SECURE TENURE FOR THE URBAN POOR
Round Table seminar organised by Cities Alliance, 23 May 2002

Outline of presentation by Geoffrey Payne

Preamble

It is an honour to be invited to contribute to this seminar as part of the Cities Alliance 'Cities Without Slums' campaign. This campaign aims to improve the lives of 100 million slum dwellers by 2020 and represents a major commitment by the World Bank and UN-HABITAT.

Whilst this target will hopefully be achieved, we should not overlook the fact that an estimated 837 million people are presently living in slums and that this is expected to double within 25 years. This suggests that the total number of people living in slums by 2020 will be about 1500 million, so a reduction of 100 million is modest by any definition. It also suggests that an equal or even greater effort is needed to reduce the rate at which new slums form and that the present campaign should be balanced with another one to review regulatory and other constraints to enabling urban poor households to gain access to adequate and affordable legal shelter.

Land tenure and property rights can play a major part in achieving the objectives of the present campaign and also in helping reduce the rate of new slum formation. It is in this context that I hope my contribution will be considered.

Introduction:

The following comments and proposals are based on research into innovative approaches to providing secure tenure for the urban poor. The case studies were carried out in 16 countries by an international team which included two of my colleagues participating in this seminar.

The research identified a number of legal, customary, religious and extra-legal tenure systems in the countries studied. Legal plurality exists in many countries and is a major influence on tenure systems and influences both perceptions and practices. In addition, there is a continuum of extra-legal and semi-legal categories which have been introduced or adapted by governments, customary systems, NGOs or communities themselves, in order to increase security of tenure and property rights, plus access to public utilities.

This diversity of customary, statutory, religious and informal tenure systems presents major problems when seeking to understand the roles which each category plays within overall land and property markets. Current UN urban indicators[1] have so far failed to capture this complexity and therefore risk distorting our perceptions of these roles and therefore do not provide a sound basis for policy formulation. A typology has been developed (see Fig 1) and is presently being tested in two countries (Cambodia and the Philippines) which attempts to provide a more accurate reflection of tenure types, the degree of de facto security associated with each and the extent of de jure property rights applicable to all categories and both sexes. It is hoped that this will provide a basis for identifying policy options based on the need to increase rights and security of tenure. However, it is NOT proposed that this typology be used as a basis for international comparisons between cities as the potential range of categories would be too great.

[1] The current indicators provide for nine categories, only two of which refer to non-formal tenure categories, namely 'squatter owner' and 'squatter tenant'. The research has found that in many cities there may be more informal than formal tenure sub-markets, each of which caters for different social groups and commands different prices within the overall urban land market.

Innovative approaches to tenure and property rights

The research has revealed that security of tenure depends not so much on legal status as on residents' perceptions of past and present government policy. For example, in South Africa, where generations were denied any rights for several generations, individual titles are considered the only form of tenure worth having. However, in Bogotá, Colombia, forced evictions are rare and residents are constitutionally entitled to receive public utilities on the sole condition that they can pay for them and formal tenure is not a subject of concern or even interest for most people in informal settlements.

The situation in most countries is somewhere between these two extremes. In most, there is a wide range of tenure categories and sub-categories, each of which provides varying degrees of security and entry costs. The research also revealed that priorities for tenure and property rights vary between sub-groups of the urban poor. For example, the priority for the poorest groups is to achieve easy access to places in which they can obtain a livelihood. Since these are invariably inner city locations where land prices are highest, they are forced to accept informal and insecure accommodation as a price of such access. For those on low, but less uncertain incomes, they are able to accept slightly longer travel distances to employment areas and afford a more secure form of tenure, though probably not at full market rates. For the upwardly mobile or less poor, residential mobility is higher and for them distances to work are less critical than the need for longer-term and more formal tenure.

Whilst freehold titles may be appropriate for the latter group, they may be counter-productive for the first two, especially if titles are only offered in peripheral locations. Even if offered in-situ, they may inflame disputes over competing claims and further intensify existing distortions in urban land markets.

The research has identified many examples of what can be called 'intermediate' tenure systems that fall short of providing full titles, but increase tenure security and facilitate access to livelihoods and services. Some of these can be upgraded to full titles over time; some offer improved rights to individual families, whilst others provide communal forms of tenure. All enable households to retain housing in areas which they need in order to improve their economic situation without adversely affecting the operation of urban land markets.

Among the innovative approaches reviewed are the Certificate of Rights in Botswana, Temporary Occupation Licences and Community Land Trusts in Kenya, temporary land rentals in Thailand, the 'Anticretico' tenure system in Bolivia and cases in which de facto rights are acquired from the collection of receipts for utilities and voter ID forms, or social ration cards, etc. The main features of these are as follows:

Certificates of Rights

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

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

Temporary Occupation Licences:
These were introduced in Nairobi to promote investment in small businesses and the efficient use of idle public land in strategic locations. Licences 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 authorities retain control of the land.

The system has considerable potential for application in other cities where pockets of un- or under-used land exist in central areas.

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

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

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

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

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

Temporary land rental:
Landowners and low-income groups in Bangkok have evolved a mutually beneficial system of land tenure which enables the poor to live for a short to medium period in inner city areas which would normally be far too expensive for them. This not only enables the poor to obtain easy access to employment centres, 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 recognised 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.

Policy implications

The examples cited above illustrate practical approaches which help the urban poor to obtain access to housing near sources of livelihoods and services. They are flexible and simple to administer and help to compensate for the rigours of the formal land market without detracting from it. This is not to say that they are without limitations. In fact, no tenure system is without limitations and it is for this reason that I believe a central feature of any urban land tenure policy should be to provide a range of tenure options as part of a diverse and responsive urban land and property market.

The research demonstrated that improving rights is the key – at least in the short to medium term - to increasing security and stimulating improvements in housing and living standards (see Fig 2). It also suggests that tenure regularisation must be part of a package of measures, not a stand-alone programme. In particular, it should be combined with increased access to existing livelihood opportunities, the provision of services and the increased supply of affordable and appropriate legal shelter options which meet the needs of all sections of the population, especially the poor. This requires city-wide measures to link tenure policies with regulatory regimes which stimulate employment opportunities and physical planning measures which permit mixed land use and basic services.

Parallel research on regulatory frameworks for affordable shelter being undertaken in six countries[2] is also demonstrating that regulatory audits can help to identify constraints to the development of affordable and locally acceptable housing which can help reduce the growth of future slums. By combining such pro-active measures with remedial regularisation of existing slums, it may be possible to make a significant reduction in the global population living in urban slums – hopefully much more than 100 million!

Implementing a tenure regularisation policy

How can such a multi-faceted approach be implemented? It is proposed that it include the following elements:

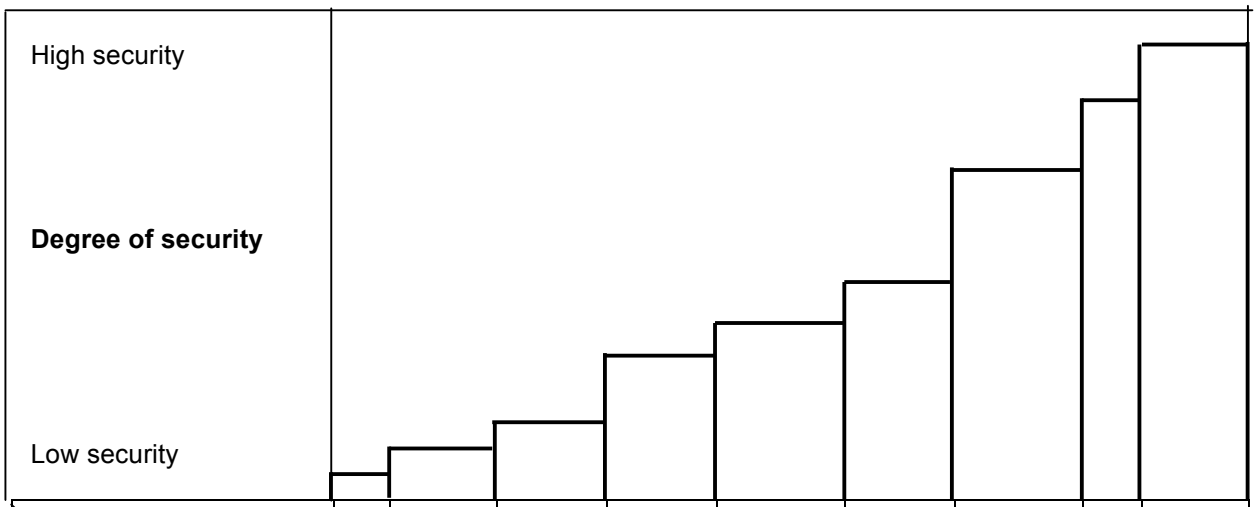
1. Announce a stop to forced evictions and relocations where these are presently part of government policy. Such approaches waste scarce public resources and increase poverty due to increased costs and times of travel to places of employment. A simple statement by the relevant Minister is often sufficient to reduce uncertainty and stabilise situations.

[2] 'Regulatory guidelines for affordable shelter' is a research project funded by the UK Department for International Development. The project is being carried out in six countries by a team of local professionals working with Geoffrey Payne and Associates. The project started in 2000 and is due for completion in 2004.

2. Survey all extra-legal settlements and identify any that are in areas subject to environmental hazards, (eg floods, landslides, etc) or required for strategic public purposes. These should be subject to review by independent experts. Offer residents of all such settlements priority for relocation to sites that offer equally close access to existing livelihood opportunities (eg street trading) and services (eg not out of the city). Temporary Occupation Licences or Permits should be provided for a limited period, depending on how long it takes to agree with the local community on moving to alternative sites.
3. Designate all other extra-legal settlements as entitled to other forms of secure/intermediate tenure with increased rights, but not full titles. Where possible, the precise form of such tenure and rights should be based on tenure systems already known to local communities. This will allow such areas to receive services and environmental improvements through a participatory process of physical and socio-economic development (eg the Kampung Improvement Programme in Indonesia or the Orangi Pilot Project in Pakistan, etc). It will also increase security without stimulating rapid increases in land prices which could attract downward raiding by higher income groups and the displacement or very poor tenants. Finally, it provides urban development agencies, communities and the private sector with time to develop a range of viable and acceptable alternatives.
4. Simultaneously undertake a regulatory audit of planning and building regulations, standards and administrative procedures to identify options for reducing costs and time required for developing legal shelter options. Options may include reducing the proportion of land allocated to roads and public open space, relaxing restrictions on plot use and development and simplifying administrative procedures. Such audits should be undertaken and changes implemented on a regular rather than a once and for all basis.
5. Increase the supply of legal urban land developments with full titles and other tenure options (eg public or private rental, leasehold, co-operatives, etc, in a range of locations and a range of prices to suit the needs of different socio-economic groups.
6. Promote Multi-Stakeholder Partnerships (not just Public-Private Partnerships) and joint ventures to extract a public benefit from private sector investments and developments. Such projects can also help generate internal cross-subsidies to facilitate low-income access.
7. Start with pilot projects at as large a scale as possible.
8. Maintain and accelerate institutional reform so that changes penetrate the institutional bloodstream and culture of public agencies, not merely train individuals whose increased experts and awareness has little chance of being applied. This could be achieved through accelerated promotion, or career fast tracking options for young talented professionals who otherwise may not seek employment in the public sector.

Geoffrey Payne, May, 2002.

Fig 1: Notional typology of urban tenure categories, degrees of security and associated property rights



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

0% Distribution of tenure types 100%

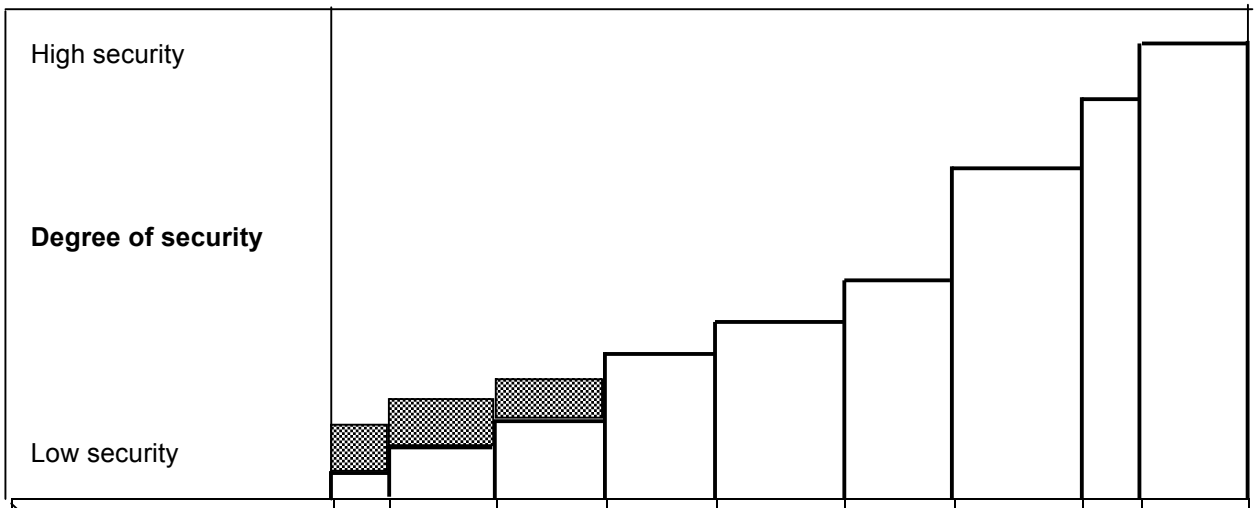
Notation: The availability of rights by gender can be shown as:

\ Right available to men only

/ Right available to women only

X Right available equally to men and women

Fig 2: Tenure typology and the result of increasing tenure rights



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