Land Policy BULLETIN

UKaid from the British people

Produced by LEGEND's Core Land Support Team

Issue 5: October 2016

Habitat III Conference and the New Urban Agenda: a unique opportunity to tackle urban land challenges?

By **Philippine Sutz** (IIED) LEGEND Core Land Support Team

More than half of the world's population already lives in urban areas, and they will be joined by at least another **2.5 billion people by 2050** *(click on bold text for hyperlinks)*. While urbanisation can promote growth and development, the sheer scale of this global transformation inevitably poses huge challenges. Helter-skelter urbanisation is often unplanned and under-resourced, generating environmental and health hazards, particularly for people in low-income and informal settlements. A lack of basic amenities and shortage of housing exacerbates such problems, ultimately jeopardizing urban dwellers' health and safety, and undermining cities' ability to fulfil their potential as drivers of social and economic advances.

Rapid urbanisation is also creating a number of land-related challenges. Commercial pressures are intensifying globally and land is becoming scarcer, pushing up rents and creating new opportunities for corruption. With its value rising exponentially, land is increasingly being coveted by powerful vested interests, which can undermine security of tenure for residents who lack formal titles. Meanwhile, uncontrolled urban growth has frequently been associated with poor spatial planning and poor land management as the pace of development outstrips governments' capacity to impose controls. All these issues are having a negative impact on city dwellers – in particular low-income and other marginalised groups – leading to increased poverty and social disparities. There is therefore an urgent need for governments to address the way urban settlements are planned,

IN THIS ISSUE

In this issue of the LEGEND bulletin, specialists from civil society, academia and development practice review how the latest draft of the New Urban Agenda (set to be adopted this month at the Habitat III Conference in Quito, Ecuador) addresses key issues around urban land, assess whether the commitments are likely to deliver more sustainable urban development and flag up key land related topics for monitoring during implementation.

What is the New Urban Agenda?

National governments and the international community are working on a **New Urban Agenda (NUA)** for adoption at the **Habitat III Conference** on Housing and Sustainable Urban Development, due to take place in Quito, Ecuador, from 17–20 October 2016. This action-oriented document is intended to set global targets for sustainable urban development for the next 20 years, and stimulate new thinking on the way cities are built and managed through building cooperation between a wide variety of stakeholders. The preparatory process has included several rounds of negotiations and government representatives have met more than four times to develop a draft agenda to be presented for adoption in Quito. After negotiations failed in the Indonesian city of Surabaya in July, a consensus on **a revised draft** was finally reached in New York on 9–10 September.

financed and managed in order to maximise opportunities for growth and development.

The negotiation of the NUA presents a unique opportunity to tackle urban land challenges and the New York draft includes numerous references to land (see box below). Beyond commitments made on paper, what will really matter is the extent to which the world's urban centres can create or enhance the institutional and governance frameworks needed to achieve these goals. Without concrete action to strengthen such frameworks, it is unlikely that the ambitious commitments detailed in the NUA will translate into improved wellbeing for the urban poor.

In this issue, specialists from civil society, academia and development practice review how the latest draft of the NUA addresses key issues around urban land, assess whether the commitments are likely to deliver more sustainable urban development, and flag up key land related topics for monitoring during implementation.

The overriding concern of the contributors is security of tenure. In particular, the contributors grapple with the question of how effective, equitable land use planning and management systems can be harnessed to protect land rights in the context of rapid urbanisation and multiple tenure systems. There is also an emphasis on the importance of access to secure and affordable land, particularly for women, and on the role land can play in financing sustainable urbanisation.

Civil society organisations and urban land specialists have welcomed several aspects of the latest draft of the NUA. Firstly, the NUA acknowledges the multiple functions of land — including the social and ecological — rather than ascribing it a purely economic or commercial function. They have also welcomed the emphasis on the need to promote "increased security of tenure for all," particularly for women, and the recognition that this can take many forms along a continuum of tenure types in different contexts. Contributors commend the NUA's commitment to the transparent and sustainable management and use of land. Another positive aspect they flag is that the latest NUA text and principles appear to be broadly in line with those in the **Voluntary Guidelines on the Responsible Governance of Tenure** (VGGT). However, specialists have cautioned that the draft of the NUA does not explicitly refer to the VGGT – despite the fact that these are the globally agreed minimum standard on land tenure management. This important omission may be a reflection of the fact the VGGT are often erroneously seen as applying primarily to rural land.

Alongside these broadly positive attributes, contributors have identified areas where the NUA text or mechanisms for implementation could be strengthened. The draft could place a stronger emphasis on the importance of location within cities for social inclusion, rather than assuming that a city is a homogenous, "level playing field". The language could align more strongly to the commitments, targets and indicators on gender equality, women's rights and women's empowerment made in the 2030 Agenda for Sustainable Development in order to guarantee adequate monitoring of the implementation of the NUA and strengthen accountability. More generally, the negotiation processes also seem to have missed an opportunity to take into account the lessons of decades of land tenure work in rural areas.

Most crucial, however, are questions over the extent to which the NUA genuinely provides a basis for action in towns and cities around the world. This will require new legislative frameworks, operational guidance, and technical and financial support to local and national governments and to civil society groups. States will need help to integrate formal mechanisms for implementing the agenda into their fiscal frameworks that will allow them to fund expenditure to support the NUA, engage land rights holders at all levels of implementation and monitor and evaluate progress. In addition, the role non-state actors can play in making urban centres safer, more inclusive, more resilient, and more sustainable needs to be fully recognised and supported.

Contact the LEGEND Core Land Support Team **legend@odi.org.uk**

NB: contributions reflect their authors' views, not those of DFID or members of the LEGEND Core Land Support Team

Key references to land in the New Urban Agenda

Paragraph numbers refer to the **New York draft of the NUA**.

- #35 asserts the need for inclusive land policies and promotes secure land tenure for all, recognizing the plurality of tenure types and including commitments to develop fit-for-purpose solutions within the continuum of land and property rights that will be age, gender and environmentally responsive.
- #69 is a commitment to preserve and promote the ecological and social function of land and to promote sustainable land use.
- #104 focuses on compliance with legal requirements through *"strong inclusive management frameworks and accountable institutions that deal with land registration and governance, applying transparent and sustainable management and use of land, property registration, and sound financial systems and to support local governments and relevant stakeholders, in developing and using basic land inventory information".*
- #106 aims to promote housing policies that enhance *"public resources for affordable and sustainable housing, including land".*
- #107 promises to promote access to a variety of tenure arrangements, including co-housing and community land trusts.
- #137 stresses out the importance of ensuring that efforts to generate land-based finance do not result in unsustainable land use and consumption.

DFID's approach to urban development: helping all stakeholders to break out of their siloes

By **Rubbina Karruna**, Cities Adviser and UK Representative to Habitat III, and **Iris Krebber**, Head of Agriculture Team, DFID

Dialogue can ensure that interventions in urban development capitalise on hard-won lessons from work in rural areas.

Cities and urban centres are complex, and there is an urgent need for integrated solutions capable of ensuring that they can function, be sustainable and productive, create jobs and be liveable. **The UK Department for International Development (DFID)** is increasing its investment in urban development and international engagement on what we see as a critical area for many DFID partner countries. We want to move the dialogue on urban development from one that only talks about the challenges to one which recognises the scale of the challenge but also the opportunities that urbanisation can bring. As part of scaling up our engagement in urban development, DFID agreed to represent the UK Government in the Habitat III process. We believe that the NUA, while broad in scope, offers an important opportunity to highlight the critical issues and a range of possible interventions in urban development today.

One such critical issue that underpins any discussion on urban development is urban land. As this bulletin highlights, this is a multifaceted issue and DFID and others are still at the beginning of formulating ways to support interventions on urban land, as well as address elite capture and political economy issues. The NUA affords a real opportunity to ensure these issues are picked up, but it shouldn't end with the NUA outcome document. Of even more importance will be what we do collectively beyond the Habitat Conference in Quito. We need to build on the momentum to develop an action-oriented agenda that can address many of the issues raised in this bulletin.

Through LEGEND, this **land policy bulletin and our wider work on land and other property rights**, we want to help break through established rural-urban, sector and professional siloes, and encourage debate and learning across such boundaries. The urban space can learn a lot about what works and what doesn't from decades of land tenure work in rural development.

Contact Iris Krebber **I-Krebber@dfid.gov.uk**

Challenges on the ground: a practitioner's perspective

By **Larry English**, Chief Executive Officer, Reall

Reall (Real Equity for All) is a network of development enterprises across Africa and Asia seeking to establish a "bottom of the pyramid" housing market by financing land acquisition, land preparation and development, infrastructure, housing and micro mortgages. Apart from the cost of finance, adequate land supply, cost of land, access to clean title and development rights are fundamental to building an affordable and financially sustainable housing delivery model – yet wherever we work, urban land remains a challenge:

- The lack of official land titles, or the institutional capacity to process them, makes it hard to sell individual properties as they are unable to be mortgaged without titles.
- The lack of title over land able to be developed also results in competing claims of ownership that can take years of litigation to resolve.
- Other countries have onerous, outdated, sometimes colonial-era requirements for developers. The capital-intensive specifications hold up all but the large-scale developments. Freehold exists but only for those with sufficient resources to obtain it.
- For others, political patronage and corruption make land difficult to acquire. Titled land can be a way of grafting. When land is released by the government, "insider trading" and cronyism drive land prices up and all but the least developable land becomes available.
- In Malawi, where the government released land for pro-poor development, counter claims by various other land rights users resulted in lengthy delays and court cases.
- Land banking by investors in some areas like Nepal, where land is scarce, has driven land values up.
- In Pakistan, while there is a good legal framework in place, there have been instances of a "land mafia" creating a climate of intimidation for land transactions.

There are a variety of other constraints as to how land is released, packaged and developed for low income earners in the countries we operate in. In each context, the market demand for housing presents a powerful opportunity for change, exposing flaws in the system and building the case for reform.

Contact Larry English
Larry.English@reall.net

Balancing private gain and the public good in an age of global capital flows

By **Geoffrey Payne**, Housing and Urban Development Specialist

Governments must not sacrifice the interests of city-dwellers when courting foreign investment; a wide range of policy instruments exist to provide affordable land and housing while regulating the market.

The way that land is managed and used says a great deal about a society. It also exerts considerable influence over the options people have for access to affordable land in locations close to public utilities and livelihood opportunities.

The NUA's commitment to the transparent and sustainable management and use of land included in the most recent draft (#104) is welcome, coming at a time when globalisation has encouraged the widespread adoption of market-based approaches. Land is considered primarily as an asset to be traded like any other commodity, which inevitably favours those who already have resources and creates potential opportunities for corruption among those with inside information on market trends and planning policies. Global financial uncertainty has boosted the premium on land as a safe haven asset class, fuelling an increase in prices and rents that has reduced affordability for the urban poor and even those on middle incomes. There has also been an increasing privatisation of public space as gated communities have developed to cater to an affluent minority seeking to isolate itself from the remainder of the population. In India, for instance, this approach has been taken to a new extreme with the development of major peri-urban nodes such as Gurgaon near New Delhi. Entire new cities have even been planned by private developers in other parts of India for those who can afford to pay for a high quality environment and other benefits.

The innovation and dynamism that characterise great urban centres is driven largely by the mix of people and ideas interacting in close proximity. Mixed land use can therefore promote growth and development and UN-Habitat recommends that at least 40 per cent of all urban areas should be planned as mixed use. However, planners preoccupied with a sense of visual order often seek to restrict the amount of mixed land. For example, the 2013 master plan for the Mongolian capital Ulaanbaatar restricts mixed land use to 1.7 per cent of the total land area by 2020, with a further reduction to 1.39 per cent by 2030. This can be expected to dramatically inhibit investment in economic activity to the detriment of the city's role in driving economic development.

Growing pressures from globalisation have posed further challenges. In an era of intense competition for investment, some governments have sought to attract foreign capital by offering preferential tax concessions or land allocations. Such measures may benefit international companies in the short term, but there can be long-term costs to the host country. Formulating fiscal policies that can help countries remain competitive while protecting the public interest is one of the most pressing challenges facing local and national governments in the land management arena.

Resolving this dilemma is not made any easier by regulatory frameworks that impose onerous conditions upon developers who wish to register, develop or transfer land. In many cases, planning standards, regulations and administrative procedures reflect the aspirations of professionals or the interests of administrators rather than realities on the ground. Costs are further increased by limited administrative capability and continuity, as well as corruption.

Formulating fiscal policies that can help countries remain competitive while protecting the public interest is one of the most pressing challenges in the land management arena.

The World Bank, **UN-Habitat** and the **academic literature** provide ample evidence that a wide range of policy instruments have succeeded in providing affordable land and housing while regulating land markets in the public interest. These include land pooling or readjustment, multi-stakeholder partnerships and fiscal measures to capture some of the incremental increase in land values resulting from state action. The key question, therefore, is how to persuade governments to adopt, implement and enforce such instruments. The current draft of the NUA could provide more guidance in this respect. While national governments have a major role to play, strong local leadership is vital and international development agencies need to play their part through the criteria they adopt in allocating loans and grants.

Contact Geoffrey Payne
gkpayne@gpa.org.uk

Closing the urban infrastructure gap through land-based finance

By **Ian Palmer** and **Stephen Berrisford**, African Center for Cities

Governments should ensure private developers pay a fair share of the cost of public goods in order to be able to develop national infrastructure frameworks and investment plans.

Financing urban development and massive infrastructure needs is a major challenge for African cities, and improving the way cities are financed is a core commitment of the draft NUA (#5, #15, #137). Cities are often poorly positioned to finance their infrastructure needs through typical infrastructure finance, such as a city's own revenues or borrowing. Another important source of finance is land-based financing (sometimes equated with land value capture), whereby regulatory instruments require property developers and land owners to contribute towards financing the infrastructure that services and significantly enhances the value of their property. Land-based financing cannot cover a city's entire infrastructure costs but can make a significant contribution. This article explores some of the instruments that could help operationalise the commitment made in the NUA to address the way that cities are financed, and highlights challenges that policy makers need to bear in mind when using them.

While key stakeholders in sub-Saharan Africa recognise the importance of land-based financing, a **recent study** found very few examples of structured land-based financing being used at scale in any city or country in the region. The two striking exceptions are Ethiopia, where the urban land lease system is implemented comprehensively in most major cities, and South Africa, which has a long history of requiring developers to contribute towards infrastructure costs. However, in both cases, contextual factors make it difficult to advocate simply introducing the approaches in other countries. In South Africa, the cities' technical capacity, financial strength and robust constitutional status are factors that are difficult to reproduce in other countries, at least in the short term.

However, the study found that an unstructured form of land-based financing was taking place in the form of "in kind" contributions, with developers installing connector, and sometimes bulk, infrastructure to serve their developments. While this contributes to the expansion of the city's bulk and connector infrastructure system, this new infrastructure may not be aligned with sound planning: there is therefore a very real risk that this practice will perpetuate infrastructure islands around middle- and high-income developments.

> Good city and country governance is essential to address the lack of sound, land-based financing practices.

The study also found many cases of "reverse value capture", where the city subsidises some or all of the internal infrastructure for middle- and higher-income developments, ostensibly in the interests of promoting investment. This use of public money to make private developments more profitable for the developers flies in the face of the policy imperative to use public money to finance infrastructure for poor households. A major government-planned industrial development on the edge of the Ugandan capital Kampala is, sadly, a good example of such reverse value capture since the government incurred heavy costs. Even then, only a small proportion of the projected developers took up the offer, leaving much of the site empty.

In general, it was found that the lack of sound, land-based financing practice relates to contextual factors. These included the lack of a clear regulatory environment, good city and country governance, and sufficiently well-established private property developers capable of undertaking property development at scale.

In addressing the shortcomings in land-based financing, an important starting point is the principle that middle- and higher-income developments (residential, commercial and industrial) must pay their own way in terms of financing bulk and connector infrastructure. The initial instrument to be promoted, in as many countries as possible, should be a development charge: a one-off payment by a developer that is calculated to cover the costs of the connector and, ideally, the bulk infrastructure needed to serve a development. Where the administrative capacity is insufficient to manage such a charge and/or where the private sector is able to install connector infrastructure, then the practice of the developer installing that infrastructure should be supported. However, the installation should fall under the umbrella of the city's planning and regulatory framework to determine its location, standards and capacity.

Across the board, there is a need to build and strengthen the conditions to implement land-based financing, including initiatives to strengthen governance structures, regulatory reform, capacity development and the supply of long-term finance for property developers. The NUA needs to provide a basis for supporting governments to develop national infrastructure frameworks, and for cities to compile infrastructure investment plans. These are all interventions that will lead to more effective cities, greater efficiency and stronger economic growth. They also demonstrate how closely intertwined land-based financing instruments are with the quality and strength of city governments.

Contact Ian Palmer **ian@pdg.co.za**

Putting the New Urban Agenda into action: the role of the Solid Ground campaign

By **Jane Katz**, Director of International Affairs and Programs, Habitat for Humanity International

Through its Solid Ground campaign, Habitat for Humanity is working around the world to improve access to land for the urban poor and hopes to put land and housing at the heart of the NUA.

A lack of access to land lies at the heart of the housing problems facing the urban poor, depriving them of the most basic physical, economic, and psychological security of adequate shelter. More than a billion slum dwellers struggle with tenure insecurity and fear of eviction. Over 75 per cent of the world's population do not have access to formal tenure systems and lack proper documentation to safeguard their land rights. Most affected are the poor, the most marginalised and vulnerable populations, and, especially, women.

The imminent adoption of the NUA makes this a critical year to address access to land for shelter. It is also timely that Habitat for Humanity, a non-governmental organization working in over 70 countries, has launched its first global campaign on access to land for shelter called "**Solid Ground**". Through global advocacy and implementation with partners, globally and locally, Habitat for Humanity is working to change land policies and systems to improve access to safe and secure land and help create the foundation for better housing.

As part of our efforts to influence the Habitat III process, we are working to ensure that land and housing will be priorities in the NUA. In particular, we strongly advocate that member states prioritise security of tenure and equal access to land for all people, including women, and we support the **continuum of land rights** and tenure options. We are also advocating strong land management institutions.

We are encouraged that the most recent draft of the NUA addresses the need for inclusive land policies and promotes secure land tenure for all, *"recognizing the plurality of tenure types, and to develop fit-for-purpose, and age and gender and environment-responsive solutions within the continuum of land and property rights, with particular attention to security of land tenure for women as key to their empowerment"* (#35); non-discriminatory practices and disaggregated data in inclusive land management frameworks, *"applying a transparent and sustainable management and use of land, property registration, and sound financial system"* (#100); housing policies that enhance *"the public supply of land for affordable and sustainable housing"* (#106); and a variety of tenure arrangements, including Community Land Trusts (#107).

In particular, we strongly advocate that member states prioritise security of tenure and equal access to land for all people, including women, and we support the continuum of land rights and tenure options.

With the Solid Ground campaign, we look forward to implementing the NUA and working with partners to build capacity at the local level to improve systems and policies. We are already seeing progress on women's rights issues, and improving security of tenure through housing reform for up to 240,000 tenants living in low-income social housing in Poland. We invite you to join us in making a difference to improve the lives of millions of people around the world.

Contact Jane Katz **JKatz@habitat.org**

The tricky task of turning commitments on tenure security into action

By **Geoffrey Payne**, Housing and Urban Development Specialist

Urban renewal programmes must minimise forced evictions or risk damaging investment, and policies implementing land tenure security should build on previous, successful tenure systems.

Land tenure takes many forms. In addition to the statutory systems developed in Europe and subsequently introduced (or more accurately imposed) on many other countries during colonialism, even older customary practices continue to enjoy social legitimacy in many parts of the world, most notably sub-Saharan Africa and some parts of East Asia and the Pacific. In addition, religious forms of tenure hold extensive sway throughout the Middle East and parts of North Africa. To make matters even more complex, more than one legal system may apply in the same country, with statutory law predominating in urban areas and customary law in rural areas.

As urban centres expand into adjacent rural areas, these legal complexities pose major challenges for policymakers. Moreover, the inability of formal land supply systems to meet increasing demand has generated a large number of unauthorised land developments. In Dar es Salaam, for example, approximately 80 per cent of all land development is considered to be informal and such developments are common in all rapidly urbanising countries. These include a wide range of sub-categories, many of which may be partly legal: such as when land is purchased legally, but developed in ways that do not conform to official procedures, standards, or regulations.

The NUA acknowledges that land tenure exists within a continuum, with each sub-category associated with different levels of legal and perceived security and implied costs of access. The NUA commits UN member states to *"promote increased security of tenure for all, recognizing the plurality of tenure types, and to develop fit-for-purpose, and age and gender responsive solutions within the continuum of land and property rights, with particular attention to women's land security of tenure as key to their empowerment"* (#35). This considerably strengthens previous drafts and is therefore to be welcomed.

The key issue, however, is how such commitments can be translated into action. Given the complexities around land ownership, any intervention needs to be based on a detailed and realistic assessment of its potential impact. In particular, governments should be very wary of taking any action that undermines perceptions around security of tenure. If forced evictions are widely pursued, then those with formal documents may feel insecure and therefore reluctant to invest. Conversely, if evictions and relocations are only undertaken in exceptional circumstances and are subject to due process with adequate compensation, then even residents living in areas lacking formal tenure status will feel secure enough to invest in home improvements.

Experience suggests that any policy designed to implement the commitment to promote land tenure security for all – as stated in the NUA – must be based on a solid assessment of what has been shown to work, and command social acceptance. Many pragmatic and progressive examples of incremental, or intermediate, tenure systems exist that – while by no means perfect – at least provide experts with time to develop tenure regimes appropriate to diverse cultural, political and institutional contexts. Examples include the *anticrético* system (where the owner of a property leases it out to a tenant in exchange for an interest-free loan) in Bolivia, Concession of the Real Right to Use (CRRU, where the state regularises the use of public land for urbanisation, building or cultivation) in Brazil, communal land rental in Thailand, Certificates of Rights (issued by the state to provide security of tenure to plot holders) in Botswana, Certificates of Comfort (also legitimating the situation of squatters living on state land) in Trinidad and Tobago and the 'non-objectionable' slum classification (which aims to secure tenure through upgrade) in India. Whilst governments often regard these as undesirable compromises, they are a positive way to buy time to develop locally appropriate, long-term tenure systems.

Any policy designed to implement land tenure security for all must be based on a solid assessment of what has been shown to work, and command social acceptance.

Contact Geoffrey Payne
gkpayne@gpa.org.uk

Let's guarantee women a bigger say in the implementation of the New Urban Agenda

By **Katia Araujo**, Director of Programs, Huairou Commission

Governments must fight land tenure insecurity affecting women and girls through the creation of mechanisms to guarantee participatory age and gender-responsive approaches in urban planning.

A combination of security of tenure and sustainable land use is crucial for sustainable, safe and resilient cities and human settlements. In relation to women and girls, their frequent insecurity of tenure reflects the gender disparities in development policies, land policies and land administration. Indicators of their marginalized status include their overrepresentation in poor living conditions in slums, in subsistence agriculture and in unpaid or low-paid work in the informal economy.

Global advocates who work on the issue of land tenure security know it has been a long journey. As negotiations and lobbying for the NUA accelerated during the Third Session of the Preparatory Committee for Habitat III on 25-27 July in Surabaya, such advocates pushed to protect critical elements of people's lives in the draft of NUA that was released on 28 July. We welcome the inclusion of the concept of the social and ecological function of land in the vision. The NUA draft also makes multiples mentions of the promotion of "increased security of tenure for all," recognizes the "plurality of tenure types," and explicitly identifies women's security of land tenure as the cornerstone of their empowerment in #35.

Sustaining these elements up to the final negotiations later this month will be fundamental for those of us hoping that the NUA will align with the 2030 Agenda for Sustainable Development, especially in terms of ensuring land tenure security for all. The language in the current draft could be improved to correspond more closely to the commitments, targets and indicators established in the 2030 Agenda, in order to guarantee that the NUA reflects the centrality of gender equality, women's rights and women's empowerment for sustainable, resilient, and safe cities and human settlements. This will be most important in the monitoring, implementation and accountability aspects of the NUA, including the collection of disaggregated data at the local level.

Furthermore, governments and the international community need to ensure that security of land tenure is accompanied by affordable, gender responsible and universally accessible services and access to natural resources. Moreover, the NUA must stress the importance of the systematic empowerment and engagement of stakeholders, and in particular women, in decision making; in the design, implementation, monitoring, evaluation and review of urban governance; and integrated territorial planning and management. For this reason, a commitment to create institutional structures to guarantee participatory age and gender-responsive approaches at all stages of the urban and territorial policy processes would be welcome. This could be facilitated by a multi-stakeholder task team at city level, linked to a facilitation mechanism that should have cross-sectorial representation at regional and or national level. Biennial national reviews could subsequently take place, preceding a Global Habitat III Follow-Up that is explicitly linked to the High-Level Political Forum that takes place at the UN Headquarters.

In addition, the NUA should ensure States relate as duty bearers, integrating formal mechanisms to implement the NUA in in their fiscal frameworks and engaging rights holders at all levels of implementation, monitoring and evaluation. A specific mechanism to monitor the social and environmental impacts of the private sector, especially large corporations, must be put in place in order to promote a transition towards the kind of optimal alliance between all relevant stakeholders that can deliver the kind of settlements where people will want to live.

Security of land tenure should be accompanied by affordable, gender responsible and universally accessible services and access to natural resources.

Contact Katia Araujo
katia.araujo@huairou.org

How the New Urban Agenda advances the global struggle for land justice

By **Jacqueline M. Klopp**, Associate Research Scholar, the Center for Sustainable Urban Development, Columbia University

The NUA is an opportunity for urban activists to become part of a broader land rights coalition fighting for sustainability, fairness and accountability.

Across the globe, deep inequalities in access to housing, transportation, services and jobs persist. Underlying these inequalities are laws and governance systems that fail to manage land in a way that could help address these injustices. Laws and regulations — along with informal practices and corruption — often support unfair accumulation of the benefits of land by the few, by enabling speculation, allowing the private capture of publicly created land value, and exclusionary development control that discourages higher density and affordable housing in some areas.

Dominant land governance models tend to narrowly conceptualize and seek to manage land as a private commodity without addressing concern for public lands.

The latest draft of the NUA explicitly argues for action against unjust land governance systems. It promotes the vision that cities and human settlements must "*fulfil their social function, including the social function of land, ensuring the full and progressive realization of the right to adequate housing, as well as equal access for all to public goods and services, food security and nutrition, quality and accessible public spaces, livelihoods and decent work*" (#13). The Agenda further urges the implementation of policy and legal frameworks to prevent land speculation and capture the increase in land and property value generated as a result of urban development processes and public investments (#137).

The NUA in this way connects urban activists to a broader land rights agenda, which aims to rethink and reshape the dominant principles and laws around land in a world facing growing inequality and severe ecological challenges from species extinction to climate change. Dominant land governance models tend to narrowly conceptualize and seek to manage land as a private commodity without addressing concern for public lands and the social and ecological functions of land as a whole. A growing land justice movement is countering this narrow focus through a myriad human rights struggles on the ground that aim to counter unfair private capture of land and land value by powerful actors. Struggles range from protecting slum populations from arbitrary eviction and poverty to putting constraints on corporations in rural areas seeking large tracts of land for industrial agriculture that tends to lead to more exclusion, poverty and environmental degradation.

As urban populations grow, improving land governance becomes even more urgent. Urbanization and consumption patterns can put serious pressures on land use across the globe. In cities, most people do not own land but fundamentally rely on the robust management of land for public use. The forms cities take also have significant ramifications. Compact, transit-oriented urban development reduces carbon emissions and curbs the kind of

In cities, most people do not own land but fundamentally rely on the robust management of land for public use.

relentless urban expansion that encroaches on farmland and critical ecosystems. Alliances between urban activists and land rights activists will therefore be key. A long road lies ahead, but the NUA is a step forward not only for cities, but for the broader sustainable and inclusive land rights agenda as a whole.

Contact Jackie Klopp **jk2002@columbia.edu**

The New Urban Agenda's fatal flaw: failing to grasp the importance of urban form

By **Michael A. Cohen**, Professor of International Affairs,
the New School, New York

By failing to address issues around urban spatial efficiency and spatial justice, delegates risk missing out on the chance to make a meaningful contribution to sustainable development.

The **Sustainable Development Goals** (SDGs) adopted by the United Nations in September 2015 and the multiple versions of the NUA being negotiated among UN member states ahead of the Habitat III Conference in Quito are focusing global attention on the importance of urban areas. This agenda is intended to be universal – applying to both industrialized and developing countries – and forward-looking, with concrete goals and targets that can guide policy, investment, and civil society action.

These ambitious objectives, however, are lacking in terms of real operational guidance to both national and local governments. Much of this failure can be attributed to the fact that the documents do not reflect an understanding of what the city itself is: an agglomeration of social and economic activities and processes located in real time and in real locations. While SDG #11 does include a target intended to improve land use in cities through increased overall urban density, there is no other reference to urban form and the spatial attributes of the city. There is no mention of how land markets operate and contribute to the distribution of poverty and segregation.

This absence may not be surprising – partly because a large proportion of those negotiating the document are diplomats from ministries of foreign affairs instead of sector experts – but it also represents a spectacular failure by UN Habitat itself that should be a clear voice for addressing the role of urban form when discussing cities.

> Urban areas are wrongly understood as a clean slate or a "level playing field", in which everyone has equal access to land, jobs, infrastructure services, and opportunities.

There is currently no mention of either urban spatial efficiency or urban spatial justice in either document. Both refer to social exclusion as if it is a sociological process without real, concrete spatial consequences for excluded individuals, families, and communities. Urban areas are somehow understood as a clean slate or worse still, a "level playing field", in which everyone has equal access to land, jobs, infrastructure services, and opportunities. The documents imply that where you live has no impact on your welfare, in contrast to the observation of the 2009 World Bank report on Reshaping Economic Geography that *"a person's location is the most important indicator of their welfare".*

Not only does this omission reflect a poor understanding of what cities are, but it has potentially disastrous global implications because it misses an opportunity to draw an explicit link between the form and shape of a city and its propensity to emit greenhouse gases. Neither the documents nor their likely consequences will therefore be able to make a meaningful contribution to sustainable development and improving the quality of urban life.

Contact Michael A. Cohen
cohenm2@newschool.edu

How the New Urban Agenda can harness the potential of peri-urban areas

By **Anna Locke**, LEGEND Core Land Support Team

While the NUA draft lays good foundations to address land issues in peri-urban areas, it would benefit from more explicit references and recommendations.

Peri-urban areas – the interface between urban and rural areas – often form the frontline of urban transformation and transition, characterised by multiple land uses and tenure arrangements, with overlapping or fragmented land administration and governance systems.

Land and property rights regimes often move from customary tenure in more remote rural areas to more individualised forms of tenure in urban areas. As populations in peri-urban areas grow and municipality borders are extended, peri-urban areas may bring municipal authorities into contact with areas under customary tenure systems, for which municipal administrators' tools are ill suited.

If managed poorly, processes of administrative reconfiguration and the settlement of incoming urban migrants can heighten tension, leading to violence and destabilisation. Conversely, where good management exists, this can facilitate efficient urbanisation as affordable land can be made available, facilitating low cost housing and minimising the displacement of households and economic activities.

An ODI study on **land in peri-urban areas** concluded that robust, transparent and pro-poor land use planning lies at the heart of ensuring that this process of transformation and transition promotes growth, poverty reduction and sustainable, resilient urban landscapes.

Such planning needs to take into account the presence of different land governance and administration systems, particularly during the transition between customary systems and more formal, state-run systems.

Approaches that emphasise adaptation to existing systems of governing land markets are particularly relevant in peri-urban areas beyond municipal borders where city administrations are weak.

> Today's rural is tomorrow's peri-urban, is next week's urban, a quickly moving dynamic creating challenges with tenure systems that should be considered.

The latest draft of the NUA lays some good foundations for enabling these conditions. It establishes the basis for viewing peri-urban areas as areas of transition rather than well-defined spaces, aiming to work *"across the urban-rural continuum"* to achieve the stated goals of sustainable, equitable urban development (#50, #73). It highlights the need for stronger coordination and cooperation at different levels of government (#87) with clearly defined respective roles, to *"encourage synergies and interactions among urban areas of all sizes, and their peri-urban and rural surroundings* (...) (and) *promote urban-rural partnerships and inter-municipal cooperation mechanisms"* (#96). This could help to smooth the path for municipal governments to address transitions in land tenure issues.

However, the NUA text makes no mention of applying these principles to land tenure issues, referring to them mainly in relation to connecting urban, peri-urban and rural areas (#71, #109) – yet, today's rural is tomorrow's peri-urban, is next week's urban, a quickly moving dynamic creating challenges with tenure systems that should be considered. In addition, governments implementing the NUA principles will need to ensure that such urban-rural partnerships are not just between formal government entities but include customary mechanisms of governing land. This implies that governments need to use a robust interpretation of the NUA's laudable recognition of the *"plurality of tenure systems"* to explicitly recognise the challenges of tenure transitions in peri-urban areas.

Contact Anna Locke **a.locke@odi.org.uk**

The New Urban Agenda should recognise the global gold-standard on land tenure

By **Dr. Babette Wehrmann**, Land Governance Expert

Adding an explicit reference to the Voluntary Guidelines on the Responsible Governance of Tenure would add strength to some of the NUA commitments and set a pattern for policy coherence.

Responsible land governance is a crucial ingredient for success in many urban development measures. Although they were primarily developed with rural areas in mind, the **Voluntary Guidelines on the Responsible Governance of Tenure (VGGT)** provide a strong overarching framework, principles and guidelines under which urban land governance, management and administration tools and methodologies can be applied. These include the acknowledgement of a continuum of rights, the Social Tenure Domain Model, participatory enumeration, participatory and inclusive land readjustment and land sharing models, effective strategies to prevent and remedy forced evictions as well as comprehensive land use planning, citywide strategic planning and multiple means of land value **capture**.

Many of these issues are referred to in the NUA, which covers all four areas that the international land community was pushing for in negotiations: promoting tenure security, ensuring sustainable land use, generating land-based revenues for the benefit of all and enabling responsible land governance.

However, the latest NUA draft does not explicitly refer to the VGGT. This appears to be a lapse since other key documents — such as the SDGs and the **Sendai Framework for Disaster Risk Reduction** — are mentioned. It is also a missed opportunity to build on efforts to forge an international consensus on responsible land governance, and ongoing work to operationalise the principles of the VGGT.

On the other hand, the current draft of the NUA appears to be broadly in line with VGGT principles, albeit with some difference in the type and strength of the language used. Whereas the NUA promotes *"security of tenure for all"*, *"recognizing the plurality of tenure types"*, and *"continuum of land and property rights"*, the VGGT highlight the States' duty to recognize, respect and safeguard all legitimate tenure rights and the responsibility of business enterprises to respect legitimate tenure rights. Hence, although the general objective is very similar, the VGGT have a stronger reference to human rights and directly refer to the responsibility of private business. In addition, the VGGT deal in much more detail with many land-related issues raised in the NUA. A clear reference to the VGGT within the NUA would provide the opportunity to tackle technical aspects in much more detail. NUA commitments, such as the promotion of *"fit-for-purpose solutions"*, the *"preservation of the ecological and social function of land"* or the *"prevention of arbitrary forced eviction"* would become much more meaningful.

When finalising the NUA, it will be important to ensure that differences in language do not impede a strong link to the VGGT. With a reference to the VGGT on top of it, the concepts around land referred to in the NUA would become much clearer and the NUA would set a pattern for policy coherence.

Contact Babette Wehrmann
babette.wehrmann@land-net.de

Further reading

For further reading, please see **issue 28 (1) of *Environment and Urbanization*** (April 2016, "From the MDGs to the SDGs and Habitat III") and the **conference report of the 2016 LANDac Annual International Land Conference**, titled "Land governance in the context of urbanisation and climate change: Linking the rural and the urban".

Photo credits:
Page 1: Building rooftop in Karachi, Pakistan, IIED / Fareena Chanda
Page 4: Construction workers in Buenos Aires, Argentina, IIED / Mark Edwards
Page 6: Residential area in Karachi, Pakistan, IIED / Fareena Chanda
Page 7: The ruins of a settlement eviction in Dar es Salaam, Tanzania, IIED / Diana Mitlin
Page 8: A young girl in Karachi, Pakistan, IIED / Fareena Chanda
Page 9: Shanty town in the centre of Buenos Aires, Arentina, IIED / Mark Edwards
Page 10: Commercial zone in Karachi, Pakistan, IIED / Fareena Chanda
Page 11: Children running in a slum in Buenos Aires, Argentina, IIED / Mark Edwards

About us

Land: Enhancing Governance for Economic Development (LEGEND) is a DFID programme that aims to improve land rights protection, knowledge and information, and the quality of private sector investment in DFID priority countries. It includes the development and start-up of new DFID country land programmes, alongside knowledge management activities, a challenge fund to support land governance innovations, and management of complementary DFID grants, MoUs and contracts, and supported by a Core Land Support Team.

Future issues of this bulletin will feature updates on our most interesting findings and results, keeping you posted and enriching the debate.

You can send suggestions and comments on this bulletin to **legend@odi.org.uk**