

TREATING PEOPLE AND COMMUNITIES AS ASSETS

INFORMAL SETTLEMENTS AND THE MILLENNIUM DEVELOPMENT GOALS: GLOBAL POLICY DEBATES ON PROPERTY OWNERSHIP AND SECURITY OF TENURE

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Identifying the Challenge

In most cities, according to the United Nations Human Settlements Program (UN-Habitat), “the worsening state of access to shelter and security of tenure results in severe overcrowding, homelessness, and environmental health problems”. This global rise of urban poverty and insecure occupancy status takes place in a context of accelerated globalization and structural adjustment policies combining: (i) deregulation measures; (ii) massive government disengagement from the urban and housing sector; (iii) attempts to integrate informal markets — including land and housing markets — within the sphere of the formal market economy, especially through large-scale land ownership registration and titling programs.

These policies, along with the lack of, or inefficiency of, safety net programs and poverty alleviation policies have resulted in increased inequalities in the distribution of wealth and resources at all levels. In most countries, the public sector no longer contributes to the provision of serviced land or housing for low-income groups. Furthermore, the private sector targets its land and housing development activities at high-income and middle-income groups with regular employment and access to formal credit.

As a result, the urban poor and large segments of low- and moderate-income groups have no choice but to rely on informal land and housing markets for access to land and shelter, thus fostering the expansion of irregular settlements in cities. Informal land and housing delivery systems remain the only realistic alternative for meeting the needs of low-income households.

Nonetheless, there is great variation within this realm of informal housing delivery. For at least three decades (ever since the expansion of “irregular” settlements has been perceived as a lasting structural phenomenon), the debate on housing policy insistently refers to the question of the informality and illegality of human settlements. The term “informality” raises the same definitional problems for human settlements as when it is applied to economic activities and to employment: it is *defined negatively*. Its main characteristics are known, but in many situations the borderline between formal and informal remains blurred. A settlement with the same characteristics regarding land, urban planning, and housing (depending on the contexts and public authority interpretations), can be considered either as formal or informal.

The term “illegality” poses similar definitional problems, but with distinctively more repressive connotations. When used by government authorities, it reveals a clearly repressive intention, or hints at a menace. The most visible expression — if not the most common — of repression is eviction. References to illegality in human settlements refers mainly to conformity with planning and construction norms and, more importantly, to tenure situations.

Settlement type also has direct ramifications on the core issue of impact on the lives of slum dwellers: tenure. Land tenure refers to the rights of individuals or groups in relation to land. The exact nature and content of these rights, the extent to which people have confidence that they will be honored, and their various degrees of recognition by the public authorities and communities concerned, will all have a direct impact on how land will be used. Tenure often involves a complex set of rules. Some users may have access to full use and transfer rights. Other users may be more legally limited in their use of these

resources, which illustrates both the diversity of rights to land and the existence of a wide range of options, from full ownership to less singular forms of possession and use.

Areas commonly designated as “slums” in the literature refer to three main types of settlements:

- Squatter settlements on public or private land.
- Illegal commercial suburban land subdivisions on private or customary land.
- Occupation of overcrowded, dilapidated buildings in city centers or densely urbanized areas.

UN-Habitat defines slums as contiguous settlements where inhabitants are characterized as having (i) insecure residential status; (ii) inadequate access to safe water; (iii) inadequate access to sanitation and other basic infrastructure and services; (iv) poor structural quality of housing; (v) overcrowding. But for the majority of slums dwellers, according to UN-Habitat, insecure residential status means first of all insecure tenure, as opposed to secure tenure, which “is the right of all individuals and groups to effective protection by the State against unlawful evictions”. *Insecure tenure* covers a wide range of local situations, from total illegality to various forms of tolerated occupation, or occupation legitimized by customary practices. According to UN-Habitat, security of tenure describes an agreement between an individual or group for the rights to use land and residential property, which is governed and regulated by a legal and administrative framework (legal framework includes both customary and statutory systems). The security of tenure derives from the fact that the right of access to and use of the land and property is underwritten by a known set of rules, and that this right is justifiable. The tenure can be affected in a variety of ways, depending on the constitutional and legal framework, social norms, cultural values, and to some extent, individual preferences. In summary, a person or household can be said to have secure tenure when they are *protected from involuntary removal from their land or residence by the State*, except in exceptional circumstances, and then only by means of a known and agreed legal procedure, which must itself be objective, equally applicable, contestable and independent. Such exceptional circumstances might include situations where physical safety of life and property is threatened, or where the persons to be evicted have themselves taken occupation of the property by force or intimidation.

Understanding Land Tenure’s Links with Poverty and Services

Poverty induces insecure tenure, which itself worsens poverty in slums. Although insecure tenure may have obvious advantages for the urban poor (easy and fast access to land, low housing expenditures), it has a structural negative impact on the situation of the poor in the medium- and long-term (precariousness, vulnerability to harassment, poor access to basic services, health problems). Indeed, studies on the socio-economic situation of households living in irregular settlements indicate a strong correlation between urban poverty, tenure status, access to services, and citizenship. Tenure status is one of the key elements in the poverty cycle. In most developing country cities, empirical observations show that the map of slums and informal settlements coincides with that of urban poverty. As underlined by John Turner nearly three decades ago, interactions between poverty and insecure tenure contribute to further deteriorate the economic situation of the urban poor. More specifically, lack of secure tenure discourages household investments aiming to improve their environment and investments in home-based activities, with major impact on poverty alleviation. Further, in most tenure upgrading and regularization projects, security of tenure has a direct positive impact on the mobilization of household resources at the settlement level.

Lack of security of tenure hinders most attempts to improve shelter conditions for the urban poor, undermines long-term planning, and distorts prices for land and services. It has a direct impact on access to basic urban services and on investment at settlement level, and reinforces poverty and social exclusion. It impacts most negatively on women and children. From the point of view of governments, insecure tenure also has a negative impact on the rate of tax recovery through local taxation on property

and on economic activities. In addition, without proper identification of urban services beneficiaries, cost recovery for services and infrastructures is made difficult or impossible.

As suggested by such links, empirical studies carried out in low- and middle-income cities over the last decade indicate that security of tenure is also one of the most effective tools for alleviating poverty in slums. According to the World Bank, "For most of the poor in developing countries, land is the primary means for generating a livelihood and the main vehicle for investing, accumulating wealth, and transferring it between generations. Land is also a key element of household wealth ... researchers and development practitioners have long recognized that providing poor people with access to land and improving their ability to make effective use of the land they occupy is central to reducing poverty and empowering poor people and communities."

The fact that there is a tight relationship between lack of secure tenure and lack of basic urban services compounds the problem delineated above. Insecure tenure negatively impacts the provision of urban services, and consequently on the economic situation of the urban poor. Governments are frequently reluctant to provide basic services in informal settlements because they view such actions as a first step toward legal recognition of the settlements and tenure regularization. In fact, slum upgrading programs carried out in the 1970s with the support of the World Bank and UN agencies revealed that one of prerequisites for the provision of basic services at the settlements level was the provision of secure tenure, at least for a certain period of time. Without security of tenure, newly serviced settlements are vulnerable to market pressures. Indeed, slum dwellers have no choice but to rely on informal service providers — especially for water — at a cost that is much higher than that which other urban households pay. Costs of transport are also frequently higher for slum dwellers than for other city dwellers, as the location of many slums in peri-urban areas results in long commuting distances. Even in some slum upgrading programs, the cost of services provided cannot be borne by the poorest segment of the settlement population. Furthermore, slums' high service costs, coupled with an insecure physical and social environment, drastically reduce any housing expenditure advantages that slums dwellers might find in informal tenure arrangements or squatting.

What, then, are the main entry points that could break this vicious cycle and — at least — protect slums dwellers against deep poverty? What measures can be taken, especially regarding tenure, in order to induce a dynamic of improvement? In the next sections, we will describe in greater detail the context of the current tenure debate in order to suggest appropriate forms of tenure for slum dwellers and highlight key next steps.

The Current Tenure Debate

Framing the Debate

Populations living in irregular urban settlements are all confronted with the same set of interrelated problems: they have no access — or limited access only — to basic services, and they have no security of tenure. Their situation is precarious as they usually belong to the poorest segment of the urban population. However, it must be stressed that informality does not necessarily mean insecurity of tenure.

Some forms of residential tenure arrangement can guarantee a reasonably good level of security. This is the case, for example, in sub-Saharan African countries, in communal or customary land delivery systems (even when these are not formally recognized by the state). Recognition by the community itself and by the neighborhood is often considered more important than recognition by public authorities for ensuring secure tenure. However, this arrangement can deteriorate under some circumstances. For instance: when the customary system is in crisis; with leadership conflicts within the group of customary owners, especially between those who allocate the land and other members of the group; when multiple allocations of the same plot generate a series of conflicts within the community (this may be the result of illicit land sales by unauthorized persons, a common phenomenon in the absence of any land information and record system); or when a major conflict arises between customary owners and public authorities

about the ownership and use of the land, or about the legitimacy of the customary claim. In such cases, alliances often develop between customary owners and the community against public authorities.

Neo-customary land delivery systems have also been detected in Sub-Saharan African cities. Excluded from formal government and private sector land delivery systems, those who are poor in the cities of Sub-Saharan Africa increasingly take shelter on urban land through other means. Many do this through transactions derived from traditional rural customs of land management. However, rather than allocating a right of use on communal lands, customary owners at the periphery of cities are selling plots of land for housing. Though such informal transactions are rarely legalized (and only sometimes tolerated) by governments, they are accepted by the social networks within which the parties concerned live.

These new customary processes — which blend pre-colonial land management procedures, low-income household strategies for securing access to land, and the production of informal settlements — have their own actors and procedures. However, neo-customary processes are commonly viewed by government officials as generators of problems, giving rise to policies whose unintended impacts can instead reduce the access of poor households to shelter, as well as reduce the security and capital assets of those already housed. However, at the same time that neo-customary systems are delivering land that formal systems fail to provide to poor people for urban housing and basic services, official procedures for land development and management seem to become more informal in their nature, perhaps often being re-interpreted by informal and customary actors.

Unauthorized land development on private land also offers various levels of protection, depending on the public authorities' perception of the degree of illegality of the settlement. Even if the area is not suitable for residential development, occupants can generally produce a deed of sale or a property title for the land they occupy. It is worth noting that, in such settlements, middle-income and high-middle income groups are well protected against forced eviction, because of their political influence and their cultural and economic capacity to regularize their situation.

In contrast, squatter settlements are more exposed to forced evictions, especially those located on private land in prime urban areas that are therefore subject to high market pressures, and those that occupy hazardous or dangerous sites. The poorest communities are especially vulnerable to external pressures. Frequently there is a lack of any internal cohesion in these settlements, making it difficult for the populations to group together to defend themselves.

Overall, regardless of irregular settlement type, four main factors help to protect households from eviction: (i) the length of occupation (older settlements enjoy a much better level of legitimacy, and thus of protection, than new settlements); (ii) the size of the settlement (small settlements are more vulnerable than those with large populations); (iii) the level and cohesion of community organization; and (iv) the support that concerned communities can get from civil society groups, such as non-governmental organizations (NGOs).

Nonetheless, levels of precariousness of occupancy status for tenants in sub-standard rental sectors are quite different, whether in unauthorized settlements, squatter settlements, dilapidated buildings in city centers, or formal settlements. These are the most vulnerable groups, especially when they are exposed simultaneously to different levels of informality (e.g. when the owner is in an irregular situation). Except in large and homogenous rental settlements, such as the shack farming settlements on South African urban fringes, tenants are scattered throughout irregular settlements, with a wide range of informal rental arrangements. As such, they are often unable to organize as a pressure group to protect themselves. They are exposed to the arbitrary decision of their land or shelter owner, generally with no recourse to legal advice. Being the poorest among the urban poor, they are unable to meet the costs incurred by any improvement of their living environment. Unlike most irregular settlement occupants, they cannot apply for compensation in case of forced removal, and they generally are not eligible for resettlement.

The Debate Unraveled

New approaches to security of tenure by international agencies (as outlined by the UN-New Delhi Declaration, Habitat II Conference, and the World Bank) are emerging. Furthermore, urban actors are changing their strategy regarding secure tenure, with impact on cities' administration, urban governance, and sustainable urban development.

International Policies

Tenure issues and security of tenure policies are given increasing attention by several bilateral donor agencies (especially in the UK, Germany, France, the Netherlands, Canada, and Sweden). In addition, two main approaches can be identified in the strategy of aid and development agencies as well as international finance institutions in defining and implementing tenure regularization policies:

a) The first one emphasizes the integration of informal markets within the sphere of the formal economy, and the access to land ownership, especially through titling programs. It forms part of an urban development strategy combining deregulation, privatization, and cost recovery for urban services. Tenure regularization may be seen as a prerequisite for slum upgrading programs, as an accompanying measure, or as a long-term objective. This is the approach developed by international finance institutions (especially the World Bank and regional development banks). It was presented in several policy and strategy papers in the 1990s.

The relevance of this development model is now being questioned. International finance institutions are increasingly aware of the perverse social effects of their aid and lending policies, and especially of the limitations of urban development strategies based predominantly on the formalization of urban land markets. They are now attempting to reassess their strategy and redefine priorities.

In particular, the World Bank is manifesting a new interest in tenure issues, in relation to the redefinition of its urban strategy, through the organization in 2002 of four Regional Workshops on Land Issues in Europe, Asia, Africa, and Latin America, as well as through a series of studies on land administration.

b) The second approach, which is to a large extent that of the UN (particularly UNDP and UN-Habitat), emphasizes the social and economic integration of slums and informal settlements. It requires the formal recognition of legal pluralism regarding tenure, and of the diversity of land markets. This is reflective of most of the principles and strategy orientations regarding land formulated in the New Delhi Declaration of 1996. In addition, access to land and security of tenure as conditions for sustainable development were adopted by the Second United Nations Conference on Human Settlements (Habitat II) in 1996. In the Istanbul Declaration UN Member States committed themselves to the objective of:

“Providing legal security of tenure and equal access to land to all people, including women and those living in poverty... Ensuring transparent, comprehensive and accessible systems in transferring land rights and legal security of tenure ... Increasing the supply of affordable housing, including through encouraging and promoting affordable home ownership and increasing the supply of affordable rental, communal, cooperative and other housing through partnerships among public, private and community initiatives, creating and promoting market-based incentives ...”.

Strategies for implementing the proposed *Global Plan of Action* emphasized the need for ensuring access to land:

“Access to land and legal security of tenure are strategic prerequisites for the provision of adequate shelter for all and for the development of sustainable human settlements affecting both urban and rural areas; it is also one way of breaking the vicious circle of poverty. In order to ensure an adequate supply of serviceable land, Governments... should recognize and legitimize the diversity of land delivery mechanisms; decentralize land management responsibilities and provide capacity-building programs that recognize the

role of key interested parties, where appropriate; explore innovative arrangements to enhance security of tenure, other than full legislation, which may be too costly and time-consuming in certain situations”.

UN-Habitat launched the Global Campaign for Secure Tenure in 2000, setting up a Land and Tenure Section within its Shelter Branch. According to UN-Habitat, the Global Campaign for Secure Tenure

“forms part of Habitat’s commitment to contribute to the emergence of a new urban paradigm. The extension of secure tenure is but one part of an integrated approach to improving the access of the urban poor, not only to improved shelter and...basic services, but also to informal and formal employment opportunities, as well as direct political representation... The Campaign is designed to spearhead a shelter strategy that is pragmatic, affordable, and implementable”.

Domestic Policies

On the national and local fronts, slums and the security of tenure issue have undergone a significant transformation in public debate, from non-recognition in the 1960s, to repression in the 1970s and 1980s, to tolerance in the 1990s.

A significant example of this metamorphosis is the Cities Alliance. It was conceived in 1999 as a coalition of cities and their development partners, committed to addressing urban poverty reduction as a global public policy approach. The Alliance is now playing a leading coordination role in the implementation of the Cities Without Slums initiative, with particular attention to security of tenure issues, in close cooperation with UN-Habitat and the World Bank.

Overall, responses to tenure insecurity vary according to local contexts, to the types and diversity of irregular settlements, to governments’ political orientations, to pressures from civil society in general and from concerned communities in particular. Nonetheless, there are basically two approaches, which differ but are not contradictory.

The first one emphasizes formal tenure regularization of land and housing in informal settlements. Regularization policies are generally based on the delivery of individual freehold and, more rarely, of leasehold titles. However, the difficulty of finding legal forms of regularization that are compatible with constitutional rules and the legal framework, acceptable to the actors concerned, and in compliance with existing standards and procedures, constitutes a major obstacle for many operations.

The second approach emphasizes one of the components of formal tenure regularization policies, security of tenure. It does not require the provision of freehold individual title, although this is not excluded. Rather, it combines protective administrative or legal measures against forced evictions — including the provision of titles that can be upgraded, if required — with the provision of basic services. One of the objectives here is to preserve the cohesion of beneficiary communities and protect them against market pressures during, and more importantly, after the tenure upgrading process. This approach must be understood as a first, but essential, step in an incremental process of tenure upgrading that can lead, at a later stage, to formal tenure regularization and the provision of real rights. Unlike complicated, expensive and time-consuming tenure regularization programs, security of tenure can be provided through simple legal and regulatory measures.

Resolving the Debate

The rapid integration of informal settlements through conventional tenure regularization and the provision of freehold titles may hinder community cohesion, dissolve social links, and induce or accelerate segregation processes through market eviction. However, measures aiming primarily to guarantee security of tenure give communities time to consolidate their settlements, with a view to further improving their tenure status. Improvements to the economic condition of households, the emergence of legitimate community leadership, the identification of rights holders, the resolution of conflicts within the community

and between the community and other actors involved (land owners, local authorities, planning authorities, central administration in charge of land management and registration, etc.), all form part of this consolidation process. In addition, the time between the decision to guarantee security and further formal tenure regularization and the delivery of property titles can be used to improve the quality of services in the settlement. It also gives households time to define a strategy, and to save or raise funds to pay for the next steps in the tenure upgrading and regularization process.

In addition, being given security of tenure without transferable or negotiable property titles lessens market pressures on the settlements and limits market evictions. This is an essential advantage of options emphasizing incremental regularization procedures, where occupants are granted occupancy rights that can, at a later stage, be incrementally upgraded to real rights, such as freehold or long-term leases, if so desired. Such an approach can be used both on vacant land and for regularizing irregular settlements.

During the last decade, in most developing cities, the common perception has been that property titles are the best, if not the only, way to ensure security of tenure. Such approaches have achieved limited results. When large-scale allocation of property titles to households living in informal settlements has been made possible, it has often resulted in an increased pressure from the formal property market within the settlement, and an increase in the cost of services, both of which have tended to exclude the poorest sections of the population. These harmful unintended consequences suggest the need for a critical analysis of the positive and negative outcomes of increased formalization, and commodification of the urban tenure process.

Indeed, if the long-term objective is to promote private ownership through the allocation of individual property titles, this approach may in fact have a negative impact on the urban poor. As Geoffrey Payne has argued, the World Bank is "surprisingly reticent regarding the impact of its tenure proposals on the rental sector, particularly private informal rental housing, which accommodates a large proportion of the urban population and almost all of the poorest households. There is therefore a real danger that a policy approach that emphasizes the benefits of owner-occupation, and provides various incentives for it, may result in the creation of a large under-class that is denied access to any form of affordable or acceptable housing. This fails to take into adequate account the variety of legal and socially accepted traditions in land tenure systems and distorts land markets in favor of one system at the expense of all others. This is hardly consistent with the objective of improving the equity of urban land and housing markets... . The important point is that policies that emphasize and encourage freehold may unintentionally or inadvertently discriminate against other forms of tenure that may be more appropriate for large sections of the population. For example, it is common for many low-income households to prefer the mobility offered by rental tenure systems, provided they enjoy adequate security and legal rights. Such protection may be easier to achieve in land markets which encourage a variety of tenure options, rather than one at the expense of others."

Given such arguments, the World Bank has recently adopted a more flexible attitude regarding land titling issues: "Increasing security of tenure does not necessarily require issuing formal individual titles, and in many circumstances more simple measures to enhance tenure security can make a big difference at much lower cost than formal titles."

In sum, security of tenure does not require the provision of property titles. All actors do not need a property title, contrary to statements made by international finance institutions until quite recently. The objective is to question the relevance of conventional answers put forward by international finance institutions and development and aid agencies, based on access to land ownership and the need for secure tenure.

This debate highlights two basic answers to the question of ensuring secure tenure:

- 1- Through formal land registration and the provision of individual property titles;

2- Through other arrangements: (i) those giving preference to the consolidation of occupancy rights (not to be evicted, to have access to services, etc.) rather than to the provision of property titles, (ii) those giving preference to collective interests rather than individual ones.

The appropriate solution depends on the original tenure situation. Whereas tenure legalization and access to individual ownership can be useful in the case of some informal settlements, or when populations concerned and administrations in charge of land management want and can afford it, UN-Habitat generally believes that “freehold and rigidly individualized title/deed for occupants of customary land is not a recommended approach”.

Mechanisms of Secure Tenure: What does not work?

Access to security of tenure for the urban poor through formal registration and the provision of individual property titles is rarely possible. There are a number of explanations, including:

a. Technical reasons: Assuming (i) that, in a given city, 1 million households are living in informal settlements, and (ii) that tenure regularization to achieve formal individual land ownership should take no more than 10 years...the administration in charge would need to deliver 350 property titles per working day, simply to cope with the existing backlog.

b. Political and administrative reasons: Improving security of tenure requires an appropriate administrative and regulatory environment, adapted to (i) the identification of rights holders and households entitled to tenure regularization, (ii) the resolution of land related conflicts, (iii) the allocation procedures of rights on land. At an institutional level, the implementation of regularization policies requires powerful specialized institutions and political and administrative reforms. At the administrative level, implementation and enforcement of tenure regularization policies can prove difficult. What is at stake in many cities is the discretionary power of government officials (i) to allocate land, and (ii) to regularize tenure. In some countries, especially those of sub-Saharan Africa (where the allocation of land remains a government monopoly and where several parallel land markets coexist), illicit practices and corruption undermine all administrations in charge of land management. Major problems encountered in the implementation of regularization policies are the result of the passive resistance of intermediate level officials in administrations in charge of land management.

c. Economic reasons: The importance of the informal rental sector in most cities in low- and middle-income countries; the limited resources of the households concerned exclude most of them from access to land at market prices; administrative or subsidized prices introduce major distortions into the property market and encourage corruption and illicit practices.

d. Cultural reasons: Diversity of tenure systems requires a diversity of responses, which is not the case when emphasis is put on one single option such as the delivery of individual property titles. Land tenure is a social relationship. Social links that are established when land transactions take place — whether legal or illegal — play a major role as a social function and must not be underestimated. The mass delivery of property titles may weaken this social link.

Access to security of tenure for the urban poor through formal registration and the provision of individual property titles is not always desirable. To explain this, let us try to answer two questions: What are the objectives and needs of three broad categories of urban stakeholders regarding tenure? Do these needs require access to land ownership and the provision of real rights?

For households living in informal settlements, the three main objectives are: (i) not to be evicted or harassed; (ii) to have access to basic infrastructure and services; (iii) to have the right to sell or transfer the land and house they occupy. These objectives do not require the provision of property titles, except

in cases where the household needs access to mortgage finance. This is the only instance when property titles are requested.

For governments and public authorities the objectives may be: (i) fiscal (it improves the rate of tax recovery or makes possible the setting up of local taxation); (ii) legal: identification of land rights holders; (iii) economic: integration of informal land markets into the formal market. Such objectives do require the provision of real rights (freehold or leasehold). However, planning, environmental (sustainable urban development), and social objectives (ensuring social peace and social control) can be reached simply through the improvement of land-related information systems (GIS) and anti-eviction measures.

For the formal private sector, the objectives are: (i) easier regular access to land with legal guarantees; (ii) easier provision of marketable urban services (pricing and cost recovery); (iii) the development of a formal property market through access to mortgage finance. This does require the provision of real rights, such as property rights.

Mechanisms of Secure Tenure: What works?

Various objectives require a diversity of responses. In other words, the objectives of various categories of urban stakeholders differ, as do their needs regarding tenure options. So far, international finance institutions and aid agencies have mainly emphasized options that serve the interests of governments and formal private investors, primarily the provision of legal rights and the allocation of individual property titles.

As far as the interests of the urban poor are concerned, access to security of tenure exclusively through the allocation of legal rights and individual property titles is not necessarily efficient or equitable. It is not efficient because, with very few exceptions, lessons from experience clearly indicate that it does not work properly and can hardly be implemented rapidly on a large scale. Shifting from slum upgrading projects to land ownership programs and policies has proved to be difficult, if not impossible. Furthermore, it is not equitable because, if not implemented incrementally, if not accompanied by appropriate actions at various levels (social, finance and credit, etc.), and if not backed by community action at city and settlement levels, it may further accelerate social exclusion and segregation processes.

The following cases represent examples of what works — they are successful examples of highly innovative approaches to tenure and property rights:

Botswana: Certificates of Rights (CORs)

The Certificates of Rights tenure system was introduced in Botswana during the 1970s, targeted to the needs of the urban poor. It provides holders with the right to use and develop land, while retaining State ownership, and it is estimated to have benefited well over 100,000 people. Certificates can be upgraded to Fixed Period State Grants on payment of survey and registration fees.

A limitation of the system is that it has not been accepted by formal private sector financial institutions as acceptable collateral for loans, and the administrative work involved is about the same as for allocating full property titles, although computerization has significantly reduced this burden. The system also has to compete with customary land allocation procedures that are already well known and active in peri-urban areas. (This interface between communal or traditional patterns of land-holding and the expanding urban periphery is of enormous policy significance, often highly problematic in nature, and needs to be the subject of far more rigorous investigation.) Given the limited population growth of urban areas and these alternative options, CORs have been discontinued though may come into their own again if demand increases.

Kenya: Temporary Occupation Licenses:

Temporary Occupation Licenses were recently introduced in Nairobi, Kenya, to promote investment in small businesses and the efficient use of idle public land in strategic locations. Licenses are allocated annually on a renewable basis for a land rent, and entitle licensees to construct semi-permanent structures. Typical uses include pavement restaurants and kiosks, though some people also live on their sites. Among the advantages of the system is the simplicity of the administrative procedures (no surveys are involved), payment is spread over the year, building standards are flexible, and the public authorities retain control of the land. This system has considerable potential for application in other cities where pockets of un- or under-used land exist in central areas.

Kenya: Community Land Trusts:

Community Land Trusts have been used in secondary towns in Kenya since the mid-1990s as a means of providing affordable access to land for housing and related activities. The aim is to combine the advantages of communal tenure with market-oriented individual ownership. By retaining ownership in the hands of a group and allowing members to hold long-term leases, it is possible to control property transfers and discourage land speculation. The basic principles of trusts are to make the best use of the collective strengths of local communities in obtaining permits and infrastructure, to keep all land under one simple title, and to encourage members to invest in their homes and in environmental improvements. These land trusts also enable communities to remain in areas that may otherwise be too expensive if conventional individual titles were provided. The major limitations of the system are that it is not well understood yet by administrators, and it requires lengthy documentation. Communal land ownership may also be a disincentive to invest, especially when people are not free to sell directly to outside buyers.

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

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

The Anticretico system is widely used in Bolivia, but depends for its success on a degree of trust between the parties. The government has formalized this system in order to increase tenure security for both land owners and occupants, but also has increased taxes on such agreements, which discourages their widespread utilization.

Tenure through acquired documentation:

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

Thailand: Temporary land rental:

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

Conclusions and Key Recommendations

Conclusions

Tenure is a social relationship of appropriation and exclusion. Accordingly, security of tenure issues cannot be dealt with in strictly technical terms. A wide range of alternative tenure options should respond to the diversity of the needs of low-income households living in informal settlements. Local situations and needs must be assessed and evaluated prior to the definition of any tenure upgrading or regularization policy. In particular:

- Community organization is a key element for the successful implementation of any tenure upgrading project, especially for supplying and maintaining records of rights on land, defining eligibility criteria for tenure regularization, and promoting suitably adapted financial mechanisms for resource mobilization in informal settlements
- In any tenure upgrading project or program to improve the situation of the urban poor, the main challenge remains scaling up. This requires: a unified strategy at the national and municipal levels of government; an appropriate and compatible legal and regulatory framework at both the national and municipal levels; financial resources and appropriate mobilization mechanisms (financial mechanisms adapted to the resources and needs of the populations concerned); political will and continuity
- The lending procedures of commercial banks and other financial institutions are not adapted to the needs of the urban poor, especially in cases of tenure upgrading. Community development funds, specially designed mortgage programs, and microcredit organizations may be efficient tools for mobilizing resources, including for securing tenure.
- Secure tenure alone cannot address the needs of the urban poor. Improving security of tenure forms part of an integrated development approach. One of the main lessons from experience during the last two decades regarding urban land management and security of tenure is that any tenure upgrading or regularization project must be accompanied by the provision of basic infrastructure and services. Conversely, provision of basic infrastructure and services requires some form of secure tenure.

However, it must be understood that provision of basic infrastructure and services combined with secure tenure will frequently generate various forms of market evictions from informal settlements, especially if such urban upgrading projects are not implemented incrementally, are not backed by an organized community, and are not accompanied by measures aiming to improve the economic situation of the households.

Key Recommendations

1. Protection against forced evictions is the overriding priority

Protection against forced evictions is a prerequisite for the integration of irregular and informal settlements into urban life. For households living in irregular settlements, security of tenure offers a response to their immediate problem of eviction and forced removal. It means they cannot be evicted by an administrative or court decision simply because they are not the owner of the land or the house that they occupy, or because they have not entered into a formal agreement with the owner, or do not comply with urban planning and building laws and regulations. It also means recognizing and legitimizing the existing forms of tenure that prevail among poor communities, and creating space for the poorest populations to improve their quality of life. Security of tenure can be considered the main component of “the right to housing”, and an essential prerequisite for access to full citizenship.

Although very few countries provide any constitutional protection against forced evictions (Brazil and South Africa are among the few enlightened exceptions) many governments, aware of the political risks of forced evictions when no alternative is offered to the evicted households, have adopted anti-eviction laws. However, as observed by UN-Habitat, “in regard to the protection of individuals where landowners arbitrarily evict occupiers in defiance of the anti-eviction laws, these laws do not provide sufficient protection for the poor, unless legal aid is cheap and accessible and/or special zones for low-income families are declared”.

An increasing number of cities also provide *de facto* protection against forced evictions through various measures that implicitly recognize the existence of informal settlements (including provision of basic services, registration or records of slum populations, voter rolls, street numbering, and issuance of identity cards). However, in this context, government administrations still retain substantial and quite arbitrary discretionary powers. Thus, effective protection of the urban poor against forced evictions depends on local patronage, and political commitments by elected officials, NGOs, and other civil society organizations. The level of protection provided depends on the balance of political power at the local and national levels.

2. Decentralizing land management responsibilities and enabling municipalities to promote tenure upgrading and regularization

On July 10, 2001, a groundbreaking legal development took place in Brazil with the enactment of Federal Law no 10.257, entitled “The City Statute”, which aims to regulate the original chapter on urban policy introduced by the 1988 Constitution. The new law provides consistent legal support to those municipalities committed to confronting the social and environmental problems that directly affect the living conditions of the 82 percent of Brazilians who live in cities and towns.

In conceptual terms, The City Statute broke with the long-standing tradition of civil law and set the basis for a new legal-political paradigm for urban land use and development controls: the right to urban property is ensured, provided that a social function is accomplished, which is determined by municipal legislation. Urban municipalities are tasked with formulating territorial and land use policies balancing the individual interests of landowners with the social, cultural, and environmental interests of other groups, and with the interests of the city as a whole.

Municipalities are required to integrate urban planning, legislation, and management in order to democratize the local decision-making process and legitimize a new, socially oriented urban-legal order. The City Statute also recognized legal instruments to enable municipalities to promote land tenure regularization programs and democratize the conditions of access to urban land and housing.

3. Taking advantage of adverse possession procedures

Adverse possession refers to the allocation of property rights, following the continuous and peaceful occupation of land over a certain period of time prescribed by law, without any opposition. It seems particularly adapted to the needs of the urban poor living in informal settlements. Most countries do have such legislation, but few implement and enforce it. Since the late 1990s, many Brazilian municipalities have relied on adverse possession procedures to provide the urban poor with security of tenure. Adverse possession applies potentially to over half of the *favelas* (squatter settlements) in Brazilian cities. So far, adverse possession procedures have benefited a limited number of slum dwellers: case-by-case court procedures are time-consuming processes, requiring the advertising of the adverse possession to establish legal claimants to the land, and involving the intervention of numerous lawyers.

4. Preventing market eviction of the urban poor

The urban poor are vulnerable to another form of eviction, less visible than forced evictions, and rarely recorded: market eviction. This phenomenon is being observed in all cities, including those in countries that already provide legal or constitutional protection against forced evictions. Market eviction is the result of market pressures exerted on urban low-income settlements usually combined with rapid increases in the housing expenditures of the economically weakest households in the settlements (increase in rents, costs of services, and taxes). Tenure upgrading or provision of urban services in newly regularized informal settlements may result in the departure of the poorest households. The allocation of individual transferable legal rights (such as freehold title) to vulnerable households, without any community controls, is likely to accelerate the market eviction process.

5. The provision of property titles must be framed over a long-term time horizon

The provision of individual property titles should not be rejected as such. It must be considered as a long-term objective. In many cases, emphasis should be put on intermediate options such as the provision of collective titles for entire informal settlements. The objective is to increase the supply of legal urban land in a range of tenure options (public or private rental, leasehold, freehold, etc.), a range of locations, and a range of prices to suit the needs of different socio-economic groups. Experience suggests that legal measures that protect occupancy rights and that guarantee security of tenure, at least for a certain period of time (permit to occupy, long term lease, concession of legal rights of use, etc.) are more efficient tools for poverty reduction than the mass allocation of property titles. This is the case in most Indian cities with the issuing of long-term leases, as implemented under the Patta Act. (The extension of land tenure rights over government land, locally known as 'patta', to squatters is undertaken as a welfare measure. Tenure rights can be given on site or in alternate locations on freehold, lease, or license basis. Even though there are cases of group tenure, the granting of individual tenure is the general practice. Current approaches give preference to regularization on site, but relocation often has been used under specific circumstances. A number of states such as Andhra Pradesh, Madhya Pradesh, Orissa, Rajasthan, and Maharashtra have opted for tenure regularization as a state-wide policy across all urban areas.)

6. Promoting community ownership and group titling is an important option

As noted by UN-Habitat, "individual titling is costly, time-consuming and often not sustainable for low-income groups, as the procedure involves full surveying and registration. A way forward is to use group registration, blocks and some form of individualized lease rights managed by groups in conjunction with local authorities." An illustration of such practices can be given in Kenya. It is estimated that 60 percent of the urban population is living in unplanned settlements, with no security of tenure. "Community Land Trusts" are one of the innovative methods for providing residents with reasonable security of tenure. Basic principles are as follows: (i) Land is kept in the settlement under one head title held by trustees; (ii) The community's focus is on resource mobilization, land acquisition, obtaining official permits, and getting the government and municipalities to provide infrastructure; (iii) Land acquisition costs are reduced by doing away with title surveys for individual plots; (iv) Communities are encouraged to create governance

systems that allow members of the community to participate fully in the affairs of the settlement. By retaining ownership of the land in the hands of a group, and allowing members to hold leases from the group title, it is possible to control transfers and discourage speculation. The affairs of a Community Land Trust are run by a web of local organizations within a general policy framework established by the national Ministry of Local Government through a consultative process.

7. Incremental approaches to tenure security are needed

As underlined by UN-Habitat, large scale and rapid “sweeping” tenure reform can lead to a loss of security of tenure (underestimation of the record-keeping requirements; creation of a range of contradictory land legislation making it difficult to clean up cloudy title/deeds and undertake formal land delivery; putting pressure on already weak administrations to carry out tasks for which they do not have the capacity and resources). Mass titling campaigns are likely to have the same impact. Once again, the most vulnerable groups are the urban poor. Securing tenure must be seen as an incremental process that may take years. An incremental approach allows governments to build technical and administrative procedures over time and within their own resource capacity, thus ensuring the institutionalization of the new approaches.

Innovative responses emphasize the development of parallel, flexible property registration systems, where the initial secure tenure rights are simple and affordable, and can be upgraded according to what residents and governments need and can afford at any given time. Provision of individual property titles should not be rejected as such. It must be considered as a long-term objective. An innovative incremental titling pilot project was carried out in Namibia in the late 1990s: allocation of a simple and affordable initial secure tenure (a “starter title”) that could be upgraded to a “landhold title” and then to a “freehold title”, in accordance with the needs and resources of individual households and the processing ability of the administration. Incremental tenure upgrading has other major advantages: it preserves the social link within the communities and gives them time to adapt, thus limiting the impact of speculative formal market pressures on informal settlements.

8. Explore innovative land management techniques, such as “land sharing”

At the settlement level, innovative land management and allocation procedures and techniques can facilitate tenure regularization of informal settlements. This can be illustrated by the “land sharing” projects implemented in Thailand during the 1980s and 1990s, and more recently, on a larger scale, in India. The principle is as follows: when the owner of a piece of land that is occupied illegally, usually by squatters who the landowner cannot easily evict, the legal owner agrees to share the property with the informal residents. Occupants will clear part of the occupied land (generally between 1/3 and 1/2 depending on the circumstances), usually the part with the highest commercial value, and return it to the landowner. The remaining part of the land is sold out or leased to the occupants, usually at below market prices. Physical upgrading and increasing population density on this part of the land makes possible the on-site rehousing of the households displaced from land that has been cleared and returned to the owner.

Such techniques do, in principle, enable tenure regularization to be carried out, while taking into account the interests of both the landowner and the community concerned. However, they require a high level of community organization, intervention of mediators and other outside groups (such as NGOs), involvement of public administrators and agencies, appropriate financial resources, administrative efficiency, transparency, and political commitment, especially at the local level. Few cities in developing countries can meet all of these conditions.

Land sharing techniques raise two questions: (i) even when successful on the scale of an informal settlement, large-scale strategies remain a difficult challenge; (ii) because it requires significant financial contributions from beneficiary households, land sharing does not respond to the needs of the poorest segments of the slum dwellers.

9. Building spatial and information systems and local land registration and records

As emphasized by the World Bank, “new land information management systems can supply some kind of early tenure security to a large number of people, especially to informal settlements... . The focus is on using the spatial information associated with an appropriate land information management system which is linked to urban service delivery, as source of legal evidence to validate people’s adverse possession claims and/or prevent eviction”. Whenever possible, land records and registration must be carried out by municipal governments, rather than being centralized at the national government level, for both technical and political reasons: identification of rights-holders, negotiation of land-related conflicts, as well as adjudication procedures cannot effectively be carried out by national government agencies. However, whereas records of land rights can be kept by municipalities (as is the case in most tenure regularization projects), land registration and the delivery of property titles remain prerogatives of central government administrations. Most national bureaucracies — especially in sub-Saharan cities — are reluctant to transfer such responsibilities to local governments. In addition, vested interests in the management and provision of public land reserves are such that few central governments are in a position to impose and enforce such necessary reforms.

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