

Reviewing titling and other tenure options

A contribution presented by Geoffrey Payne to the Global Land Tool Network meeting in Stockholm, Sweden, 24-25 November 2005.

As the programme indicates, I have been asked to present recent activities involved in creating a land-titling network. In addition, I was asked to discuss innovative tools which can deliver tenure security at scale in ways which are appropriate and affordable to both men and women. I will endeavour to cover both these aspects in my allotted 15 minutes.

Monitoring and assessment of land titling programmes in developing countries

The United Nations estimates that over the next 30 years “virtually all of the world's population growth will occur in the urban areas of low- and middle-income countries [and] increasing numbers of the world's poor will be city dwellers”. Rapid urban growth is exerting enormous pressure on local capacities and creating a new challenge for development professionals due to the unique characteristics of urban poverty.

Current research and debate is producing a common theme: securing access to land for the urban poor is critical for poverty reduction, institution building, good governance at the local and national levels, and conflict prevention. Designing and implementing pro-poor land policies is therefore a precondition for building effective states, ensuring sustainable development, and realising the Millennium Development Goals.

International efforts by donor agencies and national governments to address this issue have mainly focused on large-scale individualised land registration and titling programmes. Such programmes have been initiated in Africa, Asia and Latin America especially during the last decade and usually form part of broader, nationwide programmes to incorporate informal sector activity into the formal economy and planning framework. With few exceptions, the stated objectives of such programmes are to:

- Increase tenure security for farmers or residents of informal urban settlements
- Reduce poverty by enabling the new owners to use their property as collateral for obtaining formal credit to invest in businesses or home improvements
- Reduce transaction costs for property transfers and promote more efficient land and property markets
- Ensure that properties realise their full market value
- Increase government revenues for funding public services and facilities.

During the World Bank Urban Research Symposium held in Brasilia in April 2005, a group of colleagues met to discuss tenure issues and the role of titling programmes. As a result, I was invited to co-ordinate a research network to obtain and exchange information on completed and ongoing programmes in urban or per-urban areas, particularly in developing countries. The network was established on a voluntary basis as a yahoo discussion group later that month (forum@landtitling.net). It now has 84 members drawn from a wide range of countries and institutions in public, private and civil society sectors. Papers on titling programmes have been exchanged and reviews encouraged.

Whilst research has demonstrated that some programmes have realised many of the above objectives in rural areas, there is a dearth of independent empirical research on the social and economic outcomes of titling programmes in urban and peri-urban areas, where an increasing number are being implemented. The social and economic outcomes of titling programmes are almost certain to be different in urban areas, due to higher property values, higher densities of commercial and industrial activity, higher densities of poor rental tenants, and higher population growth rates. It is therefore critical to fill this gap in research before large-scale titling programmes are adopted as the primary policy option by international donors and national governments.

The recently established UN Global Tool Network and the High-Level Commission on the Legal Empowerment of the Poor have given added impetus to discussions and initiatives on property rights. Whilst we are pleased to note that the Commission will apparently recommend a range of options in addition to titling, this remains a key feature of many internationally and nationally funded policies. A proposal is therefore being developed by Alain Durand-Lasserve, Edesio Fernandes, Carole Rakodi and myself to identify and commission reviews of a representative range of examples. We would welcome suggestions from participants at this meeting to identify potential case studies and local researchers.

The primary objective of the research is to collect detailed evidence and provide an objective assessment of the extent to which urban and peri-urban land titling programmes have realised their objectives and addressed the different needs, cultural practices, legal traditions and economic circumstances existing in the case study locations.

An Advisory Group is presently being formed and we are delighted that so far everyone we have invited to advise us has accepted. If funding is obtained, we hope that the research will be undertaken in time to contribute to the work of the Commission and the Land Tools Network.

Innovative tenure options:

As for innovative alternatives to titles, research carried out in 16 countries¹ has revealed a large number of ways in which tenure security is being provided to meet the needs of different social groups. These range from the Community Land Trusts in Kenya, the Certificate of Rights in Botswana, communal land rental in Thailand, adaptations of customary tenure in parts of sub-Saharan Africa and the Concession of the Real Right to Use land in Brazil's favelas. In addition, there is the Certificate of Comfort available to squatters on public land in Trinidad, which protects large numbers of squatters from eviction in Port of Spain.

All of these options have a place in tenure policy. However, the central conclusion of the research was that the most effective tenure policy is one which offers a wide range of options, so that all social groups can find one that meets their immediate and longer term needs. Policies which emphasise a single tenure option fail to reflect diverse, changing needs.

How can tenure policy incorporate a wide range of informal settlements into a more formal land market in ways which do not create adverse impacts on the poor, particularly tenants and women? Based on research in Cambodia and a number of other countries, a five stage approach is proposed as a means of improving tenure security and strengthening property rights. This involves:

¹ See Payne, G (Editor) 'Land, Rights and Innovation: Improving tenure security for the urban poor' ITDG Publishing, London 2002

1. *Providing basic short-term security for all households in slums and unauthorised settlements.* This can easily be achieved by a simple statement by the relevant Minister and could last for a specified period sufficient to survey all extra-legal settlements and identify any that need to be relocated.
2. *Offer residents of all settlements to be relocated priority for relocation to sites that offer close access to existing livelihood opportunities (e.g. street trading) and services (i.e. not out of the city).* Temporary Occupation Licences or Permits could be provided for a limited period, depending on how long it takes to agree with the local community on moving to alternative sites. These licenses or permits could be extended if required.
3. *Designate all extra-legal settlements considered acceptable for in-situ upgrading as entitled to medium term forms of tenure with increased rights, but not necessarily full titles.* Where possible, the precise form of such tenure and rights should be based on tenure systems already known to local communities. Customary or communal tenure options, such as communal leases, or communal land rights (CLR) may be acceptable to residents and can reduce the administrative burden on land management agencies. This would allow such areas to receive services and environmental improvements. It would also increase security without stimulating rapid increases in land prices which could displace very poor tenants. During this period, communities could be encouraged to form community organizations as a condition to proceed to Stage 4. Those that failed to meet the criteria would be entitled to renew their CLR for a further period.
4. *Communal Land Titles (CLTs) can then be offered to all communities that meet good governance criteria.* These should be based on accurate surveys of the settlement and record all properties and residents in the area. Communal titles could be provided at a nominal cost and would provide permanent security to all residents.
5. *Individual titles can be obtained by households who want them providing they obtain the agreement of the community and are responsible for agreeing plot boundaries with their neighbours and resolving any conflicts between owners and tenants, etc.* They would also be responsible for financing and completing the necessary administrative procedures, including the appointment and payment of surveyors and lawyers.

This incremental approach could provide a sustainable, practical and socially progressive way of improving the tenure security and rights for millions of the urban poor. They could also improve the functioning of urban land and housing markets by gradually reducing the disparity in land values between formal and informal areas, stimulating economic development and improving the effectiveness of government in urban management. They could also operate in conjunction with other forms of tenure, such as private and public rental, leasehold or co-operative housing. In countries where customary systems of land tenure are widespread, as in Papua New Guinea and many parts of sub-Saharan Africa, variations on these options would need to be developed. Whilst the proposals have not been adopted in Cambodia, they are presented today as a contribution to discussions on options elsewhere.

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