban households and has effectively averted the incidence of squatter development in the urban centres. Before the Accelerated Land Servicing Programme (1992–2000), there were 26,709 SHHA plot beneficiaries, about 5,834 of whom have had access to building materials loans. The completion of the ALSP provided an additional 8,356 plots.

The COR and SHHA have played a substantial role in mitigating the effects of poverty. It is estimated that well over 100,000 people have been housed under the programme.

Adapting the COR to 21st century environments

A number of land policy reforms undertaken in the 1990s helped to put the COR in the mainstream of the evolving land market. These reforms included:

- Introducing the option to upgrade to FPSG
- Upgrading the infrastructure
- Putting COR plots on the Botswana Land Information System (BLIS)
- Reviewing the materials loan programme
- Strengthening the Land Department and Deeds Registry.

However, negotiation with finance houses on the possibility of COR holders getting 'private sector' loans have not been very successful. One reason is that the formal private finance sector is unwilling to take on new risks.

Is the COR durable?

The COR gives adequate security to its owner, since it is guaranteed by the State; development is encouraged and accompanied by financial assistance; it can be bought and sold in the property market; and infrastructure levels are relatively high. But the special circumstances of Botswana makes it easier and politically more attractive for the State to grant full title to new applicants rather than COR because:

- The administrative work involved is about the same
- Municipalities are ill-equipped to continue managing the collection of land rents and service charges
- Computerised information systems and experience gained over the years have combined to make title registration relatively easy
- High servicing and infrastructure costs require matching revenues, and the FPSG is better suited to quick cost recovery
- Because of the small population, demand and growth statistics are not overwhelming, in fact just about manageable

The COR also has to compete with an alternative land distribution system managed by the tribal authorities. The Tribal Land Boards, who control most of the rural land, are also active in peri-urban areas. So it is possible for low-income households to get a tribal residential lease for a plot just outside the municipal boundaries, especially in the larger towns.

The result of those new developments in the land development scene is that the government has suspended the issuance of CORs for the time being, until there is enough future demand. Meanwhile, however, the COR is firmly entrenched in the country's statute books and may come on its own once again one day.

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Land rites

Innovative approaches to secure tenure for the urban poor

4

Brazil: Tenure policies, urban planning and city management

Edesio Fernandes

Coronel Fabriciano, Recife: CRRU title photo: Edesio Fernandes

Vila Planetario, Porto Alegre: CRRU title photo: Edesio Fernandes

Social housing and upgrading

Tens of millions of poor people have had to step outside the law to have access to urban land and housing in Brazil. Thousands of informal urban settlements, known as *favelas* have been formed as a result of the invasion of private and public land, and their residents have long lived in very precarious conditions, having no security of tenure. As a result of growing political mobilisation in urban areas, tenure policies have been implemented since the mid-1980s in several cities, within the context of municipal programmes proposing to regularise *favelas*. These programmes have combined upgrading works, service provision, land legalisation and land titling. However, for those *favelas* which are not part of regularisation programmes, there is not even de facto security and evictions are still common.

An important factor has been the creation, within the scope of local zoning schemes, of special residential zones for social housing – called ZEIS, in Portuguese – corresponding to the informal settlements to be regularised. Specific urban regulations regarding land use and development apply to such ZEIS, for example provisions restricting the size of plots and the volume of constructions, so that their social housing nature can be maintained. In most cases, a specific institutional apparatus has been created to manage the tenure regularisation programmes, some of which involve the participation of affected communities.

The 'Concession of the Real Right to Use' (CRRU)

Whilst most tenure regularisation policies have sought to guarantee security of tenure by transferring full individual freehold titles to the residents of *favelas*, other municipalities, such as Porto Alegre and Recife, have formulated innovative tenure policies based on different legal-political notions, to promote both individual security of tenure and the integration of illegal areas and communities into the physical and social structures of the cities. They have viewed the local state's responsibilities in terms of its obligation to provide adequate and affordable social housing rights – and not in terms of providing individual property rights. Moreover, they have attempted to minimise the distortions frequently provoked by tenure policies on the (formal and informal) land market. This has been done through the combination of the two factors mentioned above – that is, the creation of ZEIS and of a participatory management apparatus – with the origins application of the legal instrument entitled 'Concession of the Real Right to Use – CRRU'.

In both cities, the tenure policy concerning *favelas* occupying private areas has provided that residents should be entitled to the special urban usucapião (adverse possession) rights stipulated in Brazil's 1988 Constitution. In such cases, the role of the local state has been limited to helping the residents in *favelas* to have their individual or collective freehold rights recognised by the local courts. The CRRU has been used for the regularisation of *favelas* in public areas, or in private areas where usucapião rights do not apply and which become public property through expropriation. This has happened because the tenure regularisation programmes in Porto Alegre and Recife have been based on the notion that public land should not, and need not, be privatised for the recognition of housing rights to take place. In fact, it has been argued that the unqualified privatisation of public land might undermine the other main objective of tenure regularisation

programmes, namely to guarantee that the original residents are able to remain in the areas where they live.

It is in this context that the CRRU has been used. Being a recognised right to land, the CRRU is not a mere administrative permit and cannot be easily revoked. Although it is a form of property rights, it is more specifically a form of leasehold and as such does not imply the full transfer of freehold titles. However, the CRRU can provide legal security of tenure as it can be registered at the public registry office, thus pre-empting eviction measures during the period stipulated in the title. The time limit of most titles has varied between 30 and 50 years, but they can be renewed.

The CRRU allows the beneficiaries to transfer the right to legal heirs as well as selling, renting out and using the property as a collateral, although experiences have varied. Whereas in Porto Alegre, the local legislation still only accepts transfers of rights in cases of death, in Recife, CRRU rights can be transferred when the original beneficiaries wish to move out, subject to control by both the state and the local communities so that the public investment is not capitalised upon by land subdividers. The CRRU can be, and has been, used in an individual or in a collective manner, in this case recognising group rights.

Recognising the active participation of women in the process of social mobilisation and in the management of the regularisation programmes in favelas, the CRRU titles have been issued in the names of both partners. Should a conflict exist, women have even been given a priority treatment for the recognition of titles. In Porto Alegre, for example, after the CRRU title had been given to an unmarried couple, a celebrated judicial decision reverted it only to the woman's name after she separated from her partner on the grounds of domestic violence.

Housing in favelas has been largely the result of self-construction, with improvements made and financed by the residents themselves. Access to informal (and sometimes formal) credit, particularly to obtain building materials, has been possible regardless of the areas' legal status. The undertaking of the upgrading programmes has promoted a better physical integration of the road system and urban infrastructure in favelas with the neighbouring areas, as well as improving the living conditions of the residents. The participation in the programme's management process has helped to improve the local residents' political awareness. In particular, the incorporation of the ZEIS into Porto Alegre's ground-breaking experience of participatory budgeting has been of utmost importance for the consolidation of social citizenship rights.

There has been little movement out of the upgraded areas and even in those areas where there has been significant internal mobility, the community's original socio-economic profile has been kept. All such developments seem to be directly related to the articulation of the tenure policies with socially-oriented planning laws and progressive city management strategies. Whereas the creation of ZEIS seems to give the areas and their residents a form of social and legal identity vis-à-vis the broader society and the land market, the institutional apparatus created to manage them has given the residents a political arena to defend their rights and put their claims forward.

Despite the incipient stage of the legalisation process, there is a general perception of tenure security. The legal restrictions typical of the CRRU do not seem to matter to the residents of regularised favelas; one of them said that "only a mad person would wish to leave the area", whilst another added "if we had been given property titles we would not be here now".

In those areas where there is consistent social mobilisation and ongoing regularisation programmes, there seems less interest in obtaining land titles than was the case in the 1980s – although many residents expressed the view that, "thinking of the family and of the children", having titles "would be a nice thing".

The need for holistic approaches

However, this perception of security can be, and often is, false, as it is based on a politically precarious pact. Having a title becomes important when a conflict arises, be it a legal confrontation between the occupiers and the original landowner; a domestic or family conflict; or because of other factors such as the undertaking of major public works, which may make the occupied areas more attractive to the official land market, to the detriment of residents' interests.

Moreover, tenure policies have not been applied to the vast majority of informal settlements in Brazilian cities. Invasions take place daily and most people living in such areas have no tenure security at all. It is in this context that the utilisation of the CRRU can promote more secure tenure for the urban poor, in that it provides social housing rights, recognises individual security of tenure and helps promote social and spatial integration in a combined manner.

The Brazilian experience demonstrates that, to be successful, tenure policies cannot be formulated in isolation. Success needs a technically adequate tenure regularisation programme based on a consistent legal and political framework; the integration of tenure regularisation programmes and the broader urban planning legislation; and the integration of both with progressive politico-institutional mechanisms enabling the effective participation of the affected communities in the city's urban management process.

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Land rites

Innovative approaches to secure tenure for the urban poor

5

Burkina Faso: Social practices and innovative tenure systems

Alain Durand-Lasserve and Alain Bagré

An informal settlement on customary land in the periphery of Ouagadougou photo: Alain Bagré

A water tank in sector 19 of Ouagadougou located between a formal and an informal settlement photo: Alain Bagré

The context

Amongst sub-Saharan Francophone African countries, Burkina Faso provides a good example of the limits of top-down State-controlled land tenure policies, and the innovative capacity of civil society. Despite resistance from the State, social practices are progressively imposing new approaches to tenure for the urban poor. These approaches are combining de facto upgrading of Occupancy Permits (possession titles) into more stable titles, and decentralisation of land management responsibilities at municipal level.

As in other countries of the sub-region, land tenure in Burkina Faso is affected by two competing systems:

- The customary system, which is adapted to the rural pre-colonial rural-based society. This does not allow individual ownership of land, and involves a large amount of community control over land use. The system was formally recognised by the government until 1964.
- The State-controlled systems, introduced with colonisation to adapt land management to the needs of the colonial State. They are based on the Napoleonic Civil Code and emphasise access to individual ownership (freehold).

From independence in 1960, until 1984, the two main land delivery channels were: (i) government land development schemes, and (ii) informal – but tolerated – land developments on customary land. In 1964, as a result of the inadequate provision of land for housing by the public sector, informal settlements on customary land represented 71% of the Ouagadougou urban area. 65% of the urban population was living in these settlements. Formal public land developments covered only 29% of the urban area.

In order to respond to the demand for land from the urban poor, the new political regime that came into power in 1983 took a series of measures, including a drastic land reform in 1984.

The State took over legal control of customary land and declared its intention 'to eradicate the irregular squatter settlements... to fight against land speculation and the high cost of renting' and 'to put in place a housing policy which would be to the advantage of the workers' by 'giving each household their own plot'. A new department was set up in order to resolve the specific problems of irregular settlements in cities. Land was nationalised, and households living in informal settlements were provided with secure tenure, against payment of a modest use fee (*taxe de jouissance*).

A house in an informal settlement in the process of regularisation. The number written above the door by the administration indicates the status of the occupants (informal owner of the house, resident or non-resident). Giving a number is the first step in the tenure upgrading proces, and the owner of the house will check that is remains clearly legible.

A settlement in sector 19 of Ouagadougou, after regularisation. In the foreground, the drainage system for rain water. Electricity has been provided.

Photos: Alain Bagré

Effectiveness/ineffectiveness of innovative approaches to tenure

The new land and tenure policy, backed by strong political will, led to the large-scale tenure and physical upgrading of the 'irregular' settlements. About 75,000 plots were allocated to households by 'commando' commissions in Ouagadougou between 1984 and 1990, and 125,000 in all towns of Burkina Faso.

Beneficiaries were provided with Provisional Administrative Permits (*attestation provisoire d'attribution*) that can be converted into a permanent administrative permit, after payment of a use fee (*taxe de jouissance*), and later into an urban housing permit (*Permis urbain d'habiter*). However, most households consider administrative permits – including provisional ones – as secure titles. In practice, public authorities never attempted to evict beneficiary households.

It is worth noting that, contrary to trends observed in most developing countries during the same period, this radically new land policy was based on the consolidation of State intervention procedures and measures aiming at keeping market forces under control, rather than on the provision of individual freehold titles.

In 1990, under pressure of international finance institutions, a review of land legislation in Burkina Faso was carried out. The land and tenure reform was re-appraised in 1991. Private property was rehabilitated, but measures aiming to improve security of tenure in informal settlements, which had been taken between 1984 and 1989 were not repealed. This had – and still has – a positive impact on the economic situation of people living in informal settlements.

A report drawn up in 1990 from a survey carried out in 1986 in 4 areas of Ouagadougou (see Cohen Becker in **Further information**) has shown that two years after tenure regularisation, permanent building materials, rather than scrap materials, were usually being used for housing. Another survey carried out in February 2001 found that the majority of households have improved their houses using permanent building materials after being granted an Administrative Permit. Although it is officially a provisional permit, it provides a sound *de facto* security of tenure.

Most settlements regularised in 1984-1985 now have individual access to drinking water and electricity, roads have been opened (although they are not yet surfaced) and sewerage and drainage has improved drastically. The construction of health centres and schools has also improved the living conditions of people.

Although the innovation process is slow, trends indicate a steady improvement of the tenure situation of the urban poor, under the pressure of emerging civil society.

Conditions that make the approach effective

In Burkina Faso – and especially in the capital city of Ouagadougou – innovative approaches to tenure must be seen as the result of deliberate and flexible action of the State combined with the decentralisation policy and new social and administrative practices. This is the result of the successive changes that have affected land policies at national level during the last 15 years. This can be observed at three main levels:

- The recognition by the State of the validity of most documents that testify 'ownership'. As a result, since 1991, *de facto* security of tenure is provided not only to beneficiaries of administrative permits but also to most 'owners' of plots in informal/customary land subdivision; in addition, since 1991, administrative permits can be formally mortgaged
- The struggle of municipalities to exert land management responsibilities, following the implementation of the 1998 decentralisation policy
- The emergence of civil society organisations which are opposed to forced evictions and are demanding more transparent land management procedures.

Constraints

Despite several attempts carried out between 1985 and 1989 for improving land-related information, the lack of land records and registration resulted in the development of a parallel land market in new land developments. In areas where tenure had been regularised, the higher tenure status, combined with illicit practices amongst government officials,

A house in an informal settlement being regularised. Surveyors have removed plaster from the wall of the house. Part of it will be demolished in order to observe new building lines.

A new road opened in an informal settlement after regularisation.

Photos: Alain Bagré

generated intensive land speculation. In addition, lack of public resources prevented the provision of urban services to new and regularised settlements.

One of the main problems raised by beneficiaries of the 1984 land reform was the size of plots. Prior to 1984, average plot areas provided by the State were 625m². In order to meet increasing demand, this was reduced to 300m², but is considered too small to accommodate large families. Most households feel that the size of the family should have been taken into consideration during the allocation process. Family growth over time has complicated the situation, in an economic context where access to suitable land is becoming more difficult and expensive.

Another problem is the cost of the 'Use taxes' (*Taxes de jouissance*), beneficiaries had to pay when they were granted the plot of land. Many of them have not yet completed the payment of these, which might oblige some families to leave the settlements and live elsewhere.

The 1995 law on decentralisation was expected to open a new perspective for the implementation of innovative tenure policies. According to this law, 'the local authorities have their own land, consisting of those parts of State land that were sold to them with property titles by the State'. Local authorities were given a large array of responsibilities regarding urban planning, land management and development. Despite these dispositions and the 1997 Land law, however, municipalities still do not have land of their own. Except in cases where a freehold title or an administrative permit has been issued, the land still belongs to the State (*Domaine Foncier National*), or to State-controlled land development agencies. The State is still reluctant to transfer its land management responsibilities to municipalities.

In some cases, tension between central government and local authorities has reached breaking point, with local authorities increasingly involved in the provision and allocation of urban land. On the other hand, customary 'owners' are still providing land for housing to households which do not have access to formal land delivery channels.

There is a close relationship between the liberalisation of land markets (after 1991 and 1996-97) and the new development of informal land delivery systems still under the control of customary owners. Most benefits of the 1984-1991 policy intended to help the poor have been jeopardised by the new market oriented policy implemented in the 1990s.

Comparative analysis

Compared with the situation prevailing in other countries of the sub-region, tenure policies in Burkina Faso emphasise the limits of top-down approaches to tenure and the political and economic dependency of the country. However, social forces at work and key stakeholders involved in land management are similar to those identified in other countries of the sub-region: the State, municipalities, customary owners and informal developers. The main innovations have therefore come from the emergence of civil society, in a context characterised by decentralisation.

Policy recommendations

The lesson of Burkina Faso's experience of land tenure innovation for other countries suggests that a number of steps need to be taken in order for urban land markets to be more efficient and be able to benefit low-income households more effectively. These include the need to:

- Integrate social practices and recognise informal approaches to tenure in public land management, unless public authorities can provide sound alternative solutions
- Develop simplified land information systems in order to monitor land transfers, improve public land management, and keep land speculation under control
- Promote and streamline community participation
- Simplify tenure regularisation procedures
- Transfer land management responsibilities to municipalities and improve their technical and financial resources.

Key sources of information

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Land rites

Innovative approaches to secure tenure for the urban poor

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Colombia: Security and services could be more important than legal titles

Nora Aristizabal and Andres Ortiz Gomez

Bogota: General view **Illegal water pipes** photos: Nora Aristizabal and Andres Ortiz Gomez

Land and the struggle for equity

Intermediate land tenure forms are a crucial factor in the struggle for equity. In its fight to prevent the growth of 'pirate' developers, Bogotá has managed to reach many poor families with public investment and services. Nevertheless, it is necessary to formalise the low-income housing processes and increase the level of coverage faster.

Bogotá has a housing deficit predominantly in the low-income sector. By 1998, 6,000 of the 30,000 built-up hectares comprising the total urban area were of clandestine origin. These settlements correspond to 23% of the urban area and 38% of the population, and are located in the outskirts of the city beyond the urban and services boundaries. They are called 'pirate' developments and result from illegal, non-planned subdivisions on private land owned by the illegal developer, many times with the disguised support of a local politician. Nowadays, 87% of people in those projects have obtained formal legal status. Nevertheless, this process has taken more than 20 years.

The urban settlements of pirate developments do not contribute to an urban plan and create additional expenses for the municipality. The cost of completing the infrastructure after the pirate homes are built is 2.7 times more expensive than the planned settlements and expose people to substandard environments. They have to undergo lengthy upgrading stages and access to credit is impossible, due to the lack of a title. Most of the people work in the informal market and do not 'own' the real estate they live in, nor do their jobs provide adequate guarantees for financial support. Additionally, the illegal nature of the dwellings makes it impossible to be eligible for subsidies.

Nevertheless, informal settlements have advantages in comparison with formal ones in their low cost, the timing of construction, and the possibility of having home-based enterprises. Tenure security is partial, because even if they have a property right, they do not have deeds for many years. They are secure because there are laws protecting them from eviction without compensation, but families depend on the possession and a legal process to have freehold. Because those are the cheapest options offered by the market, they are usually the only alternative available to the poorest families. However, their house is their first possession and a way to improve and save. Urban law 9 of 1989 provides legal instruments that allow people to eventually obtain titles, and meanwhile gives them an intermediate tenure status that promotes the upgrading process. The core part of the urban law relating to land tenure is based on the following statement: 'Every person or community has the right to apply and obtain public services, such as water supply, sewage disposal, electricity, circulation, storm drainage, garbage recollection, telephone, and gas for their homes. The only thing required to achieve this right is to prove that they live in the housing unit'.

Informal house with meter, Bogotá

Park City upgrades

photos: Nora Aristizabal and Andres Ortiz Gomez

Intermediate land tenure forms in Bogotá

Bogotá has been trying to overcome the limitations of low-income dwellings by providing investment and services, complemented by various intermediate tenure systems. These systems have been fundamental, because through them people have been able to improve their living conditions, even without formal titles. Several innovative forms of tenure have evolved in Bogotá in response to the inability of the statutory system to provide access to land and housing for all of those in need:

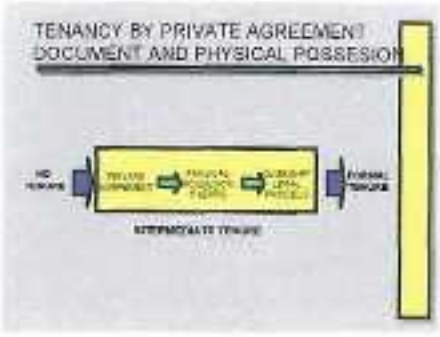
- **Tenancy by Private Agreement Document and Physical Possession**
  This is a very common type of possession, especially in the initial stage of the illegal developments. The document that supports the right of tenure is only a 'buy and sell' transaction signed by the illegal developer and the buyer. The physical possession of the plot leads to the freehold right of tenure. The sole act of living in the unit for three years implies a right. So each year that they live in the unit is a step towards freehold. They possess the plot by use, but there is a lengthy process to actually get the deeds. This type of intermediate land tenure is individual, and can be transferred to any other person by a similar transaction.

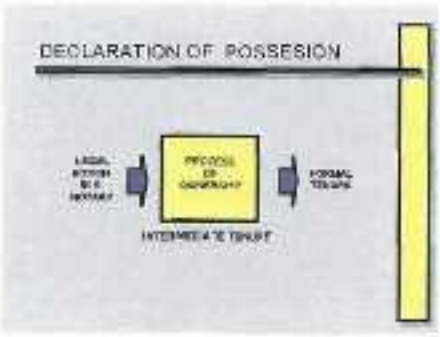
  To have a valid ownership right, the Colombian Civil Code establishes procedures to grant the freehold right though the judicial system. A valid identification of the housing unit and the person is needed. A sworn certificate proving that the dweller has occupied the unit is also required. The legal process lasts around 10 years and costs even more than a legal transaction because it requires the help of a lawyer. They should check that the settlements are regulated according to laws, not located in high risk areas, impose reasonable utility costs, and are near developed land.

- **Declaration of Possession**
  This is a form of intermediate tenure that starts with an ownership process without legal documentation, and after five years of living on the plot, a person goes to a notary and claims the legal right with a sworn certification.

- **Buying and Selling Rights for Future Use**
  An intermediate tenure form in which someone pays for a right in the future. This is a very creative intermediate tenure form in which someone who is going to inherit a unit, or is going to have the right of tenure in the future, sells or gives this right in advance to someone else. Another document appears. This is an official paper that can be registered in the Registration Office for Public and Private Documents to make it official.

- **Urban legalisation**
  This is the most common form of intermediate tenure in Bogotá. Even if it started only as a procedure, it became a collective intermediate





tenure form in all settlements of illegal origin, because legalisation is a way for families to ensure that developers fulfil their responsibilities and protect their rights of ownership to land. The responsibilities of the families are to provide a plan where public and private land is divided according to special regulations, to make official what the illegal developer did not do. Bogotá's regulations give families an intermediate tenure, which allows public investment and promotes self-upgrading.

The municipality will lead the urban legalisation with any person or group interested. However, there are several requirements: Proof of existence of the settlement prior to July 1988, when the urban law was issued; the dwellings and the users should be identified; proof that the applicants are living on the premises must be provided; and the unit must be low-income housing. A physical inspection of the area is required to determine the appropriate characteristics of the legalisation layout, and the municipality must inform the public about the legalisation in order to avoid freehold conflicts.

The municipality studies the cases and considers all the legal, physical, economic, and social aspects. The service companies prepare a statement for the Planning Office that includes the feasibility of the petition, the conditions, restrictions, and quality of the service. Possible high risks are evaluated. Environmental aspects are also considered, so that the legalisation does not affect areas of high environmental value. No payments are made prior to the installation of services. The settlements are checked by the city, so that they comply with minimum standards. Sometimes, when they do not meet them, families have to design and even build communal areas required to meet minimum standards.

- **Communal Tenancy**
  Colombian legislation allows group intermediation for self-construction projects and land trusts. The owner of a plot has his deed; he forms an agreement with a communal group that starts collecting money from potential buyers and starts working towards the development of a low-income programme. When they have met all the requirements, they start the physical development of the plot. This is a community land trust with three parties: the owner of the land, the institution that will have the intermediate land tenure, and the low-income families. Eventually titles are transferred from the owner to the group, and then to the users. These institutions have a special regime that allows them to receive down payments from the buyers and to keep and control the money while the papers are processed.

The advantages for people going through this intermediate tenure are that they are eligible for subsidy even if individually they do not have the guarantees required. This cannot be done by private developers. The services are provided by the city because these settlements are inside the services boundary and the units are cheaper than the ones produced by the formal sector because the institutions must be non-profit.

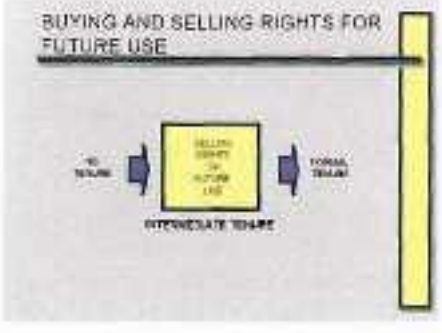
Proposals for intermediate land tenure policies

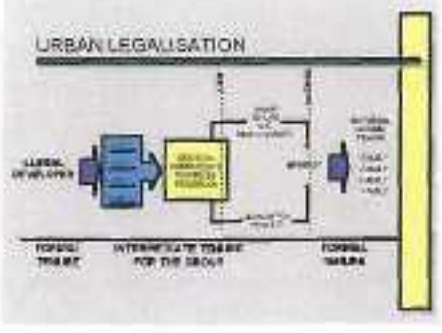
Joint efforts between private promoters, communal groups, and the municipality could produce competitive products. Urban areas are more expensive than the private developers of low-income projects can afford. Policies to acquire non-urbanised land could be possible alternatives. By buying gross land, speculation would be reduced.

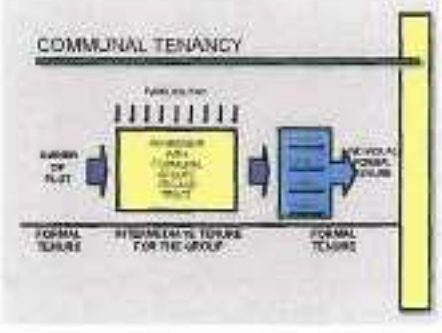
The solution is not a new bureaucratic institution, but policies for efficient entities to produce low-income housing massively and provide legal intermediate tenure in an integrated, quick manner. It is crucial for formal companies to get sales licences more quickly. It would be ideal to be able to sell even when the land is undeveloped. By doing that, they could reduce costs and compete with the 'pirates'.

Projects should be planned without buying the land. Once the gross land is selected by the private or public developer sector, a formal intermediate tenure form would be established. The entity would be holding money and land, with the support of financial and insurance companies in order to obtain a guarantee from the government. Eventually, real ownership would be granted to families. Payments for the gross land would be deferred, with the tenure rights acquired in advance.

The intermediate tenure forms reviewed have proved an excellent tool to stimulate individual and local investment. It is essential that the poorest families trust these new legal alternatives, which have to become more attractive and efficient than the present illegal options.







Further information

The following websites provide further information on tenure issues and can be contacted for relevant links:
www.alcadiabogota.gov.co and
www.metrovivienda.gov.co

The Caja de Vivienda Popular is a key institution working on land tenure for poor people in Bogotá. Their Website is:
www.cajaviviendapopular.gov.co and e-mail: **cvp@cajaviviendapopular.gov.co**

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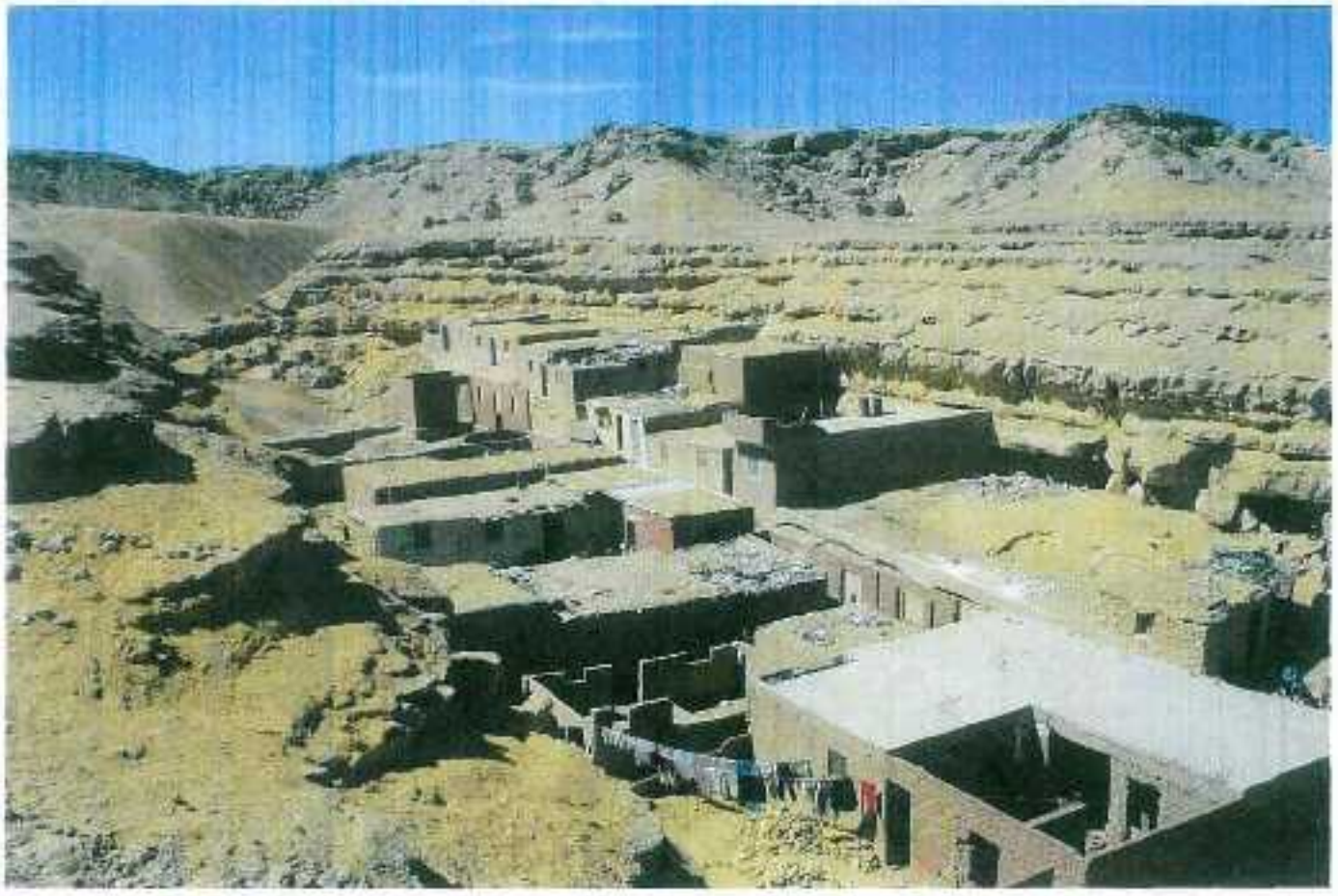
Egypt: Tenure by weight of numbers in Cairo

David Sims



Three kilometers east of the historic city centre...

A couple years ago Mohamed Fawzy completed the first two rooms of a house for himself and his family in one of the wadis extending up from the large squatter settlement of Manshiet Nasser. The area has no services and even water must be purchased at 50 piastres a jerrycan. Even so, Mohamed is optimistic about his future in this new locale. When he can save enough money he will complete the ground floor and, with the help of his brothers, hopes to build out to allow the extended family to live together.

Already Mohamed, a self-employed plasterer, has made tremendous financial sacrifices to purchase the 95 m² plot of land, buy materials for construction, and hire builders. Since he is encroaching on government land in contravention of a host of laws and military decrees, is he not at risk of losing everything? "Hardly," Mohamed responds, "since there are hundreds of other houses in the same wadi, all of which were built like mine. During construction I was a bit worried that officials might come with a bulldozer, but we built quickly and mostly at night. Now that we live in the house, there is nothing they can do." But why didn't he apply for one of the government subsidised housing schemes or buy a flat? "Are you kidding? Everyone knows that you will wait forever for public housing, and who wants to live in a remote new town where you can't even make a living? As for buying a flat from the private sector, do you think I could ever afford it? Here in Manshiet Nasser things may be tough for now, but the land was cheap and I can build a bit at a time. Also, I can easily find work in and around the area through my contacts with contractors. Plus, I can expand my house in the future and can rest assured that my sons will have a small flat to live in when they get married."

and across town on the agricultural plain...

It is Friday and Abd el Nabi Mahmoud has just poured the concrete slab ceiling for the ground floor of what, bit by bit, he hopes will become a six storey apartment block. His house is situated on what had been prime agricultural land surrounding the village of El Bashtil, one of many such agricultural settlements slowly being engulfed by Cairo's westward expansion into Giza. He had bought the 80m² plot of land eight years previously from a subdivider who had acquired a half-acre strip from a local farmer. His building is surrounded on three sides by similar structures in some stage of completion, and two of these are owned by acquaintances hailing from the same Upper Egyptian village. In fact, he found the plot through his village connections and they have been his 'support group' in getting established in El Basntil.

Most of the money for construction has come from one of Abd el Nabi's sons working in Libya. Future construction will be financed from pooled savings, the sale of family land in Upper Egypt, and revenue from renting out some of the flats. Abd el Nabi has already opened a shop for building materials on the ground floor, and it seems that business is brisk.

Buildings like Abd el Nabi's are illegal several times over. Although he bought the land from someone who bought it from a farmer, who inherited from his father, whose own father received a legal title in 1926, none of these transfers have been registered and thus his ownership is legally unrecognised. Furthermore, the land was subdivided in complete contravention of the Planning Law, he has built without a construction permit, and, to top it all, he contravenes a series of decrees prohibiting the construction on scarce agricultural land. Isn't he worried? "Not at all." Abd el Nabi replies. "When I started the foundations, an inspector from the Ministry of Agriculture came and gave me some grief, but a certain informal payment was negotiated with the help of a neighbour, and I've never seen him since. And there are thousands like me here in El Bashtil alone, not to mention other parts of Giza. Why, I already have an official electricity connection and pay property taxes. Isn't this a kind of recognition?"

Urbanisation out of control, but with its own logic

These two cases represent recent examples of a process of informal urbanisation which has, since the 1960s, transformed Greater Cairo and now houses over 60% of the population. Proscribed by the government, but impossible to stop, the process has created its own logic and its own informal standards of security of tenure. By far the most common form is that represented by Abd el Nabi – building on private agricultural land – but in both cases the ultimate security lies in the weight of numbers. Otherwise put, it is the principle of critical mass. Early settlement activity is usually too huge to stop, and once a neighbourhood gains enough inhabitants it begins to acquire a voice in local affairs, pressuring for infrastructure services and public facilities. This pressuring is most likely to pay off at the time of local elections. And, sure enough, eventually the State acknowledges the situation, declaring a mature settlement to be within urban boundaries (agricultural land) or allowing applications to purchase long-time squatted land (State desert land). And the process continually repeats itself, as it has for decades.

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India: Tenure security and environmental improvement in urban slums: The cases of Delhi and Ahmedabad

Amitabh Kundu

Formal and informal tenure systems

Formal title to land has rarely been given to poor households in Delhi, Ahmedabad and other Indian cities. However, most of them are not apprehensive of eviction in the near future due to the possession of photo identity cards, ration cards or other proofs of residence. Through various formal or informal agreements with government functionaries or political leaders, many have succeeded in obtaining a number of services from public agencies or accessing various government programmes. Mostly, they possess stamp papers countersigned by local leaders, other witnesses and a legal functionary indicating that they bought the structure (if not the land) from its previous occupant. Erecting statues of political leaders, organising their visit to the slum colonies, exhibiting photographs of the visits or their signatures in visitors books are the popular tactics used to counter eviction. Further, no major relocation or eviction of slums has taken place during the past two decades, until very recently. All these have given the slum dwellers a sense of tenure security.

Improvements through de facto security

A large majority of the households in both cities have invested substantially to improve the physical infrastructure and obtain access to amenities, despite not having formal land tenure. It is only in areas hazardous for human habitation, or likely to be taken up for development projects in the immediate future, that residents feel vulnerable and consequently have made no major investment. Importantly, the perceived sense of security in slum colonies has facilitated Community Based Organisations, NGOs, and even private agencies to launch projects for improving basic amenities. Local organisations have taken initiatives in managing the basic amenities even when land security is provided at group level. The community has become active in maintaining the amenities through their own contributions, even by paying for defaulting members. Unfortunately, there has been a lack of clarity in the governmental policy with regard to slums, reflected in contradictory policy statements. At the time of executing development projects, officials have often demolished hutments in one part of a slum but permitted the evicted people to rebuild their units in nearby locations, irrespective of their formal entitlement. This has been done mostly to avoid public unrest or interventions by the courts. The consequent rise in perceived security may be assessed from the large-scale sale and purchase of plots and the hike in prices. One can therefore argue that the poor are willing and able to invest their limited savings in housing and basic amenities if they get some kind of tenure security or an assurance against eviction, even at community level.

Sonia Gandhi Camp at Smalkha, New Delhi

This settlement is located south-west of Indira Gandhi international airport. The history of the settlement dates back to 1975 when a cement factory was established locally. At one point, the land was purchased by Sanjay Gandhi, (son of the then Prime Minister), but after his death, the villagers claimed the land. Consequently, a case was filed in the court, but the villagers lost the case and the land was taken over by the Delhi Development Authority.

Despite many of the residents possessing Identity Cards and V P Singh ration cards, about 500 huts were demolished, without prior notice, by the local authorities with the help of police and local henchmen in March, 2000. Significantly, none of the households was relocated, even though the V P Card holders were legally entitled to an alternative site. The remaining 80 percent of huts were later rebuilt.

Presently, the settlement accommodates about 1,500 households in 1,200 hutments. About 75 per cent of the houses have more than one room. There has been massive encroachment in the colony in the 1990s, of which about 40 percent appeared after 1994. The new settlers have purchased either land or huts from the earlier settlers, the percentage of the former being about 30 per cent. Each has paid a sum between Rs.20,000-25,000 (US$570-715). The procedure for buying and selling of huts is informal. Four to five persons, known to both the parties, occasionally in the presence of the local leaders, or *pradhans*, sign an informal document. At times, such agreements are signed on stamp papers but even these have little legal validity. The signatories include the property dealers who make handsome profits out of these transactions. About 45 percent of the people residing in the colony feel insecure due to their proximity to Smalkha village, which is inhabited by upper class *thakurs*. There is a history of caste conflicts between the villagers and slum dwellers, the former trying to drive them out at regular intervals. The latter are, however, getting organised and meeting the challenge posed by the *thakur* community, collectively. The other reason for insecurity, is the demolition drive of the Municipal Corporation in March, 2000. The official reason given in justification of the demolition was that sixty square metres of land on the two sides were required for road widening. The slum dwellers, however, believe that the officials were in connivance with *thakurs* of Smalkha village and were paid bribes to carry out the demolition work.

Pravin Nagar-Gupta Nagar settlement, Ahmedabad

Aerial view of Pravin Nagar-Gupta showing a mix of upgraded and un-upgraded houses photo: SAATH, Ahmedabad

This settlement, or colony, was one of several selected for upgrading as part of the Slum Networking Programme, though implementation was delayed due to difficulties in mobilising local contributions. The colony comprises 1,070 huts accommodating 6,500 people and is located on private land belonging to a number of self-claimed owners who have no valid legal documents.

The land originally belonged to the village Panchayat and was classified as waste land. As the city expanded, the village was brought under the jurisdiction of the Ahmedabad Municipal Council, resulting in high land value increases and many people tried to grab land by obtaining titles through political connections or legal manoeuvres. There are seven sections within the colony, each starting at a different time and having different claimants to land ownership. Many of these have sold plots to new settlers and are collecting rents as self-proclaimed owners, despite having no legal authority. Many settlers possess some kind of stamped papers, signed by so called owners, local leaders, notaries, etc that would probably not stand up in court.

The colony witnessed a tremendous increase in the land price during the 1980s when transfers were taking place without any legal backing. This is evident from the fact that while some settlers paid only Rs.40-50 (US$1-1.5) per plot in 1987-89, prices rose to about Rs.8,000 (US$230) in 1994. More than 75 percent of households had access to a water supply through hand pumps located in the neighbourhood and over 85 percent had electricity. Unfortunately, only about 5 per cent had legal connections. The remainder paid a fixed amount to households with meters and very few had illegal connections. A quarter of all households maintained a private sanitation and drainage facility, but there was no garbage disposal on a regular basis, and as a consequence, areas were filthy and inaccessible to outsiders. Roads became totally unusable during the monsoon. The wall and floor of almost all the houses were made of mud, while the roofs were thatched with temporary materials.

Most of the households did not spend even Rs.2,000 (US$60) for the improvement of their houses due to the fear of eviction. However, with the launching of the upgrading Slum Networking Programme, residents were granted ten year licences to their land and major improvements are now under way.

Recent reverses

The situation regarding tenure security in Delhi, Ahmedabad and other Indian cities has changed dramatically during the past couple of years. Court orders favouring the land owning agencies, together with large-scale evictions, have shattered the perceived security of tenure of the slum dwellers. The latter have suddenly realised that their social and political connections or a host of semi-legal documents are not of much use. Many of the industrial as well as commercial enterprises in both cities have been closed down and evicted, despite their having approvals from a number of departments of the local government and paying normal fees. Understandably, this has sent shock waves among the slum dwellers in the two cities and is likely to discourage further investment in housing and amenities.

Formal titles to land expose the poor to market forces and they can get trapped into selling it and thus being displaced from their original location. However, intermediate tenure or even informal assurances by public functionaries have often been enough for slum dwellers to make substantial investments in housing and amenities.

There are distinct indications of withdrawal of public agencies from the provision of infrastructure and amenities in the wake of programmes of economic reform in India. The government avowedly wants the households, communities and NGOs to come forward and share this responsibility, particularly in slum areas. The present environment created through judicial and administrative orders and large scale evictions would unfortunately come in the way their making investment in improving the micro environment. Also, it may create cities in which the poor have no place.

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Land rites
Innovative approaches to secure tenure for the urban poor
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Kenya: Community land trusts and innovative tenure

Saad Yahya

Houses on CLT: Before photo: STD/MOLG, Kenya

Houses on CLT: After photo: STD/MOLG, Kenya

Tenure systems in Kenya's cities

There are three broad types of land ownership in Kenya. These are:

- Government land which is owned by the State
- Trust land which is administered by district governments in trust for local communities indigenous to the area
- Private land held by individuals or institutions as freehold or leasehold property.

Both government and trust land are continually being acquired and allocated for urban development. At the same time, rural land close to towns is being rapidly urbanised. In the process, the conventional forms of private ownership, that is freehold or leasehold, have had to be extended and modified through popular demand in order to cater to the needs of the poor, who form the majority of urban residents.

It is estimated that 25 percent of Kenya's 31 million population live in Nairobi and other urban areas. Of this urban population, 60 percent live in unplanned settlements. Among the wide range of innovative and unorthodox types of land ownership are community land trusts (CLTs), share certificates and temporary occupation licences (TOLs).

Community Land Trusts in Kenya's secondary towns

Since the mid 1990s, local communities in Kenya's secondary cities have been experimenting with Community Land Trusts (CLTs) as a means of accessing land for housing and related purposes. The idea is to combine the advantages of communal tenure with the virtues of market-oriented individual ownership. By retaining ownership of the land in the hands of a group of and allowing members to hold leases from the group title, it is possible to control transfers and discourage speculation.

The basic principles of a Community Land Trust are:

- Making the best use of the collective strengths of members in the process of land acquisition, resources mobilisation, obtaining official permits and getting the government and municipality to provide infrastructure
- Keeping all the land in the settlement under one head title held by trustees. As a result, open spaces and other social facilities are protected from grabbing, but members are assured of continuity and stability in neighbourhood composition and environment
- Creating conditions in which members are encouraged to invest in land development and market transactions in improvements (i.e. buildings) are possible
- Creating governance structures that allow members of the community to participate fully in the affairs of the settlement
- Reducing the cost of land acquisition by doing away with title surveys for individual plots and getting the Lands Department to waive the initial land premium
- Working within existing laws to create titles which can be used to access credit.

Organisational framework for Community Land Trusts

The affairs of a CLT are run by a web of local organisations operating within a general policy framework established by the Ministry of Local Government through a consultative process. These include:

- A Settlement Society registered as a legal entity under the Societies Act and therefore possessing its own personality. It consists of residents having a stake in the future of the settlement. The Society meets annually to discuss budgets, audited accounts and the Society's activities
- A Residents' Committee representing various categories of members, including women and young people. The committee is responsible for day-to-day management
- A Technical Task Force led by the Town Clerk. Its job is to coordinate the efforts of various municipal and government departments as well as NGOs involved in delivering technical and material assistance to the community
- Registered Trustees, the highest policy making body. The nine trustees represent three constituencies i.e. property owners, renters and friends of the society.

The first CLT in Kenya was created in 1992 by the residents of Bondeni, an unplanned settlement in a town 360 km south-east of Nairobi called Voi. The settlement had 530 houses when the project was conceived and three-quarters of the settlers had been there for nearly three decades; 62 percent of the houses were built of temporary materials. As a result of installing services and providing in-fill plots, the upgraded settlement ended up with about 720 plots. Members have organised themselves into self-help groups and house construction cooperatives who build houses for members under the watchful eye of the Residents' Committee. As a result, a wide range of building types have evolved, ranging from modest two-room structures built of sun-dried bricks, to substantial double-storey houses built of concrete blocks. Researchers from the University of Nairobi helped residents to accept low-cost building technologies and several other local and national organisations also helped the residents in attaining their goal.

It is these partnership networks which enabled residents to make full use of their newly acquired status as property owners.

However, in spite of numerous advantages, Community Land Trusts have some limitations, including:

- The instrument is new and not yet well understood. Not only politicians, but also administrators at the local level, are not well versed in its precise aims and mechanics
- It requires lengthy and complex documentation, although the task is made slightly easier by the prototypes already developed
- The communal ownership of the land could be a disincentive, since some people prefer to have individual titles; restrictions on sale in the open market discourage speculation and the rapid realisation of capital appreciation.
- Although members can borrow from their own savings and credit associations, or from similar micro-credit institutions, they have limited access to loans from commercial banks
- Finally, the instrument is currently a more complex arrangement than other available ownership vehicles, such as land buying companies or co-operatives.

Making inferior land suitable for settlement

Land accessible to poor people is often the worst land available in town in terms of services, slope, drainage, flooding or contamination by industrial wastes. Providing tenure security must therefore be linked to land improvement and infrastructure works. In Voi, a major problem was the pollution and seasonal floods caused by raw waste from a sisal factory which discharged to a nearby river through a channel passing the settlement. With the help of the municipality, the community had to build roads, set aside land for schools, health centres and other facilities, improve storm-water drainage and divert the offending channel to pass outside the settlement area. Flood control measures included retention walls and stone bulwarks. As a result, more land was created and the settlement made safer and healthier.

Occupation licences for Nairobi's small businesses

In its efforts to combat poverty and generate jobs, Nairobi City Council promotes investment in small businesses by issuing Temporary Occupation Licenses (TOL) to prospective investors. The investment is designed to promote efficient utilisation of idle public land in strategic locations e.g. street intersections, road reserves in high-density neighbourhoods and open land on the urban fringe. That way the Council is able to allocate public land for a productive use without giving up title to the land, since the licence is renewable on a yearly basis and the licensee is allowed to build semi-permanent structures for his or her business. Typical uses include pavement restaurants and street food vendors, kiosks, open-air garages and furniture workshops.

A tea-shop near a large construction site or a fast food kiosk on school grounds can be a profitable business, and many such outlets are operated by women. In fact, the demand for TOLs far exceeds supply. For example, only about a third of the 1,924 applications received by NCC in 1999 were approved. In considering applications, the City Valuer has to reconcile planning and environmental requirements with market demand for development sites. Since the licensee has to pay an annual land rent, the enhancement of municipal revenues is also an important consideration.

What makes occupation licences attractive to developers?

- No expensive surveys and registration procedures are required
- Planning regulations and restrictions are flexible
- Payment for the plot is spread out as annual rent, so the developer can concentrate on the development rather than a heavy capital outlay for land purchase
- Temporary and semi-permanent materials can be used, resulting in considerable reduction in construction costs
- The allocation procedure is very quick, taking days rather than months which is usual for regular allocations; applications need not be considered by a full council committee meeting
- The developer can tap the council's trunk services and electricity network where available.
- Security of occupation and use is guaranteed by the Council.
- The property is transferable with prior consent from the city authorities

From the city's point of view, land under Temporary Occupation Licences can easily be repossessed should they be required for public purposes.

Cassava Crisps for Kids

The TOL is ideal for kiosks and other small businesses photo: Saad Yahya and Associates

Mama Abdul used to be a teacher. She gave up her job and put all her savings into a kiosk selling general provisions, soft drinks and inexpensive snacks specially packaged for school children. Her kiosk is on Nairobi City Council land across the road from a large primary school. She obtained a TOL for the land (about 200 sq.metres) and made a special arrangement with the headmaster so that the children would be allowed to cross the road to her kiosk during the mid-morning and lunch breaks. Her teenage daughter helps her sell a variety of snacks and confectionery items such as "mtandazi" (a local triangular shaped doughnut), baobab seeds soaked in syrup, cassava crisps, fruit-flavoured ice cubes and tamarind juice.

After deducting costs, Mama Abdul makes enough money to cover her household expenses. But she and her daughter have to work long hours, for each day's supplies have to be prepared the night before.

Two years ago, Mama Abdul won an award from a soft drinks multinational for operating a model kiosk. Her achievements as a businesswoman were aired on television throughout Africa, and she was given a TV set as a prize. So she built a concrete deck around her kiosk so that her teenage customers can watch football matches and other sports programmes.

Property companies as a vehicle for land distribution in Kenya

When the only land available for urban development is farm-land belonging to wealthy large-scale farmers, it makes sense for the landless poor to pool resources and acquire that land if they can. And that is exactly what has happened on the outskirts of Kenyan cities such as Nairobi, Nakuru and Eldoret. Hundreds, or even thousands, of people can get together, identify a large farm (usually a coffee or sisal estate or a mixed farm) and form a limited liability company as an institutional vehicle for achieving their goal. Savings are used to buy shares in the venture, and once sufficient money has been collected to cover part or whole of the purchase price the purchase transaction is executed. Any shortfalls are covered by bank loans.

The land is then planned and subdivided, and members can get one or several plots depending on how much they contributed. Since many plots are involved, planning, survey and servicing costs are reduced. Servicing standards can normally be negotiated with the local authority. The better-organised companies do not depend on the government for professional services but hire their own planners, architects, surveyors and valuers. They can even establish their own special development guidelines and controls to achieve high environmental standards.

So there are wide variations in quality among company developments. For instance, minimum plot sizes tend to be fairly small in Nairobi, say 300m² compared to 1000m² in the smaller towns. Factors which determine the rate at which members develop their plots include:

- Company size, the smaller companies being easier to manage.
- Quality of leadership and organisation
- Income levels among members
- Whether or not professionals (planners, engineers, architects, etc.) have been used
- Municipal support
- Availability of infrastructure and services

For the first few years, while the settlement is consolidating, the share certificate held by each member is enough evidence of ownership. Once the whole estate has been surveyed, corner beacons installed and all the requirements of the Survey Act fulfilled, individuals can apply to the Commissioner of Lands for their title deeds. In the meantime, however, owners can build, buy or sell, sublet and transact in their land like any other property owner.

Ten reasons why land buying companies are popular

- It is simple and inexpensive to form and register a limited liability company. It can cost as little as Shs. 10,000 (about US$75)
- A company can be an effective rallying point for mobilising and organising people with a common development goal; members can decide to sell shares only to like-minded persons.
- Company legislation encourages democratic governance with annual general meetings, election of officers and audited accounts.
- Company assets are owned by all; surplus land and other assets can be sold and the proceeds invested in services and other improvements.
- Government supervision and interference are minimal, while assistance from government can be sought as and when required.
- Members can borrow in the market either collectively or individually
- Through the company, members can establish their own rules for guiding and consulting development
- Members can develop at their own pace, sell, sublease, and otherwise deal in their property as they wish subject to company rules and national legislative restrictions e.g. planning restrictions
- The share certificate provides adequate security for most purposes
- The share certificate can be upgraded into full title once certain requirements have been fulfilled.

Company members look to their leaders to manage their affairs and guide them through the maze of company legislation, taxation and reporting. On their own part, however, they concentrate on mobilising enough resources for plot development. Assistance is usually forthcoming from the extended family, friends and small loans from savings and credit societies. Depending on the materials and building methods used, a three-room house can cost anything from Shs.400,000 to Shs.800,000 (US$5,000-10,000) Municipal support and encouragement can help reduce costs by allowing traditional materials (mud and wattle, thatch, timber, coral rag, etc.) and new technologies. Such approaches are allowed by the 1998 amendments to the Kenyan building code.

Further information

Shelter Forum, PO Box 39493, Nairobi.
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Further information on Community Land Trusts may be obtained from the Director, Small Towns Development Project, PO Box 41607 Nairobi, Kenya. Tel 210234. Fax 212434.
Email: **smtowns@thorntrees.com**

Further information on Temporary Occupation Licences from the City Valuer, Nairobi City Council, PO Box 30075, Nairobi, Kenya.

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Peru: Entitled to be titled

Jan Turkstra and Ayako Kagawa

Juan Pablo II photo: Ayako Kagawa

Mrs Joseta Ramirez with a colleague of the community leaders' organisation photo: Ayako Kagawa

When Mrs Joseta Errelos Ramirez moved into in *Juan Pablo II*, an informal settlement lying in the northern periphery of Metropolitan Lima in 1983, the area did not officially exist. The District of Carabayllo only recognised it in 1983 but no water, nor garbage collection or electricity came into the neighbourhood. However, things have changed since 1999. Garbage collectors come twice a week, electricity has been installed and almost all households have land titles. Land titling and registration normally involves tedious bureaucratic procedures but these land titles were given within 2 weeks. So why did residents of *Juan Pablo II* take so little time to become owners suddenly when it took nearly a decade to be given the first recognition?

Formalising informality

The Peruvian government took into account what Hernando de Soto voiced in the 1980s in his acclaimed book *The Other Path*. He saw that the Peruvian bureaucratic system needed a faster and simpler process of integrating the informal city to the formal city to stimulate economic growth, if development was to be achieved. This critique led the Peruvian government to implement a national regularisation policy.

The initiative led to setting up COFOPRI (Comisión de Formalización de la Propiedad Informal) in 1996 and with the co-ordination of RPU (Registro Predial Urbano) the two institutes aimed to create a mortgage based credit and real estate market through formal land ownership in formerly informal settlements. Massive land titling and registration began with financial support from the World Bank. Today, COFOPRI claims to have achieved their objective of granting one million titles.

Process 0

Strategic Planning

- Creation of inventory using all sources
- General planning

→

Process 1

Neighbourhood Formalisation

- Physical and Legal Diagnosis
- Possession Rights, Perimetric Plans
- Registration of Plans in RPU

→

Process 2

Individual Formalisation

- Diffusion at assemblies
- Visit to household Verification
- Issuance of title
- Registration

COFOPRI's Process of Regularisation

Victor Raul, Trujillo: an example of illegal private land subdivided for residential purposes photos: Aysko Kagawa

Why the confusion?

Victor Raul, a peripheral informal settlement in the western outskirts of Trujillo (third largest city in Peru) is an example of this confusing tenure situation. The settlement was established in the mid-1980s when residents purchased the land from an agricultural community of the neighbouring district of Huanchaco. Consolidation and densification of the neighbourhood was slow and limited, due to the massive size of each parcel and the presence of families in Trujillo who purchased land for speculation.

In the early 1990s, as the agricultural community had not helped bring in basic infrastructure, a local community organisation was established. Community consensus increased and residents asked the agricultural community for plans, but were rejected. They therefore made investigations on tenure, which revealed that there was multiple registration of lands in the traditional public registry, RPI. The oldest registration dates back to 1909, when the Ferrel family owned half of Trujillo. A dubious Mr Oyle had claimed parts of the area in 1956 and the agricultural community claimed the land in 1958, only for the regional government to plan the area as an industrial park in 1980. Thus, four records for the same area of land in Victor Raul can be found in the RPI to this day.

COFOPRI entered the neighbourhood for a brief and quick inspection in 1999. However, the area has not been formalised by COFOPRI to date. However, can we blame them if even the regional government is registering claims on private property? This tenure confusion is only an example of what the formalisation process needs to tackle.

The ingredients and mysteries of titling

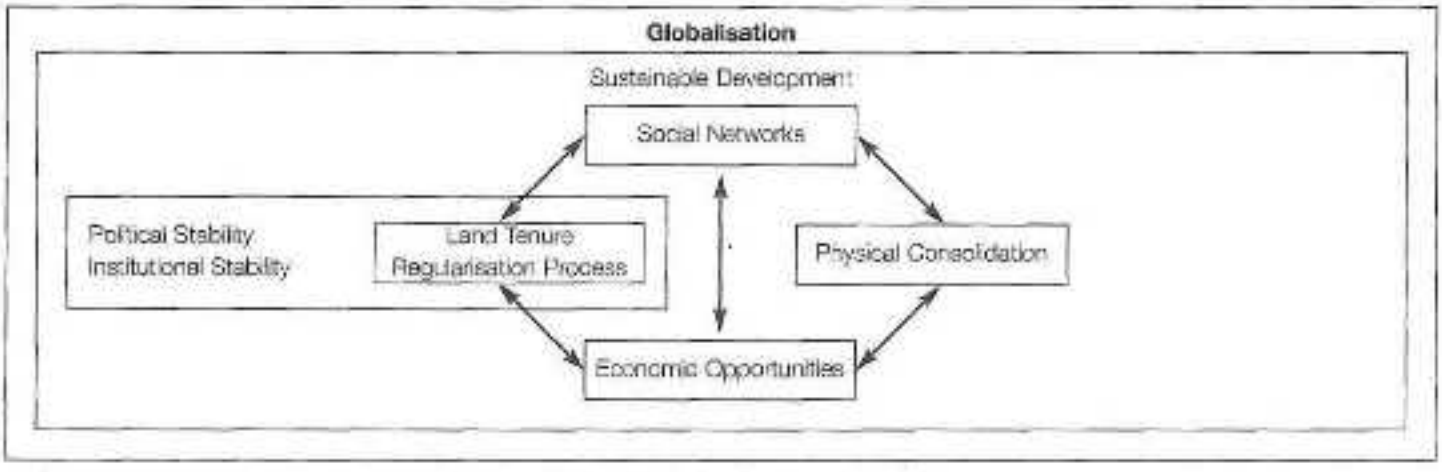
So how was COFOPRI able to provide one million titles to residents of informal settlements in a span of just 5 years?

The urban population of Peru is concentrated in the coastal region where land tends to be sandy and unproductive unless irrigation investment is made. Also, a majority of these desert areas are owned by the State. The more peripheral from the city centre, the more likely it is unproductive sandy state owned land. Therefore, when Mrs Josefa Ramirez illegally occupied the land, the Peruvian government did not evict her. So she stayed on. This means that there is little threat of eviction and it is easier for Peruvians to gain de facto tenure rights of occupying, using and building their lives. This physical and legal combination of unproductive sandy areas and a tenure status of State owned land can be seen as a major success factor in the magnitude of its policy implementation.

One of the mysteries of COFOPRI is how they deal with informal settlements on private property. Until 2000, COFOPRI admits that they have been focusing formalising on State-owned land. However, staff are increasingly involved in co-ordinating claims between private landowners and the residents who illegally occupied the land. This has had varying degrees of success, since tenure in Peru's urban areas can be extremely complex and confusing.

The technical mysteries in the formalisation process by COFOPRI require a balance to be achieved between the quantity and quality of titles. Whilst one million titles have been allocated to residents of informal settlements, it is important to note that there are households who have two titles, one given by the municipalities or formal central government ministries in the 1970s or 1980s, registered in the traditional Public Registry (Registro Publico Inmueble) and the new COFOPRI titles registered in the newly created RPU, which only registers houses in the informal settlements.

Regularisation and development



Conceptual framework of land tenure process within the wider urban landscape

The success of a policy does not come by easily or quickly. It needs a strong political and institutional environment so that effective legislation can be enforced. Such legislation also needs to be linked with economic and social activities at both household and neighbourhood level. Unless these are co-ordinated, the titles given cannot be used effectively for a better house or a better life. Mrs Josefa Ramirez wants better employment opportunities and access to bank credits for loans to improve her house and educate her daughter. She is not the only one.

But is land titling and registration the only way better life can be achieved? And is this the best way to manage urban areas?

PROFAM's future vision in Metropolitan Lima photo: Ayako Kagawa

Alto Trujillo, Trujillo Municipality's vision photo: Jan Turkstra

Avoiding informal urbanisation: Guided Land Development

Despite its success, the COFOPRI model does not escape limitations, as there are households in demanding houses every day. A significant factor in the success of the COFOPRI programme is also the availability of vast tracts of government owned desert land surrounding Peruvian cities, a resource not available in many countries. In order to prevent further illegal invasions, COFOPRI created a national programme called the Programa de Lotes Familiares (PROFAM) which identifies and reserves areas for urban expansion, all of which are adjudicated prior to issuing titles. This type of urban management has been carried out at municipal levels in Peru in the cities of Villa El Salvador and Alto Trujillo, Trujillo and are still on the way to developing socio-economic links with the formal city.

How can we increase the speed of consolidation? photos: Ayako Kagawa

But the real secrets to the hidden ingredient of titling...

It is still premature to assess COFOPRI's activities, but it is hard to deny that they have drawn attention to the land issue facing the urban poor to the rest of Peruvian society.

By focusing on formalising informal property of the urban poor, COFOPRI has sent a strong message to Peruvians that they care about the urban poor and the government is willing to take action. COFOPRI has been able to bridge the gap between the formal and informal city by enhancing the 'sense' of legal tenure security. In this respect, the formalisation process has made informal urban dwellers feel that have become finally formal urban dwellers, deeply affecting the Peruvian urban mental landscape. Development in economic and social aspects is the next step.

Further information

COFOPRI website: **www.cofopri.gob.pe**

De Soto, Hernando (1989) *The Other Path: The invisible revolution in the Third World*, I.B.Taurus, London

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Land rites
Innovative approaches to secure tenure for the urban poor
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Russia: Housing tenure change in the transitional economies

Richard Grover & Mikhail Soloviev

Photos: Richard Grover

The context

Does privatisation increase security of tenure? Or, has the creation of private housing markets in the transitional economies resulted in greater formal freedoms, but at the expense of increased insecurity?

During the last decade, the involvement of the state in housing in the Central and Eastern European Countries (CEEC) has been greatly reduced. New housing tenures have been created that have given owners rights over property they had not previously enjoyed. But, with the new tenures have come new responsibilities and liabilities. Case studies reveal some of the consequences of this change and indicate what policies are needed to manage these.

Privatisation and property restitution

Two main processes have resulted in the creation of private housing markets in the transitional economies, privatisation and the restitution of property to those from whom it had been expropriated. However, the experiences of the transitional economies have not been uniform. For example, in some countries, like Bulgaria, housing co-operatives enabled many households to purchase their homes during the communist era. In others, like Russia, personal ownership of real estate was very limited during this period. The extent to which the role of the state in housing has been reduced also varies between countries.

Many of the CEEC now have levels of owner occupation in excess of those found in much of Western Europe. Alongside the growth of owner occupation has come a decline in social housing. This raises questions as to whether the transitional countries are making adequate provision for low income and vulnerable groups.

The new housing that is now being constructed tends to be of better quality than in the past. The construction industry has become orientated towards meeting the requirements of those with effective demand, who have prospered as a result of transition.

The creation of private housing markets has taken place at a faster rate than the development of the economic and legal infrastructures needed to support them. Mortgage markets are poorly developed and the levels of housing loans are very low in comparison with Western Europe. The legal and management infrastructure needed to manage apartment blocks with flats with different owners has not been fully developed.

Policy implications

Without the development of housing finance markets, owner occupation markets will be slow to develop. This makes it difficult for households to adjust their housing to meet changing family circumstances. It also has adverse implications for labour mobility.

The financing of housing through savings markets has been hindered by the poor development of the CEEC banking systems. The alternative of funding of house purchase through the capital markets is held back by the absence of a property valuation profession, able to produce valuations of a quality that will satisfy investors.

The privatisation of flats has often taken place without resolving responsibilities for communal areas and maintaining the fabric of the block. This raises questions about who is to control service charges and management policy, particularly in mixed private and public blocks.

The decline in state building raises questions as to how social housing is to be provided for those in need. The privatisation of social housing through the transfer of control to the not-for-profit sector is impractical until the problems of the mortgage market are resolved, as this sector will need to borrow from commercial sources. Until then, social housing will have to compete for a share of shrinking state budgets.

Photos: Richard Grover

Further information

www.oecd.org is the website for the Organisation for Economic Co-operation and Development and contains papers of the Workshop on Housing Finance in Transitional Economies held in Paris, 19-20 June, 2000

www.unece.org is the website of the United Nations Economic Commission for Europe, which has a range of papers concerning the development of the transitional economies.

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Senegal: Achievements and limitations of large scale tenure regularisation

Alain Durand-Lasserve in collaboation with Moussa Gueye

Photos: Moussa Gueye

The context

Until the mid 1980s, government-controlled development companies based the housing policy for the low and low-medium income groups in Senegal exclusively on the provision of serviced plots and low cost housing. This policy proved to have severe limitations in that the target population was usually not the poor, but middle and high-income groups.

All land in Senegal that was not registered before 1964 (law on the *Domaine National*) belongs to the State and formal access to urban land for the poor is based on the allocation of temporary and revocable 'occupancy permits' on public land. Such permits do not formally guarantee security of tenure to beneficiary households. The allocation process is complicated, the ground-rent recovery is weak, and limited supply cannot cope with the high demand. As a result, about 45 percent of the population in the Dakar metropolitan region are living in irregular settlements: squatter settlements and informal land subdivisions carried out by customary "owners". However, it is worth noting that many households feel reasonably secure with an occupancy permit.

The occupation permits

The Senegalese experience of tenure regularisation carried out from 1987 onwards deserves attention for two main reasons. It is the first attempt in Francophone West Africa to implement a tenure regularisation programme at national level. In this respect, it represents a major step in the recognition of the legitimacy of irregular settlements.

The national programme was launched in late 1980, with a pilot project in the Dalifort squatter settlement on the urban fringe of Dakar, and was later extended to other informal settlements in the city. The pilot project (see box overleaf) was selected jointly by the Department of Planning and Architecture (DUA), Ministry of Housing, and the German Technical Cooperation agency (GTZ). The objective was to provide individual titles (superficy rights) to households living in informal settlements on public and privately owned land. The project combined in situ regularisation (for the majority of the population of Dalifort) with the resettlement of some households on serviced plots in the vicinity of the project.

Effectiveness/ineffectiveness of occupation permits

The Ministry of Urban Planning and Housing, with the financial and technical support of the German Co-operation Agency (GTZ) initiated the tenure regularisation programme in 1986. This initiative took place in a context of social crisis generated by large-scale evictions carried out in informal settlements in Dakar in 1985.

The initial objective was simply to improve the physical environment of irregular settlements. However, it appeared that security of tenure – and consequently tenure regularisation – was a key element in any settlement upgrading project, as it was expected to encourage the population to participate in and contribute to the upgrading process.

The Dalifort project

Photos: Moussa Gueye

In 1987, Dalifort was a small squatter settlement with a population of 7,098 living on 519 plots (concessions) on marshy land, exposed to seasonal floods. About half of the squatted land was privately owned and the other half belonged to the State. Occupants were owners or renters of the dwelling units but squatters on the land. 95 percent of the dwelling units were wooden shacks. The area did not have access to basic urban services.

Population representatives, the project team and public authorities made a series of decisions and agreed on a set of rules regarding priorities for access to basic services, tenure regularisation, and cost recovery mechanisms. In the meantime, financial mechanisms were set up to give access to credit for the beneficiary households and a trust fund was set up in 1991. According to eligibility criteria decided by the project, 600 households were entitled for a *superficy right*, a long-term lease payable in one lump sum, that can be mortgaged, transferred and inherited. This is a real right, not just an occupancy permit.

Cost recovery principles were adopted and, physical upgrading and tenure regularisation were carried out in parallel. Between 1989 and 1992, the approach was extended to other settlements covering large areas of Dakar, Pikine, Thiaroye, Pikine Irrégulier, Arafat and Medina Fass Mbao. In 1991, a National Upgrading Programme of Spontaneous Settlements was launched by Presidential Decree, and extended to other settlements in Dakar, Thies, Pikine, Saint Louis, and Bignona. About 100,000 inhabitants were supposed to benefit from this new policy. Implementation is still going on in 2001, but at a slow pace, the programme being undermined by bureaucratic opposition and insufficient human and financial resources.

In 2000, 13 years after the launch of the Dalifort pilot project and 10 years after the national upgrading policy was launched, achievements are sadly limited, as least in quantitative terms. In Dalifort, only 193 eligible inhabitants out of 600 have received their *superficy right* title and in Wakhinane the figure is 42 out of 400. In the other settlements where the approach was implemented, not a single title has yet been granted.

However, it must be stressed that all the households that paid for it did receive their titles, despite the reluctance of the central administrations in charge of land management. Other households either could not afford the cost of tenure regularisation or, simply, did not want to pay once they understood that they would not be evicted: they benefit from a 'community security' and enjoy a fairly good de facto security of tenure.

In general terms, one of the main achievements of the urban tenure regularisation programme in Senegal is the de facto recognition of most informal urban settlements: their regularisation is a matter of time. In this context, eviction is no longer considered an appropriate option.

Conditions that make occupation permits effective

The selection of the Dalfort settlement as a pilot project area was justified because the inhabitants had already taken a series of community based initiatives. Community participation played a key role in the implementation of the regularisation policy.

In Dalfort, as well as in other settlements being regularised, NGOs and CBOs have advised communities concerned and provided them with technical assistance. They also play an active role in the protection of the most fragile communities against eviction.

Pressure from the population living in informal settlements, and from civil society, contributed to the adoption of the 1991 National Upgrading Programme. This aimed at regularising all informal settlements in Dakar and Pikine and in other urban areas in Senegal. At the same time, longstanding political commitment and will at government level and democratic practices are - and will be - an essential factor of success. The most recent official documents of 1998 and 1999 mention physical improvement and tenure regularisation as long-term government strategies for improving the living environment in irregular settlements. One of the main achievements of the tenure upgrading policy is the de facto recognition of most informal settlements, and a drastic decrease in the threat of eviction.

Once the technical and financial support of the German Co-operation Agency had demonstrated promising results, it was emulated by other bilateral co-operations in Senegal and contributed to the expansion of the approach from a project to a programme level and then to a national policy. NGOs such as ENDA were active contributors to this process.

Constraints

This limited achievement of *superficy* rights in the short term is due to a series of interrelated factors:

- Overcomplicated and centralised procedures
- Open opposition of central government officials in charge of land allocation and registration. The two Departments involved (Public Land and Cadastre Departments) were more concerned with the strict enforcement of land laws and regulations than with the social and economic development of informal settlements.
- Physical upgrading and the provision of basic services were slower than expected and did not meet the expectation of the populations concerned.
- Cost recovery proved to be much more difficult than expected. The great majority of beneficiaries accepted the principle of financial participation, but wanted first to see some results. This attitude, combined with the reluctance of administrations in charge of land management to deliver *superficy* rights slowed down the process.
- Replicability proved to be difficult, both for financial and technical reasons.

Comparative analysis

The tenure upgrading policy implemented in Senegal can be considered as innovative compared with the situation that existed prior to 1968. It shows that security of tenure can be effectively granted to households living in informal settlements and that the perception by people of the central government commitment and political will to embark on a large-scale regularisation policy is understood as a protection against forced evictions. Many community leaders from informal settlements are now approaching the DUA/GTZ project in order to have their settlement included in the regularisation programme.

In this perspective, the success of the DUA/GTZ project should not be measured only in terms of the number of *superficy* rights delivered. It has provided a de facto security of tenure to most households living in informal settlements that were eligible for tenure regularisation. This situation made possible the large-scale intervention of NGOs and community based associations for improving service infrastructure within the concerned settlements.

From the very beginning, the overall priority of the regularisation strategy was to regularise tenure as a prerequisite for physical upgrading and servicing. Vested interests in land are such that the proposed tenure-oriented approach was difficult to implement. Experience of more than a decade suggests that this approach could be reversed, priority being given to physical upgrading and servicing, with formal tenure regularisation coming later, when households need it and can afford it. For the time being, security of tenure could be simply guaranteed by a non-eviction commitment made by the public authorities. Further major changes are expected to come from decentralisation.

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South Africa: Are there options other than individual ownership?

Lauren Royston and Cecile Ambert

Newtown Co-op photo: Cecile Ambert

Security deatures in the Newtown project photo: Cecile Ambert

The dominant tenure option

Although alternative forms of tenure are gaining ground in democratic South Africa, secure tenure is mainly about registered individual ownership. With a history of dispossession, forced removal and deprivation of the right to own property, the social redress role of housing and land has been high on the agenda since 1994.

The election manifesto of the African National Congress promised the construction of one million houses in five years, echoing the sentiment of its constituents in urban areas. To this end an extraordinary housing delivery vehicle was set in motion – a once-off capital subsidy scheme of up to US$2100 for households earning less than US$460 per month. The nature, structure and scale of the subsidy sets the South African housing environment apart from current international trends. One of the six subsidy options on offer provides for the granting of rights other than individual ownership. However, in practice this alternative remains limited to just less than 1% of subsidies approved to date. Individual ownership dominates in housing implementation, although policy and principle promote secure tenure and the provision of tenure options.

Today, the housing subsidy scheme is the main route to secure tenure. Government views anything other than participation in the formal, programmed system of housing delivery as jumping the housing subsidy queue. Although 750,000 subsidies had been approved within the five year target time frame, the housing queues are still long as the housing budget competes with other priorities, like education and health. Private developer driven projects dominate and generally deliver uniform houses in peripheral places where land is cheap. A nationally designed, provincially administered once-off subsidy means a standard 'housing solution' – a one-roomed house, with services, on a piece of land which you own, but that may not correspond to your needs.

The preference for individual ownership appears to be linked to a history of tenure insecurity and denial of the right to own property. However, individual ownership is inflexible for households whose survival strategy includes migration. You are likely to sell your government-sponsored house, get cash in hand, turn a blind eye to cumbersome transfer procedures and ignore the fact that you are not eligible for another housing subsidy.

Alternative tenure options

In Gauteng province where conflict within families and between claimants led to the 'family title' innovation. Rather than going for group ownership through an institution, or introducing new titling mechanisms, regulations were developed to record family members as the rights' holders on a contractual basis. The regulatory provisions of the 'family title' mean that even if the rights are those of ownership, they are held by a family or jointly by spouses. This procedure may limit resale, but beneficiaries were willing to restrict their rights to dispose of the property in order to ensure continued family access to the tenure right.

Aside from family title, which is to date limited to the Gauteng transfer process, other vehicles for tenure alternatives have been developed. In recognition of communal ownership, the Communal Property Associations Act of 1996 was drafted with the intention of enabling groups benefiting from the national land reform programme to hold, manage and possess land rights communally. Communal property associations have been implemented mainly in rural communities, although urban examples exist, like the Victoria Mxenge settlement in Cape Town, a Homeless People's Federation project. While collective struggle was central to gaining the land in those

The Everest Court Project photo: Lucky Mphafudi

Bachelor flat, Everest Court
photo: Lucky Mphafudi

projects, ongoing group ownership is increasingly impeded by the planning system and red tape.

Another official option is initial ownership. This is intended to speed up the pace of formal land delivery. Although initial ownership promises easier access to secure tenure, not a single low-income housing project has taken it up, as it is seen to raise the costs of regularisation, amounting to a duplication of planning, surveying and registration procedures. Regulations generally specify that the final subsidy instalment is only paid out once individual ownership has been registered, making initial ownership unattractive to housing developers.

Co-operative housing

Group ownership of co-operative housing is the most innovative social housing option currently being implemented in an urban context, although its replicability and scale are limited. Although co-operatives have a long history and an established record in several industrialised countries with stable housing, lending and economic environments, co-operative housing models are a recent phenomenon and an important alternative to conventional housing delivery in South Africa. They have been spearheaded by the collective action of groups of tenants seeking to address unsatisfactory housing and the activities of a well-developed network of local and international non-governmental orgsnisations.

Pioneered in Johannesburg, inner city building refurbishments by Cope Housing Association, such as the Everest Court and Newtown projects in Johannesburg, have helped to ensure that the co-operative route is also applied and developed in other parts of the country and to develop new housing stock.

The co-operative model delivers secure tenure rights over good quality housing stock in areas that are well located, which beneficiaries are proud to call town-houses, a term normally used for middle-income housing stock – a viable alternative to the individually owned one-house-per-plot model that dominates the South African landscape. However, getting access to a co-operative is still not an option for the majority of poor urban households. On the one hand, co-operative housing is not being delivered at scale. On the other, co-operatives – like anything else – have particular characteristics which are not suited to everybody's needs. In a housing co-operative, your rights and obligations are stipulated in a use agreement entered into between you and the co-operative. You have the exclusive right to use the unit in which you reside, although you may not infringe on the rights of other resident members, and on the collective. For instance, although you are able in principle to sub-let your unit, you would have to obtain approval of the Board, in order to avoid conditions of over-crowding that might put a strain on services. Your right to transfer is also governed by the use agreement. If you want to transfer your rights of occupancy and membership to your children, parents or spouse, you need to obtain board approval. The use agreement also regulates obligations such as paying monthly charges, maintaining the collective parts of the development and good neighbourliness. Your tenure security derives from the transparent criteria and procedures which govern the deprivation of rights. You can be confident that eviction cannot take place without due process being followed. Membership of the co-operative is linked to occupancy which means that residents are involved in decision making – a further factor in the sense of security.

Group owned, co-operative housing enables the rights holder to get a return on his or her investment. If you are a resident member of a co-operative you are entitled to receive an exit payment when you leave the co-operative in acknowledgement of your financial contribution. If you decide to move, the transfer process is localised and simple – no costly lawyers or transfer duties and you remain eligible for an individual ownership subsidy. Perhaps most importantly, when compared with individual ownership, membership of a co-operative can facilitate your access to credit. State lending institutions see collective responsibility for repayment as alleviating the risk which banks perceive low-income households to pose. The private sector embraces the co-operative housing opportunity to develop credit-financed high quality housing and to access the full subsidy per unit instead of the income linked amounts that normally apply.

Constraints

With all these benefits, it's surprising that the co-operative movement has not carved out a greater market niche for itself. In reality, key implementation factors have contributed to the slow pace of development of the co-operative model. Co-operative housing requires substantial institutional support. In South Africa, extensive international and local donor and NGO support has been mobilised to promote housing co-operatives. This pre-condition limits wide replication of the model.

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Thailand: A level playing field in tenure

Radhika Savant Mohit

Lunchtime is a 'family and friends' affair in the Samakee Pattana community photo: Aman Mehta

Perched above a makeshift wooden balcony, children on holiday from school photo: Aman Mehta

The private land rental market

If you were a land owner in Bangkok, with a piece of property whose market potential had not peaked, or surrounding infrastructure had not yet developed, or you did not wish to develop the property for some other reason, the chances are you would allow the use of your land as a land rental slum.

Rather than occupying a plot of land illegally, the urban poor often negotiate with landowners for permission to settle on their land on a temporary basis and build temporary dwellings. Most occupants pay a nominal rent, often without legal contracts, while some have written contracts which can usually be terminated with a 30 days notice period. In some cases, a middleman rents a land parcel and, with or without the knowledge of the owner, subdivides it to rent out to even lower income households. Slum dwellers who rent from a landowner may further subdivide their house and rent it to another family, while others build single rooms for rent in a settlement.

Security of tenure perceived by these communities varies with the type of arrangement between the renters and the landowner. For example, a community with a legal contract would have higher levels of security than one where there was a legal contract, but which on expiry has not been renewed by the landowner. In such a case, while eviction may not be an imminent threat, there is an indication that the landowner might be looking to change the land use of a given land parcel. However, levels of security that are perceived within communities may or may not always be directly related to the legal status of slums. Most land rental slum communities in Bangkok have been in existence for several years with or without a contract or with contracts which have expired, or with only some members in the community possessing a contract.

Cultural influences

Social or political signals allow low-income communities to believe that they can continue to stay on their land, that legal statutory tenure is a possibility, or that tenure is secure for a period of time. Perceptions are also influenced by tradition, society and cultural values.

As a reaction to the growing informal settlements in Bangkok and their lack of security of tenure, a number of options for low-income housing developed in the city. The National Housing Authority's public housing, land-sharing schemes, resettlement schemes and low cost housing by the private sector, have all had varying levels of success with regard to improving security of tenure. It has, however, been noted that people with access to secure tenure under these arrangements often opt for alternative options with lower levels of security for a variety of reasons. Therefore none of these can be presented as comprehensive solutions for improving security of tenure for the urban poor.

Thailand's hierarchical society plays a crucial role with regard to perceptions of security. Positions within the rigid class structure are based on age, education, income levels and/or family backgrounds. Individuals of a higher class can either offer protection, or withhold the challenge or questioning of which would be considered highly inappropriate. The patronage system which prevails in most parts of Asia directly or indirectly connects the urban poor and the powers-that-be, and allows the urban poor to live and work in an informal setting with a minimum level of security in exchange for

The Samakee Pattana community

The main road into the settlement allows for lomited vehicular access photo: Aman Mehta

Many households use their house as a food stall, especially if it's located on a strategic intersection photo: Aman Mehta

This settlement community is located off Sukhapiban 1 Road in Bangkok and has been living on a plot of approximately 6.4 hectares for the past twelve years. The 498 households resicing in the area were threatened with eviction in 1996 after which, with the help of two local NGO's and the National Housing Authority, they negotiated a 21 year lease agreement with the landowner in February 2001. The time it took to achieve this agreement is testimony to the importance residents attach to obtaining secure tenure. The heterogeneity of low-income communities is significant while considering solutions for communities such as this. Not all people want a freehold title, many are renters and wish to continue to do so for a wide variety of reasons. For many, a rental agreement for a specified period of time would be highly acceptable. With location playing such a crucial role in where the poor live, security of tenure at a given place may not be extremely important when weighed against opportunities for income generation available at another location. While for poorer families, the down payment to obtain a free hold title may not be feasible.

either money and/or political support for those in power. The patron-client relationship might also provide insight into why many of the poor communities in Bangkok choose to negotiate some form of a rental arrangement, rather than squat on vacant land. This attitude is also reflected in the way evictions are handled by the slum dwellers. Many, although not all, evictions in Bangkok are silent evictions, i.e. when told to vacate the land, the slum dwellers leave without much objection.

Balancing interests

Any policy move to increase security of tenure in Bangkok for low income communities living in land rental slums under a legal framework would encourage occupation of vacant plots and also discourage land owners from renting out their land on a temporary basis. This would remove a major housing delivery system and increase the threat of evictions, as landowners try to regain their land in advance of such a policy measure taking effect.

If land rental arrangements could be formally recognised, security of tenure for these communities would be greatly improved. The National Housing Authority could then provide basic services such as water and sanitation, while for longer term rental leases other improvements can be considered. This would remove the exploitative forces within and outside a community and allow the landowner to feel secure about regaining his property.

In the developing world, especially Asia, where there is a magnitude of problems as well as large numbers of people, where the lines between legal and illegal are blurred, where issues are influenced by politics, culture, values and an accepted way of life, a middle path, in this case not looking for freehold land titles, but lease arrangements of varying time periods, can be far more successful in solving problems. Land rental slums offer an opportunity, if the authorities play a facilitating role, to improve security of tenure for the urban poor for a given period of time.

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Turkey: Legality and legitimacy of tenure

Murat Balamir

Legality and legitimacy

Land and housing tenure in Turkey is an issue of legitimacy, rather than legality. From the late 1940s, massive numbers of rural migrants flooded into the primary cities. Their housing needs could not be met by local administrations or the market system. However, civil regulations of Islamic law (Shariat) and later legislation (Mecelle, 1869) under centuries of Seljuk and Ottoman rule, allowed tenure on land based on needs and local approval. As long as nobody objected in the neighbourhood, constructional needs could be immediately fulfilled. If conflicts arose, decisions of local judges (Kadi) provided the final decision, relying on convictions of legitimacy rather than the rules of some universal law. As transformation from 'subject-ship' to 'citizenship' was maintained in the individuals' status with the Republic, so tenure issues based on local legitimacy acquired formal legal status. The new system of property rights were described in Civil (Roman) Law adopted in 1926.

This historical legacy, and the assumptions of the Republic's modern laws, thus pointed in different directions. With the authorities incapable of meeting housing needs, the immigrants settled and built informally. Means of avoiding the costs of formal housing were devised and soon adopted throughout the country, generating a political milieu conducive for revising existing laws. The contemporary history of urban living in Turkey is thus a history of innovative informal tenure rearrangements, and their adoption into the legislative body proper. At least three major tenure systems were devised anonymously since the early 1950s.

Processes of appropriation

Direct appropriation and spontaneous occupation of public (or private) land is the most common form of violation of the Civil Code and Development Regulations. This usually implies the immediate completion of construction work to avoid outright eviction. Once occupied, the *gecekondu* ('built-overnight') provides the dweller some security of tenure, even if a court decision is taken for eviction. At its peak, half of the population of the three metropolitan cities lived in *gecekondu* buildings. A second step in securing tenure is the regular payment of property taxes, which provides evidence for *de facto* use and enjoyment of property, and credits the owner of occupation, an initial step to freehold (Box 1). Payment of property taxes also facilitates the provision of public infrastructure and services. Such services are rendered particularly widely at times of elections. In the more recent cases of direct appropriation, intermediaries (ranging from community leaders to despots) have emerged, who (at the expense of removing all freedom) organise the process, making it a profitable business.

Processes of apportionment (shared-ownership)

A second alternative for individuals, who tend to start their housing careers with relatively greater security of tenure, is to purchase a land-share. Individuals co-operate in buying a large tract of land and share it informally (Box 2). A share in peripheral urban land, serves to avoid the exorbitant costs in more central locations. Subdivisions of such lands are prohibited, however, by planning regulations designed to avoid scattered development. In such cases, a subdivision plan is prepared by the landowner or a real estate developer and private agreements are drawn up between individuals, providing them with formal share-titles together with informal allocations of land. Since private subdivisions are illegal, it is not possible to obtain building permits. Development in shared ownership is therefore a double offence. Depending on the individual's access to capital, building activities could start as a *gecekondu*, a modest single house to be modified later with extensions, or as a substantial multi-unit block. Often the latter replaces the simpler buildings, as the city grows and property prices increase. Even though subdivision plans and constructional work are both unauthorised, holding a share-deed provides greater security than in *gecekondu* on appropriated land. Persistent lobbying puts pressure on the local authority to ratify the subdivision plan. A High Court decision in 1975 confirming shareholders' disposal rights on specific locations of the jointly-owned land is often exploited. Recent regulations provide the avenues to freehold status in land and buildings and are applicable for cases of both appropriation and apportionment. With revisions in local plans accommodating higher densities, renewal processes are facilitated, leading to freehold titles for share-owners in apartment blocks.

Processes of appurtenance

Multi-unit residential blocks represent 85-90 percent of all urban residential investments in Turkey, and are constructed through the co-operation of entrepreneurs, landowners, and partner households. Sharing of the appertaining parts of a building is described by an easement. The landowner receives 25-50 percent of the prospective building, depending on the value of the land. The entrepreneur recovers the costs and profit from the sale of the remaining apartments. Capital for substantial investments and the acquisition of otherwise expensive freehold land are thus ensured. The Civil Code only tolerates such easements however, for ten years. Following this, any of the shareholders could go to court to terminate the joint-ownership. The courts usually decide to unify ownership, favouring the partner with the largest share. After decades of illegal tenure, the 'Flat-Ownership Law' (1965) allowed freehold tenure in 'independent parts' of buildings, describing the obligations of shareholders in the management of buildings. Flat-ownership is the final stage for the other two processes. Although freeholds in separate flats constitutes the essence of the system, this type of

Panoramic view of MÇ's *gecekondu* in context (see Box 2)

development is responsible for the generation of a mosaic of tenures, harbouring tenants as well as owner-occupiers in a symbiotic existence.

Tolerance breeding injustice

Administrations are tolerant to the extent that they are often accused of populism. Apart from the historical and cultural 'background legitimacy', the survival circumstances of the migrants generate a 'legitimacy of existence'. The longer their presence in an area, the stronger is their 'acquired legitimacy', and administrations refraining during this period from carrying out the legal requirements warrant a 'latent legitimacy'. Migrants as voters have a 'political legitimacy', and with the existing real market exchange values and the likely future recognition of tenure rights there are grounds for a potential legitimacy'. Irrespective of how laws are encroached, in efforts of minimising costs of land and housing, local and central authorities ignore most of the offences and prefer to legalise the consequences. Decisions on eviction or demolition are politically non-rewarding. Media and public opinion as a rule support the victims. In practice, individuals are seldom prosecuted for this kind of offence, and mass evictions are not observed unless unauthorised developments are in the way of some public project, protection zones of reservoirs, archaeological sites, etc.

About a dozen laws have been enacted since 1948 that in various ways condoned informal tenure and development offences. Law 2981 (1985) provides regularisation, by allowing higher densities in local renewal plans both for gecekondu and other unauthorised development. This is not only a process of securing tenure, but also a benevolent donation of development rights, terminating in blocks of flats wherever demand justifies, and provides freehold dwellings to the original illegal occupiers of land.

Successful though the evolution of various types of tenure and their adoption into the legal system have been, the injustices inflicted on law-abiding households, and the dramatic variations in opportunities exploited by the various factions of the poor themselves, pose major social problems. Depending on where demand for more intensive development originates, some households could acquire several apartments and others could only console themselves with the freehold of what they appropriated some decades ago. Yet it is the *gecekondu* tenants that are most severely punished in this transformation. Poorest of all, the tenants are evicted in the process and have to move to other *gecekondu* areas of lower quality, but higher rents. It is therefore the differential nature of benefits generated that needs be monitored. The other detrimental consequence of the overall process is the often-ignored social objectives of local urban plans.

Although the official discourse has always discouraged illegal status in the formation of unauthorised developments, the tenure policy in Turkey has generally favoured the poor. There may be much to learn from this experience of devising various innovative tenure forms and their inclusion into the regular system, which not only involved the urban poor but all income groups.

Box 1 **A case of appropriation**

SS's *gecekondu* with his dustbin denoting municipal recognition, even though the settlement is still illegal

The garage-shed has been taken down by the municipality inspection teams more than ten times!

A low level public functionary for 24 years, SS moved to Ankara in 1996 at the age of 45. Upon arrival, he immediately built a *gecekondu* close to his brother-in-law, who has been in Akesmsettin Mamak since 1988, an area recently favoured by *gecekondu* builders. He did not pay anyone for the land, and does not know whether it belongs to a person or the State.

It took only a couple of days for him to construct four walls and a roof, hiring a carpenter for a day. He paid for all building materials though, on a short-term consumption credit (US$1400) borrowed from a bank, with a reference from his employers. When the foundations were laid, the municipal inspectors spotted him and demolished his work. "If one is determined however, one finds the right relations and persons, and gets over such barriers".

He now lives in this two-room 75m² *gecekondu*, with a garden of about 100m² surrounded by poplars. SS is content with his home, even though he considers it "a bit distant from the city". He has not yet applied for a certificate or title, but still he will not refrain from making further investments so long as he lives there. He is confident at some stage he will be eligible for the freehold. With a net monthly income of US$200, the family does not own a car, but the household items include a colour-TV, telephone, computer, refrigerator, automatic washer, dish-washer and vacuum-cleaner. Currently, his wife is abroad, his veterinary son is doing military service, and his daughter is attending university.

No infrastructure existed when they moved in, but piped water was available the following year. Unauthorised use of electricity is extensive in the area, usually with further networking from someone who already has an unauthorised connection. Electricity becomes available soon after piped water is formally metered. SS has been duly paying all taxes since connections to networks have been made. Even without titles, he believes that his *gecekondu* at its current state could sell for US$7-8,000. "Living free is worth all that and there is always the potential for freehold in land, and at least a flat at the end of the process."

Box 2 **The tolerated success of shared-ownership**

MÇ's *gecekondu* from front entrance

Shed in yard of MÇ's *gecekondu*

MÇ's life story is similar to thousands of others, a dramatic transformation from a background of stable and stagnant rural life, into a track of life with many risks, options and indefinite consequences in the city. Now 66, he lives in Öveçler Ankara, with his wife and one of his three daughters.

A bachelor when he first came to Ankara in 1951, he lived as a *gecekondu* tenant for five years, sharing a room with two other villagers. Having had his primary schooling back in the village, he initially worked wherever he found a job, in a bakery for a year, but mostly in the constructional sector where he learned how to install electrical systems.

Having completed his military service (1956-1958), he went back to the village and married. The family settled in Atıtbey, Ankara as a *gecekondu* tenant. MÇ continued his career in the construction sector which enabled him find a job as an electrical technician when one of the universities recruited him in 1969 through examinations. In 1959, he bought land with a relative, first in Solfasol then in Öveçler where he now lives. Both were informally shared. For 600m² of private agricultural land outside the municipal boundaries, he paid about US$1/m². He was informed of the availability of this land through his countrymen already settled in the area. MÇ himself worked with friends for about a week in the construction of two rooms and an entrance hall. At the stage of foundations, municipal inspection teams interfered. He managed to complete the *gecekondu* and move in though, living there for ten years. This was later replaced in stages, by the current two-storey concrete building, all financed by savings.

Until 1990, he had two cows and chicken in the shed in his yard, and sold milk to neighbours for 13 years. At the moment, they seem to be well-off with around US$700 net monthly income, rental from his wife's flat and the daughter's salary, the other land in Solfasol maturing for development, and the daughter's Skoda Favorit at the parking lot. In 1998 MÇ built a small house in the village, where the family spends the summer months. He is active in the Örenkoy Citizens Association, paying US$1a month.

In the early years, Öveçler had no infrastructure. Water had to be carried from the communal tap, and long walking-distances to public transportation were common. Roads, piped water, energy lines, and waste water systems were provided in 1965. After 1980, the telephone became available. The administration did not seek legal rights or titles in the provision of these services.

The Improvement Plan for the area was prepared according to Law 2981, and has been in effect since last year, and as more and more share-owners arrive with agreements, construction started for blocks of flats. MÇ has been regularly paying municipal and property taxes, and applied for the freehold. He is critical of the plan for its allowance of identical rights to individuals who have illegally appropriated public land, unlike his rightful purchase of land from a private owner. MÇ's land of 240m² was reduced to 130m² in the process, which is considered to be equivalent to a flat. This equity is transferred to a plot subject to development in joint-ownership with eight other owners. Even if this right is purchased by others, it should comfortably provide him with a decent flat. Beginning with a total disregard of the existing legal system, gradually building up legitimacy and equity, this is the final stage of 50 years of determination and entrepreneurship.

Further information

Balamir, M (1999), 'Formation of Private Rental Stock in Turkey', *Netherlands Journal of Housing and Built Environment*, Vol 14, No 4, pp385-402

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Land rites

Innovative approaches to secure tenure for the urban poor

This media pack contains the following examples of innovative approaches to secure tenure for the urban poor:

BENIN	**Combining customary and statutory tenure**
BOLIVIA	**The 'anticretico' tenure system**
BOTSWANA	**The Certificate of Rights in Botswana's land market**
BRAZIL	**Tenure policies, urban planning and city management**
BURKINO FASO	**Social practices and innovative tenure systems**
COLOMBIA	**Security and services could be more important than titles**
EGYPT	**Tenure by weight of numbers in Cairo**
INDIA	**Tenure security and environmental improvement in urban slums: The cases of Delhi and Ahmedabad**
KENYA	**Community land trusts and other innovative tenure systems**
PERU	**Entitled to be titled**
RUSSIA	**Housing tenure change in the transitional economies**
SENEGAL	**Achievements and limitations of large scale tenure regularisation**
SOUTH AFRICA	**Are there options other than individual ownership?**
THAILAND	**A level playing field in tenure**
TURKEY	**Legality and legitimacy of tenure**

Health warning!

It is not claimed that the examples of innovation reviewed in this media pack have resolved all problems of insecure tenure in their respective cities, or that they are applicable in other cities or countries without some modifications. What is claimed is that they have provided greater security and official recognition than existed before and a breathing space for the urban authorities until they are able to expand the administrative capability to adopt more formal approaches. This will enable land registries to be updated, surveys to be carried out and public debate to influence official tenure policy. In countries where attitudes to land regard it as a resource to hold in trust for future generations, rather than merely a commodity to be traded like any other, this will provide a chance to evolve locally appropriate responses to the pressures of globalisation and commercialisation.

Related material

A book containing more information on the issues and examples covered in this media pack is being prepared for publication in late 2001. A documentary film entitled *Land Rites* is being transmitted on BBC World television in June 2001. Details of the project can also be found at: **www.gpe.org.uk.**

Feedback

If you have any questions or comments on the contents of this media pack, please contact:

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Acknowledgements

Particular thanks are due to Michael Mutter and Andrew Preston (Infrastructure and Urban Development Department, Department for International Development, UK), William Cobbett (Acting Director, Global Campaign for Secure Tenure, UNCHS), Sylvie Lacroux (Co-ordinator, Land and Tenure Unit, Shelter Branch, Global Division, UNCHS), Chris Williams (Policy Co-ordinator, Global Campaign Secretariat, UNCHS), Jandi Boston (Television Trust for the Environment, TVE) and Jeremy Brook (graphic designer, UK).

DFID Department for International Development

Design Graphic Ideas. Printed by Hastings Printing Company