HOLDING ON

Security of Tenure: Types, Policies, Practices and Challenges

Research paper prepared for the

United Nations Special Rapporteur on Adequate Housing

By

Geoffrey Payne and Alain Durand-Lasserve

Geoffrey Payne and Associates

October, 2012

Table of Contents

Acknowledgements

1. INTRODUCTION AND BACKGROUND

Access to secure land and housing is a precondition for reducing poverty, yet many millions of people live under the daily threat of eviction, or without sufficient security to invest what they have in improving their homes. As a recent UN-Habitat/UNESCAP report (2008:Vol3:1) noted, "Without land, there can be no housing. And without looking at the issue of land, there can be no meaningful discussion about how to solve the problems of housing for the poor in our cities. The inaccessibility of decent, secure, affordable land is the major reason why there are so many slums in Asian cities and a contributing factor to urban poverty".

While the number of slums dwellers worldwide is estimated with relative accuracy (from an estimate of 924 millions people in 2001 (UN-Habitat 2003 c) to a figure of 828 millions in 2010 (UN-Habitat 2011e:33) (depending on definition criteria), the number people exposed to insecurity is not so easily measured.

Non-empirical evidence suggests that between 30 per cent and 50 per cent of urban residents in the developing world lack any kind of legal document to show they have tenure security. Development agencies, academics and practitioners in urban issues concur that informal growth has become the most significant mode of housing production in cities of the developing world. In fact, gaining access to housing through legal channels is the exception rather than the rule for most urban poor households. In many cases the majority of inhabitants live with tenure systems that are "informal", which means that their occupation of land and/or housing is either illegal, quasi-legal, tolerated or legitimized by customary or traditional laws, which can either be recognized or simply ignored by the authorities. Slums – the generic term used to classify informal, illegal or unplanned settlements – are the invisible "zones of silence" on tenure security. (UN-Habitat, 2006: 92-93).

This situation is explained by the fact that, the concept of security of tenure often refers to a perception, a subjective appreciation of a tenure status in a given time and place, by both people concerned, observers, decision makers and experts. It depends also on policy and political factors that may evolve rapidly overtime. Methodological attempts to overcome this problem have so far achieved limited results (UN-Habitat 2011g).

The centrality of the issue of legal access to land is stressed in another, earlier, UN-Habitat report (1997) which noted that "Legal access to land is a strategic prerequisite for the provision of adequate shelter for all and for the development of sustainable human settlement affecting both urban and rural areas. The failure to adopt, at all levels, appropriate rural and urban land policies and land management practices remains a primary cause of inequity and poverty. It is also the cause of increased living costs, the occupation of hazard-prone land, environmental degradation and the increased vulnerability of urban and rural habitats, affecting all people, especially disadvantaged and vulnerable groups, people living in poverty and low income people".

Assessing the nature and scale of the problem is fraught with difficulties of definition as well as measurement. All attempts to estimate the number of people globally who suffer from insecure land tenure and restricted property rights have proved unsuccessful. This is because tenure security is partly a matter of perception and experience as much as a legal issue. Even reaching an agreed definition of terms has proved challenging (UN-Habitat 2011, State of the World Cities, 2010-2011)[1]. What is not disputed, however, is that the problem has raised alarm bells within the

---

[1] "A slum household consists of one or a group of individuals living under the same roof in an urban area, lacking one

community of professionals engaged in seeking to manage the process of transforming a predominantly rural world into a predominantly urban one.

Unfortunately, governments have failed to keep pace with the challenge of urbanization and urban growth in ways which enable the majority of people on low incomes to meet their basic needs, including tenure security. These predominantly low-income groups are increasingly unable to afford access to formal housing and now represent a large and increasing proportion of total urban populations. Evidence worldwide suggests that there is a close relationship and interaction between slums and tenure insecurity. Although tenure security is still considered as being one of the indicators for slums, it is not utilized in slum estimates produced to date, due to the lack of globally comparable data. It is considered less measurable than other indicators such as adequate access to water and sanitation, the structural quality of housing and overcrowding (UN-Habitat, 2010-2011:33). However, UN-HABITAT and partners are making progress in developing a methodology consistent across countries and regions to measure this indicator (E. Lopez-Moreno, 2012)

High land prices, inappropriate regulatory frameworks, bureaucratic inertia and political exploitation invariably conspire against guaranteeing land tenure. Mistaken confidence that there is a simple solution to such large and complex problems has also contributed to the failure by governments and international agencies to address the diversity of legal, cultural, economic and political systems within which land tenure and property rights operate.

This review summarises the issues involved in addressing tenure security. It offers a framework for understanding the nature as well as the extent of tenure security, describes some methods people use in order to meet their basic needs for secure shelter, identifies the main actors involved and reviews policies and practices which claim or seek to address tenure security. In doing so, it reports on many studies and published sources, but also draws on extensive personal experience.

1.1   What is land tenure?

Any discussion of land tenure and property rights needs to recognise the importance of cultural, historical and political influences, as well as those of technical and legal systems. Each of these influences results in subtle differences in the way key terms and relationships are defined.

Inevitably, given the fundamental nature of the issue in human relations, many definitions of land tenure exist[2]. The Global Land Tool Network at UN-Habitat[3] defines land tenure as "the relationship, whether legally or customarily defined, among people, as individuals or groups, with respect to land". A more detailed definition is provided in an earlier UN-Habitat report (2008:5) defines it as "the way land is held or owned by individuals and groups, or the set of relationships legally or customarily defined amongst people with respect to land. In other words, tenure reflects relationships between people and land directly, and between individuals and groups of people in

---

or more of the following five amenities: (1) durable housing; (2) sufficient living area (3); access to improved water; (4) access to improved sanitation facilities and (5) secure tenure (de facto or de jure secure tenure status and protection against forced eviction). Since information on secure tenure is not available for most countries included in the UN-HABITAT database, however, only the first four indicators are used to define slum households, and then to estimate the proportion of the urban population living in slums".

[2] The French verb "tenir" means "to hold"; "tenant" is the present participle of "tenir."

[3] http://www.gltn.net/index.php/land-tools/access-to-land-and-tenure-security/introduction-to-land-rights-records-a-registration

their dealings in land". This definition is the one used in this review as it is not only clear and comprehensive, but also makes a clear distinction between land tenure and property rights, which are defined as "recognised interests in land or property vested in an individual or group and can apply separately to land or development on it (e.g., houses, apartments or offices). A recognized interest may include customary, statutory or informal social practices which enjoy social legitimacy at a given time and place". More basically, therefore, tenure relates to the means by which land is held and property rights relate to who can do what on a plot of land.

Land tenure should primarily be viewed as a *social relation* involving a complex set of rules that affects the way that land is owned and used. While some users may have access to the entire 'bundle of rights' with full use and transfer rights, other users may be limited in their use of land resources (Fisher, 1995). The exact nature and content of these rights, the extent to which people have confidence that they will be honoured, and their various degrees of recognition by public authorities and the concerned communities, have a direct impact on how land is used (UN-Habitat, 2003b).

Property rights may vary within, as well as between, tenure systems. It is therefore possible to have a high level of security, but restricted rights to use, develop or sell land, or a limited level of security, but a wide range of actual rights. The exact nature and content of these rights, the extent to which people have confidence that they will be honoured, and their various degrees of recognition by the public authorities and communities concerned, will all have a direct impact on how land will be used.

It is important to note that the level of rights can be altered by a series of restrictions concerning the use of the land, which must conform to planning rules, development and construction norms and standards, and the type of development specified in the contract or agreement between the owner and the user of the land. The level of rights may also depend on the period of time for which rights are agreed upon and whether they are renewable and transferable. Finally, the degree of formality in rights agreements or lease contracts can affect the level of rights as they can range from informal unwritten agreements to formal contracts between land owners and occupants (leaseholds). Customary agreements can also provide various levels of rights depending on the local legal and regulatory framework.

1.2   What is tenure security?

Secure tenure is the right of all individuals and groups to effective protection by the state against forced evictions, i.e. under international law, "the permanent or temporary removal against their will of individuals, families and/communities from the home and/or the land they occupy, without the provision of, and access to, appropriate form of legal or other protection".[4] According to UN-Habitat (2004:31), *security of tenure* describes "an agreement between an individual or group to land and residential property, which is governed and regulated by a legal and administrative framework (the legal framework includes both customary and statutory systems). Security of tenure derives from the fact that the right of access to and use of the land and property is underwritten by a known set of rules, and that this right is justiciable. The tenure can be affected in a variety of ways, depending on constitutional and legal framework, social norms, cultural values and, to some extent, individual preference. In summary, a person or household can be said to have secure tenure when they are *protected from involuntary removal from their land or*

---

[4] Committee on Economic, Social and Cultural Rights, General Comment No.7: The right to adequate housing (Art.11.1): forced evictions, para 3.

residence by the State, except in exceptional circumstances, and then only by means of a known and agreed legal procedure, which must itself be objective, equally applicable, contestable and independent". In order to take into account *the perception of tenure security* by people and communities, UN-Habitat expands the definition of tenure security by incorporating in the definition the degree of confidence that land users will not be arbitrarily deprived of the rights they enjoy over land and the economic benefits that flow from it (Bazoglu & UN-Habitat 2011:5). This is discussed in more detail in section 2.5 below.

Insecure tenure covers a wide range of situations, from illegal occupation to various forms of tolerated occupation, as well as occupation legitimized by customary practices but not considered as legal by government or local authorities. In extreme cases, it may include land or property which could be subject to claims for legal recognition, but where such status has not been officially recorded or where the adjudication of claims has been denied. It also affects vast numbers of people. "Estimates suggest that between 30% and 50% of Asia's urban residents lack any kind of legal tenure document which entitles them to occupy that land. In cities like Mumbai, Karachi, Manila and Dhaka, the proportion of people living without any form of tenure security in informal settlements is already much higher than the proportion of those living on formally-accessed land" (UN-Habitat 2008:3).

1.3   Insecure tenure and evictions

Eviction can be considered as the most detrimental manifestation of tenure insecurity for the urban poor, but it is not the only one: tenure insecurity impacts also on access to services, access to credit, vulnerability to risks and other hazards.

Although there is a tight link between tenure insecurity and eviction, (eviction takes place in settlements that do not enjoy security of tenure), insecurity does not systematically result in evictions, which are more influenced by political factors than by the tenure and occupancy status of the land. Many cities where communities do not have secure tenure are not threatened by evictions. If, according to the UN-Habitat definition, security of tenure requires the "effective protection by the state against forced evictions", it must be stressed that this protection usually remains at the discretion of authorities.

Insecurity of tenure and related risks of eviction can be aggravated by political factors (threats of eviction of politically hostile communities), social stigmatization of poor communities, non-compliance with planning and construction norms and standards, and market pressure (demand for land impacts on land values in all land delivery channels[5]).

However, a series of other factors can reduce the risk of eviction when security of tenure is not legally guaranteed: political will at the highest government level; perception of political risks for governments (threat on influential communities or the threat of protests if a high number of

---

[5] Land delivery refers to the procedures and processes through which urban stakeholders have access to land. Each type of land delivery – or *land delivery channel* – is characterized by (i) its organization and steps observed in the delivery process (from initial conversion of non-urban land into urban land to the occupation of the developed land by its final user), (ii) the actors involved in the delivery process, and (iii) the tenure held over land, land values (whether market or non-market based), services provided (esp. water and electricity). In Western and Central African cities, three main types of land delivery channels coexist: (i) customary and informal ones; (ii) formal private ones; (iii) public and para-public ones. The two first types of land delivery channels involve transactions. In the third type, land is allocated by central or local government institutions to selected beneficiaries at administrative prices and does not involve transactions. However, publicly allocated plots are often sold out onto the market in a later stage.

households are exposed to eviction); political protection or patronage; capacity of communities concerned to protect themselves (cohesion, self-organization, solidarity); support from civil society organizations and human rights organizations at national and international levels; intervention of national and international NGO, commissions, coalitions and federations; and recommendations and guidelines by international aid & development agencies (UN, and bilateral; restrictions put by the World Bank[6]).

2. OVERVIEW OF EXISTING FORMS OF TENURE

2.1. Why tenure and tenure security are important

The ways in which a society allocates title and rights to land is an important indicator of the nature, character and organization of that society, since rights to land can be held to reflect rights in other areas of public life. There are therefore as many systems of land tenure as there are societies. Naturally, societies which place a great deal of emphasis on communal interests will reflect this in the forms of tenure which are officially recognised, whilst those which give priority to the rights of individuals will encourage private tenure systems.

Each type of tenure system has advantages and limitations. Under public land ownership, the state assumes responsibility for ensuring access to secure land and housing for all, though often at the cost of bureaucratic inertia, clientelism and corruption, whilst customary tenure ensures access to all within the community, but has become subject to commercial pressures that have often eroded the social cohesion from which it derived its legitimacy. Private tenure systems have, in principle, the benefit of transparency and efficiency provided they are backed by an effective land governance and administration framework, but have proved weak in enabling the poor to obtain land and shelter.

Despite the diversity of concepts, categories and practices regarding land tenure, it is clear that globalization has tended to reinforce statutory tenure systems based on Western preoccupations with the rights of the individual. Those unable to meet the terms and conditions imposed by commercial land markets offering individual titles are therefore forced into various non-formal solutions. Initially, most of these consisted of illegal occupations of land, either through squatting, usually of government owned urban land, including on the public and private domain of the State, but as this supply of land ran out, people purchased plots of undeveloped or agricultural land on the urban fringe from land-owners and farmers, and developed the land. Such sales are usually legal (sale agreement passed before witnesses or deed of sale authenticated by notaries), but the construction of a dwelling unit may not be permitted because the land is not zoned for residential development. Later still, these processes became commercialised and entry was only possible at a cost determined by the informal market (Payne 2002:5).

Access to secure and affordable land is a pre-condition for social and economic development and for human dignity. The denial of such access has been a major cause of human conflict throughout history and as populations increase and concentrate in urban centres, the potential for such conflict inevitably intensifies. At the same time, when access is provided, the potential for social and economic progress is immense. The stakes are therefore extremely high and the responsibility on policy makers is daunting. Understanding and managing the dynamics of urbanization and

---

[6] Operational Manual 4.12 of the World Bank on Involuntary Resettlement, World Bank, 2001.

addressing issues of secure land tenure are therefore critical elements in any developmental strategy to contribute to lift people out of poverty (UN-Habitat 2003a:xxxii).

Empirical studies carried out in low- and middle-income cities over the last decade indicate that security of tenure is also one of the most effective tools for alleviating poverty in slums (Millennium Project 2005:48-51). The lack of secure tenure constrains the prospects for economic development in several ways. For example:

- People living in fear of eviction are less likely to realize their full potential as workers or as citizens are unlikely to invest in improving their homes and neighbourhoods;
- External investment and improvement of other services such as water and sanitation is likely to be reduced; and
- Excluding a significant portion of urban households from legal shelter reduces the prospects of a city's economic development (UN-Habitat/UNESCAP 2008:3).

2.2 Existing tenure systems

Land tenure systems determine who can use what resources for how long, and under what conditions. In a given jurisdiction the land tenure system comprises the set of possible bases under which land may be used. This range encompasses both rural and urban tenures and includes ownership, tenancy and other arrangements for the use of land (FAO 2003).

The dynamics of tenure regimes indicate a decline in state property regimes (economic liberalization, and privatization of land delivery channels), the accelerated vanishing of land of open access regimes (demographic and market pressures on rural land), and a regression/adaptation of common property regimes in urban and peri-urban areas.

All categories of land tenure exist within a number of *primary tenure systems*, each of which corresponds to major social and political systems, such as customary/traditional, socialist/communist, religious or market economy[7]. Of course, whilst such broad distinctions help to clarify the nature of variations, in practice, there are many cases where legal plurality exists, such as when statutory tenure categories based on market economies are superimposed upon customary regimes when urban areas expand into adjacent rural areas. Nonetheless, it is important to identify the essential characteristics of each primary tenure system. These include the following:

Statutory tenure systems
These are tenure categories established by law or statutes. They consist of two main types: Private and public tenure systems, though it also includes a range of collective tenure categories.

Private tenure vests ownership in the hands of individuals, companies or non-governmental organizations. It is largely an imported concept in developing countries and is generally concentrated in urban areas, where it was designed to serve the interests of colonial settlers. As such, it may co-exist with other indigenous tenure systems, such as customary tenure, as in the Solomon Islands, Lesotho and Papua New Guinea. The system permits the almost unrestricted use

---

[7] This categorization overlaps the country-specific *typology of land tenure* that has been established during the implementation of the LGAF: it distinguishes (i) Public ownership/use, (ii) Private ownership/use and (iii) Indigenous and non-indigenous community tenure.

and exchange of land and is intended to ensure its most intense and efficient use. Its primary limitation is the difficulty of access by lower income groups, since markets allocate assets to the highest bidder.

Public tenure systems operate in countries within which all land is owned by the State. Whilst all countries acknowledge the concept of public land ownership to some degree through the right of eminent domain[8], in some, (eg Ethiopia, Cuba, Vietnam) all land is vested in the state and allocated according to officially determined priorities. The concept of public land ownership is largely a reaction to the perceived limitations of private ownership in that it seeks to enable all sections of society to obtain access to land under conditions of increasing competition. Although it has frequently achieved higher levels of equity than private systems, it has rarely achieved high levels of efficiency due to bureaucratic inefficiency, or systems of patronage and clientelism.

Within statutory tenure systems, examples also exist of collective categories. These include housing cooperatives set up by a group of persons who apply for land or purchase land on which to develop a housing project. They can also be allocated a land held under the name of the cooperative until the project is completed. Cooperatives are organised for the collective benefit of their members. All land and property is held communally and sales or transfers are made with the agreement of other cooperative members. Another collective tenure category is that of Community Land Trusts (CLTs), which are non-profit, community-based organizations run by volunteers that develop housing, workspaces, community facilities or other assets to meet the needs of the community, are owned and controlled by the community. Communal forms of tenure may also be temporary in nature as a form of transition from collective to individual tenure status. For example, in urban and peri-urban areas in Benin, where occupants have only a land sales agreement, or a temporary permit to occupy, the whole area is first registered under the name of the State. The State title is then shifted to the land association set up by resident (presumed proprietors, Association d'Intérêt Foncier). After they have been individually recognised as "proprietors", residents are delivered a "land title".

Customary tenure systems
Customary land "ownership" refers to the communal possession of rights to use and allocate agricultural and grazing land by a group sharing the same cultural identity. A single person usually administers on behalf of the group. Decisions - made on a consensual basis - must comply with the cultural tradition of the community concerned. The extent of the rights to use the land depends on the agreement passed between the customary community and the person receiving the rights. Within the group, social institutions defend or protect these rights against other claims regarding the land.

Land use, transfer, development and inheritance are traditionally managed according to communal needs rather than through payment, though some form of token amount (eg. beer money, cola nuts, or cattle) is often extracted as a sign of agreement. In some customary systems, land is regarded as sacred, and man`s role considered to be one of stewardship, to protect the interests of future generations. This is found in most parts of Africa, the Middle East, Melanesia and (once upon a time) North America. It evolved from largely agricultural societies in which there was little competition for land, and therefore land had no economic value in itself, but where survival was often precarious and depended upon careful use of the land to ensure ecological sustainability.

---

[8]Eminent domain, is the right of the state to acquire private property. It is usually reserved for cases where land is required in the public interest, such as for public facilities, highways, or national defence.

During the past two decades, customary land management practices have undergone various adjustments (Toulmin and Quan, 2000). In most countries, they have proved to have a surprising capacity to adapt to the new economic and social context introduced by the globalization of national economies and to the rapid spatial expansion of urban areas.

Although customary tenure is widespread in rural areas, in urban areas, customary land delivery in the strict sense of the term does not operate according to this model. It still survives at the periphery of most African cities, but it has been progressively eroded during the colonial and post-colonial period: urban expansion has generated commercial pressure in peri-urban areas held under customary tenure. Recent empirical observations suggest that it is being replaced by a combination of reinterpreted customary practices with other informal and formal practices.

These forms of adaptation have been observed by Durand-Lasserve and Mattingly (2003) in sub-Saharan African cities. Excluded from formal government and private sector land delivery systems, those who are poor in the cities of sub-Saharan Africa increasingly take shelter on urban land through other means. Many do this through transactions derived from traditional rural customs of land management. However, rather than allocating a right of use on communal lands, customary owners at the periphery of cities are selling plots of land for housing. Though such informal transactions are rarely legalized, (although they are frequently tolerated by governments), they are accepted by the social networks within which the parties concerned live. These new customary processes – which blend pre-colonial land management procedures, low-income household strategies for securing access to land, and the production of informal settlements, have their own actors and procedures (Durand-Lasserve, 2005, pp.169-173).

Religious land tenure systems

In some societies, land is owned and managed by religious authorities, as in many Islamic countries. There are four main categories of land tenure within Islamic societies. *'Waqf'* land is land 'held for God', whilst *`mulk'*, or private lands, are also protected in law; *`miri',* or state controlled land which carries *`tassruf'* or usufruct rights, is increasingly common, whilst *`musha',* or communal lands, are gradually ceasing to be a major factor under the requirement by land registries that ownership of land parcels has to be proven[9]. The religious foundations of the *Waqf* hold substantial areas of land in some cities, notably Baghdad and Beirut, which are protected from legislative encroachment[10]. Because they cannot be repossessed, *waqf* lands become an impediment to urban renewal and efficient land management.[11]

Within each of these primary tenure systems, a number of tenure categories exist (see Annex A for some common examples). These include various types of shared ownership, such as cooperatives, shared equity and condominium ownership. In addition are a number of tenure categories that do not enjoy full legal status. These include regularised and un-regularised squatting, unauthorised subdivisions on legally owned land, various forms of unofficial rental arrangements and developments which are on legally owned land, but developed without official documentation or approval.

Any accurate analysis of existing tenure arrangements needs also to recognise that several tenure categories may co-exist on the same plot, as in Kolkata, where `*thika'* tenants rent plots and then sublet rooms to others who sub-let beds on a shift system, with each party entitled to certain rights. Some of these non-formal categories, such as squatting, started as a response to the

---

[9] United Nations 1973:Vol V:37.
[10] United Nations 1973:Vol V:37.
[11] United Nations 1973, Vol V:2, UN-Habitat 2008:10.

inability of public allocation systems or commercial markets to provide for the needs of the poor and operated on a socially determined basis. However, as demand has intensified, even these informal tenure categories have become commercialised (see Payne 1989:24, for examples), so that access by lower income groups is increasingly constrained. Despite this, various types of informal tenure arrangements represent the most common urban tenure category in many countries and accommodate the majority of lower income households. They are also often expanding more rapidly than any other category (Payne 2001:418).

The range of tenure categories to be found within a given context may therefore include a wide range of legal, semi-legal and non-legal categories, each of which serves different sections of demand or the needs of different socio-economic groups within the population. Some categories may exist under different tenure systems. For example, public rental, co-operatives and various non-formal categories can be found under both public and private tenure regimes. Table 1 identifies the key tenure types and summarises their characteristics, advantages and limitations.

Table 1: Tenure categories and their characteristics

Tenure categories	Characteristics	Advantages	Limitations
Freehold	Ownership in perpetuity. This is found in all market economies at different levels of economic development, including transition economies in eastern Europe.	Provides a high degree of security. Freedom to dispose, or use as collateral for loans. Maximises commercial value, enabling people to realise substantial increases in asset values.	Costs of access can be high. Collateral value may not be relevant if incomes are low/financial institutions are weak. Property values can go down as well as up and may trap the unwary in properties worth less than they paid for them.
Delayed freehold	Conditional ownership. Title is granted on the completion of payments or when developments have been completed. This is also found in all market economies.	This provides the same high degree of security as freehold, providing payments are made as required or developments have been completed. Freedom to dispose, or use as collateral for loans. Maximises commercial value, enabling people to realise substantial increases in asset values.	Failure to maintain payments or undertake developments may result in eviction and loss of funds invested. Collateral value may not be relevant if incomes are low. Property values can go down as well as up and may trap the unwary in properties worth less than they paid for them. Expectations of increased values can divert investments from more productive sectors of the economy.
Registered Leasehold	Ownership for a specified period from a few months to 999 years. This is based on English property law and exists in most countries where this legal system applies, particularly members of the Commonwealth and countries once under British colonial administration.	As secure as freehold, but only for the period specified in the lease.	Requires legal framework. Costs of access can be high.
Public rental	Rental occupation of publicly owned land or house. This exists in countries of all political and legal structure.	Provides a high degree of security providing terms and conditions of occupation are met.	Limited supply may restrict access. Often badly located for access to livelihoods. Terms often restrictive. Deterioration may result if maintenance costs not met.
Private rental	Rental of privately owned land or property. This exists worldwide in countries where private property applies.	Good security if protected by legally enforceable contract. Provides tenants with flexibility of movement.	Open to abuse by disreputable owners. Deterioration may result if maintenance costs not met.
Shared equity	Combination of delayed freehold and rental in which residents purchase a stake in their property	Combines the security and potential increase in asset value of delayed freehold and	Requires a legal framework and efficient management.

12

Tenure categories	Characteristics	Advantages	Limitations
	(often 50%) and pay rent on the remainder to the other stakeholder. This originated in the USA and exists in a number of other European countries.	the flexibility of rental. Residents can increase their stake over time, ultimately leading to full ownership.	
Shared ownership, including co-operative tenure and Community Land Trusts (CLTs)	Ownership is vested in the co-operative or group of which residents are co-owners. Various types exist worldwide, especially cooperatives. Shared ownership is particularly popular in Scandinavian countries. CLTs are common in the USA, Canada and recently in the UK.	Good security. Maintains social cohesion.	Requires a legal framework. Restrictions may reduce incentives to invest. Requires double registration first of land and then of association
Customary ownership	Ownership is vested in the tribe, group or community. Land is allocated by customary authorities such as chiefs.	Widely accepted. Simple to administer. Maintains social cohesion.	May lose its legal status in urban areas. Vulnerable to abuse under pressure of urbanization. Poor customary leadership may weaken its legitimacy.
Religious tenure systems (e.g. Islamic)	There are four main categories of land tenure within Islamic societies. *'Waqf'* land is land 'held for God', whilst *`mulk'*, or private lands, are also protected in law; *`miri'*, or state controlled land which carries *`tassruf'* or usufruct rights, is increasingly common, whilst *`musha'*, or communal land, is based on tribal practices of allocating arable land and is falling into disuse.	Sometimes facilitates family/group tenures and accessible and affordable land management procedures	Because they are outside the commercial land market, *waqf* lands are often inefficiently managed. Inheritance disputes can cause land conflicts
Non-formal tenure systems	These include a wide range of categories with varying degrees of legality or illegality. They include regularised and un-regularised squatting, unauthorised subdivisions on legally owned land and various forms of unofficial rental arrangements. In some cases, several forms of tenure may co-exist on the same plot, with each party entitled to certain rights.	Some of these non-formal categories, such as squatting, started as a response to the inability of public allocation systems or commercial markets to provide for the needs of the poor and operated on a socially determined basis.	As demand has intensified, even these informal tenure categories have become commercialised, so that access by lower income groups is increasingly constrained.

Source: UN-Habitat (2004) 'Urban Land for All' Nairobi.

Over the centuries, land tenure has evolved from communal/collective systems towards increasingly individual forms of tenure such as ownership and leasehold, with many variants in each broad system. However, changes in land tenure do not necessarily change at the same rate as socio-economic and political structures[12].

Forms of urban land tenure in sub-Saharan Africa

---

[12]For example, in the UK, property ownership was a prerogative of the landed aristocracy and a precondition for being eligible to vote until as recently as 1918.Even today, more than a third of all land is still in the hands of aristocrats and traditional landed gentry. Indeed, 36,000 individuals own about 50 percent of the rural land in England and Wales - http://www.countrylife.co.uk/article/506200/Who-really-owns-Britain-.html

Throughout sub-Saharan Africa, formal land tenure is either customary or statutory. Customary tenure systems are very ancient and prevailed in virtually all African cities and rural areas before colonialism. Customary land tenure is largely undocumented; based on local practices and norms; flexible, negotiable and location-specific, as well as mostly managed by a village chief, traditional ruler or council of elders. It remains by far Africa's largest tenure sector.

Statutory land tenure mostly entered Africa through its colonial cities. It is based on formal laws and regulations; on government agencies; on judicial decisions and documented. Land rights are allocated and confirmed through titles or other forms of ownership registration.

Continued population growth in urban areas and the sprawl of cities into rural areas where customary tenure systems prevailed have often created land conflicts because these two different tenure systems are not really compatible. Wherever land conflicts arise over customary-statutory contradictions, the latter usually prevails due to its documented nature which is easier to uphold in the courts of law.

Rights under customary tenure systems are determined by community leaders according to need rather than by payment. These rights are categorized by FAO (2002) as:

- User Rights: Rights to use the land for residential or economic purposes (including grazing, growing subsistence crops and gathering minor forestry products);

- Control Rights: Rights to make decisions on how the land should be used, including deciding what economic activities could be undertaken and how to benefit financially from these activities; and

- Transfer Rights: Rights to sell, mortgage or convey the land to others through intra-community relocations, to transmit the land to heirs through inheritance, and to reallocate use and control rights.

The sum total of the rights exhibited in the three categories suggests that customary systems are more flexible than formal systems. The measure of its flexibility provides the inherent weakness whereby the rights of the poorer groups may be usurped unless adequately protected.

In the region's urban centres, however, public and formal tenure categories are captured in State land or public land which consists of land acquired by government in the public interest. In the case of transfer or sale, compensation on such lands are paid only to those holding rights and, in some instances, acquisition may be to enable land to be developed or reallocated as freehold or leasehold. The actions of governments are legitimized by the issuance of a 'Deed of Conveyance' or 'Certificate of Permit' to new allottees.

Tenure categories for the urban poor are mostly restricted to regularized/non-regularized squatter types whose security may depend on such factors as ethnicity, numerical strength, political support, antecedent and historical strength. This category often enjoys limited services provision even when clearly located within the municipal territory. In many cities also, the urban poor undertook land subdivisions without official approval. Subsequent construction is eventually classified as 'unauthorized' as part of the ever-growing urban slums.

2.3   Tenure informality in human settlements: a wide range of situations

A striking feature of developing countries is the high prevalence of informal settlements in peri-urban areas and to a lesser extent within city centres (UN-Habitat 2003a). However, as the term 'informality' is only *defined negatively*, it raises the same definition problems for human settlements as when it is applied to economic activities: although there is a relative consensus about the characteristics of informal human settlements, the exact definition and frontier between informal and formal settlements remains blurred: a given settlement type with particular characteristics regarding land tenure, property rights, urban planning, and housing can be considered either as formal or informal depending on the local context and public authority interpretations.

As far as land tenure is concerned, two main types of informal settlements can be distinguished, depending on the type of development:

- A first type of informal settlement is *unauthorized commercial land developments* – usually on private land – where legally owned land is subdivided by the owners and sold as

plots for urban development, usually for housing. The buyer has a property title but the subdivision for housing development is illegal either because it violates zoning and planning regulations, or because the required permission for land subdivision has not been obtained, or because development on the plots does not comply with construction norms. It is very common in Latin America (*Loteamentos* in Brazilian cities) or in Asia (some unauthorized colonies in Indian cities).

- The second type is *squatter settlements* on public or private land. As the land has been illegally occupied and the building activity has taken place regardless of, or in violation of development, planning and construction norms, occupants in squatter settlements basically have no legal rights.

Another distinction among informal settlements (whether unauthorized land developments or squatter settlements) can be made according to the primary tenure status on the land which is informally occupied. One should distinguish *public land* (public or private domain of the State and local governments), *land privately owned* by individuals and institutions, and *communal or customary-owned land* (on which the use and allocation of land is under the control of a community).

Finally, it should be noted that tenure informality is the end result of legal, political and economic exclusion mechanisms. The expansion of informal settlements reflects the gap between demand for land and its provision by the public and formal private sector. In Africa and Asia, these exclusion processes are amplified by rural-urban migration and urban population growth. In Latin America, especially Brazil, the expansion of informal settlements mainly reflects population growth within the existing urban centres.

2.4   The tenure spectrum and degrees of tenure security

It has been common for many years to discuss land tenure and property rights in terms of some form of duality. This took several forms, such as that between statutory and customary tenure arrangements[13]. Another form of duality involved a distinction between legal and illegal, or formal and 'informal' tenure categories, in which the former consisted of officially approved and registered property and the latter, all other tenure arrangements that were, or were close to being, "extra-legal" (Durand-Lasserve and Tribillon 2001).

Local terms such as *gecekondu, bidonville, bustee* and *favela*, are also commonly used to describe settlements which do not conform to official norms. However, such terms may now subsume processes of land settlement, development and exchange which embody significant differences in perceived tenure status and economic value not recognised by outsiders (Payne 2001:417-8). Whilst widely used, such terms should therefore be avoided as their subjective nature invariably implies pejorative characteristics and also impedes recognition that they include a range of distinct tenure sub-categories.

In many cities, various forms of unauthorised development now represent the largest single channel of land and housing supply. As they have expanded, so they have diversified in terms of the level of security provided, the rights that they provide in practice (if not in law) and the social groups which they serve. Empirical findings have demonstrated that a substantial and increasing proportion of all urban and peri-urban land in rapidly urbanizing countries was not formally registered but some

---

[13] WORLD RESOURCES INSTITUTE (2005) 'THE DUALITY OF EMERGING TENURE SYSTEMS' WASHINGTON DC. HTTP://WWW.WRI.ORG/PUBLICATION/CONTENT/8069

were almost indistinguishable from formal arrangements in terms of security and market value (Payne, 1997, Sietchiping et al., 2012).

In practice, many tenure categories may be partly legal (e.g., officially recognised subdivisions), creating gradations of legality. The degree of tenure security provided by each or any of the above categories can vary considerably and is ultimately dependent upon official attitudes, land governance practices, policy orientation of governments with regard to social integration and inclusiveness. It is also influenced considerably by the degree of social legitimacy that a tenure system enjoys with those operating within it. For these reasons, any tenure typology needs to be assessed within its local context, since these factors will vary from place to place and from time to time within a given place.

In attempting to reflect the varying degrees of security, legality and formality that different tenure categories represent, UN-Habitat (2008:8) expressed the range as a continuum (see Fig 1). However, this linear presentation has severe limitations. It confuses tenure status and rights and also implies that customary systems are relatively informal. More seriously, it implies that the most secure, formal and legal form of tenure is that of registered freehold, suggesting it is an ideal type or ultimate goal, despite the fact that many other categories in other tenure systems offer equally high levels of security and legality. However, as tenure categories reflect social and economic contexts, there can be no such ideal category and the concept of a continuum is therefore not used in this report.

Fig 1: A continuum of tenure types
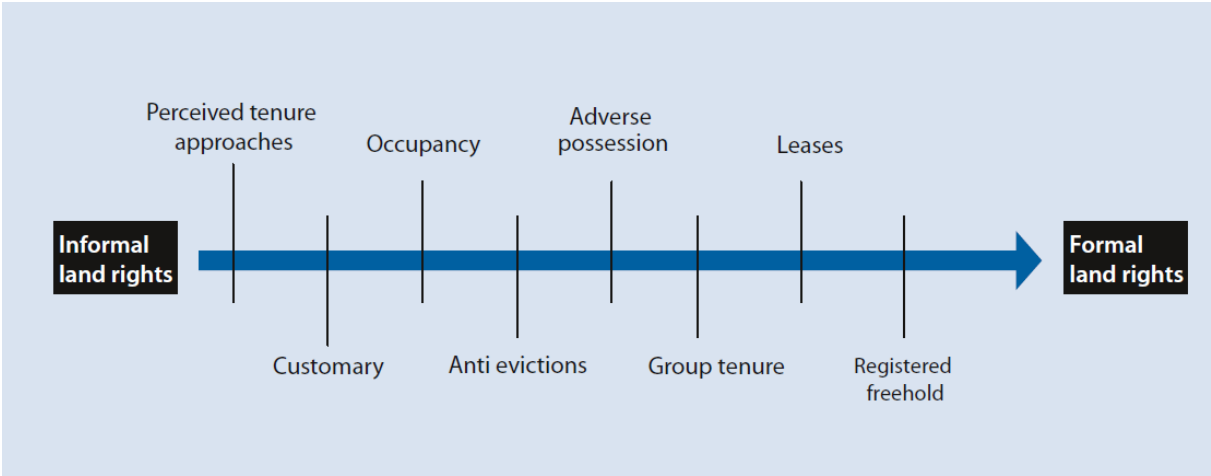
Leap[14] contends that there are multiple tenure systems that may all display varying degrees of formality and informality, security and insecurity and that these are more accurately placed in a multi-dimensional relationship to one another. Movement towards formality or towards informality may equally apply to customary rights, registered individual titles or other forms of tenure (Leap 2005:4).

From experiences in selected cities in South Africa, Iraq and Brazil, and two previous UN-Habitat methodological approaches to assessing security of tenure, (the Legal and Institutional Framework Index (LIFI) and the Urban Inequalities Survey), it is evident that there is more than one route to

---

[14] Leap is a South African association that brings people together to practically explore, learn about and recommend appropriate tenure arrangements in urban and rural contexts.

achieving tenure security. As assessed by GLTN–UN-Habitat, and quoted by Du Plessis (2012), tenure rights "do not lie on a single line, and they may overlap with one another. Tenure can take a variety of forms, and 'registered freehold' should not be seen as the preferred or ultimate form of land rights, but as one of a number of appropriate and legitimate forms. [...] The most appropriate form depends on the particular situation. [...] Land tools have to take this into account". The author recommends, in particular "to review, revise, improve the continuum of land rights concept …and to develop the evaluation framework for the continuum of land rights".

With reference to the case of Maputo, Royston and Kihato (2012) show how the understanding of a continuum in tenure security is a precondition to the design and implementation of incrementally secure tenure. This issue is discussed by Rutsch (2011) who analyses the continuum from customary/communal to statutory tenure and sets up a typology of land tenure in the context of South Africa from "emerging tenure" to "evolving tenure" and to "established tenure".

Whilst the concept of a continuum is useful in illustrating a wide range of tenure categories, together with progress from low to higher levels of security and increasing rights, it is perhaps more useful to think of a spectrum of tenure categories, each offering different options to meet different needs.

A generic typology illustrating a notional range of objectively defined tenure categories was provided by Payne (2001:419) which attempted to demonstrate how tenure security increased incrementally as the degree of legality increases.

Fig 2: Range of tenure categories found in many cities by degree of tenure security
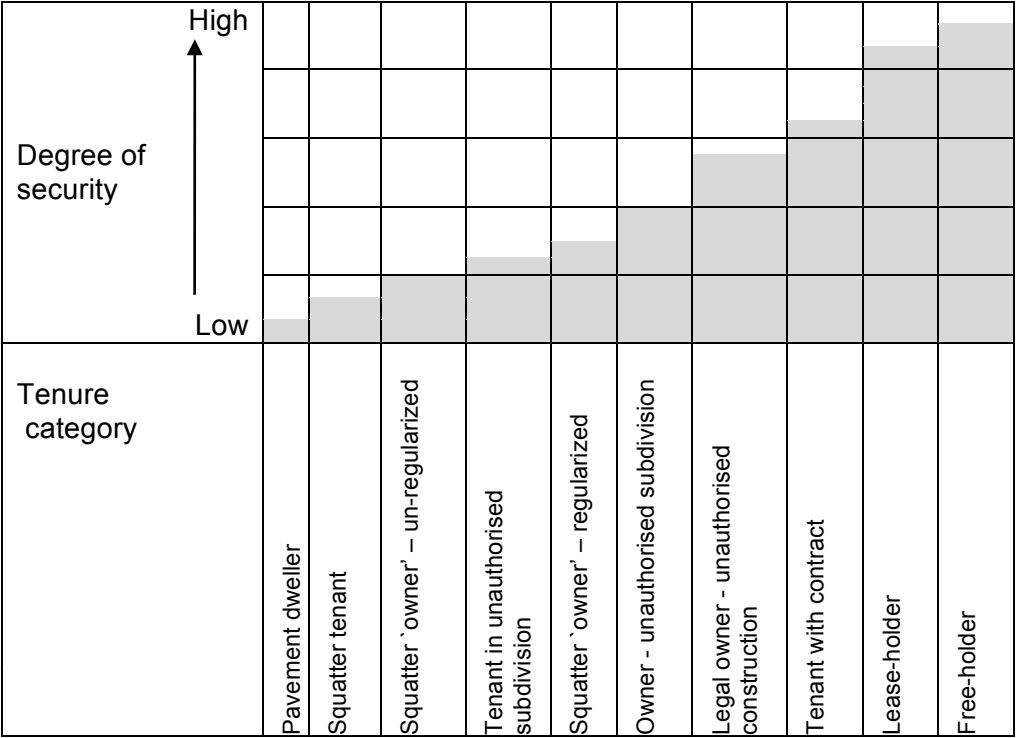
NB: For simplicity, this illustration deletes customary and Islamic tenure categories
Source: Payne, G.(2001) 'Urban land tenure policy options: titles or rights?' Habitat International Vol 25 pp415-429.

A development of this notional typology illustrates (see Fig 3) how the tenure status, levels of security and associated rights can be recorded (see Payne 2004:171). This enables a full range of

property rights to be identified for any given tenure category and can be adjusted to include gender rights as well as temporary or permanent rights according to need. Guidance on completing the typology for a selected city and interpreting the information for the purposes of policy formulation, is provided in Annex B.

Fig 3: Notional typology of land tenure and property rights

Degree of security		Pavement dweller	Squatter tenant	Squatter 'owner' – un-regularized	Tenant in unauthorised subdivision	Squatter 'owner' – regularized	Owner - unauthorised subdivision	Legal owner - unauthorised construction	Tenant with contract	Lease-holder	Free-holder
Tenure category / **Rights**											
Use											
Occupy											
Restrict others											
Buy/transfer/dispose											
Inherit											
Develop/improve											
Cultivate/produce											
Sublet											
Access services											
Access formal credit											

Note; A simple notation can be used to record a range of rights. For example a backward slash (\) can record rights only available to men, a forward slash (/) when only available for women and a cross (x) when available equally to men and women. Colours or asterisks, etc., can be used to indicate other aspects, such as conditions to rights.

A variation on this typology was published by Durand-Lasserve and Selod and provides a simple way of recording a wide range of information on the range, nature and characteristics of different tenure categories to be found in a city. This is illustrated in Fig 4 below.

Fig 4: The continuum in land tenure and rights

Tenure status / Level of rights	Squatters [a]		Occupants in unauthorized land subdivision		Holders of temporary permits to occupy	Holders of long-... or renew... permi... occu...
	not protected against forced evictions	with temporary protection against forced evictions [b]	on sites unsuitable for development	on sites eligible for upgrading		
No rights	■		■			
Rights limited to legal or administrative protection against forced evictions		■	■	■		
Access to a limited number of rights to use [c]					■	■
Access to the full bundle of rights [d]						

Notes:
a. These refer to pavement dwellers, squatters, and tenants in squatter settlements.
b. Squatter settlements declared as 'slums' in some Indian cities or located in Special Zones of Social Interest in Brazilian cities can benefit from some legal or administrative protection.
c. Land can be developed, inherited, sublet.
d. Land can be developed, transferred, inherited, mortgaged, etc.

Source: Durand-Lasserve, A. and Selod, H, "The Formalisation of Urban Land Tenure in Developing Countries', in Lall, Freire, Yuen, Rajack, Helluin (Eds), *Urban Land Markets. Improving land Management for Successful Urbanization*, Springer and the World Bank, 2009, p.101-132.

2.5. Importance of perception

An important strand of discussion in the literature is how security of tenure is perceived, rather than how it is legally conferred, or whether it is legally recognised. Perceptions of tenure security are prompting many of the actions that formal title is meant to ensure, such as access to credit and investment. Tenure arrangements in informal delivery systems can often provide a reasonably good level of security, even when this is not formally recognized by the state. Recognition by the community itself and by the neighbourhood is often considered more important for ensuring secure tenure than recognition by public authorities. Evidence of this perceived security is that people around the world spend money on improving houses that they officially or legally do not own (e.g. Leap 2005:8).

Perceived, or de facto security of tenure, can be based on a number of things such as:

- The illegal occupation of a dwelling, since a court order is required before inhabited buildings can be demolished and the backlog of such cases provides effective security of tenure and the provision of basic services to the area by a local authority, such as access roads, water and electricity.
- Street addressing: giving streets names/numbers and visible plate numbers to houses/shacks doors in informal settlement (mainly for tax purposes and urban services billing) are making people feeling more secure.
- In some situations, this later leads to some form of *de jure* tenure but in some cases residents have been forcibly relocated;
- Support from a local politician. This can often give sufficient *de facto* tenure security for people to invest in housing. However, this generally only happens when a large proportion of a city's population are informal settlers;
- Customary rituals;
- The experience of the community concerned with both legal and informal instruments;
- When land is under litigation, settlements are known to remain undisturbed as long as the court case is not settled, sometimes for decades;
- When land is not required for any other purpose it is often perceived as secure. However, this land is often unsuitable for human habitation such as steep slopes, railway margins, etc;
- Where NGOs and grass roots movements have confronted the government repeatedly thereby limiting evictions;
- When a religious structure is built in a prominent place in the hope that the authorities will be reluctant to demolish such a structure. In this way, the surrounding areas may acquire immunity;
- Ration cards for the public distribution system, identity cards, letters addressed to the family, tax receipts, electricity bills (UN-Habitat 2003b:10).

One of the problems raised by the measurement of perceived security of tenure is the choice of relevant indicators, and methods of monitoring changes between types or within types over time. It is for these reasons that tenure security has so far been excluded from the Millennium Development Goal targets. However, because it cannot easily be weighed or measured does not make it any less critical.

Balamir (2002:175) draws an important distinction between legality and legitimacy. In reviewing the range of informal land tenure processes in Ankara, Turkey, he concludes that

these processes have enjoyed a high degree of social legitimacy in the absence of affordable formal options. He identifies *'background legitimacy'* resulting from historical and cultural traditions and the fact that 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 natural *'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'*.

2.6 Conforming with legal requirements

The issue of legality itself can therefore be seen to be dependent to some extent on the ability of all sections of the urban population to conform to the legally defined requirements regarding access to land and property. Where land tenure law is grossly inappropriate, it can be expected that the degree and extent of extra-legal or 'informal' tenure categories will be greater than in cases where the law is more firmly based on existing local realities, of which the availability and affordability of access will be prime considerations.

Fig 5: Typology of land tenure situations and legality of transfer in Bamako, Mali, in 2012 (source: Durand-Lasserve and Selod, 2012)

Allocated by … or transferred to … / Legal status of the land & Associate document	Allocation (1)		Sale / Transfer			
	State (*)	Local Authorities (Communes)	Para-public Land / development Agencies	Private companies	Individuals	Customary "owners"
Land ownership title TF	1	00	3	3	3	n.a.
Long term lease	3	1	1	1	1	n.a.
Allocation letter LA (assimilated to CUH ou CRUH since 2002)	1	1	0	2	3	n.a.
Permit to occupy PO (assimilated to CUH ou CRUH since 2002)	1	1	0	2	3	n.a.
Urban residential land concession– CUH & Rural residential land concession – CRUH	2	3	0	3	3	n.a..
Rural land concession – CR	3	0	0	2	3	n.a.
Bulletin & Convocation letter Notification letter	2	3	0	0	2	3
Land sale agreement authenticated by local authorities	0	3	0	0	3	3

| Customary land | n.a. | n.a. | n.a. | 3 | 3 | 3 |

Not formally authorized		Authorized:		Not Applicable: n.a .

The coexistence of different tenure systems and accelerated commoditization of all land delivery channels have a direct impact on security of tenure. Especially in sub-Saharan African countries, land rights of people who have had access to land through customary land channels do not ensure a sound security of tenure. People are rarely exposed to evictions, (with or without relocation), but they are permanently in a situation where their tenure status can be questioned by public authorities or by other buyers or investors who managed to register a property claim on the same parcel of land. The situation in Bamako (Mali) suggests the magnitude of potential tenure insecurity problems with which the majority of the urban population is confronted. As shown in Figure 5 above, one can see that a large number of land transactions concern land that do not have the required titles (in red in the table). Such situations are highly risky in social and political terms.

2.7 Market pressure, market driven displacements and insecurity of tenure

Current dynamics that accompany the liberalization of land markets in many developing countries, and systematic land titling programmes carried out in the name of economic development and "poverty reduction strategies" are increasing the pressure of the market on urban low-income settlements, and this in a global context where resources generated by economic growth are rarely allocated to housing and resettlement projects for the low-income groups. This situation has a severe impact on security of tenure and may result in massive evictions. However, they are not recorded as such, either because they do not require the use of force, or because some form of compensation is paid to the "displaced" or "removed" households, regardless of how fair and equitable this compensation may be. The scale of market-driven displacements is tending to override that of forced evictions.

There are no figures on the scale of tenure insecurity and on related expropriations or evictions market evictions but we can assume that their number worldwide is much higher than the number of forced evictions. Market-driven displacements or evictions are usually seen as normal consequences of urban development, as a kind of "creative destruction", as defined by Schumpeter, which necessarily accompanies economic development and modernization processes.

Another set of problems encountered in attempts to identify the scale of market-eviction is the lack of agreed definitions. As long as negotiations between the involved parties take place, whatever the terms of the negotiation are, eviction is usually considered as a voluntary removal (Durand-Lasserve, 2006).

3. POLICIES AND PRACTICES RELATING TO TENURE SECURITY

3.1. Tenure policy and the emerging debate

Socialist land policies and public land ownership

In acknowledging the diversity of tenure systems and the equally diverse cultural and historical influences which they reflected, the pioneering UN study (1973:vol1:19) of urban land policy and land use control measures recommended that "a spectrum of choices is open to the government and the choice of any course of action will be dictated by either the prevailing political climate, or the awareness of the government of its social obligation, or the dominant land tenure system". Even in this early study, it was evident that policies need to reflect the diversity of social structures and tenure systems and be politically acceptable.

As land policy in general and tenure policy in particular reflect the political ideology of ruling elites, it is inevitable that the policies that have been adopted in recent decades reflect this contextual influence. Within rapidly urbanizing countries, two distinct and almost diametrically opposite approaches can be identified. Starting with the USSR, the communist government brought all land under public ownership, a system that was extended to its eastern European satellites after 1945. It was also adopted in China following the revolution in 1949 and proved popular throughout much of sub-Saharan Africa, especially during the late 1960's and the 1970s. Mabogunje (1992) observed that 20 out of the 40 countries in sub-Saharan Africa had nationalised all lands and extinguished private freehold ownership. Although most have reversed this approach since, all land in Ethiopia and Rwanda remains under state ownership. In Francophone Western and Central African countries, the newly independent States took over the land prerogatives of the colonial State.

As in other regions of sub-Saharan Africa, land ownership systems and tenure structures in West and Central African countries are characterised by a dual system combining statutory tenure – as codified by the law – and customary tenure. The two main sources of State law are the French civil code, and the British common law.

In Francophone African countries, land laws and codes are still based on the same broad categories of land status put in place by the colonial administration with reference to the civil code: (1) the public domain of the State, that cannot be alienated; (2) the private domain of the State, that can be alienated under certain conditions; (3) private land, for which a title has been issued, (4) customary land, and (5) land with no clear status, idle/empty, unclaimed and vacant land ("terres vacantes et sans maître"). Legal dualism and ambiguousness between the two concepts of "public domain" and "State domain" is blurring the boundary between alienable and unalienable land, to the benefit of government actors involved in land allocation. This situation has major consequences on security of tenure.

In most West and Central African countries, with very few exceptions customary rights on land have not been, for long, formally recognized by the State especially in urban and peri-urban areas, but they were usually tolerated. This situation gave government authorities a discretionary power to incorporate customary-claimed lands in its own domain. This situation is now changing, under the pressure of civil societies. National and Forum on national land policies and on decentralization have contributed to this shift. Customary rights are being more and more frequently formally recognized, in rural and peri-urban areas (Mali, in 2002, Benin in 2007, Burkina Faso in 2008). This inclusive trend is thwarted by two interrelated but opposite trends: (i) privatization of land, and (ii) access to individual private land ownership (Rochegude and Plançon, 2010).

Another country which steadfastly maintains the concept of state ownership is that of Cuba, where land was nationalized following the revolution in 1959. Whilst this successfully

ensured that land and housing was made available to all, and has enabled Cuba to achieve a high score in the human development rankings,[15] it inhibited productivity and investment as well as the ability to maintain property. Government policy is currently relaxing restrictions on private enterprise which may herald a greater role for private land holdings and property ownership.

Similarly in Albania, following the communist take-over in 1944, all land was placed under state ownership until 1991 when the regime collapsed. Laws were then prepared to return land to its original owners. All rural land was returned to the farmers, though many original owners surfaced claiming areas back as their own, creating ambiguity and uncertainty. This was particularly prevalent in urban areas where the original owners frequently found that their land was occupied by people who had received it from the State and were reluctant to surrender it. Where the State had developed urban land, the original owners were entitled to claim compensation or land in other areas in lieu. The cost of such compensation has been variously estimated, but the Property Commission itself has indicated an amount of Euros 12 billion (Kelm 2009:25), compared to a total annual government budget of approximately Euros 3 billion.

In Cambodia, the most extreme form of land nationalization occurred during the totalitarian regime of the Khmer Rouge, under which the urban areas were forcibly evacuated and all land and property was vested in the state. Even after the replacement of this regime in 1979, previous land ownership rights were declared null and void, creating problems of land access and insecurity which are still not fully resolved.

Even in India, the influence of socialism under Prime Minister Jawaharlal Nehru resulted in the passing of the Urban Land Ceiling and Regulation Act of 1976 which sought to bring large vacant private land-holdings under public ownership or control. However, the increased demands that public ownership place upon the state have invariably proved greater than the ability to develop and allocate lands according to needs, so that a substantial proportion of urban populations were forced into the unauthorized settlements that the policy was intended to prevent.

Markets and the advance of private land ownership

As stated in section 1.1, societies which give priority to the rights of individuals will encourage private land tenure systems. This has been the central tenet of most market economies and reached its apogee in the USA where the principle of individual private ownership is enshrined in law and popular culture. In most countries where private ownership is the primary tenure regime, land and housing become primary channels for investment and economic development. High levels of home ownership are common (see Table 2). However, the priority given to encouraging high levels of home ownership may generate inflationary pressures which in turn tempt those on less than adequate or reliable incomes to invest, creating the risk of a property bubble, the bursting of which can cause national and even international recessions, as was experienced in Asia in 1998 and in the USA and globally in 2008 through the 'sub-prime' housing crisis (see Payne 2008).

Deininger and Feder (2008:264-266) discuss how "the magnitude of the impact of systems of land registration will vary under circumstances and will be negatively affected by market imperfections" especially in situations characterized by (i) the unequal distribution of power, bad and ineffective governance, and the absence of impartiality and credibility of the

---

[15]See http://hdrstats.undp.org/en/countries/profiles/CUB.html

registrations system, (ii) limitation of credit markets, (iii) low efficiency of land administration systems and (vi) "relatively land abundance that can reduce the scarcity value of land and lead to adoption of alternative arrangements to secure tenure."

Tenure policy in international development
Given western influence over international affairs and the institutions addressing international development, the promotion of private land tenure concepts has seen a steady advance in both theory and practice. Thus, Stanfield and Bloch (2002:1-2) state that "in the 1980s, U.S. foreign assistance shifted to emphasize macro-economic policy reform and private enterprise development. This shift was reflected in USAID's Policy Determination on "Land Tenure" (PD-13) that mentioned neither land reform nor redistribution (USAID 1986). Instead, the policy emphasized land markets, land titling, and real property registration. Policy options that relied on market forces were seen as more feasible politically than administratively determined land redistribution". A series of interrelated United States Government programmes have been launched in order to promote property rights in developing countries, with particular attention being given to Latin American countries. Other initiatives promoted by US President George W. Bush pursued similar objectives through investment in development programmes, such as the Millennium Challenge Account. Property rights and land titling have been at the core of this aid and cooperation strategy.

In addition to USAID, several other organizations have promoted land titling, including The Inter-American Alliance for Real Property Rights, which was established to support the Summit of the America process in response to the commitments related to real property rights in the region made in the Declaration of Nuevo Leon; the Millennium Challenge Account (MCA); the Real Estate Advisory Group (REAG); and the Inter-Summit Property System Initiative (IPSI). Such agencies have encouraged national governments to undertake land titling programmes as a means of increasing tenure security, improving access to formal credit and reducing poverty.

The momentum established by these initiatives is noted by Daley and Hobley (2005:13) who report that "the start of the Thailand Land Titling Program coincided neatly with a major international shift in development policies: during the 1980s, the World Bank's structural adjustment programmes and liberalization policies (and the IMF's stabilization policies) linked beliefs about the importance to economic growth of privatising and individualising land rights with the broad pro-market tenets of 'neo-liberalism'. This shift was also reflected in the World Bank's 1993 housing policy paper, '*Housing: Enabling Markets to Work*', which stated (1993:70) that secure tenure increased housing investment and that "where proper titles are issued, investment in housing may further increase if the titles can be used as collateral for obtaining housing finance". The report went on to state that titling need not be restricted to freehold titles, and may offer titles that can be upgraded to full freehold titles over time.

The World Bank was an early supporter of urban land titling programmes and began funding the major programme in Peru in 1998. Its objectives regarding land titling and title registration indicate that they are considered essential preconditions for:

- Protection of property rights, increasing individual investor confidence;
- Transparency of ownership, thus reducing transaction cost and increasing the efficiency of property markets
- Establishment of land markets;
- Development of secondary markets, including rental markets, increasing the efficiency of property use;

- Mortgaging of land, and through this the recapitalization of newly established farms and improvement productivity (sic) and;
- Establishing a land-based taxation system (World Bank 1996:6-7).

This set of objectives permeated early titling programmes which have since been applied in many other countries, despite enormous differences in local conditions. Such standardized approaches run the risk that they may succeed or fail for reasons unrelated to the intrinsic qualities of the policy, but more to the appropriateness or otherwise of local conditions. Since these are not necessarily assessed prior to adopting the approach, it is therefore difficult to explain the reasons for success or failure.

A synthesis of World Bank policy regarding titling identifies three stages of reform based on experience in the East Asia and Pacific region:

- Achieving direct linkages to agricultural and urban investment—involves the definition of property rights in a coherent legal framework and the provision of administrative mechanisms to provide security of tenure for these property rights.
- The emergence of formalized land markets in which land can easily be leased, purchased and sold, and gifted to achieve more efficient and higher-value use of the resource.
- The use of land and real property as collateral for transactions (World Bank 2004).

A major boost to discussion on the importance of tenure security and its implications for social and economic development followed the publication in 2000 of the book by Hernando de Soto which claimed a direct correlation between property ownership and affluence in the West and the lack of this in developing countries. De Soto claims that the major stumbling block that keeps the rest of the world from benefiting from capitalism is its inability to produce capital, and that whilst the poor already possess the assets they need to make capitalism work for them, they hold these assets in defective forms. By this he means that they lack titles to their properties which they can use to invest in businesses, rendering their assets as 'dead' capital. He estimates the total value of such 'dead' capital is at least US$9.3 trillion. "They have houses but not titles, crops but not deeds, businesses but not statutes of incorporation" (de Soto 2000:7). He proposes that if the governments of developing countries provide universal property ownership with clear titles and rights enforceable in law, then the poor will be able to use their assets to obtain credit and capitalism would enable countries to lever themselves, and their poor majorities, out of poverty and achieve capitalist affluence.

De Soto has successfully focused attention on the role of tenure policy as a central factor in social and economic development. He has attracted widespread support from international development agencies and several governments, though many observers have also criticised his approach on conceptual, ideological and methodological grounds. Typical of many is the comment by Bromley (2005) who states "eradicating poverty is the goal, new agricultural investments, new businesses, and upgraded dwellings are the means whereby this will happen, tenure security is the necessary condition, and formal titles are the sufficient instrument. Titles are the means to eradicating poverty. It sounds too good to be true. And it is".

Sjaastad and Bromley (2000:386) state that "it is important to understand that locally evolved property institutions contain complex rules whose purpose is to meet specific social and environmental objectives … Unfortunately, the land tenure policies and programmes introduced into developing countries have a discouraging legacy of ignoring such

complexity". Whilst not referring specifically to land titling programmes, it is clear that they are concerned about the tendency for single policy options to be applied globally.

As Angel et al also note (2006:9) "critics of titling programs also point out that de-facto security -provided by the lack of evictions in recent history, or by the provision of public services and street addresses, may be sufficient to induce the most important of the benefits commonly associated with titling. The gains to incremental housing investment, labor mobility and employment, and the fundamental humanitarian interest in providing a measure of stability for the urban poor can all be accomplished through legal instruments other than freehold titles".

Quan (2003) has summarised the early influence of World Bank thinking on tenure policy and its predisposition toward individualised land titling programmes, though he recognised the major policy shift that took place in the late 1990s. Nonetheless, titling has continued to exert a powerful influence over many agencies and some national governments. Quan notes (2003:5) that the World Bank focuses on land and property rights primarily from an economic point of view, emphasising the importance of secure rights to economic growth. But it recognises the social values of land rights, their complexity on the ground, and that poorly designed interventions have over-ridden legitimate established rights. In addition rights do not necessarily have to be secured by formal land titling processes, but simpler, more accessible processes, based in local institutions can also be used.

The attention which de Soto and others have brought to bear, and the welcome debate this has generated, has yielded signs of a policy review within the international community. For example, a World Bank report (2006:12) notes that "the earlier consensus on this issue has since changed and become more nuanced. For instance, most policy analysts now no longer simply assume that formalization in a given context necessarily increases tenure security, and leads to collateralized lending. The original assumptions have now become questions for empirical research". Recent thinking from the World Bank suggests that, at least in policy circles, more nuanced approaches now dominate.

Buckley and Kalarickal (2006:30-31) suggest that titling may not necessarily result in increasing the assets of the poor when they state "while there are good reasons to agree that improving property rights should be an essential part of reform, there is also a range of practical problems that potentially reduce the seemingly large gains. Among these problems are:

- Titling is often a costly process. It is not just a matter of formalizing informal arrangements that already exist. Very often, contradictory claims of ownership succeed the announcements of titling programs.
- Much of the land on which informal houses are built is obtained through illegal squatting on private property, and compensation is not paid to existing owners
- The broader web of societal contracts and constraints, as well as a wide variety of political economy issues, may well reduce the value given to property titles in isolation
- A title is less valuable if it cannot be used as collateral. Such a result occurs whenever there is no effective formal financial system, as is the case in many developing countries
- The anthropological perspective on tenure. Across this spectrum, some may value titles much more strongly than others".

It is also important to note that the Bank's role in promoting secure tenure embodies two potentially conflicting objectives. On the one hand, it seeks to improve tenure security for residents in informal settlements, whilst on the other hand it attempts to increase security for domestic and international investors promoting economic development. The interests of these key stakeholders may not always be easy to reconcile.

International finance institutions are increasingly aware of the negative and unintended social effects of their aid and lending policies, and especially of the limitations of urban development strategies based predominantly on the formalization of urban land markets. They are now attempting to reassess their strategy and redefine priorities, especially in the light of the sub-prime crisis in the USA, which was a major trigger for the current global economic recession.

Recent changes and national responses

The current challenge posed by insecure tenure worldwide presents those involved in land policy with the benefits of hindsight and the evidence of what works and what does not. The promotion of individual private property ownership as a means of generating economic development stimulated intense investment in property throughout the East Asia and Pacific region during the 1990s. This in turn led to rapid house price inflation and helped trigger massive property market crashes and economic recession throughout the region in 1998. Salim (2011:3) reports that Indonesia "went through an economic crisis, due largely to [the] domino effect of [the] Asian monetary crisis, but domestically, to some extent might have been caused by excessive property development by private sector and sloppy private bank practices that financed property development excessively". Similarly, the promotion of home ownership in Thailand and government incentives to property developers in the 1990s, resulted in a major real estate crash in 1998 when the currency rates changed and investors withdrew, leaving 350,000 unoccupied housing units.

A failure to learn from experience resulted in the more recent collapse of the housing market and subsequent economic recession in the USA and other countries with high levels of home ownership, such as Belgium (72.9%), Greece (83.6%), Ireland (80%), Italy (75.5%), Spain (85.5%) and the UK (70.2%), compared to those countries with lower levels of home ownership where the housing markets and national economies have not suffered, such as Austria (53.7%), Denmark (65%), Germany (59%), the Netherlands (54.4%) and Switzerland (34.6%) (see Mulder 2006:287). The pattern is clear: high levels of property ownership create incentives to invest which become unrelated to needs and risk creating inflationary pressures which in turn cause widespread economic volatility which may result in recession and even economic collapse.

In many sub-Saharan countries, investment in urban areas and rapid increases in land values are resulting from the combination of demand for land, driven by accelerated urbanization, limited investment opportunities for monetary assets holders, poorly remunerated savings by banks and a lack of social protection (e.g. medical care and poor pension systems). Investment in land is seen as an inflation proof investment, encouraged by land administration and availability of land from two main sources: customary land and land allocation by governments. However, land reserves are running out, thus pushing up land prices and accelerating market-driven eviction processes (Durand-Lasserve, 2006).

Whilst international agencies such as the World Bank now promote more pragmatic and incremental approaches to economic development in general and tenure policy in particular, some agencies (e.g. the UK Department for International Development project for land tenure

regularization in Rwanda and Millennium Challenge Corporation (MCC) in Benin), continue to support the association on private property ownership with economic and social development. However, increasing awareness of the limitations of private property ownership as the ideal or ultimate form of tenure is generating interest in other forms, many of which already exist in many rapidly urbanizing countries. These tend to adopt a more pragmatic, pluralistic and incremental means of integrating informal settlements into land and housing markets based on empirical evidence of their social and economic aspects.

International examples of approaches to tenure and property rights

International research (e.g. by Durand-Lasserve and Royston, 2002 and Payne et al, 2002) assess many examples of innovative and practical approaches to tenure policy and practice. These include the administrative "permits to occupy" (PTO) regime - the most common occupancy status in sub-Saharan West African cities. With few exceptions, PTOs are temporary documents, granted conditionally, and they can be unilaterally revoked by the administration whenever it considers that the permit holder has not fulfilled his or her obligation and/or that it can make better use of the land (Durand-Lasserve 2005). Other examples are listed in the following boxes (Payne, 2002, Durand-Lasserve et al., 2002).

Botswana: Certificates of Rights (CORs)

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

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

Yahya, S. (2002:193-208)

Kenya: Community Land Trusts:

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

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

Yahya, S. (2002:233.263).

Bolivia: the "Anticretico" ('against a credit') tenure system

An unusual tenure arrangement in Bolivia has evolved in response to sustained high rates of domestic inflation and weak formal private sector finance institutions. It involves the owner of a house receiving money (dollars) in advance in return for allowing a low-income household to occupy the property for an agreed period, normally of two years. What makes the 'anticretico' system different from conventional rental agreements is that at the end of the contract period, (or any agreed extension), the occupants return the property to its owner and the owner returns the full amount received initially from the occupants. For the owner, this is an effective way of raising capital without incurring high interest rates, whilst for the occupants it represents an effective way of living at low cost for those able to raise the deposit. The occupant is required to return the property in the same condition as it was received and may even be able to purchase the property if the owner agrees.

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

Farfan, F. (2002:181-192)

Tenure through acquired documentation:

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

Sims. D (2002:79-99), Kundu (2002:136-157) and Aristazabal, N. And Gomes, A. O. (2002:100-113).

Thailand: Temporary land rental:

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

Mohit, R.S. (2002:278-299).

Trinidad and Tobago: Certificate of Comfort (CoC).

In 1998, the Regularisation of Tenure Act established a *'Certificate of Comfort'* that can be used to confer security of tenure to squatters as the first step in a process designed to give them full legal title. The COC is a statutory undertaking to regularize squatters on State lands "in situ", once the land is not needed for public purposes, including rationalization of the site, or is in an area likely to be required for public use. The problem is that once the COC has been given, there is no immediate incentive for the beneficiary squatter household to proceed to the next stages which would lead to secure tenure. As squatter sites need to be rationalized and developed in a comprehensive manner there is need to put limits on the relatively open-ended rights of a COC.

If the progressive tenure improvement does not take place, it would theoretically impede one of the proposed benefits of the programme as the beneficiary would not have the market instrument to secure finance to improve the quality of the shelter structure.

Kigali (Rwanda): The Land Tenure Regularisation Programme

Before 1994, the supply of urban land for the low-income population was mainly provided by "customary owners" of the urban fringe, like those usually seen in sub-Saharan African cities (Durand-Lasserve, 2003). The right to use, develop and occupy the land was recognized to occupants by the government under the "permit to occupy" regime. In 1994, 80% to 85% of the population of Kigali was living in these so-called "informal" or "precarious" settlements.

The adoption of the Organic Land Law in November 2004 introduced major changes as it recognized private ownership of land, and open the way for a privatisation of land markets. (Durand-Lasserve, 2005). The systematic Land Tenure Regularization Programme was initiated in 2007-2008 and is being implemented at national level since 200. It is a key component of the National Land Policy that has been progressively developed from 2004 onwards, following the publication of the Draft of National Land Policy and the preparation of the Organic Land Law.

It is intended to realize three sets of complementary objectives: (i) ensuring tenure regularisation, securing land tenure, encouraging investments, stimulating land markets, and preventing land conflicts; (ii) establishing a multipurpose LIS to rationalizing agricultural production, improving environmental management and planning in urban and rural areas, increase fiscal resources; (iii) reassessing land rights following mass migrations and casualties that have accompanied and followed the genocide of 1994.

In 2012, about 11 million land parcels had been registered at national level. Although the programme is backed by strong political will and political stability, is implementation is made highly difficult because of the limited capacity of central and local administrative agencies to maintain initial levels. Furthermore, privatization of land combined with strict planning constraints, especially in urban areas are tending to increase rather that to reduce social inequalities in access to land.

Durand-Lasserve and Payne (2011)

Cambodia: Progress and problems in ensuring tenure in a changing political economy context
During the Khmer Rouge regime, all private property was abolished in Cambodia, and most documents were destroyed. After the fall of the Khmer Rouge in 1979, returnees to Phnom Penh were selectively authorized to occupy buildings on a first-come first-served basis and were given a "temporary permit" by the authorities, but all property remained in the hands of the State. "They were allowed to occupy any vacant dwelling close to their new place of employment in the civil service. These new owners took many centrally located buildings in the city, which some then subdivided and sold, even though there were no formal titles. Once all existing buildings were occupied, people started to settle on vacant land, creating the communities that are now considered illegal" (Fallavier, GRHS, 2003).

The right to own land was reintroduced in 1989. From 1989 onwards, the government took a series of measures to address land issues and ensure efficient land privatisation and management: enactment of the 1992 Land law; recognition of right to ownership of legal private property by the National Constitution of 1993 (Art 44); decision to issue land titles, in 1995; adoption of the Statement on Land Policy in May 2001 with the objective "to strengthen land tenure security and land markets, prevent and resolve land disputes" and "to promote land distribution with equity". However, lack of clarity in the 1992 Land law generated many land-related conflicts and people received a variety of documents as evidence of ownership which generated confusion regarding tenure legality (Chan and Sarthi (2002). The 2001 Land Law was an attempt to solve the complexity of the last decades and recognize the fact that people had no other choice but to settle on vacant land. The Law recognizes the right to ownership and "possession rights," whereby people who occupied land for at least five years prior to 31 August 2001, and meet a number of other conditions, have rights which can be transferred to full ownership. Khemro and Payne (2004) identified nine types of land tenure in the in Phnom Penh: (i) Pavement/mobile dweller; (ii) Unauthorized occupation of state public land; (iii) Unauthorised occupation of state private land; (iv) Unauthorized occupation of private land; (v) Family registered book; (vi) Court order after dispute; (vii) Government concession; (viii) Certificate of possession; (ix) Certificate of ownership.

However, the last two decades saw an increase in evictions of residents in urban centres, particularly Phnom Penh, in a context of rapid urban development. There have been evictions of residents in areas awaiting the adjudication of their claims and in one case, (the Boeung Kak lake community), eviction led to an investigation by the World Bank's Inspection Panel. This resulted in the government cancelling a multi-donor national land management and administration program in 2011 and the World Bank suspending all future loans to Cambodia until a resolution was reached. The Inspection Panel found in favor of the Boeung Kak community's claim that non-compliance with Bank safeguard policies in the design, implementation and supervision of the program contributed to the harms that they had suffered. The Cambodian government later issued a sub-decree granting title to 800 families living in the Boeung Kak area. The situation remains, however, insecure for many other urban poor communities. (See: http://go.worldbank.org/IUTVJ7CXG0 and http://www.inclusivedevelopment.net/bkl/). This highlights the limitations of systematic land titling in a context of conflicted legal pluralism and increasing land prices, and its failure to recognize the rights of particularly vulnerable groups, such as urban slum dwellers and informal settlements.

http://www.gocambodia.com/laws/data%20pdf/Sub%20Decree%20on%20Social%20Land%20Concession/Sub%20Decree%20on%20Social%20Land%20Concession%20.pdf

4. LESSONS LEARNED AND ISSUES TO BE ADDRESSED

The wealth of international research and the substantial literature that it has produced bear witness to the complexity of tenure issues and the danger of trusting in universally applicable solutions. It also demonstrates the extent to which land tenure and property rights need to be understood within their broader political, institutional, legal, economic, cultural and historical context. In this context, designing and implementing policies that are aiming to improve security of tenure cannot be only limited to interventions in the land sector, namely land governance and administration and land allocation processes either by governments or through market mechanisms. It must also take into account factors and policies that impact on

the dynamics of land and tenure situations and their interactions at settlement, cities and national levels: political situations, economic policies, urban planning and housing policies, access to credit, environmental issues and social representations are all interconnected.

It is also clear that policies need to be related to the capacity of institutions, organizations, communities and other stakeholders involved in land management and administration.

Another limit of policies to formalise or regularize tenure status is the strong interaction between various land delivery channels in a given place and time: land delivery forms a system, and any change in the component of one land delivery channel (government controlled, formal private, informal and customary) impacts on other channels and on the whole land delivery system. This means that interventions limited to one land delivery channel i.e. informal tenure categories, must be carried out with a systemic perspective. Many tenure upgrading programmes do not take this into account.

The literature also makes clear that any effective interventions on land and tenure require a long term perspective, whereas governments are primarily concerned with the electoral cycle and development agencies are more focused on the duration of a project or programme.

Lessons from case studies remind us that successful tenure upgrading policies require a combination of: (i) high and sustainable rate of economic development, (ii) equitable distribution of wealth and resources, (iii) political will and continuity, and (iv) a land governance system that is based on transparent land administration and that recognizes the diversity and legitimacy of diverse tenure situations.

In any tenure upgrading project, or programme to improve the situation of the urban poor, the main challenge remains scaling up. This requires a unified strategy at national and city/municipal levels; an appropriate and compatible legal and regulatory framework at both national and municipal levels; financial resources and appropriate mobilization mechanisms (financial mechanisms adapted to the resources and needs of populations concerned); political will and continuity (Millennium Project, 2005).

Finally, when addressing security of tenure issues, it should be stressed that the principle of the right to housing and the legal measures to enforce this right frequently contradict constitutional principles regarding the protection of property rights. This is one of the main areas of conflict when tenure upgrading and regularization policies are implemented, as well as when providing simple forms of secure tenure

4.1   Individual titling policies have limitations as well as benefits

It is clear that the form of tenure under which land is held or owned has a significant impact on its market value and options for access by the urban poor. In addition to the evidence of de Soto and the World Bank cited above, Dowall (1998) found that residential plots in Jakarta with clear title sold for a 45 percent premium over comparable plots without clear title, whilst in Manila the risk of eviction was considered to lower the value of housing units by 25 percent (Dowall and Leaf, 1990; Dowall, 1998).

What this evidence also suggests, however, is that the lack of formal titles is a price which the urban poor pay to gain access to residential plots which they could otherwise not afford. It also suggests that, in cases where the poor are tenants in settlements lacking formal tenure

status, providing their landlords with titles will exacerbate evictions of the most vulnerable social groups.

Tenure regularization programmes which operate at city level are likely to reduce market distortions, but impose an excessive burden on land registries. Conversely, those implemented at the local level will be easier to cope with, but are likely to increase urban land market distortions for the reasons given above. The only case where massive land titling can claim to have increased land market efficiency and equity is that of the COFOPRI (Organismo de Formalizaçion de la Proprieda Informal/Organization for the Formalization of Informal Property) programme in Peru, which has allocated about one million titles in just four years. Whilst this is impressive by any definition, it has been made possible largely by the existence of vast tracts of government owned desert land adjacent to urban areas, a feature not available in most countries. Even in Peru, COFOPRI is finding it increasingly difficult to maintain this scale of supply in older urban areas where land ownership is open to dispute.

The drive to increase tenure security for all urban citizens is a laudable development and offers exciting opportunities for market wide improvements and deserves widespread support. However, there is a real danger that a policy approach which emphasises the benefits of owner-occupation, and provides various incentives for it, may result in the creation of a large under-class which is denied access to any form of affordable or acceptable housing. Such a policy also fails to take into adequate account the variety of legal and socially accepted traditions in land tenure systems and distorts land markets in favour of one system at the expense of all others. This is hardly consistent with the objective of improving the equity of urban land and housing markets.

It is worth remembering that Bangladesh has a far higher level of property ownership than Switzerland or Germany (see section 3.1). Another problem with a market based approach is that it becomes extremely attractive to hold land as an investment and a hedge against inflation, especially in countries where financial institutions are not well enough developed to attract and channel domestic savings into more productive sectors.

Another limitation of freehold tenure systems is that only a small proportion of households can afford even the subsidized cost of a plot with title, thereby excluding low-income households from future access to areas they can presently afford. In a well-functioning and self-regulating market, where changes in demand stimulate changes or increases in supply, this would not be a problem. However, land markets in most developing countries are often controlled by a few powerful groups and are severely distorted due to the lack of stable and profitable channels for more productive investment. Until such monopolistic tendencies are reduced, it is essential to protect vulnerable groups from the rigours of such markets and the sloping playing fields on which they operate.

Colclough (1991) has argued that where there are serious market imperfections, liberalization could actually make matters worse and that under such conditions, the market itself is the problem to address. Platteau (1994) goes further and concludes that under certain conditions, more complete liberalization can entail *new* market imperfections. Finally, the assessment of World Bank land titling programmes in Tanzania by Shivji (1995) concludes that the process of titling became the process of the more powerful and influential groups getting themselves registered as owners to the disadvantage of others. In addition, land markets have not emerged on the scale expected, land has been held increasingly for speculative purposes, registration has not increased access to credit and titling has worked against the interests of women and

children. He also tellingly claims that these failures have been verified by the Bank`s own research without, apparently making a dent in its orthodoxy (ibid:54).

The important point is that policies which emphasise and encourage freehold may unintentionally or inadvertently discriminate against other forms of tenure which may be more appropriate for large sections of the population, and by doing so exclude or discriminate against some groups, such as tenants. For example, it is common for many low-income households to prefer the social cohesion which customary systems offer under conditions of rapid social change, or the mobility offered by rental tenure systems, providing they enjoy adequate security and legal protection. Such protection may be easier to achieve in land markets which encourage a variety of tenure options, rather than one at the expense of others.

While the policies of many developing countries continue to support titling approaches to securing tenure, there is widespread confirmation in the literature (eg Cousins 1999, Quan 2003; Durand-Lasserve and Selod, 2009, Payne, et al 2007, Robins 2003:7) that titling programmes can be problematic for poor people living in both urban and rural areas (Leap 2005:XX). International experience has shown that the objectives of improving tenure security, increasing investment in housing, generating revenues from property taxes and improving the efficiency and equity of urban land and housing markets can be more effectively achieved through other methods than the provision of land titles. For example, a radical review and sustained reform of the regulatory frameworks by which urban land markets are managed may achieve considerable progress in meeting these objectives. High building and planning standards, restrictive regulations on land use and development and cumbersome administrative procedures raise entry costs to land markets and legal shelter which inhibit development. Permitting modest initial development and the merits of incremental development, together with the introduction of 'one-stop-shops' for processing land transfers and development proposals could generate major improvements in the efficiency and equity of urban economies and land markets (Payne 2001:426).

4.2   The diversity of tenure categories deserves recognition

The tenure status of slum dwellers is as diverse as the variety illustrated in the generic typologies presented in section 2.4 above. Security of tenure can be tied to the legality of the physical structure and/or the legality of land ownership. It can be tied to residency permits or legal proof of some form of tenure. It can depend upon ration cards or other modes of urban registration. Yet, in many cases, security of tenure is a de facto recognition of tenure despite illegality of the structure, thus blurring the distinction between legal, semi-legal and illegal.

4.3.   Incremental approaches have merit

Experience shows that progress can often best be achieved in practice by building on those tenure systems and categories which already exist and which enjoy a degree of social legitimacy, rather than introducing new options which require high levels of institutional capacity and are not familiar to local people. Such an incremental approach highlights the importance of, and makes provision for, alternate forms of legal tenure such as short-term leases, rental and servitudes of use. In certain circumstances, such as in very poor locations or unusually good locations, these alternative forms of tenure may be the instruments of choice – even in the long term (Smit and Gemey 2010:10). In doing so, they provide time for a society to evolve new tenure systems and categories that reflect local needs and resources.

The term "transitional land tenure arrangements" refers to land settlement contexts where past interventions have had a marked effect on current land tenure arrangements. These interventions may be induced by both external and internal pressures which have brought permanent and incontrovertible changes to customary principles of land tenure, whilst not overruling them completely. In this configuration, rights holders express a desire towards more formalised recording of land rights and regulation of land use, whilst also maintaining some elements of (adapted) customary tenure. There is also a tendency towards more individualised land use rights and fixed spatial demarcation thereof. This "hybrid" land tenure context raises policy questions beyond land tenure forms, viz. wider land policy questions such as land use management and cadastral reform.

All tenure arrangements are transitional to greater or lesser degrees. In most situations past interventions are likely to have had a marked effect on current tenure arrangements. Transitional tenure systems have the potential to reveal alternative tenure systems and forms, and may reveal what adaptations may be possible or appropriate at points in between the two extremes of tenure status. There may be clues as to what elements of an alternative tenure system are operating optimally and robustly, and what elements detract from tenure security in a transitional environment. A study of transitional tenure systems may provide indicators of what factors distinguish customary systems from the formally legally recognised registration system. Is the movement away from customary principles a factor of changing governance institutions, changing person-person relationships or changing person-land relationships? Or all three? Is it a push for more individualised rights and exclusive ownership, and if so, what forces drive this change? How do these changes impact on access to land by gender? Are these tenures suspended between customary tenures and registered formal tenure or do they represent potentially new forms of tenure in themselves? If so, what are the possibilities of recognition in their own right rather than viewed as incomplete versions of the either of the two polarities? (Leap 2005:38).

4.4   Local context is important

Options available to deal with security of tenure depend upon a set of inter-related social, political, economic and technical factors:

- The respective responsibilities of central and local governments in relation to the implementation of security of tenure policies are, generally, clearly defined. More often than not, local entities have responsibilities regarding land and housing policies, but are hindered in carrying them out by their limited resources, both human and financial.
- At city/municipal level, the options available regarding security of tenure policies depend upon the balance of power between various urban stakeholders, as well as on the political orientation of the municipality.
- Available options also depend upon the prevailing residential tenure systems in place, and also, to some extent, on the size of the population living in irregular settlements.
- At settlement/community level, the measures employed will depend upon the size of the community concerned, any political influence that may be involved and the age of the settlement and the level of community organization. Any or all of these factors can determine whether the claims and demands of communities are, in fact, put forward for consideration (UN-Habitat 2003a:171-172).

4.5   Ensuring tenure policy enjoys social legitimacy

It is tempting to assume that the existence or passage of laws or other official measures will be sufficient, even if resources exist for their enforcement, will be sufficient to ensure the effective implementation of a policy. However, as this review has demonstrated, land and property issues are essentially socially and politically determined, so it is vital that all policies, legislation and other official requirements enjoy social legitimacy by those to which they apply.

The financial constraints to which low-income groups are subject inevitably limit their ability to conform to requirements which do not reflect their needs and resources. It is therefore important to ensure that those responsible for drafting or enforcing legislation bear this in mind and based proposals on evidence of such needs and resources.

4.6   Tenure and access to services and urban development

Secure tenure alone cannot address the needs of the poor. Improving security of tenure forms part of an integrated urban development approach. One of the main lessons from experience during the last three decades regarding urban land management and security of tenure is that any tenure upgrading or regularization project must be accompanied by the provision of infrastructures and basic urban services. Conversely, provision of infrastructure and basic services does require some form of secure tenure. For example, the large scale Kampung Improvement Programme in Indonesia launched in 1969 is the world's first urban slum upgrading project. It focused on improving the provision of services and access and did not formalise tenure status (Dhakal, S. 2002). This also deterred higher income groups from taking over areas occupied in otherwise prime urban locations and making them unavailable to lower income groups.

4.7   The role of central government is changing

As the Habitat Agenda has stressed, the primary role of governments is to act as an enabler and regulator of land and housing markets, rather than a direct provider. However, this does not mean that governments have no role at all in providing directly or indirectly for those in need. Such government provision may be needed to help particular sections of housing demand, such as for civil servants who may be required to move relatively frequently and for some groups unable to meet their basic needs through market based systems of provision. A number of countries have adopted public-private sector approaches in relation to land delivery, with a fair amount of success but major problems to upscale such projects. These include Requests for Proposals, land pooling and land readjustment, guided land development, and various forms of joint venture companies (see Payne (editor) 1999).

In a wide range of contexts, the ability to promote diverse forms of land and housing supply, such as participatory approaches involving communities and private sector developers, will depend upon the existing and enforcement of a regulatory framework based on social and economic realities. At present, planning and building regulations, standards and administrative procedures are often based on the assumptions and aspirations of the urban middle class and the commercial sector. As a result, they exclude the majority of urban dwellers, forcing them into the very unauthorized development that the regulatory framework seeks to prevent. Reviews of the regulatory framework can contribute to a more responsive land and housing market and improve access to officially sanctioned forms of secure housing for all (see Payne and Majale 2004).

4.8　Participatory planning and the community

Centralized planning has failed to deliver adequate access to land and security of tenure. A number of countries have adopted participatory planning approaches and these have proved successful.

Public land delivery systems often operate without any involvement from the affected communities. More and more countries are now involving local communities in order to make development more sustainable, affordable and beneficial to low-income groups.

Community organization is a key element for the successful implementation of any tenure upgrading project, especially for maintaining /supplying records of rights on land, defining eligibility criteria for tenure regularization, and promoting suitably adapted financial mechanisms for resource mobilization at settlement level.

Focusing on individual informal settlements has not made it possible to solve the problem of informality, either city-wide or globally. Moreover, *ad hoc* approaches do not foster inclusive cities. Fresh approaches that lower standards, spread resources and are designed to go to scale have been developed, paving the way for inclusive cities.

4.9　Gender discrimination needs to be addressed

Much effort has gone into ensuring that women enjoy equal rights with regard to land and inheritance. Some legislative success has ensued. Apart from that, there have been positive instances where poor women at the local level have been able to overcome discrimination under either formal law and/or custom in connection with land and/or inheritance. One area of success has been with cooperative savings. In many societies, gender inequality in access to land, economic opportunities and decision making bodies, is resulting in households headed by women being more vulnerable to evictions than those headed by men, especially market-driven forms of evictions (Durand-Lasserve 2005).

Poor women face great barriers to obtaining land for housing because social customs or patriarchal tenure systems prevent them from holding rights to land. Despite up-to-date laws which forbid discrimination, the property rights of women are often ignored in the buying, selling, inheriting, leasing or allotting of land, leaving them dependent on fathers, husbands or sons for tenure security. Besides violating women's basic human rights, this kind of discrimination is contrary to good urban management and makes no economic sense. Women are invariably considered to be lower risk against loan default than men, and female- headed households frequently form a high proportion of a city's low-income population (UN-Habitat 2008:5).

4.10.　Poor access to public land

Public land remains one of the most important potential sources of land for housing the poor — both now and in the future — but there are still serious problems with public land.

There are many reasons why the poor cannot access public land in cities. These include:

- Centralized decision-making keeps the authority over land and land management programmes with national governments, while the local authorities who have to deal with the problems of landlessness in their cities have very little role in solving those problems locally. In addition, decentralization is difficult to implement in the land sector.
- Inefficient use of urban space means that too often, insufficient thought is given to how urban land is planned, developed, serviced and used
- Government-driven approaches rely on the state to make land available for people for housing and to set standards and procedures for developing that land.
- Especially in sub-Saharan Francophone Africa, poor land governance, widespread corruption in land administration and the tight relationship that exists between tenure status and land values encourages nepotism and clientelism in public land allocation and high levels of corruption in land administration, especially in sub-Saharan African countries. This can be illustrated as follows. Land governance in a context of legal dualisms is a major obstacle to the implementation of transparent, equitable and efficient policies aiming to improve security of tenure. In the periphery of Bamako in January 2012 a plot of land valued at x if purchased on the customary land market, will be valued 2x if the sales agreement is authenticated by local authorities, 3 to 4x if the buyer can obtain a temporary permit to occupy, and 6 to 8x if can convert its permit to occupy into a freehold title. This process can take as much as 10 year, but influential persons or investors can complete it within a few weeks
- Unrealistic planning rules, rigid and costly regulatory frameworks about how land should be made available and developed often fail to meet the needs of the poor.
- Poor land recording systems and highly centralized land information systems for registering land ownership and user rights can create large barriers for many poor households to access land (UN-Habitat 2008:4).

4.11   Pressure of demand for urban land combined with inadequate land provision.

A combination of pressure of demand for urban land and insufficient provision of land for housing the poor is usually observed in the following instances:

- During the first stages in the liberalization of land markets following a period of government control over land management and allocation;
- In the context of accelerated commodification of informal land markets (World Bank, 2003)
- Political economy context – land speculation and massive increase in land prices
- When demand for urban land from investors and developers from the formal sector is accompanied by rapid increases in urban land prices, usually at a much faster rate/pace than average incomes.
- When the lack of public land reserves makes it impossible to offer alternative resettlement options to the urban poor (Durand-Lasserve), except in remote locations far away from city centres.

4.12   Market pressure (and extensive use of eminent domain prerogatives)

Three decades ago, the dominant approaches in urban law, planning and social sciences in general, saw the expropriation of land as a crucial component of any development strategy. Expropriation was the ultimate tool for advancing public over private interests and planning was the art of getting the right balance. For one author, there could not be urban policies

"worth the name", if public authorities did not have the power to acquire and control land (Fromont, 1978:7).

An interesting aspect about policies adopted at international level refers to the different discourses that prevail in financial organizations, as opposed to that of the UN system and NGOs. In the latter two settings, the concept of *housing rights* organizes the discourse around evictions that are associated to expropriations. In contrast, financial organizations use the language of *property rights* to pose the problem in terms of public policy. More than a mere lexicological difference, this reflects different ways of defining the underlying issues: the concept of property rights (especially as used in the context of the World Bank) is part of an economic theory of development, whereas the concept of housing rights refers to a moral imperative that comes associated to doctrines of, economic, social and cultural rights. Although security of tenure is seen as a common goal of all land policies, there are different philosophical foundations for the institutions that are to be created in order to attain that goal (Azuela 2007:12).

4.13   NGOs need more expertise and capacity

There are too few NGOs with adequate technical awareness of urban housing and property affairs. Where such expertise does exist, NGOs have demonstrated the critical impact they can have on land delivery to low-income groups. NGOs need to build their professional capacity if they are to facilitate sustainable urban land management.

As some international and regional NGOs expand their influence, opportunities arise for collaboration with public sector agencies. Whilst this presents immense opportunities for implementing people-based policies, it can also present a challenge in terms of maintaining their intellectual and institutional independence and integrity.

As the scope and range of local and international NGOs involved in land tenure and land management issues increases, so does the diversity of their work. Some focus on the human rights aspects, whilst others are more focused on the policy and technical aspects. There is a need for both types and approaches and it is important that they collaborate in order to maximise collective impacts, regardless of the approach they adopt towards maintaining their ethical principles or making compromises for the greater good.

4.14   The benefits of diverse tenure options

Individual titling is costly, time-consuming and often not sustainable for low-income groups, as the procedure involves full surveying and registration. An alternative is to use group registration, blocks and some form of individualized lease rights managed by groups in conjunction with local authorities. Furthermore, it has not been possible to deliver freehold and/or registered leasehold rights to the majority of people in the developing world. Therefore local authority leases are one way forward.

Adverse possession laws do not deliver to scale on their own, but require legal aid and/or to the use of class actions if they are to be efficient. Compulsory land acquisition by government is not delivering to scale, especially in relation to urban encroachments on agricultural areas. Public-private partnerships and innovative use of legal instruments with regard to cloudy title/deed on private land have been found to be more efficient in a number of developing Asian countries, especially in India. There have been many examples of innovative relationships between public and private sectors, some which have been operating for many

years. These include Town Planning Schemes (TPS) based on British planning practice; Participatory Development Schemes (PDS), by which the private sector is permitted to undertake large scale land developments in return for the provision of a social housing component; land compensation schemes to benefit Project Affected Persons (PAPS); Transferable Development Rights (TDR), by which private land-owners in areas where development is restricted, are compensated by disassociating the development rights from their existing plots and awarded transferable development right certificates for use in other approved areas. Another example is the Slum Redevelopment Scheme (SRD) introduced in Mumbai, whereby the commercial private sector, together with slum co-operatives and NGOs, are offered land-based incentives to upgrade existing slums (Payne, 1998).

5. CONCLUSIONS AND RECOMMENDATIONS

This literature review on land tenure issues has sought to demonstrate that despite the devastating effects of forced evictions, initiatives taken at various levels and by different actors have resulted in a range of practical and socially acceptable alternatives which are consistent with international human rights obligations. These provide the basis for a range of innovative and practical options for improving tenure security and access to legal and affordable land and housing for all those in need, irrespective of income.

5.1 Taking stock

Before considering policy options to improve access to land and housing with tenure security, it is essential to analyse the existing range of tenure categories, their individual and collective role within the urban and peri-urban land and housing markets, the sub-categories of demand which they serve and their strengths and weaknesses. This will inform options for intervention and thereby risk unintended consequences from inappropriate tenure policies.

The tenure typology presented in section 2.4 and discussed in detail in Annex B, can be used to provide empirical evidence of the relationships between different tenure categories.

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

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

If the typology of the existing situation regarding tenure security and property rights demonstrates that some tenure categories provide reasonable tenure security, but not rights to sell, inherit, use or develop, or such rights are not equally available to women, priority

attention will need to be given to gender issues when considering the most appropriate options for formulating new, or revising existing, tenure policy.

5.2   Primary considerations in formulating a pro-poor tenure regularization policy

A primary objective of a pro-poor tenure policy should be to ensure protection for all households from forced eviction, harassment or other threats and the application of due process in assessing tenure claims and rights. This need not result in public sector agencies losing long-term control, or private landowners losing their land. However, in extreme cases where the removal of a settlement and the relocation of its residents is essential for either environmental or genuine public interest reasons, people must be afforded due notice, a right of appeal, acceptable compensation and reasonable options for alternative accommodation[16]. The secondary objectives involve improving access to livelihoods, services and credit, usually respectively.

The most effective way of increasing security for many households may be to increase rights, such as improved access to credit or services, rather than changing the form of tenure as such. Fig. 6 shows that if rights are increased for those living in insecure tenure categories, their de facto security of tenure increases, even though there is no change in their legal tenure status. This has the added advantage of reducing disparities between those at the lower end of the tenure range and those in more formal tenure categories, making it easier for people to move from one to another and in ways that do minimise land and property market distortion. It also places less pressure on land administration agencies.

Fig. 6: Likely consequences of improving tenure rights in unauthorized settlements

.

---
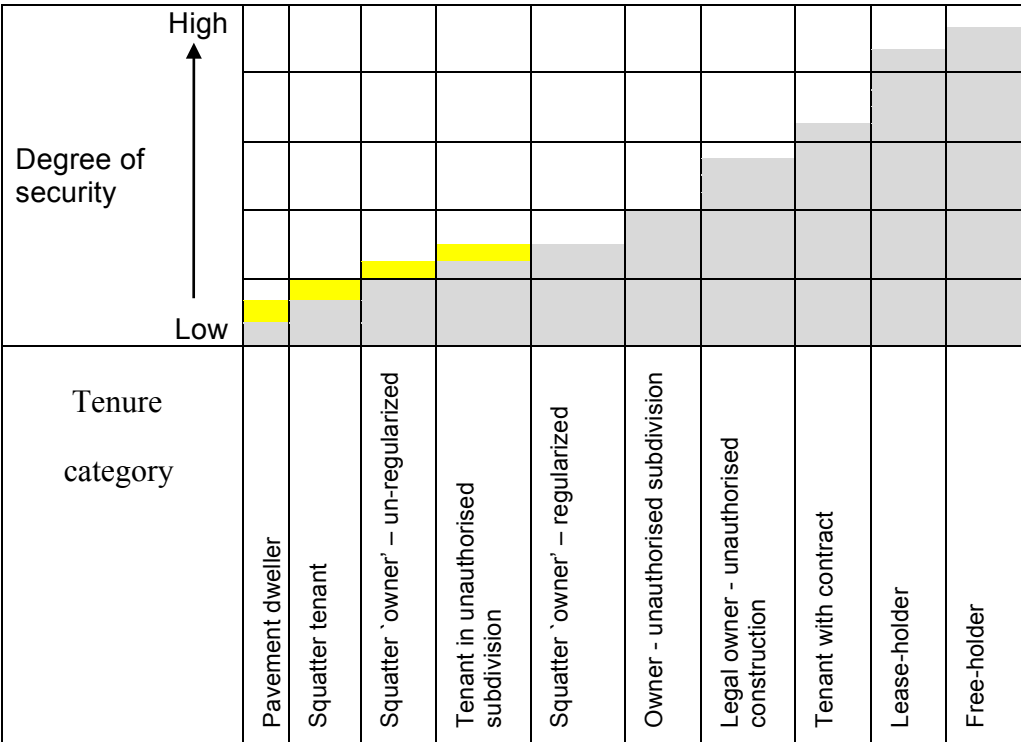
[16] See other procedural requirements in: CESCR Committee, General Comment No.7, para 15.

Note: Tenure security in law (de facto rights may vary considerably)

5.3 Factors in preparing an effective tenure policy

The preparation and implementation of effective tenure policy is dependent on many factors. To satisfy the various social, economic and institutional requirements for effective and sustainable implementation and enforcement within limited resources, international research (eg., Payne 2001:415-429) suggests that the following factors need to be considered.

1)   Encouraging investment in housing
It is undeniable that perceived security of tenure is widely accepted as a precondition for households to invest in house construction or improvements. Naturally, people cannot be expected to invest if they do not feel reasonably secure. This is not the same thing, however, as saying that full titles are the only means of achieving acceptable levels of security. Numerous examples exist of considerable investments being generated simply by an official statement that a settlement will not be removed, by the provision of services, or by the issuance of certificates of use.

2)   Improving access to formal credit
Many households in developing countries, especially poorer ones, do not require large loans, since they do not earn enough to service them. Access to small loans, however, will enable them to build an extra room (eg. for rental income), or to improve the quality of their existing accommodation. For such loans, other forms of collateral would invariably be acceptable. The reluctance of formal credit institutions to enter the small loans market for the poor due to the high transaction costs and assumed risks is the real impediment to obtaining formal credit.

Even for those households wishing to obtain larger loans, the value and use of titles as collateral may be less in practice than has so far been assumed. The reasons for this are quite simple. Public sector finance institutions frequently find it difficult to foreclose on defaulting loans, even when they possess the title deeds to a property, because it is politically unacceptable for public authorities to be seen to forcibly remove poor people from their modest houses. Traditionally low levels of cost recovery in public sector schemes indicate that it will take some time to change the culture of such institutions.

For households seeking loans from private sector finance institutions, the primary consideration in approving a loan is the ability to repay it. Collateral is irrelevant unless households can satisfy this initial criterion, since responsible institutions would be reluctant to provide loans only to have to foreclose on them soon afterwards. This inevitably restricts mortgage finance to households with adequate levels of income or savings and this, by definition, excludes the poor. It can therefore be concluded that individual property ownership through the provision of titles is unlikely, in itself, to increase access to formal credit. Low-income households are often reluctant to obtain formal bank mortgages out of fear that they could lose their only real asset. At the same time, the need for titles as collateral is becoming less critical in many countries as innovative community based finance institutions, such as the Grameen Bank in Bangladesh, or Banco Sol and FIE in Bolivia, provide large loans based more on credit worthiness achieved through regular small savings.

3)   Improving the property tax base

43

An incentive for many governments to regularise informal settlements and incorporate them into the formal land and housing markets is to extend the property tax base and hence increase government revenues. It is logical that those in the formal land market would resent residents in informal settlements being able to occupy land and property in high value urban and peri-urban locations without being subject to the same tax liabilities as they are. Therefore, policies to regularise such settlements paves the way for such potential revenue sources. However, it needs to be remembered that tax levels need to be related to the ability to pay. For many low-income households, this will inevitably be highly constrained and may equal, or even exceed, the costs of collection.

4)   Increasing public sector influence over land and housing markets
The regularising of land tenure may have serious negative consequences which have so far not been fully acknowledged. Given the range of statutory, customary and unauthorised tenure categories in most cities in the South, public sector intervention in any one sub-market has direct and indirect repercussions on other sub-markets.

5)   Improving the efficiency of land and housing markets
When governments or international agencies intervene at the level of individual projects or settlements, the consequences of errors are easier to contain. However, policies operate on a larger scale, making negative outcomes more difficult to contain. In this connection, a major concern is that land ownership patterns in many countries in the South is heavily concentrated, with those possessing large land-holdings also enjoying considerable political and economic power. Under such conditions, the policies advocated by Brandao and Feder in favour of facilitating individual and corporate autonomy are likely to be welcomed by such elites, though not be those lower down the social and economic ladder. For example, land-owners in Pakistan do not pay taxes on their land and are unlikely to support legislation to introduce this.

For vulnerable social groups, such as tenants in the wide range of unauthorised settlements dominating most urban areas in the South, the 'downward raiding' process may prove disastrous as newly 'entitled' owners seek to realise their new found capital assets by increasing rents to unaffordable levels. The mere prospect of full, formal tenure status within informal settlements may raise their commercial value and can therefore actually reduce tenure security for such groups.

A further cause for concern is that even when land ownership is more egalitarian, governments in developing countries have little experience of formulating and implementing urban land tenure policies appropriate to all sections of demand. The direct and indirect, positive and negative consequences of a specific policy measure are particularly difficult to predict, and if they cannot be predicted, they cannot be controlled. Also, unlike policies concerning interest rates or taxation, which can be adjusted upwards or downwards as circumstances require, tenure is a uni-directional policy instrument, in that it is practically impossible to withdraw rights once granted.

The unpredictability and inflexibility of tenure instruments therefore make it difficult to apply them with any degree of confidence as a means of improving the efficiency of land and housing markets. However, it is clear that insistence on full titles can have severe negative impacts on the operation of urban land and housing markets.

6)   Increasing the equity of land and housing markets

Given the high proportion of tenants in the cities of developing countries, particularly in unauthorised settlements, the impact of inappropriate regularization policies may raise property prices dramatically, rendering many tenants unable to pay increased rents and forcing them out of their homes.

Land tenure issues cannot be separated from the broader issues of how cities are governed. Although land tenure raises important technical issues, it is ultimately a political and governance issue. There is a large competition between social, economic and environmental goals in how limited land in cities should be used. Decision-makers face difficult choices every day in how to resolve competing needs—such as whether to use scarce land for housing, industry, parks, or keeping the cultural heritage of a particular place. The quality of governance determines how this competition is managed, and also how any disputes and conflicts are resolved. When we think about good land governance the type of questions to ask are: who benefits from the laws and policies of land as they are in our cities today? Who makes the decisions, and how are they enforced? How do these decisions relate with traditional institutions (UN-Habitat 2008)?

5.4   Elements of a tenure regularization policy

While local conditions need to determine final policy choices, the following steps may be considered as a means of moving incrementally towards a more formal tenure system which improves the efficiency of land and property markets. Information on tenure policy options, their characteristics, strengths and limitations, are summarised in Annex D, together with an assessment of their potential role.

Prioritize occupancy rights and security of tenure
International experience suggests that caution is advisable in effecting major changes to tenure systems. This is partly because titles and rights once granted cannot easily be withdrawn unless occupants fail to meet agreed obligations and because the wider implications of specific tenure policy changes are presently difficult to predict. A starting point may therefore be to regard every step along the spectrum from complete illegality to formal tenure and full property rights as a move in the right direction, to be undertaken incrementally. This would minimise market distortion and the risk of undesirable social consequences.

A precondition to improving tenure security is to prevent forced evictions and relocations where these are presently part of government policy or practice. Evictions waste scarce public resources and increase poverty due to increased costs and times of travel to places of employment, in addition to the huge costs of community disruption and individual suffering.

Promote records of land rights (including use rights) at the local level involving
concerned communities
Surveying all extra-legal settlements and identifying any that are exposed to serious environmental hazards (e.g. floods, landslides, etc.) or required for strategic public purposes is important. These surveys should be subject to review by independent experts. Governments should offer residents of all such settlements priority for relocation to sites that offer close access to existing livelihood opportunities (e.g. street trading) and services (e.g. not out of the city), together with adequate compensation. In cases where residents occupy land under other forms of tenure (e.g. those who claim the right to their land or property), compensation should be subject to agreed conditions for compensation. Temporary Occupation Licences or Permits

should be provided for a limited period, depending on how long it takes to agree with the local community on moving to alternative sites.

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

A further option is to extend existing customary arrangements. One example of this can be found in Egypt, where a modest ground rent, or `hekr' is charged to informal settlers on government or unclaimed desert land. This does not grant title, and cannot be transferred, but ensures that if households have to be displaced, they will receive compensation for the buildings they have erected on their plots. Such an arrangement distinguishes between the ownership of land and the ownership of property and facilitates access by the poor to plots which would otherwise have been beyond their means. Farvacque and McAuslan (1992) also recommend that where a national code for land law is inapplicable, the best approach is to build on what exists and develop local forms of regulation, rather than trying to impose institutions from the centre, modelled on imported systems. Doebele (1988) lists several other options, including community land trusts, transfer development rights (TDRs) and co-operative tenure forms.

Develop appropriate regulatory frameworks for the regularization of existing settlements and the development of new settlements for the urban poor

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

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

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

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

Upgrade settlements incrementally in order to limit the effects of formal market pressure and market evictions on informal settlements

Starting with pilot projects at as large a scale as possible provides opportunities to build trust and confidence among all stakeholders and provides the foundation for a city-wide approach.

Providing the option to upgrade to real rights when affordability and the administrative capacity allows, can facilitate the processing of such claims.

It will be important to maintain and accelerate institutional reform so that changes penetrate the institutional bloodstream and culture of public agencies, not merely train individuals whose increased expertise and awareness has little chance of being applied. This could be achieved through accelerated promotion, or career fast tracking options for young talented professionals who otherwise may not seek employment in the private sector.

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

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

5.5   Implementing a tenure policy

Tenure policy options can be classified in terms of short, medium and long-term options (does not include customary or religious tenure categories). Examples include:

- Short term tenure options:
    - A moratorium on relocations and evictions)
    - Temporary Occupation Licenses (TOL)
    - Certificates of Comfort
- Medium term tenure options:
    - Communal Trust/Lease
    - Individual lease
    - Private rental
    - Certificates of Rights
- Long term tenure options:
    - Communal ownership/titles/Communal Property Associations
    - Co-operative ownership
    - Condominium ownership
    - Social concession
    - Public rental, and
    - Individual ownership or title.

The characteristics, benefits and limitations of each of these options is summarised in Annex C.

5.6   Building institutional capability

As emphasized by Augustinus (2003), "new land information management systems can supply some kind of early tenure security to a large number of people, especially to informal settlements…The focus is on using the spatial information associated with an appropriate land information management system which is linked to urban service delivery, as source of legal evidence to validate people's adverse possession claims and/or prevent eviction".

Whenever possible, land records and registration must be carried out at local / municipal levels, rather than being centralized at the government level, for both technical and political reasons: identification of right-holders, the settlement of land-related conflicts, as well as adjudication procedures cannot be carried out at central government level. However, whereas records of land rights can be kept at municipal or sub-municipal level (as is the case in most tenure regularization projects), land registration and the delivery of property titles remain prerogatives of central government administrations.

By phasing implementation, line agencies are able to build institutional capability and also maintain flexibility in terms of adapting existing tenure categories which enjoy social legitimacy. It should be remembered that it took countries which urbanised in the nineteenth century about two hundred years to formalise systems of land tenure and property rights that enjoyed social legitimacy even though their populations were small and they enjoyed greater economic autonomy than is available to countries currently undergoing the same socio-economic and environmental transformation. Tenure policies which build on what works, irrespective of legal status, will therefore maximize the prospects of evolving new tenure systems based on locally applicable social, cultural, institutional and political realities. Even though the increasing commercialization of land and property markets in almost all countries will continue to exert a powerful influence on land tenure policies and therefore housing policies, these diverse factors deserve an important place in ensuring that tenure systems operate in ways that are acceptable to all in need (Payne 2001).

APPENDIX A: CATEGORIES OF TENURE:

Freehold:

Freehold is generally the most expensive legal tenure type because it uses professionals to create the right, transfer it and maintain the registration records over time. It also often takes the longest to register. This is because firstly, there is a lack of human and financial capacity, especially of public sector professionals (Williamson:1998). Secondly, underlying title/deed ambiguities have to be solved first, e.g. for obtaining the correct land use permissions, sorting out any deceased estate issues, establishing whether there are any other claimants to the land. As a result of the length of time it takes, and the lack of human and financial capacity in government, most countries do not have universal coverage, and in fact in most developing countries only ten percent of land sites or plots are documented (UNCHS:1991).

As freehold systems are dominated by professionals and centralized records, access is limited (see section 2.2.6 below for further discussion). Freehold in most, but not all countries, can be mortgaged. Finally, it is also a powerful political tool used by .

Problems with individualized rights

- It is not necessary to give individual titles/deeds in order to *deliver services* to an informal settlement (Azuela and Duhua:1998:160 -Mexico);
- Individual tenure rights do not fit well with *customary forms* of tenure (Nafantcham-na and Borges:1998);
- In customary areas freehold creates a class of those with land rights and a *landless class* (Payne:1997:18) as it cannot accommodate extended family and group rights easily;
- Where there are numerous tenants in an informal settlement or customary area, freehold often forces existing *low-income tenants out* of an area, as they can no longer afford the rents, which rise dramatically after titling (Payne:1997:46);
- Individual titling of customary land in Kenya was *beneficial to the rich* and powerful and not the poor, as "....land registers failed to reflect reality on the ground, land markets have not emerged on the scale expected, land has been increasingly held for speculative purposes, registration has not increased credit, and titling has worked against the interests of women and children" (Payne:1997:36);
- *Women's land rights* tend to be nested in the land rights of the family. By individualizing the rights when titling takes place, women can become landless. Moreover, when the rights are initially created, women, and especially widows, can lose their land rights to male members of the family/household who tend to be recorded as the head of household;
- The provision of freehold to informal settlements *encourages squatting* as a way of obtaining land rights eventually (Azuela and Duhua:1998:160 -Mexico);
- Payne found that the ability to make substantial profits merely from holding and transferring land, without investing in its improvement or paying taxes on its increasing market value, serves to attract even greater levels of investment undertaken by *professional squatters*. This reinforces land price inflation (1997: 46);

49

- Huchzermeyer found that low-income people transfer their freehold land informally (1999:20 –South Africa). While governments quite often subsidize the initial land delivery that includes the individualized title/deed, they seldom subsidize the subsequent transfers of the land. Informal transfers are undertaken because low-income groups cannot afford the transfer costs and/or are not familiar with the corporate culture of the land professionals. *Illegal transfers* mean that the buyer of the property has no legal tenure security and the property registration system itself is not sustainable if large numbers of informal transfers become routine;
- Freehold will not make it automatically possible for households to *obtain a mortgage*. If household incomes are too low, financial institutions can be discouraged from lending, even if the applicant has freehold title/deed. In some countries the capacity of the financial institutions is not enough to meet demand. Also, unless government allows foreclosure in the event of default, financial institutions will not be interested. Local group rights can be so strong that even though the property is in freehold, it is not possible for the financial institution to take possession and transfer it to someone else. In this situation financial institutions are reluctant to lend money;
- According to Payne, there is an increasing body of empirical evidence to show that *freehold "...is not essential* to increasing levels of tenure security, investment in house improvements, or even increased property tax revenues.

Problems caused by the very nature of freehold

- With a market-based approach, freehold titles/deeds make the land attractive to *speculators* who hold the land as an investment and a hedge against inflation. This has the effect of displacing the low-income population and creating unutilized vacant land where densification was planned;
- From another angle, *public money is misdirected* when subsidies are used to enable low-income groups to obtain freehold title/deed, as there is widespread evidence of 'downward raiding' as occupants realize the true market value by selling to higher income groups. Where resources are scarce, public money would be better spent on developments for low-income groups where they would obtain long term use from the subsidy;
- Only a *small proportion of households* can afford even the subsidized cost of a site with a title/deed. Therefore freehold cannot serve low-income groups to any great extent;
- Freehold for all is not always a possibility because of the *lack of financial and human capacity* in governments;
- Often the *de facto* land tenure in an informal settlement does not match the *legal record.*

Freehold not the best option for low-income groups
It can be concluded that for low-income groups, freehold is not the best option in most circumstances.
The chief reasons are that:-
- It is *too costly* for most people, both in terms of entry and for subsequent transactions;
- While it offers a range of services, many of these are *not required* by low-income groups and merely add to the costs;

- While it offers secure tenure, other, *lesser forms of tenure* also offer secure tenure;
- The system is *not accessible* to low-income groups;
- Countries *lack the capacity* to issue freehold to the whole population. In this situation, and unless other forms of secure tenure are developed for low-income groups, large numbers of the latter will remain outside the formal land rights system. (UN-Habitat 2003b:25-28).

Provisional, conditional and/or qualified titles/deeds

Provisional, conditional and/or qualified title/deed is a title/deed registered subject to certain restrictions or limitations (Dale:1976). The occupant only obtains the final freehold title/deed at the end of a specified period and/or when they have complied with specific conditions. The advantage of these titles/ deeds is that they can be used in the short term to deliver individual private land-ownership much more quickly than freehold (Sweden, Australia, South Africa, Malaysia), largely because they limit the number of registration steps in the short term. The disadvantage is that they require land administration systems with as much capacity as the conventional freehold, or lease, in the medium to long term, to upgrade to final title/deed and to manage the titles/deeds. Also, often there must be sufficient capacity in the administrative system to undertake inspections and enforce decisions.

If there is not sufficient land administration capacity, conditional owners behave as if they are full owners or title/deed holders from the outset, and the conditionality, becomes an additional burden on an already weak system (UN-Habitat 2003b:25).

Leasehold

Leases, leasehold and rental are different terms used for a similar bundle of rights. In this handbook 'lease' will be used to cover all these terms, and it involves the rental of land or property under contract or statutory conditions for a specified time period. It may be created by the state, corporations, or individuals. Lease conditions vary considerably and may not be enforced, especially in public leasehold systems. "Development and use rights are likely to be restricted by the lessor" (Payne:1997:18,19,38). There are both legal and illegal leases, both for land and houses. Long-term leases are often registered in sophisticated centralized systems and will be dealt with under freehold.

<u>A variety of forms</u>
Leasing takes many different forms in different countries. Some examples are given to demonstrate the range:
- In Turkey, landowners *lease land unofficially*, although it remains officially vacant. Such practices often include the provision of water and electricity. This approach is also common in Thailand, "...where both public and private owners rent land, whilst ensuring that tenants do not build permanent structures on the land." In some cases the lease agreements may take the form of an oral agreement or, more often, are written rental contracts ranging from one to three years. Even when the contract expires, people remain in occupation and the rent is collected for long periods of time (Payne:1997:7-9);
- In Burkino Faso, there is a *range of specific government leases*, for housing, temporary use, permanent use, industrial and commercial use, public offices, and non-economic activities such as a church;

- In Botswana, a *Certificate of Rights* (COR), has been introduced. The rights are held in perpetuity and can be inherited. Only the improvements on the site can be sold and not the land itself. It cannot be mortgaged but a building materials loan is available. A service charge is paid to the local authority.
- The land administration linked to the management of these rights is simple and done by the local authority in an affordable fashion (Payne:1997:9,33). Botswana also has two other types of lease, a Temporary Occupation Permit, which is a very weak form of lease and a Fixed Period State Grant, the strongest form of lease, which requires surveying. A similar system to Botswana's
- COR exists in Zambia where thirty-year occupancy licenses are granted for sites and customary and community leaders are used for dispute resolution. Swedish cities used the same approach linked to land banking (Payne:1997:9,33);
- In India, *'pattas'* or leases are issued. Provisional *pattas* are issued prior to housing followed by a house site *patta*. The house site *patta* is given after 5 years of occupation if the area is considered by government to be safe, is not required for other purposes and is not under a court dispute. There is an income qualification so that low-income families benefit. There are numerous title/deed conditions by the applicant and is not a condition of regularization, the *patta* is in the name of the woman of the house (they are considered less likely to sell), the site can be inherited but cannot be sold, the government can take back the land without any compensation if it is required, the site can be used only for residential purposes, if the land is sold, government can re-possess, the *patta* can be withdrawn without compensation if it is found that there was a misrepresentation of facts in claiming eligibility. Leases are for thirty years, unless the government requires the land, where one year leases are issued. A small ground rental has to be paid. The restriction on sales is not adhered to and over 50 percent of *pattas* have been sold illegally in Delhi (Risbud:1999);
- In Brazil, a lease termed *'Concession of Right to Real Use'* (*sic*) exists for public lands. The contract is between the local authority and the residents on the land, for the use of land in order to construct a house, for a specified period of time (Alfonsin:1999:4). The lease gives rights to use the land to live on and eventually to develop some commercial uses on the same property. The right can be transferred with the agreement of the local authority (Pinho:1999:7);
- In Papua New Guinea, where all vacant land adjacent to urban areas is held under customary tenure, there are *illegal lease arrangements* between the owners and migrants to the area. "This 'tenancy on sufferance' is further complicated by the dis-aggregation of settlers into their tribal groupings"(Payne:1997:9);
- In South Africa, informal settlers rent sites from private landowners, under a *site renting contract* between landlord and tenant. The tenant is responsible for erecting the house and removing it. Evictions are commonplace where tenants cannot pay the site rental for a substantial period of time. No services are made available either by the landowner or the local authority (Cross:1999:13);
- In Ghana, there is a *traditional leasing system* and over 100 chiefs in the city allocate land rights, irrespective of the official plans (Payne:1997:10);
- In Egypt, land can be *leased from the state* on a long-term basis to the occupants. "Squatters may be granted this status, if they make a request to the

Governorate. Land which remains permanently under a leasing status and cannot be sold is known as *Hekr* land. Other leased lands can be converted from public to private ownership following the end of the leasing period" (El-Batran:1999a:6);

- *Lease-lease back.* "This arrangement is essentially a device for leasing land to third parties. Under this arrangement, a clan or tribe agrees to lease land to the government, which then leases it back under statutory laws, so that the clan or tribe can then lease through government to private individuals or groups" (Payne:1997:43).

Common features

As indicated above, the conditions of title/deed of a lease can vary tremendously both within a country and between countries. The key characteristic of a lease is that the ownership right is not transferred, but all and any other right can be transferred. Land leases that contain most of the rights, aside from ownership, are generally registered and require the inputs of professionals such as surveyors and lawyers. Land leases that include only a few of the bundle of rights are often administered by local authorities and at the local level, using non professionals both to create the land sites or plots and to administer them.

The benefits of leases

Payne states that "(f)or individual occupants, leasehold has generally been found to provide a sufficient sense of security to stimulate investment. The long-term interests of the lessor, whether public or private, are also protected." Leasehold has been shown to meet the needs of residents, landowners, developers and local authorities and is becoming an increasingly popular option in 'extra-legal settlements.'" (1997:19). In a summary of the findings of the Expert Group Meeting of South East Asian Surveyors, Williamson states that, "…a common concern was the identification of rights in land, especially rights of occupancy and use." (1998:119). Finally, local authority leases, while giving basic tenure security to residents, are generally more affordable and can be more transparent and accessible than freehold (see section 1.2.14 below). Leases also give a local authority more flexibility in the medium to long term to manage land development and land use changes in the city (UN-Habitat 2003b:19-21).

Group tenure arrangements

Another possibility on the titling debate is a compromise in which ownership is transferred to groups of people rather than individuals. Collective or community ownership as a legal model creates incentives for sustainable resource use through local definition and enforcement of allocation and use. In the South African version, group ownership remains within the cadastral model but the costs of legal tenure are reduced by the creation of a single perpetual juristic person that takes transfer of the property. In this example, the parent property can also be used as a commodity in a commercial venture, if that is the collective decision.
(Leap 2005:12-13)

Group tenure arrangements radically diminish the number of registration units and thereby also the survey and registration costs and the public land administration costs. Rights of occupancy or leases to individuals within the group arrangement can be handled in an uncomplicated manner, perhaps by oral agreement according to customary rules, or by simple recording within the group.

Such records may be successively improved. The important thing is that the system keeps initial investment costs low, while at the same time allowing for future improvements (Larsson: 1991:124-
126). The unit of group registration can be the land site or plot (block), a building/land (belonging to a housing cooperative) or the area belonging to a customary group or sub-group. This can be registered in freehold or a lease.

Practical problems
Group tenure arrangements, while giving tenure security to the group, require specific land administration methods to ensure affordable tenure security for individuals and households within the group, and to protect them from encroachment by neighbours. The tenure security of individuals and households is eroded by a number of factors, namely:-

- It is difficult to determine who is, and who is not, a member of the group. In practice this is extremely difficult as a person may 'belong' by a number of criteria to various groups and all criteria are negotiable and dependent on others (Larsson: 1991:124-126);

- It is even more difficult to determine what rights each member has. For example, the rights and obligations of a male head of household, an orphan, a wife, a son-in-law, a gang leader, an absent sister, a talented builder, a refugee and various other statuses, differ greatly, even though all may be 'members' of the same group. It is not possible to retain the notion that all members of a land holding group are equal (Larsson: 1991:124-126).

A varied experience
Against this background, different countries have developed different ways of supplying an internal land administration structure, with varying degrees of success, namely:-

- *Customary land administration structures* of the existing community have been used to make the rules and undertake dispute resolution (Nafantcham-na and Borges: 1998 –Guinea-Bissau). This often breaks down under urbanization as more and more strangers take up residence in the area (Payne:1997) and/or the group can be hostile to strangers residing in the area, thereby limiting urban development;

- The *social cohesion* within a community is considered to be critical (www.bestpractices:1999 Pakistan/ KKB) when undertaking the regularization of blocks. Coherent informal settler groups include in their leadership can be a critical factor in successful urban development, as they can take responsibility for their own internal land administration. Where blocks had no social cohesion it was not possible to develop service infrastructure;

- Australian aborigines run their own *Housing Association on leased land*, known as the Tangentyere Council, on the former town camp land outside of Alice Springs, using the social capital from their own culture to manage conflicts. The internal rules are run separately from, but not in opposition to, those of the state (www.bestpractices:1999);

- In Tanzania, in the town of Voi, "…a *Community Land Trust* was implemented, which combines community ownership and control of land with individual ownership of improvements on the land. Individuals have a number of well-defined rights including the right to bequeath user rights to the property and build improvements upon the land; the community retains the right to make decisions on the admissible use of land and control of alienation of land" (FIG/UNCHS:1998:21; UNCHS:1997a:16-17). Although this was a useful experiment, a complex legal process, involving a range of laws, had to be

54

followed to create the CLT, making duplication problematic and/or unaffordable to communities;

- Payne found that *cooperatives* provided an effective form of tenure. He describes this as where each member receives a share of the benefits and costs involved. "This presumes a strong sense of community and the existence of a well-organized community organization which is able to withstand variations in local interest over time and deal effectively with the relevant authorities. This option provides clarity of tenure status and rights, is efficient in terms of generating and allocating resources and can be equitable for all involved, though low-income groups with little experience of the procedures involved in establishing cooperatives or companies can easily be excluded in practice" (1997:19);

- In Egypt, *cooperative associations* with *NGO status*, have been using members' funds and low interest loans to build a range of different housing units and have "...played an important role in middle income families with housing" (El-Batran:1999b:13);

- In India, government "...is encouraging the formation of cooperatives before resettling squatters and involving NGOs in the process,... the latest policy on regularization of unauthorized colonies envisages formation of *residents' cooperatives* that would make regularization proposals and manage settlement development" (Risbud:1999:33);

- In India, *cooperatives are being used with land-sharing agreements* provide low-income people with land. Land that is under informal occupation is transformed into cooperative housing on the one hand, and commercial development by the land-owner on the other hand, with the intervention and technical know-how of an NGO (see box below). Internal titles/deeds are held jointly between husband and wife. After the slum has been rehabilitated, an elected management committee of tenement occupants runs the tenements in partnership with the local authority (bestpractices:1999);

- In Namibia, it is intended that *blocks of existing informal settlement groups* will be created, with a form of individualized right, known as *'starter title,'* which is kept as a record in the local authority (FIG/UNCHS:1998). The land administration of the area will be shared by the community and the local authority, and use a trained community member as a local land administrator employed by the local authority (Fourie and Davies:1999).

Condominiums

Another approach is that of condominium ownership linked to strata title. Whereas cooperative ownership tends to be based on shares and group tenure rules for the entire building, condominium ownership linked to strata title is based on individual ownership of the residential units and common ownership of the shared areas, such as corridors and lifts (Mosha:1999, Dale and McLaughlin:1988). Land professionals are generally also involved in the creation of the individual residential unit strata titles. This makes it a more expensive option than cooperatives, where the land professionals tend only to be involved in the registration of the total land site or plot. Condominium ownership associated with strata titles can often be mortgaged.

Administrative requirements

As noted earlier, while group tenure is much more affordable than individual, it requires specialized land administration approaches to secure the rights of individuals. Examples given above indicate that this land administration generally involves partnerships between the

community, the local authority, NGOs who supply the technical know-how, landowners and housing associations, to work successfully.

Finally, an important advantage of group tenure is that the group might be able to access channels of finance as a group, which they could not do as individuals. (UN-Habitat 2003b:24-25).

APPENDIX B: PREPARING A TYPOLOGY OF LAND TENURE AND PROPERTY RIGHTS

The preparation of an appropriate policy on land tenure and property rights requires that an analysis is made of the existing forms of tenure and property rights within a selected city. To identify each tenure category within the local land and housing market, and their associated property rights, it will be necessary to identify each of the existing tenure categories and sub-categories within the primary tenure regime, *irrespective of their legal status*. To undertake this, it will be necessary to prepare and complete a typology of all tenure categories.

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

- Identify the full range of formal, non-formal/unauthorised/semi-legal, customary and/or religious (e.g. Islamic) tenure categories within the selected city. These should include pavement dwellers, unauthorised subdivisions, recognised squatters which are not given formal titles, as well as formal categories.
- Estimate the proportion of the total urban housing stock represented by each of these categories.
- Estimate the degree of de facto (not de jure or formal) security available to households living in each category and represent this on the vertical axis as a proportion in between nil and absolute security. Remember that there is probably no category anywhere which enjoys absolute security in that in almost every country the State retains the right of eminent domain or the right to acquire land or property for public purposes. At the same time, even pavement dwellers often possess rights which entitle them to compensation or alternative housing if forced to move. This means that all categories in practice are somewhere above zero and below full security.
- Next, identify *all* the property rights available to households within each tenure category. For example, households may theoretically enjoy a high level of security, but heavy restrictions on their rights to use or dispose of property, whilst those with lower levels of security may possess more rights in practice to use or dispose, etc of their property. The list of property rights shown in Figure 3 includes the right to occupy, use and enjoy; to restrict access by others; to buy, dispose of or inherit; to develop or improve; to use for cultivation or production; to sublet; to sublet and fix the rent; to benefit from any pecuniary increase in property value; to access services and to access formal credit. This list is not exhaustive, so all locally applicable rights should be included. It would be good to also identify the responsibilities or obligations which may be, and often are, tied to particular rights. These terms and conditions will affect the relative security and value of different forms of tenure and property rights. For instance, if a right exposes residents to property taxes or service charges this could more than offset the benefit of such increased rights. This added dimension could be commented on in the notes reviewing the typology, rather than included in the typology itself.
- The final stage involves noting the extent to which each category of property rights is available to households within each tenure category *and* noting if these rights are available to men only, women only or both sexes.

- It is also important to allow for social and cultural variations such as ethnic differences and the social status of women as single, married, divorced, cohabiting or widows. For example, women may be denied property rights if they become divorced or widowed.

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

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

An example of a tenure typology is provided in the following figure.

Notional typology of urban tenure categories, degrees of security and associated property rights[17]

	Pavement dweller	Squatter tenant	Squatter 'owner'	Tenant in unauthorised subdivision	Owner – unauthorised subdivision	Legal owner – unauthorised construction	Tenant with contract	Lease-holder	Free-holder
Degree of security (High / Low)									
Tenure category / **Property rights**									
Occupy/use/enjoy									
Restrict									
Dispose, buy, inherit									
Develop/improve									
Cultivate/produce									
Sublet									
Sublet and fix rent									
Pecuniary									
To access services									
To access formal credit									

0%   Distribution of tenure types   100%

Notation: The availability of rights by gender can be shown as:

\   Right available to men only
/   Right available to women only
X   Right available equally to men and women

---

[17] This example does not include the types of tenure existing within customary or religious tenure regimes. To prepare and complete the typology for an urban area where these apply, simply revise the list of categories.

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

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

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

APPENDIX C: SHORT, MEDIUM AND LONG-TERM TENURE POLICY OPTIONS AND THEIR CHARACTERISTICS

In countries or contexts with large numbers of people living in various types of informal or unapproved settlements, sudden changes to tenure status can result in dramatic changes in land values. The expectation or perception that a given settlement or area of land is about to become fully legal with long term security can generate predatory interest from government officials or private speculators (or combinations of the two) which can result in proposals for increasing tenure security resulting in the opposite – the displacement of existing residents or the capture of the economic increment by outsiders.

To reduce such predatory pressures, and the distortions in behaviours of land markets which they can produce, it is advisable to consider adopting a range of short, medium and longer term policy options for incorporating informal settlements into the formal land and property markets incrementally. International experience by the authors suggests that a period of ten or even twenty years might be advisable in order to manage expectations in a way which discourages predatory interest, allows existing tenants to adjust to increasing rents over time and yet also provides sufficient security and confidence to existing residents to invest what they can over time.

This annex presents a range of short, medium and longer term options that may be applicable in different contexts. The actual duration of each would need to be adjusted to meet local conditions in any given context.

Short term tenure options and recommendations:

Moratorium on relocations and evictions

Characteristics:		
An announcement by government or a municipality that no residents of unauthorised settlements would be evicted or relocated for a specific period. The period could be anything from three months to over a year depending upon circumstances. The announcement could be made in Parliament, on radio or television or in the press and would therefore commit the relevant authorities to prevent any such evictions within the stated period.		
Advantages:		**Disadvantages:**
Provides a basic level of security for all residents of unauthorised settlements; Easy to implement, since no administrative action is required. Buys time for the authorities to identify which settlements may be suitable for in-situ upgrading and those which may need to be relocated for environmental, economic or other reasons. Buys time for the authorities to identify sites for relocating those settlements not considered suitable for in-situ upgrading. Keeps options open for future developments.		Dependent upon political will.
Assessment:		
MORE can reassure residents in vulnerable forms of housing that they are secure at least for the period covered by the moratorium. It needs to be made clear when announcing MORE that the term of the moratorium is restricted to the specified period and that some settlements may need to be relocated or removed after this period. This can enable governments to stabilise the situation facing poor communities without committing itself to any long term upgrading or regularisation of individual settlements. It buys time, can help win political support and imposes no financial costs. Well worth adopting as a short term measure.		

Temporary Occupation Licenses (TOLs)

Characteristics:
These are licenses allocated by local authorities to residents of unauthorised settlements on public land and entitles them to remain for a specific period which may range from three months to over a year. Licenses may be renewable or restricted to a specific period.

Advantages:	Disadvantages:
Provides short term security of tenure and limited rights, especially to residents of unauthorised settlements; Can apply to residential, commercial or industrial activities; Allows unused public land to be put to a good use in the short-term, where governments do not wish to re-allocate or re-classify the land. Enables the public sector agencies to formulate criteria for selecting which unauthorised settlements should be upgraded and regularised in situ and those which need to be relocated; Provides time for urban development authorities to identify sites for relocation where it is deemed necessary.	May impose a heavy burden on urban authorities to identify all eligible households and allocate individual licenses.

Assesment:
This option deserves consideration providing the administrative arrangements are transparent and costs are kept under control.

Certificate of Comfort

Characteristics:
The Certificate of Comfort is similar to Temporary Occupation Licences. It is an instrument used in Trinidad and Tobago that gives the holder a personal right that he will not be removed from the house plot that his dwelling stands upon unless it is deemed necessary for him to relocate and an alternative plot is identified and made available to him. In essence therefore, it is an assurance of somewhere to live, either on the spot occupied or on an identified alternative. In return, residents acknowledge that the State possesses a superior claim to the land.

Advantages:	Disadvantages:
It provides security of tenure with a minimum of administration.	Residents in Trinidad are denied the option to obtain individual ownership since they have acknowledged the superior claim of the State to their plot.

Assessment:
This option has the benefit of protecting the State ownership of land and also providing de facto security of tenure to settlers on a short or medium term basis. It can be restricted in duration or renewed indefinitely, thereby giving a high degree of flexibility. However, once residents have occupied land on this basis for some time, it becomes more difficult to move them unless special reasons are involved. It deserves consideration in areas where there are squatters on inner city publicly owned land as it can help counter speculative pressure and enable low-income groups to live in areas which they could otherwise not afford.

Medium term tenure options and recommendations

Communal Trust/Lease:

| **Characteristics:** |
| The right to hold or use property for a fixed period of time at a given price, without transfer of ownership, on the basis of a lease <u>contract</u>. A leasehold is a <u>fixed asset</u>. A main or head lease would be provided to the representatives (such as a co-operative or trust) of residents in a selected settlement for a specific period considered suitable for in-situ upgrading. The community or co-operative would then be able to provide sub-leases to individual households. The sub-leases would need to be for a shorter period than the main or head lease, but both would need to be for a sufficiently long duration to stimulate investment in home improvement. The lease may provide for the residents to renew the lease for a further period or purchase the site at the termination of the lease period. Alternatively it may offer compensation at the market value applicable at the end of the lease period to residents for all plot improvements made. |

Advantages:	**Disadvantages:**
Provides residents with full security for the duration of the lease, providing terms and conditions are fulfilled. This may include payments for the ground rent or other costs stated within the lease contract; Makes minimal demands on the administrative system for land management since only plot boundaries need to be specified; Discourages the tendency for higher income groups to buy up plots or houses in the settlement, making it easier for it to be available on a long term basis to low-income households; Facilitates the installation of services.	Unfamiliarity with the concept of leasehold tenure may discourage acceptance by authorities or local residents; Requires legal advice in preparing leases; Requires strong and honest community organisations since any costs for ground rent, etc will have to be collected from the community rather than individuals. Failure to meet obligations may therefore prejudice the lease. May not facilitate access to formal credit, though this is usually dependent upon incomes rather than property collateral. Ownership of the land remains with the government. If lease duration is sufficient to attract higher income households to buy into a settlement, it may encourage speculative pressure and 'downward raiding'.

| **Assessment:** |
| CLTs can form an important tenure option in urban land and housing markets. It is recommended that they be introduced in pilot upgrading and land sharing projects where a community organisation is strong. The period recommended for the main or head lease is twelve years as this is considered sufficient to encourage residents to invest in home improvements, but not long enough to encourage higher income groups to buy up land and property in the selected areas. Sub-leases could then be provided for a period of ten years, which is considered sufficient to encourage local investment. |

Individual lease:

| **Characteristics:** |
| The right to hold or use property for a fixed period of time at a given price, without transfer of ownership, on the basis of a lease contract. A leasehold is a fixed asset. Contracts may contain clauses entitling leaseholders to a renewal or extension of the lease, or the right to purchase the freehold on the expiry of the lease. Residential leases are usually for longer periods than commercial leases, but may be for any period up to 999 years. |

Advantages:	**Disadvantages:**
Provides complete security of tenure for the period of the lease; Flexible in that it may be extended, renewed or surrendered at the termination of the lease; Lessees are usually free to dispose of the remaining period of the lease on the open market. Provides a high level of control over land use subject to local rules, regulations and procedures.	May require lessees to spend more than they can afford to obtain the lease, unless financial institutions are willing to lend for leases, or payments are made over time; May not be a familiar tenure option and therefore requires market testing; Requires the legal, institutional and financial recognition of leasehold as a recognised form of tenure.

| **Assessment:** |
| It is recommended that leasehold tenure be encouraged in the urban areas of Cambodia and that the legal, institutional and financial systems be revised to facilitate this. |

Private rental:

Characteristics:
This involves the rental of a plot, house, apartment, room or bed from the private owner. This may be with or without a written contract and for periods from a week, or several years according to mutual agreement. In some countries rent control legislation has discouraged property owners from providing rental accommodation, or required large sums of 'key money' to offset reduced rent income.

Advantages:	Disadvantages:
Provides an important option for very poor or highly mobile households or individuals; Provides valuable additional income for house-owners; Offers flexibility to both renters and owners.	Can be exploitative, especially if landlords are not resident in the property.

Assessment:
This is already a widespread tenure option in most countries, especially the larger urban areas. It is a n important component of any housing supply system, especially for very poor or mobile groups. It also supplements the incomes of households slightly further up the income scale. It is strongly recommended that it be encouraged.

Certificate of Rights:

Characteristics:
CoRs give the holders the right to use and develop the land, but ultimate ownership belongs to the State. It operates in many urban areas in Botswana. The Certificate of Rights lies midway between tribal rights and a state grant

Advantages:	Disadvantages:
COR can be converted to a Fixed Period State Grant on payment of survey and registration fees. The COR suits poor and low-income self builders who do not qualify for credit from formal institutions	In theory, the COR is mortgageable, but most financial institutions will not accept it as collateral. Even the Deeds Registry will not register a charge/bond against a COR.

Assessment:
COR is a viable alternative to full title on the one hand and illegal settlement on the other. It therefore deserves serious consideration as part of a practical and progressive tenure policy.

Long term tenure options:

Condominium ownership:

Characteristics:
A condominium is a residential complex in which dwellings are owned individually while land and common areas are held in communal ownership with others.

Advantages:	Disadvantages:
Facilitates multi-occupancy of properties, especially in areas where land prices are relatively high compared to construction costs; Does not require strong or established community organisation; Differential pricing of apartments (eg by floor) makes this a viable option for most income groups.	May require secondary legislation; Requires legal documentation. May not be familiar to local people.

Assessment:
Where land prices in larger cities are high enough to justify apartment housing for most income groups this can be an attractive tenure option. It is recommended that it be introduced through private sector development projects.

Communal ownership, Communal Title or Communal Property Associations:

Characteristics:
This involves the residents of a settlement receiving or purchasing the land from the owners, usually government, on terms and conditions acceptable to both the party disposing and the party receiving the land and/or property. Where repayment is involved, it would need to be affordable to the community as a whole.

Advantages:	Disadvantages:
Provides permanent security of tenure; Discourages speculative pressure on land and property prices, especially if transferred at or near market values; Discourages 'downward-raiding' by higher income groups; Facilitates the provision of services. Enables areas to be available to low-income households in future. Enables land values to increase gradually as services are provided and the social stigma is reduced. Enables households to sell their properties on the open market at any time, though the land will remain in communal ownership so prices will be discounted. Communal ownership can either be considered as a step towards individual ownership or as an alternative option.	Largely unknown in practice and therefore requires innovative approach on behalf of authorities and support from donors and potential communities; Dependent upon strong, honest and efficient community organisation, especially where payment for the land is involved over a period of years; Does not facilitate access to formal credit since no effective collateral is available; If standard payments are required from households where affordability varies considerably, it could impose hardship; Similarly, if repayments vary according to affordability, obtaining agreement within the community could present problems; If land is given free or substantially below its market value, it may encourage households to sell plots and distort land markets.

Assessment:
This option is recommended for countries where community organisations exist or can be created to assume responsibility for managing land and property assets. It can be regarded either as a step towards individual ownerships or an alternative to it. For areas accommodating predominantly low-income groups, it is likely that the following conditions will apply: 1) the need for land to be provided either free or at a nominal price (eg to cover survey and administration costs); 2) freedom for residents to be able to sell their property (but not the land on which their structures stand) on the open market, albeit at a heavily discounted price; 3) residents have access to other forms of credit than private banks and 4) communities are able to demonstrate specified criteria of good governance to avoid abuse.

Public rental:

Characteristics:
This involves the rental of a plot, house or apartment from a central or local government agency. Rents may be at or below market rates and are usually of undefined duration. They may also be subject to rent control. Such rental accommodation is usually intended for low-income or other vulnerable groups, though sometimes others obtain access.

Advantages:	Disadvantages:
Can provide housing of a higher standard than would be provided by the private sector.	May not be available in sufficient quantities to meet potential demand; Commonly attracts higher income groups if heavily subsidised; May not be in locations required by lower-income groups; Invariably produces inflexible, standardised environments; Cost recovery levels are often low; Often badly maintained due to scarcity of resources; May impose restrictions on tenants regarding home-based economic activity or pets, etc.

Assessment:
It is not recommended that public rental housing be in countries where the institutional capacity to collect rents and maintain properties is weak. For special interest groups, such as public sector personnel required to move from one location to another, it is recommended that housing allowances or transfer payments be provided to enable staff to obtain their own accommodation in the market.

Co-operative ownership:

Characteristics:
A co-operative ownership is formed when residents of a manufactured home community join together on a democratic basis to own and control the community in which they live. To own their homes co-operatively, the residents form a corporation that buys the land on which the homes sit. Each resident has a share in the corporation and a collective proprietary right to the land on which their development stands. The benefits of real estate ownership then accrue to the residents collectively. These include: security and stability, cost and charges are set by the residents. If wanting to sell their home residents would have to sell their proprietary rights to the land back to the co-operative.

Advantages:	Disadvantages:
Provides permanent security of tenure; Discourages speculative pressure on land and property prices, especially if transferred at or near market values; Widely known in both developed and developing countries; Facilitates the provision of services.	Dependent upon strong, honest and efficient community organisation, especially where payment for the land is involved over a period of years; May inhibit access to formal credit since no effective collateral is available; If standard payments are required from households where affordability varies considerably, it could impose hardship; Similarly, if repayments vary according to affordability, obtaining agreement within the community could present problems; If land is given free or substantially below its market value, it is likely to encourage households to sell plots illegally.

Assessment:
It is recommended that they be tested in pilot projects for settlement upgrading and regularisation where community organisations can assume responsibility for property management.

Social concession:

Characteristics:
It is a legal mechanism to transfer private state land for social purposes to the poor who lack land for residential and/or family farming purposes.

Advantages:	Disadvantages:
Provides land for residential purpose to poor homeless families. Provides land to poor families for farming Provides land title to beneficiaries after completing all conditions of agreement for social land concession. Facilitates socio-economic development.	May increase speculation after having infrastructure in social land concession areas, especially in peri-urban areas Conflict between private state land owners by relevant ministries Competition of villagers.

Assessment:
It is recommended that this option should be used for landless people as well as resettlement programmes.

Individual ownership or title:

Characteristics:	
A form of tenure in which land or property is held in fee simple or for life.	
Advantages:	**Disadvantages:**
Provides permanent security; Permits owners to inherit, transfer, lease, rent; Provides maximum control over land use subject to local rules, regulations and procedures; Provides collateral for credit; Provides opportunities for pecuniary gain if property values rise. Can be achieved through instalment sale by taking out a mortgage	Requires either a sum sufficient to purchase land or housing outright or a financial system willing to make funds available on acceptable terms and conditions to enable households to repay a loan over time; May significantly distort land and housing markets if provided at less than market values; May not increase access to formal credit if incomes are low; Ownership may be forfeit and residents made homeless with the loss of all payments made if repayments are not made as required; May expose owners to property taxes and other charges; The value of property may go down as well as up, resulting in negative equity; Requires owners to assume full individual responsibility for property maintenance; Places a heavy burden on land administration agencies responsible for surveying, registering and allocating titles.
Assessment:	
It is recommended that individual ownership, or freehold titles, be made widely available to all those who can afford the market value of the land or housing they seek to obtain. It is not recommended for application in the case of regularising informal settlements as some properties will be so valuable as to encourage residents to sell to higher income groups (either legally or illegally) and squat elsewhere in the hope of repeating the process. It also exposes new owners to the loss of their home unless they maintain payments and conform to other conditions imposed by lending agencies. The potential demand would also impose a burden on the land administration agencies with which they are presently unable to cope. However, it could form a final option in settlements which have been granted communal land ownership or titles. Under such conditions, it is recommended that any negotiations regarding boundary definitions with neighbours or the status of owners and tenants, etc, be resolved between the parties affected locally and on the basis of professional advice and surveys paid for by the residents seeking such titles. This will prevent potential conflict between the residents and the municipal authorities.	

BIBLIOGRAPHY

Advisory Group on Forced Evictions and United Nations Human Settlements Programme (2007) 'Forced evictions -- towards solutions?' Second report of the Advisory Group on Forced Evictions to the Executive Director of UN-HABITAT. Nairobi, Kenya: Advisory Group on Forced Evictions.

African Union, African Development Bank, Economic Commission for Africa (2010). 'Framework and guidelines on Land Policy in Africa. Land Policy in Africa: A Framework to Strengthen Land Rights, Enhance Productivity and Secure Livelihoods'.

Angel, S, E Brown, D., Dimitrova, D., Ehrenberg, J., Heyes, P., Kusek, G., Marchesi, V., Orozco, L., Smith and Vernesto (2006), 'Secure tenure in Latin America and the Caribbean: regularization of informal urban settlements in Peru, Mexico and Brazil' Woodrow Wilson School of Public and International Affairs, Princeton University, New Jersey, 135 pages.

Antwi, A.Y. (2000). 'Urban land markets in sub-Saharan Africa: a quantitative study of Accra, Ghana'. A thesis submitted in partial fulfillment of the requirements of Napier University for the degree of Doctor of Philosophy. Napier University, October 2000.

Aristazabal, N., and Gomes, A. (2002) 'Are services more important than titles in Bogota?' in Payne, G. (Editor) 'Land, Rights and Innovation: Improving tenure security for the urban poor' ITDG Publishing, London.

Augustinus, C (2003), 'Surveying and land information for secure land tenure'. A paper presented at the USK/CASLE/UN-Habitat Regional Seminar on Security of Land Tenure, Nairobi, 12 June.

Azuela, A., (2007) 'Taking Land Around the World: International Trends in the Expropriation for Urban and Infrastructure Projects'. Documento de trabajo. Cambridge, MA: Lincoln Institute of Land Policy.

Balamir, M. (2002) 'Legality and legitimacy of tenure in Turkey' in Payne, G. (Editor) 'Land, Rights and Innovation: Improving tenure security for the urban poor' ITDG Publishing, London.

Bazoğlu, N, & United Nations Human Settlements Programme. (2011). 'Monitoring security of tenure in cities: People, land, and policies'. Nairobi, Kenya: United Nations Human Settlements Programme.

Berrisford, S., Kihato, M. (2011). 'The role of planning law in evictions in sub-Saharan Africa'. South African Review of Sociology. Volume 37, Issue 1, 2006.

Bromley, D.W. (2005). 'The empty promises of formal titles: creating Potemkin Villages in the tropics'. (mimeo , p.1).

Buckley, R. M. and Kalarickal, J. (2006), "Land market issues: the mystery of capital revisited. Urban land policy – is titling the answer?", Chapter 3 in Buckley, R. M., and Kalarickal, J. (editors), Thirty Years of World Bank Shelter Lending: Directions in Development Infrastructure, World Bank, Washington DC.

Chan Sophal and Sarthi, Acharya. (2002). 'Land Transactions in Cambodia. An Analysis of Transfers and Transaction Records'. Working paper N° 22. Cambodia Development Resources Institute. 46pp.

Cernea, M.1999, 'Why Economic Analysis is Essential to Resettlement: A Sociologist's View.' In Michael Cernea (ed) *The Economics of Involuntary Resettlement: Questions and Challenges,* The World Bank, Washington, DC.

Cernea, Michael and Christopher McDowell (eds). 2000. 'Risks and Reconstruction. Experience of Resettlers and Refugees'. Washington: The World Bank.

Colclough, C. (1991) 'Structuralism versus market neo-liberalism' in Colclough, C. and Manor, J. `States or markets: Neo-liberalism and the development policy debate' Clarendon Press, Oxford.

Committee on Economic, Social and Cultural Rights, General Comment 7, Forced evictions, and the right to adequate housing (Sixteenth session, 1997), U.N. Doc. E/1998/22, annex IV at 113 (1997), reprinted in Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, U.N. Doc. HRI/GEN/1/Rev.6 at 45 (2003).

Cousins, B. (1999) 'Legislating Negotiability: Tenure reform in Post Apartheid South Africa' Paper for the seminar on "Negotiating Property - Processes of Vindication of Land Claims in Developing countries: Roskilde University, Denmark, October 11 - 14 1999.

Dhakal, S. (2002). 'Comprehensive Kampung Improvement Program in Surabaya as a Model of Community Participation'. Working paper, Urban Environmental Management Project, Institute for Global Environmental Strategies (IGES), December 2002, Kitakyushu, Japan.

Dale, P., & McLaughlin (1988) 'Land information management: an introduction with special reference to cadastral problems in Third World countries'. Clarendon Press.

Daley, E., and Hobley, M. (2005). 'Land: Changing Contexts, Changing Relationships, Changing Rights'. Paper for Urban-Rural Change Team, DFID.

Deininger, K. and Feder, G. (2008). 'Land registration, economic development, and poverty reduction'. In. Proceeding of the 2008 Land Policy Conference. Property rights and land Policies. Ingram, K. and Yu-Hung Hong, Ed.) Lincoln Institute of Land Policy. Boston, MA. pp. 257-295.

Deininger, K., Selod, H., Burns, A. (2011). 'The Land Governance Assessment Framework: Identifying and Monitoring Good practices in the Land Sector'. The World Bank.

Doebele, W (1988) 'Issues paper on urban land tenure' Paper presented at the Land management review Workshop, the World Bank, Washington DC, June.

De Soto, H. (2000). 'The Mystery of Capital: Why capitalism triumphs in the West and fails everywhere else'. United Kingdom: Basic Books, New York.

Dowall, D. (1998). 'Making urban land markets work'. Working paper 702. The Institute of Urban and Regional Development.28p, March.

Dowall, D., & Leaf, M. (1990). 'The price of land for housing in Jakarta'. Urban Studies, 28, 702-722.

Du Plessis, J (2004) 'PomMahakan: People of the Fort', in Proceedings on UNESCO Round Table discussion on 'Social Sustainability in Historic Districts' held at the World Urban Forum, Barcelona, 13 September 2004

Du Plessis, J (2005) "The growing problem of forced evictions and the crucial importance of community based, locally appropriate alternatives", Environment and Urbanization Vol 17, No 1, pages 123–134.

Du Plessis, J. (2010). "A loss more significant than they think". Description and review of existing eviction impact assessment méthodologies. Report prepared for UN-Habitat 26 November.

Du Plessis, J. (2012). 'The GLTN continuum of land rights'. World Urban Forum 6.
Presentation before the Round Table 5 September 2012. GLTN, UN-Habitat.

Durand-Lasserve, A. (2006). "Market-driven displacement and the perpetuation of informal settlements". In: The perpetuating challenge of informal settlements, pp. 207-227. Sous la direction de Marie Huchzermeyer and AlyKaram. University of Cape Town Press, South Africa, 2006.

Durand-Lasserve, A., Fernandes, E., Payne, G., Smolka, M. (2002). 'Secure Tenure for the Urban Poor'. CIVIS, Cities Alliance, Cities without Slums, Issue 3, September 2002.

Durand-Lasserve, A., Payne, G. (2011). 'Support to Phase 2 of the Land Tenure Regularisation Programme in Rwanda'. Annual Review submitted to DFID. Final Report.

Durand-Lasserve, A. and Royston L. (Eds) (2002). 'Holding their Ground: Secure Land Tenure for the Urban in Developing Countries, Earthscan Publications, London. 264p.

Durand-Lasserve, A., Selod, H (2009) "The Formalisation of Urban Land Tenure in Developing Countries". In "Urban Land Markets. Improving land Management for Successful Urbanization ", Lall, Freire, Yuen, Rajack, Helluin (Eds), Springer and the World Bank. P 101-132.

Durand-Lasserve, A., Selod, H. (2012). 'Land Markets and Land Delivery Systems
in rapidly expanding West African cities. The Case of Bamako'. A paper presented at the Sixth Urban Research and Knowledge Symposium 2012. Barcelona, Spain, October 8-10, 2012.

Durand-Lasserve, A. ,Tribillon, JF. (2001) 'Coping with illegality in human settlements in developing cities'. A contribution to the ESF/N-AERUS Workshop. Leuven and Brussels, Belgium, 23-26 May 2001.

Durand-Lasserve, A. (2005). 'Land for Housing the Poor in African Cities. Are
neo-Customary Processes and Effective Alternative to Formal Systems?' in Urban
Futures: Economic Growth and Poverty Reduction, Edited by Hamdi, N. ITDG
Publishing, London, pp160-174.

Durand-Lasserve, A. (2012) 'Land markets in urban and peri-urban areas in Sub-Saharan Africa'. Report prepared for the NRC, FAO, Rome, August, 2012

FAO. (2003). 'Multilingual Thesaurus of Land Tenure', English Version - Rome: FAO.

FAO. (2002) 'Land tenure and rural development'. FAO Land Tenure Studies.

FAO. (2012). 'Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security'. FAO, Rome.

Fallavier P. (2003). 'Understanding Slums. The case of Phnom Penh'. A case study for the Global Report on Human Settlements. 24p.

Farfan, F. (2002) 'Bolivia's land tenure experience' in Payne, G. (Editor) 'Land, Rights and Innovation: Improving tenure security for the urban poor' ITDG Publishing, London. FIG/UNCHS (1998)

Fischer, J. E. (1995) 'Local l70and tenure and natural resource management systems in Guinea: Research findings and policy options' USAID, Guinea, Land Tenure Center, Wisconsin, Madison.

Fourie, C. , Davies, C. (1999). 'A land Management approach for informal Settlements in South Africa'. In: Durand-Lasserve, A. and Royston L. (Eds) (2002) 'Holding their Ground: Secure Land Tenure for the Urban in Developing Countries, Earthscan Publications. pp. 218-230.

Fromont, Michel. (1978). 'Les instruments juridiques de la politique foncière des villes. Etudes comparatives portant sur quatorze pays occidentaux'. Brussels: Etablissements Emile Bruylant.

Huchzermeyer, M. (1999). 'How to accommodate two billion new urban citizens by 2030?' Marie Huchzermeyer. Where and how to house urban citizens? In: Cities Streering toward sustainability. (Jacquet, P., Pacauri R.K., Tubiana, L. (Ed). pp157-176.

Kelm, K. (2009) 'Study on Security of Registered Titles in Albania' Land Administration and Management Project Component A: Security of Tenure and Registration of Immovable Property Rights, December.

Kundu, A. (2002) Tenure security, housing investment and environmental improvement: The cases of Delhi and Ahmedabad, India' in Payne, G. (Editor) 'Land, Rights and Innovation: Improving tenure security for the urban poor' ITDG Publishing, London.

Lall, S.V., Freire, M., Yuen, B., Rajack, R., Helluin, J-J. (Eds) (2009) 'Urban Land Markets: Improving Land Management for Successful Urbanization' Springer and the World Bank.

LEAP. (2005) 'Perspectives on Land Tenure Security in Rural and Urban South Africa: An analysis of the tenure context and a problem statement for LEAP'. June 2005.

Leckie, S. (1995) 'When Push Comes to Shove: Forced Evictions and Human Rights', Utrecht: Habitat International Coalition.

Lopez-Moreno, E. (2012). Making Slums History "A Worldwide Challenge for 2020," Background Paper for the International Conference on Improving the Lives of Slum Dwellers, Rabat, Morocco, 26-29 November 2012

Mabogunje, A. L. (1992). 'Perspective on urban land and urban management policies in Sub-Saharan Africa' Technical Paper No. 196. Africa Technical Department Series. Washington, D.C.: World Bank.

Mohit, E. S. (2002) 'A level playing field: security of tenure and the urban poor in Bangkok, Thailand' in Payne, G. (Editor).

Millennim Project (2005). 'Task Force on Improving the Life of Slum Dwellers. A home in the City'. Achieving the Millennium Development Goals.

Mulder, C. (2006) 'Home-ownership and family formation' Housing Built Environment.

Palmer, D., Szilard, F., Wehrmann, B. (2009). 'Towards Improved Land Governance'. Land Tenure Working Paper 11. FAO.

Payne , G, (1989). 'Informal housing and land subdivisions in Third World cities: A review of the literature' Centre for Development and Environmental Planning (CENDEP, Oxford Polytechnic, Oxford.

Payne, G, (1997) 'Urban Land Tenure and Property Rights in Developing Countries: A Review Of The Literature', IT Publications/ODA, London, August 1997.

Payne, G. (1998). 'Research on public/private partnerships in urban land development'. A contribution to the 15th Inter-Schools Conference on Development 'The management of Sustainable Development in Fast Growing Urban Areas, held at the University of Wales, Cardiff, 29-31 March 1998.

Payne, G. (2001), 'Urban land tenure policy options: titles or rights?' Habitat International, Volume 25, Issue 3, pages 415-429.

Payne, G. (Editor) (2002) 'Land, Rights and Innovation: Improving tenure security for the urban poor' ITDG Publishing, London.

Payne, G. (2004). 'Increasing tenure security and options for new housing in Phnom Penh, Cambodia'. Draft final report submitted to the Ministry of Land Management, Urbanisation and Construction, Royal Government of Cambodia. Phnom Penh Municipality, Cities Alliance, UN-Habitat & GTZ Cambodia. Prepared by Geoffrey Payne and Associates with Din Somethearith and B.S. Khemro. 42pp.

Payne, G., Durand-Lasserve, A., Rakodi, C. (2007). 'Social and economic impacts of land titling programs in urban and peri-urban areas: A short review of the literature'. In, Urban Land Markets. Improving Land Management for Successful Urbanization, S.V. Lall, M. Freire, B. Yuen, R. Rajack, J.J. Helluin (Eds). Springer p. 133-161.

Payne, G. (2008) 'Owning up: what price home ownership?' Housing Finance International, December.

Platteau, J-P (1994) 'Behind the market stage where real societies exist' Journal of Development Studies, Vol 30 No 3.

Quan, J (2003) 'Better livelihoods for poor people: The role of land policy', Issues paper discussion draft, Department for International Development (DFID).

Robins, S (2003) 'Literature Review on the Socio-cultural Dimensions of Township (Residential) Property Markets', Prepared for Shisaka Development Management Services, for research into the Working of Township Property Markets. DRAFT 2 19[th]October 2003.

Rochegude, A. & Plançon, C. (2010). 'Décentralisation, acteurs locaux et foncier en Afrique. Mise en perspective juridique des textes sur la décentralisation et le foncier' Agence Française de Développement.

Royston, L., Kihato, C. (2012) 'One step at a time: linking the tenure security continuum concept to the findings of Urban LandMark's operation of the market study in Maputo'. Urban LandMark.

Rutsch, P. (2011) Land Governance and Administration Framework. Land tenure typology Paper. A paper prepared for the World Bank Theme Coordinators,

Salim, W. (2011) 'Indonesia: State of Low Income Housing Policy and Finance Legislative, Institutional, Planning, and Regulatory Frameworks' World Bank, Jakarta.

Sims, D. (2002) in Payne, G. (Editor) 'Land, Rights and Innovation: Improving tenure security for the urban poor' ITDG Publishing, London.

Sietchiping, R., Aubrey, D., Bazoğlu, N., Augustinus, C., Mboup, G. (2012). 'Monitoring tenure security within the continuum of land rights: methods and practices'. UN-Habitat. Paper prepared for presentation at the "Annual World Bank Conference on Land and Poverty - Washington DC, April 23-26, 2012.

Sims, D. (2002) 'What is secure tenure in urban Egypt?' in Payne, G. (Editor) 'Land, Rights and Innovation: Improving tenure security for the urban poor'.

Sjaastad, E. and Bromley, D. W. 2000. "The Prejudices of Property Rights: On Individualism, Specificity, and Security in Tenure Regimes," Development Policy Review, Vol. 18 (4): 365-389.

Smit, D., and Abrahams, Gemey. (2010). 'Incrementally securing tenure: An approach for informal settlement upgrading in South Africa'. Hatfield, South Africa: Urban LandMark.

Stanfield, J. D. and Bloch, P. C. (2002) 'A conceptual and methodological framework for an assessment of USAID's investments in land markets and property rights'. Draft 35p.

Toulmin, C., Quan, J. (2000) (Eds), 'Evolving Land Rights, Policy and Tenure in Africa'. IIED and NRI, March 2000.

United Nations (1973) 'Urban Land Policies and Land Use Control Measures' Department of Economic and Social Affairs' New York, (seven volumes).

United Nations (1997). 'Covenant on Economic, Social and Cultural Rights General Comment No. 7 on the Right to Adequate Housing', (E/C.12/1997/4), para.8.

UN Commission on Human Rights (2004), Report of the Special Rapporteur on Adequate 'Housing as a Component of the Right to an Adequate Standard of Living', 8 March 2004, E/CN.4/2004/48, available at: http://www.unhcr.org/refworld/docid/45377ada0.html [accessed 13 August 2012]

UN Commission on Human Rights, Commission on Human Rights Resolution (2004) 'Prohibition of Forced Evictions', 16 April 2004, E/CN.4/RES/2004/28, available at: http://www.unhcr.org/refworld/docid/43f313669.html [accessed 7 August 2012]

UN-Habitat (1997) 'The Habitat II Land Initiative', Habitat Debate, 3(2).

UN-Habitat (1999) 'Implementing the Habitat Agenda: Adequate Shelter for All, Global Campaign for Secure Tenure', UNCHS, Nairobi.

UN-Habitat, (2002). 'Expert Group Meeting on Urban Indicators. Secure Tenure, Slums and Global Sample of Cities'. Revised Draft Report. Urban Secretariat and Shelter Branch. Nairobi, 28-30 October 2002.

UN-Habitat (2003a) 'Global Report on Human Settlements 2003: The Challenge of Slums' Earthscan, London.

UN-Habitat (2003b) 'Handbook on Best Practices. Security of tenure and Access to Land. Implementation of the Habitat Agenda' Nairobi.

UN-Habitat (2003c). 'Slums in the World. The face of urban poverty in the next Millennium' Nairobi.

UN-Habitat (2004a). 'Global Campaign For Secure Tenure: A Tool for advocating the provision of adequate shelter for the urban poor'. Concept Paper 2nd Edition.

UN-Habitat (2004b) 'Urban Land for All' Nairobi.

UN-Habitat (2006). 'Setting up a Global Monitoring System on Secure tenure' Nairobi.

UN-Habitat (2006b) 'State of the World Cities' Report 2006-2007 (Chapter 2.5. Owners without Titles: Security of Tenure in Cities of the Developing World), Nairobi.

UN-Habitat (2007). 'Finding solutions to forced evictions worldwide: A priority to meet the MDGs and implement the Habitat Agenda'. Executive Summary Report of the Advisory Group on Forced Evictions (AGFE) 1 to the Executive Director of UN-Habitat, April.

UN-Habitat (2007) 'Global Report on Human Settlements 2007: Enhancing Urban Safety and Security' Nairobi.

UN-Habitat (208) 'Secure Land Rights for All' Nairobi.

UN-Habitat (2010a) 'Count me in. Surveying for tenure security and urban land management'

Nairobi.

UN-Habitat (2010b) 'Report on the International Expert Group Meeting on guidelines and practices related to evictions, acquisition/expropriation and compensation' Organised and hosted by: UN-HABITAT Global Land Tool Network (GLTN) Instituto de Arquitetos do Brasil (IAB) (Institute of Architects of Brazil) Prefeitura da Cidade do Rio de Janeiro, Secretaria Municipal de Habitação (Housing Secretariat of the Municipality of Rio de Janeiro).

UN-Habitat (2010c). 'State of the African Cities' Nairobi.

UN-Habitat (2010d). 'State of the World Cities. Cities for All: Bridging the Urban Divide: 2010/2011' Nairobi.

UN-Habitat (2011a). 'Affordable land and housing in Africa' Nairobi.

UN-Habitat, (2011b) 'Evictions and the rights-based approach to urban development' Nairobi.

UN-Habitat (2011c). 'Forced Evictions: Global crisis, global solutions' Nairobi.

UN-Habitat (2011d) 'Formal and Consensus-based Observations and Recommendations to UN-HABITAT', Rev.1 By participants in the International Expert Group Meeting on Forced Evictions 20 – 23 September 2011.

UN-Habitat (2011e) State of the World Cities, 2010-2011. Bridging the urban divide

UN-Habitat (2011f). 'The United Nations and Housing Rights – The Way Forward'. An International Steering Group on Eviction Overseeing a Global Housing Rights Network, Nairobi.

UN-Habitat - GLTN (2011g). 'Monitoring Security of Tenure in Cities: People, Land and Policies'. Working Paper, Nairobi.

UN-Habitat – GLTN (2012). 'Handling land: Innovative tools for land governance and secure tenure' Nairobi.

UN-Habitat (2009) 'Global Urban Observatory' Nairobi.

UN-Habitat - Global Land Tool Network. (2008).'*Secure land rights for all'*. Nairobi: United Nations Human Settlements Programme, Global Land Tool Network.

UN-Habitat/UNESCAP (2008). *Housing the poor in Asian cities*. Bangkok, (QG3-Land') available at http://www.unhabitat.org/pmss/listItemDetails.aspx?publicationID=2526

Weru, J. (200) 'Kenya's Urban Tragedy', in Habitat Debate Vol. 6 No. 4.

World Bank. (1993). 'Housing: Enabling markets to work'. A World Bank policy paper. Washington, DC.http://documents.worldbank.org/curated/en/1993/04/1561159/housing-enabling-markets-work

World Bank (2001). Operational Policy Statement OP 4.12 on Involuntary Resettlement.

World Bank, UNCHS (1999) 'Cities Alliance for Cities Without Slums. Action Plan for Moving Slum Upgrading to Scale'.

World Bank (2004). 'Rural Development and Natural Resources East Asia & Pacific Region'. Regional study on land administration, land markets and collateralized lending, Washington DC.
World Bank (2006) 'Will formal documents of titles and the courts resolve all land disputes?' In: Kabul Urban Policy Notes Series, n° 5. Washington DC.

Yahya, S. (2002) 'Community Land Trusts and other tenure innovations in Kenya' in Payne, G. (Editor) 'Land, Rights and Innovation: Improving tenure security for the urban poor'.

Yahya, S. (2002) 'The Certificate of Rights story in Botswana' in Payne, G. (Editor) 'Land, Rights and Innovation: Improving tenure security for the urban poor'.

Zevenbergen, J., Augustinus, C., Antonio, D. (2012). 'Designing a land records system for the poor. Secure and property rights for all'. Report 2/2012.