Secure Land Rights for All

GLOBAL LAND TOOL NETWORK

The Global Land Tool Network

The main objective of the Global Land Tool Network (GLTN) is to contribute to poverty alleviation and the Millennium Development Goals through land reform, improved land management and security of tenure.

The Network has developed a global land partnership. Its members include international civil society organizations, international finance institutions, international research and training institutions, donors and professional bodies. It aims to take a more holistic approach to land issues and improve global land coordination in various ways. These include the establishment of a continuum of land rights, rather than a narrow focus on individual land titling, the improvement and development of pro-poor land management, as well as land tenure tools. The new approach also entails unblocking existing initiatives, helping strengthen existing land networks, assisting in the development of affordable gendered land tools useful to poverty-stricken communities, and spreading knowledge on how to implement security of tenure.

The GLTN partners, in their quest to attain the goals of poverty alleviation, better land management and security of tenure through land reform, have identified and agreed on 18 key land tools to deal with poverty and land issues at the country level across all regions. The Network partners argue that the existing lack of these tools, as well as land governance problems, are the main cause of failed implementation at scale of land policies world wide.

The GLTN is a demand driven network where many individuals and groups have come together to address this global problem. For further information, and registration, visit the GLTN website at www.gltn.net.

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Disclaimer

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Foreword

The Millennium Development Goal 7 Target 11 commits the international community to improving the lives of at least 100 million slum dwellers by the year 2020. However, rural urban migration, natural increase and expansion of urban centres all contribute to rapid urbanisation resulting in the constant increase in the number of slum dwellers.

It is now well-recognised that secure land and property rights for all are essential to reducing poverty, because they underpin economic development and social inclusion. Secure land tenure and property rights enable people in rural and urban areas to invest in improved homes and livelihoods. They also help to promote good environmental management, improve food security, and assist directly in the realization of human rights, including the elimination of discrimination against women, the vulnerable, indigenous groups and other minorities.

We are now seeing important changes in land policies, which reflect these principles in a variety of countries across the world. Today, however, land resources face multiple pressures and demands as never before, and developing countries still lack the tools, systematic strategies and support necessary to deliver secure land rights for all.

Sound land policies should protect people from forced removals and evictions, or where displacement is determined by legitimate processes as necessary for the greater public good and is carried out in conformity with national and international norms, ensure they have access to adequate compensation. Another critical dimension is ensuring gender equality, because women face such widespread discrimination in questions of land and property. Yet when women enjoy secure and equal rights, everybody benefits. Also, a secure land rights for all citizen contributes to conflicts reduction and improvement in environmental management as well as household living conditions.

This publication will assist policy makers to understand and apply the practical way in which people's land rights can be made more secure, while at the same time improve land policies as a basis for the better, fairer and more sustainable urban and rural development.

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Contents

Introduction

This publication is for policy-makers and public officials. It is for all those in land management and development who are looking for the best ways of securing rights and meeting increasing demand for land. It stresses the need for policies that facilitate access to land for all sections of their existing and future populations – particularly those on low or irregular incomes. This publication updates and revises UN-HABITAT's 2004 publication 'Urban Land for All'. The focus is on urban, rural and peri-urban land issues.

Secure land rights, and the way of providing them, are important for development and poverty reduction. Rather than a complete and comprehensive guide to the broader issues of land policy, management and reform, this brochure explains how secure land rights and equitable, effective institutions can support good land governance.

The greatest challenges in providing secure land rights are in urban, peri-urban areas, and the most productive rural areas. Together these areas face growing demands for land for housing, property development and commercial investment in agriculture. In rural areas, insecurity is increasing poverty and driving people off the land. For urban and peri-urban areas, a 'twin-track' approach is needed: it would increase tenure security in informal settlements wherever possible while making additional land available to meet future needs.

Rural land is coming under multiple pressures. They include population growth and increasing fragmentation, land use conversion, commercial investments, environmental degradation due to drought, soil erosion and nutrient depletion, as well as natural disasters and conflicts. If incomes and food production are to be safeguarded, and the growing pressure on urban areas is to be mitigated, the land rights of poor rural people must be made secure; on top of these, robust arrangements for the effective management of land use change, competition and conflict are in order.

A range of policy instruments can help address these challenges, and they must be adapted to meet local conditions. It is also important for government officials first to identify those land management and tenure systems that already exist; and in a next step, to build on these systems for the benefit of the poor and vulnerable groups. The poor are major contributors to economic development; pro-poor land policies can maximize this and enable this segment of the population to share in the benefits.

Part 1 of this document explains what we mean by secure land rights for all. It outlines the concept of tenure security and the range of types of land tenure that give access to land in various countries. Part 2 discusses the importance of secure land rights for social and economic development and for poverty reduction in urban and rural areas. Part 3 reviews examples from around the world; they show how innovation in various aspects of land access and management can provide secure tenure and property rights and enable people to escape from poverty. Part 4 explains the importance of land for governance in greater depth; it shows how policies, tenure options, land administration and development planning can be improved so as to provide secure tenure and property rights for all.

1. Secure land rights for all – what this means

Secure land tenure and property rights can be delivered through a variety of forms. They are fundamental to shelter and livelihoods; as such, they are an important foundation for the realisation of human rights and for poverty reduction. Secure land rights are particularly important in helping to reverse three types of phenomena: gender discrimination; social exclusion of vulnerable groups; and wider social and economic inequalities linked to inequitable and insecure rights to land.

1.1 The importance of land access

Access to land is a fundamental basis for human shelter, food production and other economic activity, including by businesses and natural resource users of all kinds. Secure rights to land encourage people to invest in improved dwellings and the land itself; they can also enable people to access public services and sources of credit.

Proportion of urban population living in slums 2005

Major area, region, country or area	Urban population (thousands) 2005 a	Percentage of Urban Population living in Slum 2005 b	Slum population (thousands) 2005 c
Developing world	2,219,811	36.5	810,441
Northern Africa	82,809	14.5	12,003
Sub-Saharan Africa	264,355	62.2	164,531
Latin America and the Carribean	434,432	27.0	117,439
Eastern Asia	593,301	36.5	216,436
Southern Asia	468,668	42.9	201,185
South-eastern Asia	243,724	27.5	67,074
Western Asia	130,368	24.0	31,254
Oceania	2,153	24.1	519

a: United Nations Population Division, World Urbanization Prospects: The 2005 Revision.

b: Population living in household that lack either improved water, improved sanitation,sufficient living area (more than three persons per room), or durable housing.

c: In the 2005 slum estimation, half of pit latrines are considered improved sanitation.

While in the 1990 and 2001 slum estimation all pit latrines were considered not improved, the 2005 slum figures are not directly comparable to 1990 and 2001 figures.

Stakeholders'meeting in Kibera slums, Kenya. Photo © U. Westman/ UN-HABITAT. 2005

Access to land is a fundamental basis for human shelter, food production and other economic activity.

However, land everywhere is under pressure as a result of population growth and economic development. In areas where land is in greatest demand for residential, agricultural, industrial or business use, it attracts increasing commercial value, a process intensified by global economic integration. How to achieve secure and sustainable access to land for all those who need it, and especially for the poor, has become a critical issue.

Unprecedented numbers of people move to urban areas. Developing countries could triple their entire urban built-up areas by 2030, from 200,000 to 600,000 sq. km. This 400,000 sq. km. increase would match the world's combined urban area in 2004. Few urban centres have been planned to absorb these numbers. The result is a growing urbanization of poverty. Cities will be host to hundreds of millions of new slum-dwellers – unless radical efforts are made to provide legal, affordable and secure land and services. UN-HABITAT estimates that almost 90 per cent of new urban settlements in sub-Saharan Africa are taking the form of slums.

A quarter of the world's 1.1 billion poor people are landless (including 200 million living in rural areas)[1]. In many countries, the problem of rural landlessness is related to inequitable patterns of land distribution: the poorest households can access only small proportions of national land areas, often on insecure terms, while large areas of productive agricultural land are controlled by minorities. In addition, high population growth combines with subdivision of land on inheritance; the resulting land fragmentation again leaves many poor farmers with access to only very small plots, from which they are unable to make and adequate living or feed their families.

Better land access and more secure land rights encourage investment in the land and respect for the environment. This mitigates competition for, and pressure on, land and natural resources, while also maintaining productivity. Land rights also entail a duty of efficient and productive use.

Eviction and relocation

An estimated five million people worldwide suffer from forced evictions every year. On top of personal suffering, this reduces available housing stocks just when they need to increase dramatically. Therefore, it is for government to provide alternative

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Box 1. Forced evictions in Cambodia

"My son was arrested and beaten up while he was collecting belongings from the house. I saw them walking away with him, beating him. Then he was tied up and put on the truck."

"Before, he went fishing and farming. Now, who can I rely on? Since he was arrested, I have not managed to earn anything. My house was completely burnt down."

(Villager forcibly evicted from Mittapheap 4 village, Sihanoukville, 20 April 2007)

At least 150,000 Cambodians across the country risk eviction because of development projects, land disputes and land grabbing.. This highlights an urgent need to bolster the legal framework. In May and June 2006, over 1,500 poor families (including tenants) were forcibly evicted from Sambok Chap, a 10-15-year old informal settlement on the Bassac River.

Amnesty International 2007 Rights razed: Forced evictions in Cambodia

Forced eviction is defined under international law* as the permanent or temporary removal against their will of individuals, families and/or communities from the homes and /or land which they occupy, without the provision of, and access to, appropriate forms of legal or other protection.

* See Committee on Economic, Social and Cultural Rights http://cesr.org

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[1] *Figures from IFAD available at http://www.ruralpovertyportal.org/english/topics/land/statistics.htm*

shelter. Eviction also leads to the creation of new unauthorised settlements elsewhere, only moving the problem from one location to another at great social, economic, and occasionally political, cost. Cambodia's experience (Box 1) shows how slum clearance and eviction programmes punish people, who are victims of a combination of market forces and authoritarian, inappropriate planning frameworks. Evictions fail to address the structural problems posed by population growth, rural-urban migration and economic inequality.

In cities and rural areas, insecure tenure and informal settlements combine with other factors – unplanned, congested development, insecurity and social vulnerability – to reduce public revenues, infrastructure investment, employment and economic growth. Sustainable development technical innovation and a knowledge economy, as they emerge in the developed world, cannot take place in a context where the bulk of human settlement is unplanned and populations are exposed to hazardous, unsanitary and insecure living conditions.

Box 2. Defining land tenure and property rights

Land access: Opportunities for temporary or permanent use and occupation of land for purposes of shelter, productive activity, or the enjoyment of recreation and rest. Land access is obtained by direct occupation, exchange (purchase or rental), though membership of family and kin groups, or by allocation by government, other land owners or management authorities

Land rights: Socially or legally recognized entitlements to access, use and control areas of land and related natural resources.

Property rights: Recognised interests in land or property vested in an individual or group and can apply separately to land or development on it. Rights may apply separately to land and to property on it (e.g., houses, apartments or offices). A recognised interest may include customary, statutory or informal social practices which enjoy social legitimacy at a given time and place.

Land tenure: 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 their dealings in land.

Land tenure systems: Sets of formal or informal rules and institutions which determine access to, and control over, land and natural resources

Land tenure security can be defined in various ways:

- 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;

- the certainty that an individual's rights to land will be recognized by others and protected in cases of specific challenges; or, more specifically,

- the right of all individuals and groups to effective government protection against forced evictions.

Definitions adapted from FAO, 2003 Multi-lingual thesaurus on land tenure and UN-HABITAT, 2003 Handbook on Best Practices, Security of Tenure and Access to Land

1.2 Land and property rights

Certain individuals, groups or institutions will normally have stronger rights over land, often over large and important areas; this puts them in a position to control the allocation and distribution of land rights to others. The rights and related obligations of individuals, families and corporate groups are embedded in sets of tenure rules and norms that are sanctioned by formal or informal institutions.

A number of parties can hold different tenure claims and rights in the same piece of land. These can be either, formal / legal, or informal / extra-legal. Claims can be stronger or weaker according to social conventions, the law, enforcement conditions, and length of possession, political support, etc.

Property rights can involve combinations of various elements. These include the right to:

- Occupy, enjoy and use
- Cultivate and use productively
- Restrict or exclude others
- Transfer, sell, purchase, grant or loan
- Inherit and bequeath
- Develop or improve
- Rent and sublet
- Benefit from increased property values or rental income

Clearly, documented land rights can also facilitate other rights and opportunities. These include the right to civic and political participation, or access to basic services and to bank credit.

Secure land tenure is not the same as land rights. For example, an individual may enjoy complete tenure security, but no rights to sell, develop, or sublet; whereas another may have limited security but be free to transfer their limited rights to others.

1.3 The various types of land tenure

In developing countries, land tenure and property rights can be formal (freehold, leasehold, public and private rental), customary, or religious in origin; they can also include various types of unauthorised/informal tenure or settlement. Tenure entails varying degrees of legality, according to the legislative framework. These different forms of tenure also include different sets, or bundles, of rights to land, property and natural resources.

In many societies, customary tenure still prevails, based on kinship, membership or relationship with traditional land holding groups. In some sub-Saharan Africa societies, land rights derived from custom predominate in rural and even urban areas. Often, these include complex sets of secondary or subsidiary rights to land, housing and natural resources; these rights can be held by family members and other individuals and groups, and are derived from negotiations and transactions with the primary land holding group (see Box 3).

Customary and formal tenure systems often co-exist and will conflict where different people claim rights to the same land under each system. Customary systems are under strain due to six main factors: demographic pressure; land scarcity and

competition; growing urbanization; inter-group and wider civil conflicts; breakdowns in customary authority; and the conflicts that can arise under pluralistic legal systems.

1.4 Tenure security

For all forms of tenure, the two major components are:

- Reasonable duration of rights appropriate to the use to which the land is put and the social needs of the land user, and
- Effective legal protection against eviction or arbitrary curtailment of land rights, with enforceable guarantees and legal/social remedies against the loss of these rights

Other important aspects of tenure security include plot users' freedom to bequeath land to heirs, and to lease, lend or grant land to others on a temporary or long-term basis with reasonable guarantees of being able to recover the land.

Where ultimate ownership rights are vested in government or a customary land holding group (e.g., an extended family lineage), there may be restrictions on the land users' freedom to transfer land, to exclude others or to use it in particular ways (e.g., to cut down valuable trees). However, these restrictions do not necessarily compromise the tenure security of the land holder.

Tenure security is partly a matter of perception, and can be safeguarded under various forms, provided the rights of land users and owners are clear. In addition to formal titles, security can be achieved through clear, long-term rental contracts, or formal recognition of customary rights and informal settlements, with accessible and effective dispute mechanisms. Many examples (see the boxes in Part 3 on China, Colombia, India, Mozambique, the Philippines, Thailand and Trinidad and Tobago) show that enhanced tenure security generates individual, household and community benefits; it does so by encouraging savings and investments in the improvement of land, homes and neighbourhoods. This, in turn, improves livelihoods and living standards.

Continuum/range of land rights

The diagram shows a continuum with an arrow pointing from "Informal land rights" (left) to "Formal land rights" (right). Above the line, from left to right: Perceived tenure approaches, Occupancy, Adverse possession, Leases. Below the line, from left to right: Customary, Anti evictions, Group tenure, Registered freehold.
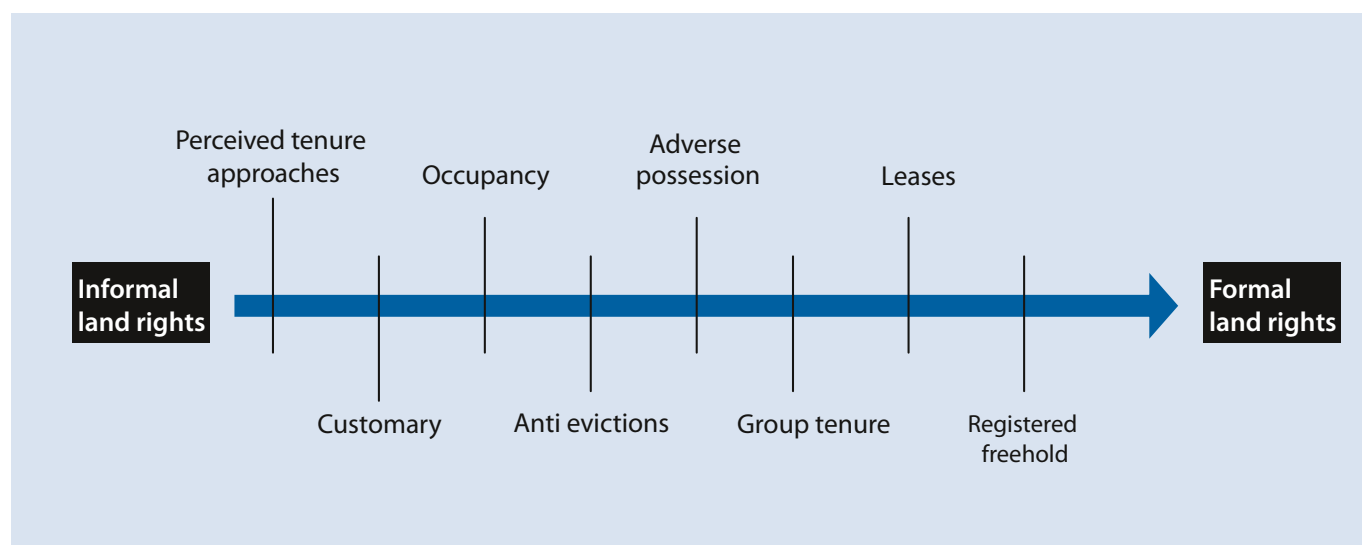
1.5 The continuum of tenure types

The range of possible forms of tenure can be considered as a *continuum*. Each continuum provides different sets of rights and degrees of security and responsibility. Each enables different degrees of enforcement (see Box 4). Across a continuum, different tenure systems may operate, and plots or dwellings within a settlement may change in status, for instance if informal settlers are granted titles or leases. Migrants from rural areas, where customary tenure predominates, may be considered to be acting illegally when obtaining land from friends and relatives in urban centres where only statutory systems are officially accepted.

Informal and customary tenure systems may retain a sense of legitimacy after being replaced officially by statutory systems. This is particularly the case where the new systems and laws prove slow to respond to increased or changing needs. Under these circumstances, and where official mechanisms deny the poor legal access to land and shelter, people tend to opt for informal or customary arrangements to access land and housing in areas that would otherwise not be affordable or available.

Some governments have, to varying degrees, recognised customary rights as legitimate, and some functional informal systems to document land rights and transactions have emerged. Still, most governments continue to grapple with conflicting sets of tenure rules (and relevant institutions), particularly in Africa and Asia. These tensions can be exacerbated by multiple layers of legislation and fragmented institutional responsibilities for land allocation; this in turn leads to widespread uncertainty, insecurity and disputes, inhibiting investment and land development.

1.6 The benefits of different forms of tenure

As shown in Table 1, each form of tenure has benefits and limitations in different contexts. Customary systems can meet social and economic needs and, although often not documented, can be very secure. However, commercial pressures and the monetisation of customary land transactions are eroding the social cohesion that gives customary tenure its legitimacy. Public ownership potentially ensures equal access to land for all, but all too often results in bureaucratic inertia, corruption and political patronage in land allocation. Private tenure systems are intended to ensure the most intense and efficient use of land, but have not enabled the poor to obtain legal land and shelter.

Table 1   Tenure systems and their characteristics

Tenure system	Characteristics	Advantages	Limitations
Freehold	Ownership in perpetuity	High degree of security. Freedom to dispose, or use as collateral for loans. Maximises commercial value, potential for increases in asset values.	Costs of access generally high. Collateral value may not be relevant if incomes are low or financial institutions are weak. Property values can go down as well as up.
Delayed freehold	Conditional ownership. Title is granted on payment or when developments have been completed.	Same high degree of security as freehold when payments are made on schedule or developments are completed. Freedom to dispose, or use as collateral for loans. Maximises commercial value, potential for increases in asset values.	Default in payments or 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. Expectations of increased values can divert investments from more productive sectors.
Registered Leasehold	Ownership for a specified period from a few months to 999 years.	As secure as freehold, but only for the period specified in the lease.	Requires legal framework. Costs of access generally high.
Public rental	Rental occupation of State-owned land or house	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.	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 (often 50%) and pay rent on the remainder to the other stakeholder.	Combines the security and potential increase in asset value of delayed freehold and the flexibility of rental. Residents can increase their stake over time, ultimately leading to full ownership.	Requires a proper legal framework and efficient management.
Co-operative tenure	Ownership is vested in the co-operative or group of which residents are co-owners	Good security. Maintains social cohesion.	Requires a proper legal framework. Restrictions may reduce incentives to invest. Requires double registration first of land and of association

Customary ownership	Ownership is vested in the tribe, group, community or family. 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 urban and market development. Poor customary leadership may weaken its legitimacy.
Religious tenure systems (e.g. Islamic)	Islamic tenure has four main categories: 'Waqf' is religious trust land and addresses landlessness; `mulk', is full individual ownership; `miri', is state owned/controlled land which carries usufruct rights, whilst `musha/mushtarak', is collective/tribal ownership.	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
Intermediate, or temporary, tenure systems	There are many pragmatic arrangements, including land certification, 'Certificates of Comfort', Temporary Occupation Licenses, etc.	These provide reasonable security for households to invest, whilst protecting long term public interest options for change.	Costs may be incurred by authorities or residents if relocation is required. If these prove excessive, redevelopment can be inhibited.
Non-formal tenure systems	These include many 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, (e.g. tenants and sub-tenants), 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 formal 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.

No single form of tenure can meet the different needs of all social groups. However, a range of land tenure options enables both women and men from all social groups to meet their changing needs over time. Legal recognition for different forms of tenure can also strengthen the development of dynamic land markets in highly populated areas.

Globalisation reinforces the role of market-based statutory tenure systems that emphasise individual rights, forcing the underprivileged into various non-formal solutions.

Attempts to incorporate informal settlements and customary land into the formal land and housing markets have often focused on granting individual freehold titles. Land titling has been popular with many international agencies and with beneficiaries too (e.g. protection against eviction; windfall profits). However, if implemented on a small scale, titling may distort land and housing markets as sudden rises in land values lead to displacement/eviction of the poor. When the scale is large enough to mitigate such distortion, titling is likely to over-stretch institutional capability. Titling can even increase uncertainty by undermining pre-existing land rights, including those of the weaker groups. Moreover, evidence shows that titling as such does not automatically lead to higher investment in infrastructure, access to credit or more productive land use (see Box 5).

The alternative to costly or difficult titling is an *incremental approach*, whereby tenure rights are gradually formalised or upgraded over time. This can increase short- to me-

dium-term security at a large scale. In the meantime, the authorities can develop more comprehensive and locally sensitive long-term alternatives.

Table 1 summarises the characteristics, advantages and disadvantages of the main tenure types.

1.7 How are land rights managed?

Forms of tenure and property rights to land vary from one society to another, since they reflect other areas of social and civic life. In all cases, rights normally include checks and balances.

Where formal legal systems co-exist with customary, non-formal, or semi-legal systems, customary and religious authorities and community leaders will have roles in land management along with government.

With land coming under pressure and competition, modern states require *land policies* to govern access, tenure, use and development. These take the form of *land laws*, rules and procedures as well as of specialist bodies for *land administration*. These bodies are in charge of *land information systems* linking land plots and their occupants or users. Area mapping and plot titling typically result in a *cadastre*, which ties land information to a parcel map or spatial data base.

Community development council, Cabo Delgado, Mozambique. Photo © J. Quan. 2007

The core business of land administration and management provides two major conditions for tenure security:

- Robust, commonly accessible forms of tenure for which rights can be easily documented.
- Land dispute mechanisms regardless of the (quasi) legal system.

In order to deliver secure land rights for all, land information and registration systems must be capable of capturing the range of forms of tenure and local land management arrangements. Dispute mechanisms are an essential aspect of security.

1.8 Secure land rights and human rights

Article 17 of the Universal Declaration of Human Rights [2] recognizes the rights of everyone to own property either alone or in association with others, and that no one should be arbitrarily deprived of their property. In addition, the right to an adequate standard of living and security (Article 25) entails a universal right to adequate shelter.

Article 11 of the International Covenant on Economic, Social & Cultural Rights recognizes a universal right to housing and to continuous improvement of living conditions[3].

A wide consensus also recognises the need for an enabling approach which supports people in their efforts to access adequate shelter and housing in a variety of ways.

All human rights apply equally to women and men. The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)[4] states that women, and both spouses, shall have equal rights in respect of the ownership, acquisition, management, administration, enjoyment and disposition of property administer property (Articles 15 and 16). Yet many land tenure and property rights regimes discriminate against women either formally, or in practice. Female-headed households frequently form a high proportion of low-income groups; but cultural traditions often leave women dependent on male relatives for tenure security and without legal protection, also denying basic rights to divorced or widowed women. This discrimination is unfair and prevents women from overcoming poverty.

The principle of a 'minimum core obligation' in international law holds that it is incumbent upon states to ensure minimum economic social and cultural rights. Cultural rights for example imply that territorial rights over land and natural resources should be recognised as fundamental to the cultural identify of indigenous groups, and that housing layouts and construction must enable the expression of cultural identity.

With all due respect to customs and traditions, it is each government's obligation to ensure that land management is not discriminatory, particularly with regard to women and the poor, and does not violate other human rights.

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[2] *Universal Declaration of Human Rights available at http://ccnmtl.colombia.edu/projects/mmt/udhr/ .*

[3] *see Committee on Economic, Social and Cultural Rights http://cesr.org*

[4] *Available at http://www.un.org/womenwatch/daw/cedaw/cedaw.htm*

2. Why secure land rights matter

Securing land and property rights for all supports economic growth, reduces poverty and provides opportunities for empowerment. It is vital that land tenure policy be based on a detailed and reliable understanding of the full range of existing tenure types and sub-categories with different impact on different groups.

2.1 Land rights for economic and social development

Secure land rights are a firm springboard for economic, productive activity. They facilitate household income gains, improve food security and act as a safety net in times of hardship. More equitable land distribution across society reduces social inequality.

In addition to serving as a basis for secure shelter, for access to services, for civic and political participation, secure land rights can also provide a source of financial security, and a transferable asset which can be sold, rented out, mortgaged, loaned or bequeathed. Tenure security creates incentives for land users to invest labour and other resources to improve and maintain the productivity of farms, the quality of dwellings and the value of land and property.

In 2005, an estimated 934 million people lived without secure tenure in informal settlements in the urban areas of developing countries.

Box 6. Secure rights to land and the Millennium Development Goals (MDGs)

MDG1: Eradicating poverty and hunger: secure land rights and greater equity in land access provide a secure foundation for livelihoods, economic opportunities, and in rural areas, for household food production.

MDG 3: Gender equality and the empowerment of women: in September 2005 the UN Summit resolved to promote gender equality by guaranteeing women's right to own property, ensuring their security of tenure and equal access to productive resources including land*.

MDG 7: Environmental Sustainability: includes a target to improve the lives of 100 million slum dwellers, (including through secure land rights).

MDG 8: Development partnerships: secure land rights now have a significant place in development partnerships in many countries.

* World Summit 2005 Outcome, article 58. Available at http://www.sarpn.org.za/documents/d0001607/P1957-UN-Summit_Sept2005.pdf

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In 2005, an estimated 934 million people[5] lived without secure tenure in informal settlements in the urban areas of developing countries. This number is projected to increase to 1.5 billion by 2020 and two billion by 2030. This suggests that even if the Millennium Development Goal (No 7, target 11) of improving the lives of at least 100 million slum dwellers by 2020 is achieved, it will meet only a small proportion of existing needs and only seven per cent of future estimated needs by 2020.

In rural areas, some 200 million people (almost 20 per cent of the world's poor) have no access to sufficient land to make a living. Women predominate in rural areas (up to 70 per cent of the agricultural labour force), but most do not own or control any land[6].

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[5] *UN-HABITAT, 2006, The State of the World's Cities 2006/2007, Earthscan*

[6] *Figures from IFAD available at http://www.ruralpovertyportal.org/english/topics/land/statistics.htm*

More than 90 percent of the rural population in sub-Saharan Africa (of which 370 million people are considered to be poor) access land and natural resources via legally insecure customary and informal tenure systems, as do 40 million Indonesians and 40 million South Americans[7]. In many African countries, some 50 per cent of farmers cultivate less than one hectare, and some 25 per cent have access to less than 0.1 hectare. Also remaining insecure are the land and resource rights of the majority of indigenous people (an estimated 300-370 million across the world), comprising up to 5,000 distinct groups, mainly in rural areas.

In some countries, many more people live in unauthorised settlements and under informal or customary tenure arrangements than in formal land and housing markets. Women, indigenous people, pastoralists, unemployed workers and migrants are especially vulnerable to losing access to land and natural resources, as market forces and land acquisition processes work against them. Box 7 shows how the impacts undermine development.

Box 7. How the lack of secure land rights undermines development

Excluding a significant proportion of urban and rural populations from legal shelter and secure land rights undermines prospects for economic development, as it reduces incentives for investment and imposes significant costs on government when addressing the consequences:

- People who fear eviction are not likely to operate to their maximum potential, or invest in improving their homes, farms, villages or neighbourhoods.
- Tenure insecurity in rural areas undermines farm productivity, food production and the sustainable utilisation of natural resources people rely on for subsistence and livelihoods.
- Uncertainty and unclear land rights associated with insecure tenure may hinder both local and inward investment in both urban and rural areas.
- Local and central governments are denied revenues from property taxes and service charges, which could help improve urban living environments and the provision of essential services.
- Poor living conditions have adverse impacts on people's health, with possible impacts on the wider community.

More than 90 percent of the rural population in sub-Saharan Africa (of which 370 million people are considered to be poor) access land and natural resources via legally insecure customary and informal tenure systems.

2.2 Land and business development

Secure rights of access to land are a prerequisite for productive investment. Difficult access discourages enterprises of all sizes in both urban and rural areas. Easier access depends on effective, accessible land administration systems. Also required are proper regulation, transparency and an end to bureaucratic discretion and corruption. Governments must also reduce any risks of conflict and promote effective partnerships through proper dispute mechanisms.

Restrictions on foreign ownership of land, or forcing foreign investors into joint ventures with nationals, do not necessarily undermine investment flows: long-term renewable leases are adequate for most if not all business purposes, and all that is needed is a proper land access procedure.

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[7] *Commission on Legal Empowerment of the Poor Making the Law Work for Everyone Volume II Working Group Reports, Ch 2, available at http://legalempowerment.undp.org/reports/*

2.3 Land rights and social stability

Secure land rights tend to promote social stability by reducing uncertainty and conflicts over land; they also mitigate the insecurity, unemployment, poverty and social exclusion associated with landlessness and homelessness. Contested access to land and natural resources has also been a factor underlying armed conflicts and territorial disputes.

In many societies, access to land or natural resources is seen as a crucial element of cultural identity. Without secure land rights, people are unable to play a full part in society, citizenship is restricted and exclusion grows. The more people are unable to conform to official norms and procedures, the more their status is undermined. Excluding large sections of the population from legally secure access to land generates alienation; it also discourages respect for the rule of law, which can surface in various forms of anti-social behaviour, with the costs and problems involved.

Social problems linked to inequitable distribution of land and associated economic opportunities tend to lead to demands for land reform. Where these are not met, social conflict or political violence and instability may ensue.

2.4 Land rights and gender

Equal property rights for women and men are fundamental to social and economic gender equality. Yet, they are far from being effective. Women often face discrimination in formal, informal and customary systems of land tenure. For instance, they gain access to land generally through male relatives and exercise only subordinate rights; these are vulnerable to breakdowns in relationships, divorce and to the changing priorities of male land owners. Gender discrimination in access to land and secure land rights is unjust and undermines women's human rights.

Providing secure land rights for women makes economic sense and is important for poverty reduction. This is because of women's roles as food producers in rural and peri-urban areas, their responsibilities for feeding family members and their broader roles in household management. Female-headed households – a significant proportion of the poor – can benefit enormously from the security, status and income-earning opportunities which secure rights to even a small plot of land can provide. There is a strong positive association between women's land rights and poverty reduction; this is because women's control over land assets enhances household welfare, women's cash incomes and spending on food, children's health and education. Secure land rights for female farmers and businesswomen can improve investment, access to sources of credit and better land use and productivity, with women frequently regarded as at lower risk of credit default than men.

When women are denied equal tenure rights with the same degree of security as enjoyed by men, then society as a whole and children in particular, suffer. When women enjoy equal rights, conflicts are reduced, environments are improved and household living conditions are enhanced (see Box 8).

Gender discrimination in land rights is culturally engrained. It is important to develop stronger legislation for gender equity, along with collective action for effective women's rights to hold legal and documented claims, to spousal co-ownership rights, and to legal protection for customary and informal claims to land.

2.5 Land rights for sustainable urbanisation

In parallel with providing secure land rights for existing urban populations, urgent measures are needed in another area: upgrading programmes must be complemented with a 'twin-track' approach to increase the supply of planned, legal and affordable

land for housing to meet present *and* future demand. This is needed both within existing cities and in peri-urban areas where the greatest extent of unplanned change takes place; this twin-track approach can be achieved through the following:

- Revising planning regulations, standards and administrative procedures, to reduce entry costs and accelerate the supply of new legal developments. Options may include reducing the proportion of land allocated to roads and public open space, relaxing restrictions on plot use and development, and simplifying administrative procedures.
- Introducing and collecting property taxes on all urban land, whether developed or not.
- Permitting incremental development of land construction and services provision.
- Allowing households to obtain basic services, such as water, sanitation and electricity, irrespective of their tenure status.

2.6 Land rights for rural development

Poverty often remains concentrated in rural areas where agriculture is the main source of livelihood. People need secure land rights to provide reliable opportunities for food production. Policies should foster not only access to land, but also productive use of land.

Even the majority of income-earning opportunities lie outside agriculture, access to productive land and natural resources provides a supplementary source of food and an important safety net for both the employed and unemployed. In expanding economies such as India and Brazil, low agricultural wages, vulnerability to eviction and retrenchment combine with exploitative labour and tenancy contracts to create landlessness, and drive political demands for land reform. Policies should foster not only access to land, but also productive use of land.

Tenure rights over natural resources and land are important to production systems. The rural poor (including women and marginalised groups) tend to rely more than others on forests, grasslands and wetlands for their livelihoods, both routinely and in times of crisis. Hunting, fishing and gathering of wild foods can all provide critical fall-back resources in times of crisis.

Land and management of urban – rural change

The expansion of urban centres into rural areas involves rapid social and economic change. Land values increase with demand for commercial development. Urban migration causes interaction of different social, cultural and legal traditions and practices. Peri-urban areas are the most affected and those where policy focus is most urgently needed. Any overnight switch away from traditional land and tenure systems will cause resistance to change, especially if the new systems fail to meet people's needs quickly. Therefore, any change must take place at a pragmatic, gradual pace consistent with the ability to deliver access to secure land according to local needs and conditions.

2.7 Land rights and the environment

Clearly defined tenure and access arrangements over natural resources provide a basis for long-term stewardship and reconciliation of competing claims by different users and interest groups. Lack of these in rural areas can lead to environmental degradation (e.g. deforestation, water, biodiversity, grasslands and desertification).

Clearly defined tenure and access arrangements over natural resources provide a basis for long-term stewardship and reconciliation of competing claims by different users and interest groups.

In expanding urban areas, lack of land for the poor frequently leads to the growth of informal settlements in hazardous locations.

Poor land use planning associated with insecure and incompletely specified land rights also leads to problems of air and water-borne pollution from agricultural and industrial land use. As a result, in densely populated areas the poor are more exposed to pollution hazards.

The challenge of providing secure land rights for displaced people and refugees is likely to increase under climate change. Those populations living in low-lying coastal areas are already disrupted as a result of lower rainfall and more frequent extreme weather events, as are agriculture and food security.

2.8 Land rights after conflicts and natural disasters

Land rights must be included in humanitarian and development response to disasters or civil conflict. Reconstruction must address issues of land access for refugees, returnees and displaced people; it must also include rebuilding land institutions and establishing legitimate and equitable land policies after violent conflicts. Conflicts over land rights between different ethnic, social or generational groups can lead to communal violence, economic instability and war. To help prevent this, land policies must guarantee secure land rights to competing interest groups in an equitable way; this involves recognising the long-running grievances that can arise when certain groups are alienated or excluded from land they consider to be rightfully theirs.

Post-conflict settings frequently involve overlapping sets of land claims. Reconstruction and reconciliation require the disentangling and negotiated settlement of these claims. Establishment of legitimate institutions governing access to land for re-settlement of migrants and refugees is very important, as is the issue of restitution to original owners.

2.9 Land rights and governance

Tenure cannot be divorced from governance of land, natural resources and processes of land use change. Land governance can be understood as 'the process by which decisions are made regarding the access to, and use of, land, the manner in which those decisions are implemented and the way that conflicting interests in land are reconciled'[8].

In addressing land governance, UN-HABITAT adopts the following principles:

■ Government / national leadership is crucial, as is empowerment and capacity building at various levels in society
■ Changing policy or laws is not enough to resolve conflicting interests and to change discriminatory, corrupt and inefficient performance of land institutions
■ Only sustained, long-term interventions can resolve land problems and deliver secure land rights for all
■ Gender and minority groups must be handled as specific issues of concern
■ The interests of multiple stakeholders in land and multiple visions of land development must be reconciled
■ Outside agencies and development partners must coordinate strategies to engage in and support national processes

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[8] *Good governance in land tenure and land administration available at: http://www.fao.org/docrep/010/ a1179e/a1179e00.htm*

If they are to improve governance, tenure policies must satisfy the following nine criteria: sustainability, rule of law, subsidiarity, equity, effectiveness, efficiency, transparency and accountability, civic engagement and citizenship, and security. Although providing secure land rights raises important technical and procedural questions, ultimately it is a political issue. This is because rights over land cannot be separated from civil, political and human rights, and are dependent on political, administrative and professional will to ensure fair treatment and equal opportunities for all.

In many societies, control over land rights is a means of accumulating and dispensing political and economic power and privilege through patronage, nepotism and corruption. Addressing these issues is critical to improving governance, but will require considerable commitment from policy-makers and practitioners.

Government's role is to manage land in the public interest. Its own performance as land owner and regulator is critical to governance. In practice, government-owned land is often managed in unaccountable and inefficient ways, and is subject to appropriation by political or allied economic elites.

Land governance must shift its emphasis away from currently dominant technical and managerial approaches to land tenure and administration, and towards approaches based on a better understanding of the political economy of land (e.g., the nature of vested interests and power relations, and their impact on land access and land rights as well as changing uses).

Land refom farm, E. Cape, South Africa. Photo © J. Quan

3. Innovation and good practice in providing secure land rights for all

Innovative approaches to land management, tenure policy and housing provision are regularly presented at international conferences[9], granted international awards[10] and disseminated through professional or academic journals and other media. The Internet is also a powerful source of information on effective innovations. Therefore, the challenge is to encourage and assist policy-makers and others with influence nationally and internationally to adopt and adapt such innovations at scale.

3.1 Secure land rights for poverty reduction

Secure rights to land have multiple benefits for the poor, and provide a readily available means for people to rise out of poverty, especially for women. In rural, urban and peri-urban areas where population density is high and land markets can be very competitive, even very small plots of land can provide these benefits.

The stronger their land security, the easier it is for households to invest in the land, improve production and escape from poverty.

Box 9. The value of small household plots for the poor in South Asia

In India, the proportion between landless people and the limited number of available land plots makes large plot distribution schemes financially and politically impractical. West Bengal's distribution of 1.04 million acres to 2.54 million land-poor households has had a positive impact on livelihood opportunities, even though many received only 0.07 to 038 acre.

In Pakistan and Bangladesh, ownership of even relatively small plots of land is associated with significant reductions in poverty. Data for 1999-2000 show that in India, small improvements in land ownership were associated with five to nine per cent reductions in the incidence of poverty. This is because small plots provide a supplementary source of income and food to the poor, as part of diversified livelihood strategies that also include work as wage labourers, trade or cottage industries, and remittances. Small plots can also function as sources of credit, social status and security in times of crisis.

The larger the house-and-garden plots, the greater the scope for non-housing benefits. Typical household plots (1,700 to 2,600 sq. ft.) can supply enough vegetables, fruit and milk to meet agricultural labouring households' own needs, on top of generating annual incomes of around 11,000 rupees (or about US$268) from commercial sales. For women, house-and-garden plots are readily accessible and easily tended, with fresh produce available directly, resulting in improved welfare for children and for families as a whole.

Hanstad T, Nielsen R, Bown J 2004 *Lands and livelihoods: making land rights real for India's rural poor* FAO Livelihood Systems Programme Paper, RDI, Seattle / FAO Rome; and Srivastava RS 2004 *Land reforms and the poor in India: an overview of issues and recent evidence* in Gazdar H and Quan J 2004 *Poverty and Access to Land in South Asia: a study for the Pakistan Rural Support Programmes Network* NRI Chatham

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[9] The bi-annual World Bank Urban Research Symposia and the bi-annual Global Urban Forum are prime examples, though many other international events present examples of innovation and good governance.

[10] The annual UN-Habitat Awards and the Dubai Best Practices Awards are prime examples.

Box 10. Gradual increases in tenure security, agricultural growth and poverty reduction in rural China

In the 1950s, the collective farming system introduced in China reduced sharp historical inequalities in land ownership, preventing the re-emergence of famine after the Second World War. However, collective farming restricted individual households' security of tenure and incentives to invest in the land, impeding agricultural growth. Since the 1980s, and particularly since 1990, the gradual introduction of more secure land use rights has contributed to dramatic increases in agricultural productivity and reductions in rural poverty.

Under a 1980 scheme, households acquired rights over land and were allowed to retain any increased farm revenues, leading to higher productivity and poverty reduction. However, Village Committees continued regular land redistribution in response to changes in population and family sizes, discouraging household investment in land improvement. The 1998 Land Management Law has since provided households with greater tenure security. However, uncertain and insecure land rights remain an issue for women, who are dependent on male relatives for land access, as a result of discrimination due to customary inheritance practice and Village Committees.

Duncan, J. and Ping, L., 2001. *Women and land tenure in China: a study of women's land rights in Dongfang County, Hainan Province,* RDI Seattle; and Ravaillion, M. and van de Walle, D 2001 *Breaking up the collective farm: welfare outcomes of Vietnam's massive land privatisation* World Bank Washington DC

Box 11. Security and services in Colombia

Formal tenure systems are often considered essential in influencing access to public services. However, in Colombia, legislation allows all citizens to obtain services such as water supply, sanitation, electricity, storm drainage, garbage collection, telephone and gas supplies. The only condition is that they must prove that they live in their homes and can pay for the services provided. A range of intermediate tenure systems – such as 'Declarations of Possession', 'buying and selling rights for future use' and 'communal tenancy' – all provide stepping stones with strengthened rights and degrees of protection from eviction, enabling poor households to obtain secure, affordable housing. In such conditions, land tenure is not even a concern to the majority of poor households; this is because they are protected by legislation from forced evictions without due legal process, and are entitled to receive all essential services irrespective of their tenure status.

Aristazabal, N. and Gomez, A. (2004) 'Improving security without titles in Bogotá' *HABITAT International* Vol 28 Issue 2 pp245-258

3.2 Land titling programmes

The example from Peru (Box 5) shows that titling programmes are extremely expensive and do not necessarily achieve objectives, even when implemented at a large scale. Land titles have benefited many informal property owners and deserve a place in any tenure policy. However, titling has not necessarily improved access to credit nor prevented the growth of new informal settlements. With rapid social and economic change widespread across the world, many low-income households prefer the social cohesion which customary tenure arrangements can provide, or the mobility offered by renting, as long as they enjoy adequate security and legal protection. Ensuring this protection is easier where land markets and planning encourage a variety of tenure options beyond titling.

Moreover, many governments in developing countries have little experience of formulating and implementing urban land tenure policies appropriate to all types 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.

3.3 Alternative tenure options

Given the limitations of individual land titling, the value of an incremental approach and the importance of building on existing tenure arrangements with which people are familiar, UN-HABITAT advocates use of a variety of alternative tenure options which can be adapted to various circumstances in any area.

Several such innovative, 'intermediate' tenure options have been developed by landowners, civil society organisations, private developers, local and even national governments as well as communities themselves. These are pragmatic, short-, medium- and longer-term means of improving security and access to livelihood opportunities and services, as shown in boxes 11 to 17 below.

3.4 Enhancing occupancy rights

Enhancement can take the form of proclamations by senior politicians against, or moratoria on, forced evictions and relocations. These are widely used to buy time and are both popular and easy to implement, since no surveys or documents are

Box 12. Low-cost registration and formalisation of customary rights

Pilot cases from the field show how rights can be registered at much lower cost, in simple ways, for example in Ethiopia, Mozambique, and Benin. Equally, in some places, titling and registration may matter much less than working to strengthen local institutions with responsibility for managing land rights and related disputes. Building on local knowledge and existing land management practices at local level are critical ingredients, and systems of land rights documentation can be gradually refined over time. The costs and techniques of land administration also must match the value of land. Bringing down costs and streamlining procedures are computerisation of land records and use of Geographical Positioning Systems (GPS to automate land survey and demarcation) and Geographical Information Systems (for comprehensive parcel maps and an aid to spatial planning). However, technology can be no substitute for locally legitimate processes to allocate and record land rights, approve land transactions and adjudicate disputed claims.

Cotula L, Toulmin C and Hesse C (2003) *Land tenure, land reforms, and land administration in Africa: lessons of experience and emerging issues,* IIED, London

Experience also shows that low-cost land access and secure land rights can be improved incrementally and at scale. The rural land certification experience in Ethiopia provides one example, despite persistent problems with data maintenance, management of common property resources, and gaps in policy and legal reform (e.g. lease restrictions). A recent World Bank study shows that certification has not only stimulated productivity, but also notably empowered women.

Box 13. Land proclamations in the Philippines

Like his predecessor, Filipino president Macapagal-Arroyo has made a number of land proclamations ensuring squatters on public land against eviction and promising better social services. Between 2000 and 2002, more than 645,000 families in 33 informal settlements have benefited. The policy does not apply to families squatting on private land, which form the majority of informal settlements; nonetheless, it is a positive and pragmatic response, which has encouraged many poor households to improve their homes and neighbourhoods.

Porio, E. and Crisol, C. (2004) 'Property rights, security of tenure and the urban poor in Metro Manila' *HABITAT International* Vol. 28 Issue 2 pp203-220

Box 14. Temporary Occupation Licences in Kenya

Temporary Occupation Licences (TOLs) were introduced by Nairobi City Council to promote efficient use of idle public land in strategic locations, e.g., street intersections, road reserves in high-density neighbourhoods and open land on the urban fringe. Under a TOL, the local authority allocates land for a productive use while retaining long-term control, since the licence is renewable annually and the licensee is allowed to build semi-permanent structures. The licensee pays an annual land rent, which adds to municipal revenues. Although intended for commercial and income-generation purposes, TOLs are also sometimes used for residential purposes and could be replicated elsewhere for this purpose.

Yahya, S. in Payne, G (2002) *Land Rights and Innovation: improving tenure security for the urban poor*, ITDG Publishing, London

Sri Lanka. Photo © UN-HABITAT

required. Proclamations and moratoria differ from general amnesties in that they do not necessarily involve the formal recognition of unauthorized settlements; therefore, they enable the authorities to retain control over land whilst exploring equitable and cost-effective longer-term alternatives.

Box 15. Certificates of Comfort in Trinidad and Tobago

People living in spontaneous and informal settlements in Port of Spain can obtain affordable shelter close to urban amenities through 'Certificates of Comfort' (CCs) under Act 25 of 1998.

The benefit of such certificates is that they provide sufficient tenure security to enable households to invest with confidence in home improvements and maintenance. They also preserve the public sector's long-term interest in the land. CCs also pave the way for statutory leases, but recognition of the government's superior claim to their land means that households are not eligible to titling as easily as residents in other informal settlements.

Government of Trinidad and Tobago, Act 25 of 1998.

3.5 Rental markets

Rental markets can widen the range of tenure options available. This may involve recognising, legalising and building on extant informal rental practices. As they monitor progress, households and governments can learn from experience and adjust to change at an acceptable pace.

Box 16. Temporary land rental in Bangkok

Low-income communities in Bangkok have evolved a practical arrangement with land-owners to enable them to live in areas with affordable access to livelihood opportunities. The poor look out for owners waiting for their land further to gain in value before developing it; they offer to rent the land on a short- to medium-term lease, paying what they can afford. Land-owners favour this as a defence against third-party invasion of their land.

In recent years, communities and authorities have been exploring how basic services can reach out to temporary settlements. Long-term leases pave the way for higher service standards, but residents must be willing to vacate the area when required. This arrangement has enabled large numbers of poor households to live in areas that would otherwise be beyond their reach. As urban growth brings livelihood opportunities to other locations, so the poor can move with the flow and negotiate a similar arrangement with another land-owner.

Savant-Mohit, R. in Payne G. (2002) *Land Rights and Innovation: improving tenure security for the urban poor*, ITDG Publishing, London

Box 17. *Anticretico* in Bolivia

The need to use the existing housing stock to the full and improve access for those in need has led to an innovative tenure system in Bolivia. Called *'anticretico,'* or 'against a normal credit' it involves a legally binding contract whereby the owner receives a lump sum (in dollars) from the occupant in return for the right to use the property, normally for a period of two years. At the end of the contract period, the owner returns the full amount deposited by the property occupier. For the owner, this is an effective way of raising capital without incurring high interest rates from the banks for the user, this is an effective way of living at low cost for those able to raise the initial deposit. *Anticretico* tenure also encourages people to maintain the property, due to the possibility of purchasing it when the contract period expires. Although the system enjoys widespread social acceptance, it depends on both parties fulfilling their obligation. Government attempts to formalise the system and extract revenues from a transfer tax have recently made the approach more bureaucratic and expensive.

Farfan, F. in Payne G. (2002) *Land Rights and Innovation: improving tenure security for the urban poor*, ITDG Publishing, London

Customary Land Secretariat sign, Wassa Ghana. Photo © J. Quan. 2007

3.6 Building on customary tenure systems

In rural and peri-urban areas in many countries, especially in sub-Saharan Africa and in parts of South-east Asia, customary tenure is the main way of accessing land. If recognised and well supported, customary systems can provide documented and legally secure rights to house plots, farmland and natural resources.

Box 18. Customary land secretariats in peri-urban Ghana

In Ghana, 80 per cent of land is under customary ownership. Having found statutory tenure security a challenge, the government is seeking a gradual transfer of customary land management from formal to customary agencies ('Customary Land Secretariats' - CLS).

In Gbawe, outside Accra, a CLS developed as a spontaneous innovation by the land-owning Gbawe-Kwartey clan has spontaneously developed a CLS as migrants and new settlers demanded housing plots. The CLS records land rights, surveys land and marks out development plots, collects rent, manages finances, draws up land leases and facilitates their registration at the Lands Commission. A portion of land revenues supports development of community facilities and infrastructure. An organised land allocation system with documented rights combines with improved local services to stimulate demand for plots. Lineage members who lose agricultural land due to residential conversion are entitled to compensation; this includes provision of a residential plot and entitlement to the proceeds of the sales of additional residential plots, which can be used to invest in more intensive production ventures.

Ubink J and Quan J 2008 "How to combine tradition and modernity, Regulating customary land management in Ghana" *Land Use Policy*, forthcoming

Box 19. Secure land rights for pastoralist peoples

Fundamental to the survival of pastoralist systems is periodic access to strategic resources including water, dry season grazing and livestock corridors permitting movement between seasonal pastures. By their nature, these are not subject to individual tenure arrangements but access rights to these resources can be protected by the adoption of suitable legal and institutional frameworks.

Progressive pastoral legislation in Mali and Niger

Several countries in the Sahel have sought to clarify pastoral rights through devolution to local communities and the development of pastoral laws or charters. These regulate competing resource uses (grazing and farming), and incorporate elements of customary pastoralist land management, such as herd mobility, negotiated reciprocal access to natural resources and the multiple, sequential use of grazing and water resources by different stakeholders.

Niger's *Code Rural* brings together in a single book the laws and regulations relating to the transfer and tenure of agricultural and pastoral lands. It gives pastoralists free access to natural resources and introduces the concept of '*terroir d'attache*'. A '*terroir d'attache*' is a place where a community of herders spend most of the year and where they return after periods of transhumance. The *Code* does not give pastoralists the exclusive right to the '*terriors d'attache*', nor ownership of the land, but it gives the community priority access to the resources whilst these must remain open to other users. Mali's *Charte Pastorale* gives pastoralists the right of mobility across agricultural and pastoral areas in Mali and access to natural resources. It protects pastoralists' right to priority usage of defined natural resources, but not ownership of the land.

Bruce JW and Mearns R 2002, *Natural resource management and land policy in developing countries: lessons learned and new challenges for the World Bank*. Drylands Programme Issues Paper No. 115, IIED London; and Thebaud B 1995 *Land tenure, environmental degradation and desertification in Africa: some thoughts based on the Sahelian example.* Dryland Programme Issues Paper No. 57. IIED London.

Agro-pastoralist land, NE Brazil.
Photo © J. Quan.2007

3.7 The role of civil society organizations in achieving secure land rights

Social movements and organizations can help increase the supply of land available to the poor. Where powerful groups have commercial interests in the development of public land, securing land rights for the poor may depend on mobilization of civil society organizations to help implement government policies that make land available to the landless, as in Bangladesh. In India and Pakistan, NGOs have also intervened in private land markets to facilitate secure rental contracts for the poor and for women's groups.

Box 20. Making public land allocation work effectively in Bangladesh

In Bangladesh, pro-poor NGOs such as Samata and Nijera Kori facilitate poor people's access to public (*khas*) land in Bangladesh, 3.3 million hectares of which have been illegally occupied These NGOs are up against the local elites, which control public land through political, administrative and judicial links as well as organised violence and intimidation. Those NGOs promoting land rights provide services to farmers' and poor people's networks and help them gain access to land. They also help the poor to engage with private landlords and the land administration.

Barkat A 2004 *Land reforms and the poor in Bangladesh, an overview of issues and recent evidence*, in Gazdar H and Quan J 2004 *Poverty and Access to Land in South Asia:a study for the Pakistan Rural Support Programmes Network* NRI Chatham; and DFID 2007 *Land: better access and secure rights for poor people,* DFID London

Box 21. Community-Based Organisations (CBOs) and access to land in the Philippines

The Kabalaka Homeowners Association is a local network of CBOs in Iloilo, the Philippines, mobilising 1,000 very poor squatter households against insecure tenure and inadequate housing conditions. Since 1977, they have collectively saved 2.5 million pesos (or about USD50,000.00) to buy 4.4 hectares of land close to their original settlements. The groups found the land and researched its ownership, zoning and rights-of-way before purchase. The CBOs also won support from the National Housing Authority to develop three new sites under their Land Tenure Assistance Programme. Once the land purchase is completed, the NHA will develop the land according to the community's layout requirements. The people will then build their own houses.

Vincentian Missionaries Social Development Foundation

3.8 Literacy and empowerment for secure land rights

The ability of individuals and groups to defend land claims and to manage natural resources can depend on their capacity to organise and negotiate with the State and other interest groups. Typically, vulnerable and marginalised groups lack the resources, time, skills and opportunity to participate in collective action; they rely on external support to claim and defend land and natural resource rights. Support includes training in legal literacy and awareness, advocacy, political campaigning and action, intervening in land markets and allocation, building capacity, and supporting collective action and organisation. On top of providing credit, education, healthcare, water supply and production support, NGOs can also facilitate access to land. Organised civil society can encourage management of common property resources and facilitate the transfer of property rights to user groups.

3.9 Integrating tenure and development strategies

Combining innovative tenure policies with responsive urban and rural planning (including infrastructure provision and resource management) is the most effective means of improving economic conditions – and meeting the Millennium Development Goals on poverty reduction. Strategic urban development and decentralised territorial planning can provide a spatial framework for local development and encourage local participation and investment. They can also increase public sector and democratic influence over urban and rural land development.

Box 22. Rural land leasing by NGOs for more secure access in South Asia

In India, the Deccan Development Society has been leasing out under-used private land in Andhra Pradesh for use by *Dalit* (lower caste) women on a tenancy basis. The scheme has improved food security and has been replicated under the country's Scheduled Caste Development Corporation programme. This was in the face of Andra Pradesh State restrictions on land leases, In Bihar, NGOs have acted as guarantors for collective sharecropping arrangements for women's groups, on top of training as well as production and marketing support.

In Pakistan, community-based organisations backed by NGO rural support programmes now go beyond credit and service provision for the rural poor: they lease out large areas from landlords at favourable rates, offering guaranteed rental incomes over a number of years and sub-leasing to community groups.

Government of India 2004, *10th National Plan*. Hanstad T, Nielsen R, Bown J 2004 *Lands and livelihoods: making land rights real for India's rural poor* FAO Livelihood Support Programme Paper, RDI, Seattle / FAO Rome; and Srivastava RS 2004 *Land reforms and the poor in India: an overview of issues and recent evidence* in Gazdar H and Quan J 2004 *Poverty and Access to Land in South Asia: a study for the Pakistan Rural Support Programmes Network* NRI Chatham.

3.10 Reconciling land and natural resource claims of multiple groups

Together with similar approaches (like French-speaking West Africa's village-based *'gestion de terroir'*), Community-Based Natural Resource Management (CBNRM) schemes have devolved group-based property rights to community user groups. However, there has been a tendency to designate resource access and user rights as *exclusive* to particular groups. In practice, a variety of groups may have legitimate established claims to resources such as dry season pasture, seasonal wetlands or fishing beaches, and so arrangements for inter-group negotiation about access rights and boundary restrictions are extremely important.

© UN-HABITAT

Box 25. Strategic urban development planning in Tanzania

In common with many developing countries, Tanzania has sought to manage urban development through master plans. However, these are too static to respond to growth and changing needs. To overcome these limitations and increase the contribution of the local population in urban development planning, the Kahama District Council decided in 1999 on a strategic urban development planning framework (SUDPF) in order to address a number of critical issues. Workshops with the local business sector, civil society organisations, utilities and local community groups identified issues and options, which were then developed by multi-disciplinary task groups. The approach has provided a predictable environment for families wishing to invest in housing construction or neighbourhood improvements.

Halla, F. 2002 'Preparation and implementation of a general planning scheme in Tanzania: Kahama strategic urban development planning framework' *HABITAT International* Vol. 26 Issue 2 pp281-293

Box 26. Enabling secure community land rights in Mozambique

In Mozambique, land and natural resources ultimately belong to the State. In much of the countryside, livelihoods live off natural resources, including arable land, forests, wildlife and tourism. But this depends on effective rights to land and natural resources through community land delimitation.

Mozambique's 1997 Land Law provides legal protection for two categories: established customary land users, and people who have occupied land in good faith and used it productively for a period of at least 10 years. The law also facilitates community land delimitation, although it does not require it; it sets out procedures for community consultation before land can be allocated to outsiders. Although legislation on land, forests and wildlife is generally adequate, the government has not devolved effective property rights over natural resources to local communities, who often compete with local and foreign commercial investors for control of land. Allocation of land leases and concessions is subject to centralised political control, which is not always transparent.

Capacity remains weak, both in government and communities, to establish secure community land rights, ensure effective consultation and adjudicate between competing interests. Moreover, ineffective land administration and cadastral system do not facilitate clear and transparent allocation of concessions, a process which is not yet integrated with decentralised district-based or territorial planning. Since 2007, the Mozambique Community Lands Initiative (a partnership of government, rural social organisations, NGOs and donor agencies) has launched a demand-led programme. The scheme promotes community land delimitation, capacity building and strategic interventions at provincial and district level, including equitable partnerships and sustainable use of land and natural resource use, all based on secure land rights.

Norfolk S 2004 *Examining Access to natural resources and linkages to sustainable livelihoods: a case study of Mozambique* FAO Livelihood Support Programme Paper, FAO, Rome; and *Mozambique Community Lands Initiative*, project documentation 2006-2008

Box 27. Decentralisation and negotiated land rights and management in the Sahel

Implementation of progressive rural land laws such as those in Mali and Niger is closely bound up with decentralisation that entrusts greater powers to local authorities. In the Sahel devolution has also taken place in Benin, Burkina Faso and Senegal. This can involve the transfer of competence over local infrastructure development and resources. In Mali, the local collectivités territoriales have the power to impose a tax on access to certain resources.

In the Sahel, a patchwork of customary reciprocal arrangements amongst pastoralist and farming groups have regulated access and controlled use of scarce natural resources. Some have been formalised as Conventions locales sanctioned by the local authorities; they involve the development of shared arrangements for access and management over wide areas negotiated between the full range of stakeholders (including pastoralists). These schemes can overcome the deficiencies of more localised gestion de terroir, which focus on individual settled village communities and tend to exclude mobile herders.

Gueye MB and Tall SM 2004 *Conventions Locales – Local Agreements in the Sahel*: *an instrument for co-governance of natural resources* IIED Sahel, Dakar ;and Thebaud B 1995; and *Land tenure, environmental degradation and desertification in Africa: some thoughts based on the Sahelian example*. Dryland Programme Issues Paper No. 57. IIED, London

4. Strategies for delivering secure land rights for all

As demand grows for better access to productive land and housing, land and natural resources are coming under increasing pressure. This forces governments, developers and communities to deliver secure land rights and improve the management of the urban and rural environment. Instruments like conventional titling programmes, urban master plans and rural development strategies are no longer appropriate in view of rapid urban growth and land use change. More flexible development and management strategies are needed. If population growth and competing land uses must be accommodated, pro-active planning can help bring about economic growth to urban and rural areas. However, this will require considerable political will and professional commitment to meet the challenges of up-scaled provision of secure land rights. The public, private and civil society sectors must improve co-operation, as must central, provincial and local government; this would offer great scope for better secure land access for all. As such, collaboration is deployed innovative approaches can be tested and developed through individual projects before replication on a larger scale.

4.1 Assessing tenure conditions

Before making any policy decisions regarding land tenure or property rights, it is advisable to review the existing tenure situation to understand the issues involved.

A simple way is a survey of the main stakeholders involved in the provision of land and housing. The next step is to sort out the data first by tenure categories and then by the types of rights available to those occupying the land. This will be relatively straightforward for formal, statutory tenure categories. It will be more difficult for customary or non-statutory tenure, where perceived security, legal rights, and rights exercised in practice may all differ. Surveys should identify all formal and non-formal tenure categories and sub-categories, including those listed in Table 1 in the first part of this document.

It is advisable to identify the various tenure forms and rights applicable to both men and women. This should be done directly with slum dwellers, customary land users and owners as well as those developing informal settlements, as direct contact enables a better understanding of local problems and may suggest appropriate policy options. Where customary tenure systems operate, the tenure practices and forms of rights involved should be identified. One must also distinguish between those who claim to own property and those renting or using it, since policy decisions can affect them very differently.

4.2 Considering land tenure options

Options for improving land access and tenure security will depend on local circumstances and resources, including institutional capability. The challenge facing governments, developers and land-holders (of statutory, customary and non-formal tenure categories) is to improve land use efficiency whilst protecting the poor and the more vulnerable. This is critical to sustainable development and good governance.

Policy-making on land tenure and property rights calls for careful consideration of the benefits and limitations of different tenure options, as summarised in Table 2.

Policy-making on land tenure and property rights calls for careful consideration of the benefits and limitations of different tenure options.

Table 2   The benefits and limitations of different tenure policy options

Policy option	Benefits	Limitations
A: Evicting unauthorised settlers	Releases land for more productive use. May facilitate more secure tenure elsewhere.	Disrupts already deprived communities. Reduces the housing stock, unless alternative shelter is provided. Moves problems elsewhere. Socially and politically contentious. Relocation sites often far from livelihoods and services.
B: Individual titling	Provides a high degree of security Grants poor households an asset they could otherwise not afford. May facilitate access to formal credit, but only if incomes are sufficient to service loans. Encourages residents to invest in home and neighbourhood improvements. May increase revenues from property taxes, where levied. Often linked to provision of services.	Places a heavy burden on relevant agencies and cannot easily be done at scale. Distorts land and housing markets unless granted on a large scale. Open to abuse and nepotism if granted on a small scale. May stimulate litigation over competing claims, and undermine pre-existing land rights agreed with relatives and others. Does not necessarily improve access to bank loans. May encourage unauthorised development by groups hoping to obtain titles at a later date. May expose poor residents to unaffordable property taxes and service charges. May generate or accelerate market-driven displacement on unfavourable terms for newly titled residents May result in higher rents or eviction of tenants.
C: Intermediate tenure options, such as Temporary Occupation Licenses; community land leases, Certificates of Rights, Certificates of Comfort, adverse possession rights, etc.	Enhanced security, protection against eviction and loss of access to natural resources. Encourage residents to invest in home, farm and neighbourhood improvements. Reduce land and housing market distortions. Discourage further unauthorised development. Reduce administrative burden. Improved social cohesion and community solidarity. Residents less inclined on windfall profit from home sale to higher income groups. Facilitate future access for low-income groups and younger generations.	Not likely to increase beneficiaries' willingness to apply for loans or to be widely accepted by finance institutions as collateral. Can take years to introduce by reforming legal frameworks. Requires adjustments in the legal and regulatory framework if introduced outside of the existing mainstream tenure framework, especially if innovations are to be scaled up. Require large-scale capacity building among implementers.

D: Strengthening rights of use, occupancy, development, etc.	Enhances *de facto* security. Only requires an announcement, which do not add to administrative tasks. Residents less inclined on windfall profit from home sale to higher income groups. Facilitates future access for low-income groups and younger generations. Provides time to develop more formal tenure alternatives.	Not widely accepted by finance institutions as collateral for loans.
E: Integrating tenure policy with planning and infrastructure provision (e.g., strategic urban development or rural territorial plans).	Creates diverse and dynamic urban-rural societies in which the poor can play a full part. Enables all stakeholders to contribute. Improves security and quality of life for low-income groups. Improves public health and labour productivity. Reduces the need for subsidies.	Administrative structure must be responsive to active participation by local groups. Can be time-intensive, especially in the early stages. Requires effective co-ordination and communication amongst relevant agencies and other stakeholders to gain effective collaboration.
F: Formalising customary rights and building on customary tenure systems	Provides legal back-up to land rights established through customary channels. Clarifies rights and enhances security for those at risk of losing land access. Protects community rights to natural resources. Facilitates low-cost documentation of rights at local level, at low cost.	Requires training and capacity building at local level. Requires links between customary and formal land information and administration systems. Risks of abuse, mismanagement and poor accountability if customary authorities' powers over land are formalised but remain unchecked. May not be politically acceptable if external commercial interests seek to develop customary land.

4.3 Improving tenure security – an incremental approach

An incremental approach to strengthening tenure rights can enhance short- to medium-term security at a large scale, whilst allowing the authorities time to build capacity for more comprehensive and locally sensitive long-term options. This approach includes five successive steps, as follows:

1. Provide basic short-term security for *all* households living in slums and unauthorized settlements and with informal or customary rights in urban, peri-urban and rural areas. This can best be achieved through land proclamations, or a simple statement by the relevant minister, for a specific period (e.g., three to nine months). Longer term security can be provided by appropriate legislation

2. During this period, survey all extra-legal settlements in urban and peri-urban areas and identify any that need to be relocated. Offer residents priority for relocation to sites with close access to livelihood opportunities together with long-term tenure options.

3. Designate all other extra-legal settlements as entitled to medium-term forms of tenure with enhanced rights though not necessarily full titles. A simple option is to allocate community-based leases for a designated period, with options for extension. Where possible, the precise form of such tenure and rights should be

based on tenure systems already known to local communities. This will enhance security without encouraging rapid increases in land prices leading to market-driven displacement and eviction of the poor; it will also create opportunities for more participatory processes of physical and socio-economic development. For unauthorized settlements on private land, options can include land sharing, under which settlers may be provided long-term tenure on part of their site and the landowner develops the remainder.

4. Where effective local land management arrangements are in place, communities can be offered long-term tenure, for instance through Community Land Trusts, community-based titles or co-operatives.

5. Households seeking individual titles obtain the agreement of the community, agree boundaries with their neighbours, and are responsible for financing and completing the necessary legal and administrative procedures, including the appointment and payment of surveyors and lawyers and property registration.

These measures can provide a sustainable, cost effective and socially progressive way of improving the tenure security and rights for millions of poor people.

4.4 Improving land management and administration

Alongside the legal framework, land administration systems are the main instrument of land policy administration. They include organizations and procedures for the survey, demarcation and mapping of land, recording of land rights and transactions, provision of documentary evidence of land rights, as well as resolution of land disputes and competing claims. Land administration systems are generally managed by specialist formal land institutions, established by government. However, responsibilities for land allocation, documentation and the management of rights can be devolved to local, community or customary bodies, and as some services may be delivered by the private sector.

> ### Box 28. Bureaucratic procedures inhibit legal land development
>
> In many countries, administrative procedures for registering a land parcel, obtaining planning and building approvals, or effecting property transfers are so cumbersome, expensive and confusing that they actually encourage the very unauthorized development they seek to prevent. Addressing this important issue will require political and administrative leadership.
>
> In Egypt, acquiring and legally registering a plot on a State-owned vacant land involves at least 77 bureaucratic procedures at 31 public and private agencies. In Peru, building a home on State-owned land requires 207 procedural steps at 52 government offices…In the Philippines, establishing legal ownership takes 168 steps and between 13 and 25 years. In Haiti, obtaining a lease on government land – a prerequisite for buying – takes 65 steps.
>
> World Bank 2001 Cited in The Challenges of Slums, UN-HABITAT 2003

Effective, well-adapted land administration systems facilitate the realization of the broadly accepted land policy goals of secure land as land-related services are accessible to all land users, including the poor and vulnerable as well as commercial investors.

If land rights are to be effectively secured, land access improved, land allocations made fairer, land more productive and demand better matched with available supplies, two conditions must be met:

- Institutional arrangements for land administration are accessible to all. These are best delivered in a decentralised way, which can respond to local priorities rather than through highly centralised systems.
- Comprehensive, up-to-date land information systems which can capture the complexity of existing land occupation, use and claims, including overlapping sets of rights.

Formal land administration services are most effective when provided at local level. One

option is a local one-stop shop for land-related services. Another is local land boards representing, and responding to, the range of stakeholder interests: those of local and customary authorities, land owners, male and female land users and community members.

Formal land administration services must also include land management arrangements at neighbourhood and village levels. These might be provided by the lowest levels of local government through Internet-connected local land offices, village councils, traditional councils, customary authorities, or local secretariats, based on customary practices and supported by Web-based or simple manual systems of documentation and witnessing. The better understanding which results from land administration at the local level allows governments to tailor approaches to different settings, and to upgrade rights and systems over time.

Box 29. Decentralised land management in sub-Saharan Africa

The new land laws and policies that many African countries have adopted in recent years provide for greater decentralisation in land management and administration – with a great variety of models and approaches to the nature and roles of local institutions; the role granted to customary chiefs; and the powers of decentralised institutions in land conflict management. Examples of such decentralization processes include Botswana's Land Boards, Uganda's District Land Boards and Sub-Country Land Committees, Namibia's Communal Land Boards, Tanzania's Village Councils, Niger's local land commissions and Ghana's decentralised Deeds Registries and pilot Customary Land Secretariats

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Effective delivery of secure land rights may, therefore, depend on reform of centralized State land agencies with a view to devolving responsibilities to local and customary institutions. Both office- and field-based land registration and titling procedures can then be improved by computerization of land records and cadastral systems.

Poorer groups will enjoy better access to land if they have clear information about their legal rights and how the administration system operates. This can be enhanced if land administration services are locally available, operate in local languages, use clearly understandable units of measure, accept oral evidence in support of land claims, and apply affordable user fees.

Box 30. Examples of the role of land information systems in secure land rights

- In Brazil, efforts to improve the public land inventory, with identification of available State land and illegally occupied and underutilised private land, should facilitate land allocation to land reform groups, and reduce demands for expropriation of new land.
- Pioneering efforts in modernising land records in some Indian States have enabled the protection of indigenous tribal people's land rights, by including their land claims in the system; they have also made land records publicly available on-line through a network of kiosks, facilitating land applications and reducing risks of duplicate allocations and rent-seeking by officials.
- There are efforts to regulate and record customary land transactions in West Africa by use of simple documents and witnesses, under the jurisdiction of customary authorities or groups of elders.

4.5 Assessing policy options for urban land management

Tenure policy must be considered as part of governance, spatial planning and infrastructure provision. This is to ensure that security and rights are balanced with wider development efforts and improved access to livelihoods and services. In urban and peri-urban areas, the four more commonly adopted options for achieving these objectives include:

- Implementing conventional master plans and regulations. These often involve the eviction and relocation of unauthorized settlements, reflecting a pre-occupation with visual order. The standards they impose are unaffordable to large sections of the population. As a result, unauthorized settlements may actually increase.
- Recognizing the complexity of existing land markets and building on processes that work well. This enables public, private and civil society stakeholders to develop a range of productive partnerships. Government can promote and regulate pluralistic land and housing markets, where a diverse range of suppliers compete on equal terms to meet the needs of various sections of the population.
- Promoting public participation in a common vision of how settlements can be planned to meet future needs. For urban areas, City Development Strategies, as promoted by the Cities Alliance,[11] provide a framework for developing and implementing such a vision.
- Reviewing the framework of planning and building regulations, standards and administrative procedures for the processing of new developments, changes of use, transfer, etc.; this is in order to ensure that these reflect the full range of local needs and resources. Where official norms and procedures impose uncertainty or excessive delays or costs, they will force many otherwise law-abiding people into unauthorized developments. A regulatory audit can reveal any constraints which must be removed or relaxed in order to facilitate incremental development.

## 4.6 Securing land rights and improving land governance

Good governance is critical in the face of increasing pressure on both rural and urban land and in delivering secure land rights. Therefore, allocation and management of land resources must be transparent and publicly accountable if development and poverty reduction objectives are to be achieved.

Good land governance addresses a variety of issues, including:

- Management of public land by the government: putting all land to socially accountable and economically efficient use. This includes the large and often underutilized land portfolios held by governments and public sector agencies in many countries. In some cases, this can be achieved by maximizing the proportion of land in private, revenue-generating uses and reducing non-revenue generating public use.
- The role of the government is vital in providing a framework for the effective management of common property and natural resources, including regulation of competing claims to these.
- Accessibility, accountability, transparency and general fitness-for-purpose of systems for land administration to meet the needs of the range of land users. Complex, limited and inconsistent legal/regulatory frameworks work against the public interest; they must be better harmonized for adequate land management.
- Management of land disputes and conflicts: where rights are complex, overlapping and subject to dispute, the priority is to put in place effective and legitimate mechanisms for dispute resolution and negotiation amongst interest groups; this is a better alternative to comprehensive registration exercises, which are costly and may fall rapidly out of date.

Continual efforts are in order to build the institutional capability required for the granting of secure land rights; this will also tackle vested interests, rent-seeking, bureaucratic inertia as well as corrupt, unaccountable and inequitable discretionary practices.

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[11]*see www.citiesalliance.org*
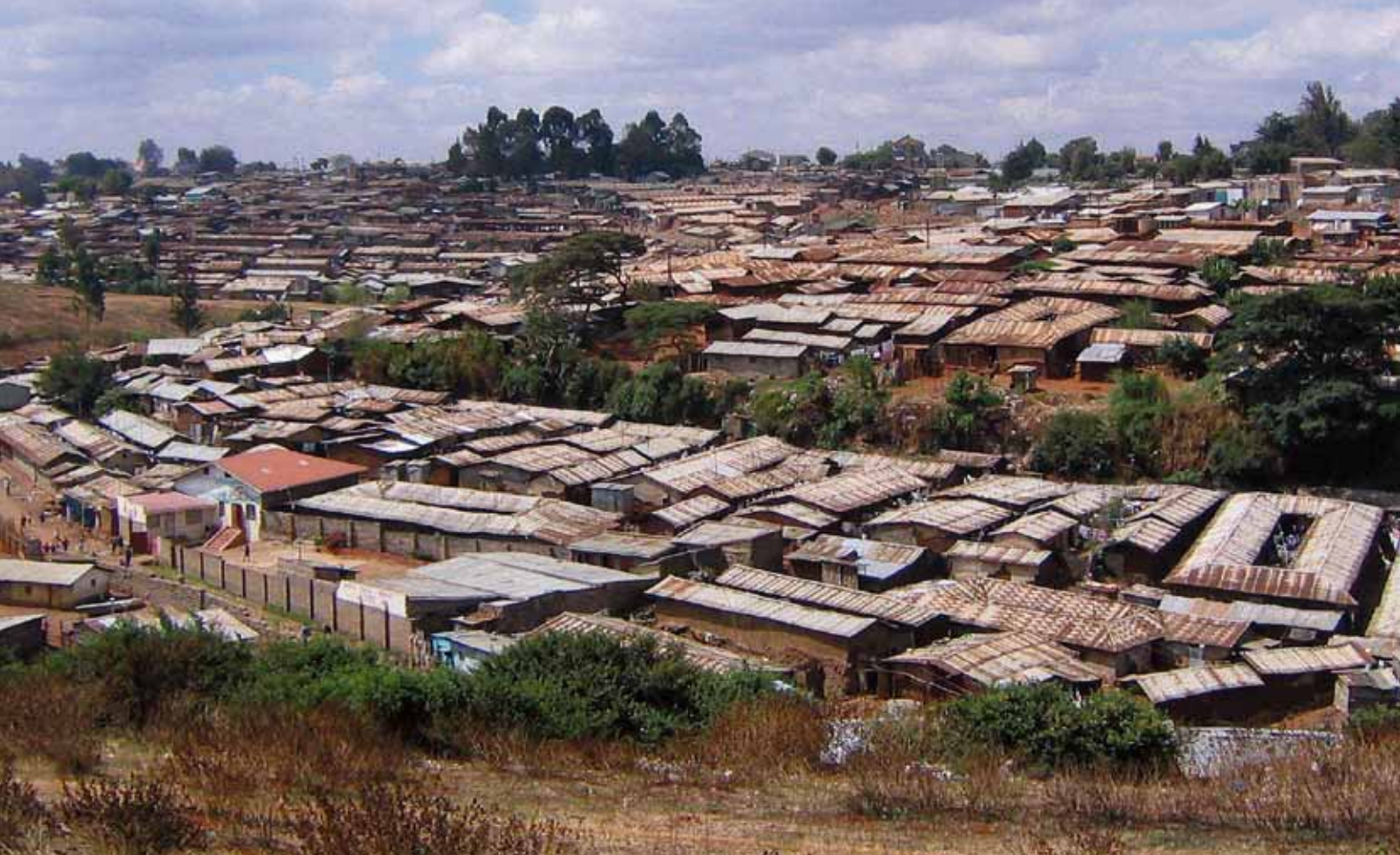
Secure land rights for all are best achieved where they are nested within coherent governance frameworks.

Effective and adapted cadastral systems, public land inventories and appropriate mechanisms for tenure regulation and dispute resolution are important; they will ensure better management of public land and common property resources, as well as better land development and smoother changes in land use.

Secure land rights for all are best achieved where they are nested within coherent governance frameworks – for instance, through joined-up delivery of land, basic services, credit, marketing and business support – and which build accountability and stronger participation.

4.7 Capacity building

Capacity building is the missing link between land innovation and good practice on the one hand, and their dissemination and implementation at scale on the other. While capacity building requires adequate resources for effective land management and administration institutions, it is also vitally important to equip policy-makers and practitioners with adequate skills and knowledge. Capacity building is required for three main purposes: (1) the restructuring and improvement of land administration processes; (2) conversion of land records from manual to digital formats; and (3) improved customer services for all types of land users, including the poor and vulnerable, as well as business users. This will often include staff training with regard to land use, preparing planning briefs for private developers, regulations for marital co-ownership, customary rights and common property, as well as reducing corruption. Capacity building in land management and administration can take many forms: networking including peer-to-per exchange and local-to-local dialogue; knowledge management; incremental human resource development (from on-the-job training to formal graduate studies; provision of technical assistance, information, analytical support, etc.).

4.8 Improving land management and tenure policies

A major objective of land tenure policy should be to provide a range of options. An open or pluralistic land, housing and tenure system is more responsive to existing and future needs than a 'closed' one. The more choices people have, the more they will be able to find an option that meets their needs. Therefore, governments should seek to broaden the range of supply options for land, housing, forms of tenure and access to services.

However, land policies and allocation methods are not always coherent, and the public finds that a variety of channels available to gain permission and documentary evidence of land rights, while maximizing opportunities. Such 'institutional shopping' has claimants exploiting their familiarity and links with various formal and customary authorities and processes in a bid to gain access to land. This can lead to considerable uncertainty, with conflict arising between land users claiming different sources of legitimacy, and sometimes between different social groups.

When preparing or revising land management and tenure policies, it is important to consider the following:

- The principle of incremental development allows people to invest what they can when they can in both urban and rural areas, providing their rights are secure,
- Regulatory barriers to affordable and incremental land development must be reviewed and adjusted if necessary, in order to reduce costs and uncertainty in processing planning and building applications.
- Managed properly, housing is a means of economic development and need not be a welfare burden on the economy.
- Similarly, good management of rural land development, agri-business investment and nature conservation can increase employment and improve socially inclusive growth – provided that rural people's land rights are secure.
- A range of land tenure options can meet the needs of all social groups, strengthens land markets and encourages economic stability.

Land and housing policies must be comprehensive and acknowledge economic, social, cultural and human rights aspects of development. In addition, five specific actions have direct and effective impacts on the general improvements of living and housing conditions and sound national policies for adequate shelter and land access, as follows:

1. Promoting equitable access to land and housing resources,
2. Promoting security of tenure and property rights
3. Preventing forced evictions and discrimination in the land and housing sectors
4. Combating homelessness and landlessness while upholding the rights of homeless and landless people, and
5. Promoting access to legal, administrative and other remedies.

Land and housing policies must be comprehensive and acknowledge economic, social, cultural and human rights aspects of development.

4.9 Exploring additional policy requirements

Existing and new urban and rural settlements must have improved access to livelihood opportunities and affordable services to all, including the poor. Since subsidies are unlikely to bridge the gap, tenure security and land resource governance must be improved, as follows:

- Decentralizing resources and responsibilities to the lowest possible administrative level;
- Strengthening community participation in the formulation as well as implementation of urban development policies;
- Promoting partnerships and joint ventures between government, developers and communities 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;
- Encouraging mixed land use developments, except for pollution-generating activities;
- Encouraging finance institutions to provide credit without requiring titles as collateral;
- Strengthening the administrative capacity of land administration and land record agencies;
- Improving transportation links between residential, commercial and industrial areas.

Box 32. A voice in the budget process in Brazil

Many municipalities today are using participatory budgeting. The approach originated in Porto Alegre, Brazil, in 1990. At the beginning of each year, neighbourhood assemblies set budget priorities; they elect 44 members to a Council of Participatory Budgeting, which negotiates with the local authority. Budget allocations are then made combining 'the subjective preferences of citizens with objective quantitative criteria.' After a decade and with 40,000 participating in the process, home water supply expanded from *78* to *99* per cent of households and sewage collection from *46* per cent to almost *83* per cent, with garbage collection reaching all residences. On top of project implementation and monitoring, the participatory procedure can be used at local, regional/city and national level for land projects; this is where evolving priorities over resources, tenure types or registration methods are a sensitive issue. Participatory budgeting can also be adapted by planning departments when developing city and zone plans to ensure that well-off residents are not predominant.

S Tikare *et al.* 2001 *Organizing participatory processes in the PRSP* World Bank, Washington DC, and K. Sharma et al2000, *Governing our cities: will people power work?* Panos Institute, London

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4.10 Engaging all stakeholders

Alongside the distribution and management of land, the delivery of secure land rights for all has important political aspects. It is for civil society organizations to provide checks and balances on government decision-making and the implementation of land policy. Because land issues involve political choices, broad public debate of the options at stake is essential. Instead of drawing up new legislation, it is usually better for government to engage with various parts of society at all levels; this will ensure that policies and practices reflect the broader public interest and protect vulnerable groups. This process takes time, but is ultimately more efficient.

4.11 Developing and implementing land policy processes

Public debate on major policy issues should precede legislative reform and may include consultation with stakeholder groups across the country. This could be followed by an enquiry commission and a discussion (or 'green'), paper. Commissions

and policy steering groups should be interdisciplinary and cross-sector, with strong civil society and independent expert advisory support; this will prevent domination by those land sector institutions whose roles and mandates may need to change. The policy paper should identify the main areas and options for legislative reform, before cross-party government committees consider proposals for draft legislation.

Detailed policy formulation, legislative reform and institutional change must take place in parallel, rather than in a sequence. Major stakeholders endorse a road map setting clear milestones for reform. Policy must take into account the costs of implementing institutional reform and strengthening, above all where new institutions are to be created. Legislation should avoid detailed prescriptions and timetables for institutional change, unless it is very clear that these are feasible and the costs can be met. Fundamental institutional changes will likely be required (e.g. the merger of land agencies, creation of new land agencies independent of the civil service, and formalizing the status, mandate and authority of new bodies, such as local land boards, or village and customary land secretariats).

Once the general lines of policy and proposed legislation are in place, a pilot scheme or phased implementation can start. Pilots require careful monitoring of any new institutional arrangements, processes and technical systems so that lessons can be learned before undertaking detailed design, or finalising legal regulations prescribing new administrative procedures. UN-HABITAT has published a guide on 'How to develop a pro-poor-land policy'[12].

Community meeting in western Kenya
Photo © U. Westman/UN-HABITAT. 2006

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[12]UN-HABITAT, 2007, *How to Develop a Pro-Poor land Policy: Process, Guide and Lessons.*

5. Way Forward: conclusions and recommendations

5.1 Conclusions

The importance of secure land rights

Secure land tenure and property rights for land users underpin economic development, social inclusion and proper environmental management. They enable people to invest in home and land improvements and income-generating activities.

Secure tenure and property rights have a direct role in the full realisation of human rights, including the right to shelter, the right to earn a livelihood and the elimination of discrimination against women, the vulnerable, indigenous groups and other minorities

Secure tenure and property rights are of direct and indirect importance to achieving the MDGs, and are essential for poverty reduction as they underpin economic development.

Secure tenure and property rights can empower women and increase their contributions to economic and social development. Since women often face discrimination in tenure systems, gender issues must be fully mainstreamed into all aspects of land policy and related institutions.

Tenure and land rights administration

Secure land tenure and property rights for land users underpin economic development, social inclusion and proper environmental management. They enable people to invest in home and land improvements and income-generating activities.

To many among the poor, security of tenure matters more than land or home ownership, as showed by the uneven outcomes of titling programmes.

There are various forms within the tenure continuum that can provide adequate security for all land users, especially the poor and vulnerable in urban and rural areas alike. As the various needs are met, land markets work better and economic stability improves.

Effective, accessible, transparent and accountable land administration agencies are crucial to any effective governance framework, bringing social justice and sustainable economic development.

For all the efforts of many governments and international agencies, vested interests make land rights an intensely political matter, and in practice the interests of the poor and vulnerable are often neglected.

Central and local government needs renewed political will and improved incentives if land access must become secure for all against a background of climate change and environmental crises.

5.2 Recommendations

1. Policy and the law should recognize and protect land rights established under customary, religious and informal tenure systems; they should provide guarantees and legal remedies against arbitrary eviction without adequate compensation.

2. Policy-makers should adopt long-term, incremental approaches, with a range of tenure options to improve security of land and property rights for those in informal settlements and the rural poor.

3. Policy should focus urgently on those peri-urban areas coming under pressure for rapid residential development and replacement of rural uses, in order to secure the rights of all land users and promote sustainable urbanization

4. Policy-makers and planners should develop strategies to secure land rights across the urban-rural continuum, in response to four major inter-related trends: accelerated urbanization, increasing migration, land use changes, and risks related to environmental degradation and climate change.

5. Policy-makers and planners must review regulatory frameworks and remove or relax constraints on access to affordable land and housing.

6. New slums and unauthorized settlements must be stemmed urgently through expanded supply of planned, legal and affordable land for current and projected future demand.

7. Fully inclusive Land Information Systems (LIS) must be adopted to:

   a. identify priority areas for secure land rights and conflict resolution (e.g., any areas in need of tenure regularization); and

   b. Capture land interests in areas where land rights are not fully specified (e.g., informal settlements and rural common pool resources).

8. Those countries facing increased incidence of natural disasters, environmental hazards and social conflict, must urgently map unsafe settlements and identify land available for expanding human settlements and displaced populations.

9. In addition to improved and expanded tenure policies and options, and on top of increasing land administration capacities, policy-makers should pursue secure land rights for all through the following:

   a. decentralizing resources and responsibilities to the lowest possible administrative level; strengthening community participation in planning and policy formulation and implementation;

   b. promotion of partnerships and joint ventures between government, developers and communities, which encourage investment while protecting the land and property rights of the poor and delivering public benefits from private development;

   c. partnerships with civil society to provide education, advocacy and rights awareness for poor and insecure land users, especially women and minority groups.

10. The global community should support systematic efforts to develop appropriate capacities and skill sets for the effective governance of land resources as well as for inclusive land administration and management across the world.

Further reading and sources of information

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This publication on Secure Land Rights for All demonstrates how secure land rights are particularly important in helping to reverse three types of phenomena: gender discrimination; social exclusion of vulnerable groups; and wider social and economic inequalities linked to inequitable and insecure rights to land. It argues that policy-makers should adopt and implement the continuum of land rights because, no single form of tenure can meet the different needs of all social groups. However, a range of land tenure options enables both women and men from all social groups to meet their changing needs over time. This study can assist policy-makers to understand and apply the practical ways in which people's land rights can be made more secure, while at the same time improve land policies as a basis for the better, fairer and more sustainable urban and rural development.

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NETWORK

**GLTN contributes to the implementation of
pro poor land policies to achieve
secure land rights for all
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