

# insights

DEVELOPMENT RESEARCH

## Safe as houses? Securing urban land tenure and property rights

**M**illions of people in developing countries live without adequate security of tenure or property rights. The United Nations expects this group to increase by nearly 37 million a year to reach 1.5 billion by 2020. The problem is particularly acute in urban areas where the costs of access to legal land and housing are high and rising faster than incomes.

In some cases, informal settlements outnumber legally planned developments and are increasing more rapidly. Beyond the effects on the poor, governments are finding themselves in danger of losing control over urban development and the affluent minority are feeling increasingly surrounded by slums and illegal settlers.

The high rates of urbanisation in developing countries over recent decades have left urban authorities overwhelmed by the demand for land, services and housing. Planning and building standards, regulations and administrative procedures based on European norms rather than local circumstances have only made matters worse. In many countries these have not changed since colonial days and impose such high costs and delays that even middle-income households are forced into informal settlements. This issue explores some of the key debates around providing secure tenure and property rights to the urban poor under conditions of globalisation, rapid urban growth, limited administrative capacity and widespread social, gender (see **Mari**) and economic inequality.

### Defining tenure and rights

Any discussion of land tenure and property rights needs to recognise the importance of cultural, historical and political influences, as well as those of technical and legal systems. Each of these influences results in subtle differences in the way key terms and relationships are defined. The term 'tenure' can refer to how land is held or owned, or the set of relationships among people concerning the use of land, which can vary considerably between different cultural and economic contexts. Land or property 'rights' refer to what those who hold, own or occupy land may do with that land and any development that takes place on it. Property

rights cover several factors, including the right to occupy, enjoy and use; restrict others from entry; dispose, buy or inherit; develop or improve; cultivate or use for production; sublet; realise a financial benefit; and access services. Again, different people or groups may enjoy recognised interests in some or all of these rights.

Not all contexts give equal emphasis to both tenure and property rights. Security of tenure involves the real or perceived protection from forced eviction, whilst property rights may vary within, as well as between, tenure systems. It is therefore possible to have a high level of security, but restricted rights to use, develop or sell land, or a limited level of security, but a wide range of actual rights.

Additionally, different forms of tenure and rights commonly co-exist within the same settlement and individual plots can change from one category to another over time. Therefore we should not think of tenure strictly as formal or informal, but acknowledge a broader range of systems from squatting, to unauthorised subdivisions and others which may simply fail to conform to official procedures. As **Durand-Lasserve** and **Mattingly** note, there may also be more than one legal tenure system operating in the same city, as in the case of Islamic societies or those where customary tenure operates alongside statutory systems.

Each of these systems has its advantages and disadvantages:

- Customary systems facilitate social cohesion, but may not be able to withstand increasing pressure on land.
- Private land ownership puts land to the most economically efficient use, but often excludes the poor and limits state land management options.

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- Public or religious land ownership may facilitate equal access to prime locations, but also lead to bureaucratic inactivity and corruption.

### The drawbacks of titling

These complexities have often been ignored by policy-makers. Thus, many governments and international funding agencies have taken the conventional route of providing individual land titles, either within informal settlements or in locations to which settlers are relocated. The intention is to provide high levels of security and property rights in a form which will enable poor households to obtain access to services and work to lift themselves out of poverty. But these expectations do not appear to have been widely realised and there is evidence that the claimed benefits of titling have been exaggerated. As **Home** observes, many households are not interested in obtaining titles because of the costs involved and the risk that they may lose their land if they have to pledge their deeds to obtain a bank loan. **McLeod** also notes that most bank lending is not asset- but revenue-based, so the provision of titles will not necessarily increase access to formal credit.

There are significant drawbacks to titling programmes which have not been adequately acknowledged by their advocates, especially **de Soto**. These include providing windfall profits to squatter 'owners' who sell up as soon as informal tenure is granted, the eviction of tenants or imposition of higher rents upon them, the resulting growth of new unauthorised settlements by groups hoping formal titles will also be awarded to new areas, the heavy burden placed on land registries and the potential distortion in property prices caused by the buying up of newly formalised settlements by higher income groups who may capture much of the subsidies. More seriously, some governments have used titling programmes as an excuse to

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▶ evict informal settlers from prime inner-city sites and grant them titles on plots outside the city and far from sources of livelihoods and services. It is also expensive for governments to grant titles to settlers on private land, where market values may approach European or American levels. Finally, the costs and complexity of administrative procedures required for titling programmes may reduce demand, though this can also be an indication that people feel secure even without titles.

formal titles are not always necessary or sufficient for high levels of tenure security

The public debate on tenure, which de Soto has done much to bring to centre stage, can now be based on a wealth of empirical evidence. For example, international experience shows that even the poor will invest what they can if they have reasonable security. However, titles are not the only means of ensuring security. Many people achieve this through political pressure, collecting receipts for utilities payments, or simply by sheer force of numbers. Interestingly, in its recent publication 'Land policies for growth and poverty reduction', the World Bank now acknowledges that formal titles are not always necessary or sufficient for high levels of tenure security.

**What alternatives are there to titling?**

Recent research reveals a range of innovative approaches world-wide which seek to increase security and rights and provide access to services and credit. **Kumar** reminds us of the considerable contribution of formal and informal rental tenure systems in meeting the needs of poor households for security and mobility, whilst **Rakodi** asserts the importance of semi-formal and customary tenure systems in current land delivery systems. Such intermediate, incremental options which emphasise an increase in land rights appear to offer improved security, increased public sector influence over land development, modest increases in tax revenues and practical options for financing land development. They are also simpler and cheaper to implement.

As **Leckie** observes, the primary objective of tenure policy should be to ensure protection for all households from forced eviction. This need not involve public sector agencies losing long-term control, or private landowners losing their land, but that people are given due notice and reasonable options for alternative accommodation. The secondary objectives involve improving access to livelihoods, services and credit, usually in that order.

**How can these objectives be realised?**

Basic security can be provided simply by proclamations announcing a ban or moratorium on evictions and relocations, allowing time to prepare more formal, long-term and socially acceptable solutions. Access to livelihoods can be provided by improved public transport systems and short-term forms of tenure in areas near employment centres, combined with basic standards affordable to low-income groups. Access to formal credit is more difficult to ensure, since many poor households are as wary about borrowing from banks as banks are of lending to the poor. However, as McLeod demonstrates, governments can encourage the establishment and expansion of community-based or

commercial financial institutions that are willing to offer loans without requiring land as collateral.

Ultimately, however, tenure issues cannot be divorced from the broader issue of governance which is arguably the single most important factor for the eradication of poverty and for prosperous cities. Governments should take the

following steps to help stabilise the existing situation and provide a foundation for longer-term options:

- Provide basic short-term security for all households in slums and unauthorised settlements.
  - Survey all extra-legal settlements and identify any that are in areas subject to environmental hazards (for example floods or landslides) or required for strategic public purposes.
  - Offer residents of all such settlements the option to relocate to sites with close access to existing livelihood opportunities and services.
  - Designate all other extra-legal settlements as entitled to medium-term forms of tenure with increased rights, but not necessarily full titles.
  - Encourage land sharing for informal settlements on private or customary land.
- Improving tenure security and rights for existing communities will not be easy. Nor will it be sufficient, unless parallel measures are taken to reduce the need for the growth of new informal settlements. This requires a parallel approach to increase the supply of planned, legal and affordable land on a scale equal to present and future demand ■

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**See also**  
 'Land, Rights and Innovation', Intermediate Technology Publications, London, G. Payne (ed), 2002  
 'Urban land tenure policy options: Titles or rights?', Habitat International Vol 25, No3, G. Payne, 2001

**De Soto: de-mystifying development of capitalism?**

**Why has capitalism flourished in the West but not in developing and former communist countries? Do the cultures and colonial histories of those poorer countries somehow work against the proper development of capitalism? Or do people lack the intellectual or material wealth to start their own enterprises? Peruvian researcher, Hernando de Soto, maintains that both these answers are wrong. Rather, he argues that the 'mystery' of the development of capitalism lies in formalised property rights.**

De Soto begins with the assumption that free-market capitalism is the most efficient means to produce economic prosperity. His research then is focused on how to get free-market capitalism to function properly in developing and former communist countries.

To test the assumption that poor people are poor because they lack material wealth, de Soto and his team undertook lengthy research in Cairo, Lima, Manila, Mexico City and Port-au-Prince. The research, reported in De Soto's book 'The Mystery of Capital', involved estimating the market value of buildings (shops, houses, factories) held in poor areas of these cities by surveying building materials and making comparisons with actual sales.

As a result of this research, de Soto argues that poor people in the developing and former communist world are far from lacking in wealth. On the contrary, de Soto estimates that they own between them at least US\$9.3 trillion – almost as much as the total value of all the companies listed on the main stock exchanges of the world's 20 richest countries.

If people living in the shanty towns of the developing world actually possess such a wealth of real estate, why are they so poor? De Soto's answer is that this wealth is effectively 'dead' as it is difficult for the owners to realise its value by investing it in an enterprise because they can neither sell it, nor use it as security to borrow money against. This is because the majority of such real estate wealth is not formalised or legally recognised.

**Homing in on gender and access to tenure**

**Many women still face discrimination in accessing land, shelter and property rights despite policy and legal reforms. Tenure systems and contexts vary greatly in the different opportunities and barriers they offer to women. Changes clearly need to be made, but a better understanding of the way these complex tenure systems relate to the dynamic roles of women and men is required before the necessary options and impacts of achieving the changes can be fully understood.**

Despite broad agreement that laws and policies should not distinguish between men

and women, there is limited legislation supporting women's property rights in many countries, particularly in South Asia and Africa. Even in cases where reforms have recently been achieved, such as Uganda where a wife's consent is now legally required to undertake transactions on jointly occupied land, translating these into practice has been problematic. Knowledge about legal rights is limited, women and men often uphold traditional gender roles and relationships rather than formal rights and women lack the confidence, information, experience and resources to get what they are entitled to by law. Many women are also excluded from the application of statutory law, such as in Kenya where women may not be legally married, or customary law contradicts new legislation.

In some customary tenure systems women only have access to land, housing and property as daughters, mothers or wives. Many women therefore face the constant insecurity that if the relationship ends they will lose their homes, land and livelihoods. In Lesotho, moves are being made to enable women to own land. However, customary systems of tenure are often

# Sticking with tradition

## How effective are new customary land delivery systems?

**Excluded from formal government and private sector land delivery systems, the urban poor in sub-Saharan Africa increasingly obtain shelter on urban land through other means. Many do this through transactions that borrow features from traditional rural customs of land management so that their claims to use land and buildings can be identified, legitimised and defended. Although these informal transactions are sometimes tolerated by governments, they are rarely legalised. Nevertheless, they are accepted by the social networks within which the people live.**

De Soto reports that in some cities the rules governing who owns a particular building vary between neighbourhoods and even streets. Property rights might stem from customary and religious rights, to rights endowed by a previous legal system. Further, procedures to securing formal ownership are prohibitively lengthy and complicated in many countries.

Through an historical analysis, de Soto demonstrates that formal property rights have been key to the successful development of capitalism in the West in several ways:

- Legal titles provide accountable ways to prove wealth to others, for example a bank when requesting a loan.
- Formal property systems make people more accountable: people's addresses can be identified. This knowledge strengthens trust between strangers – a necessary ingredient to market relationships in capitalism.
- Formal rights make ownership more flexible. Formalised property rights enable ownership to be divided among many individuals which results in flexibility in borrowing, investment and risk-sharing.

De Soto thus argues that the further development of capitalism in the developing and former communist world depends on governments taking the initiative to convert informal property rights into formal ones and extending the reach of that formal property system to all. De Soto's recommendations have been influential in the World Bank since the early 1990s, and have informed recent policy-making in Peru, Mexico, Egypt and the Philippines.

Hernando de Soto was unable to contribute to this issue of 'Insights'. This summary was therefore prepared by id21 based on 'The Mystery of Capital: Why Capitalism Triumphs in the West and Fails Everywhere Else', by H. de Soto, Black Swan Books, 2000. Translations of selected extracts are available at [www.ild.org.pe/tmoc/language.htm](http://www.ild.org.pe/tmoc/language.htm)

### Reviews of de Soto's work

S. Angel, Interplan, June 2002 <http://interplan.org>  
'The mystery of credit', Land Lines, Vol. 14, No. 2, LILP, April 2002, by J. Calderon  
E. Fernandes, Interplan, June 2002 <http://interplan.org>  
A. Gilbert, International Development Planning Review, Vol. 24, pp1-20, 2002

These new or neo-customary processes blend pre-colonial land management procedures with low-income household strategies for securing access to land and the production of informal settlements and have their own actors and procedures. Like customary systems, they achieve group and community recognition (perhaps using clan or family ties in many cases) to back up claims of rights to use land and/or buildings, to operate mechanisms that can resolve disputes over these use rights and to delineate and maintain the boundaries of the plots. Also like customary systems, leaders that are accepted by the group may take day-to-day decisions about land delivery. Often such recognition is generated because the land is delivered by the holder of genuine customary rights or by a genuine customary leader. However, government officials commonly view neo-customary processes as troublesome, giving rise to policies the unintended impacts of which can instead reduce the access of poor households to shelter, as well as the security and capital assets of those already housed.

During the 1970s and 1980s, many observers saw customary processes of land management for housing in Africa as a relic of past practices that would be eradicated by economic development. This did not occur. Low-income demand for land has been overwhelmingly met by informal delivery systems and neo-customary practices have been prominent within these informal

systems. The failure of government and the weakness of formal private sector systems has possibly strengthened the attractiveness of customary procedures and encouraged the development of new forms of customary systems in peri-urban areas.

Rather than being out-dated, customary systems appear to have a surprising ability to adapt to change. Neo-customary systems are delivering land that formal systems fail to provide to poor people for urban housing and basic urban services. At the same time, official procedures for land development and management are becoming more informal in their nature, perhaps being re-interpreted by informal or customary actors.

France's National Centre for Scientific Research (CNRS) and the Development Planning Unit at University College London are researching neo-customary urban land delivery systems in nine African countries. The researchers are exploring how the systems are working, changing and adapting, how their actors are interacting with democratically constituted governments and whether the systems are viable alternatives to formal means of delivering urban housing land to the poor.

Based on prior research, they are exploring the possibilities that:

- The delivery of land for housing through informal neo-customary processes is still playing a major role in sub-Saharan Africa, especially for poor households.
- These processes can adapt to change and

more dynamic and complex than statutory systems and though women may have limited access to land through inheritance or purchase, they may have significant indirect access and rights to use these resources through their roles as household managers.

Many women rely on informal markets for housing not only because of inappropriate legislative and administrative frameworks, but also because women, and women-headed households in particular, are among the poorest and most vulnerable in society. Research by Geoffrey Payne and Associates has found that although discriminatory legislation has been removed in Bolivia, in informal housing markets it is traditional patriarchal, rather than legislative, relationships which dominate and the transactions usually exclude women.

Development interventions and land reform can have significantly different implications for women and men. During colonial periods in many African countries the process of formalising and individualising land rights meant that women were increasingly disenfranchised and lost many of their rights.

Similarly there are dangers that World Bank promotion of freehold titles, by increasing the costs of land and simplifying bundles of rights, may actually increase barriers to access, and extinguish certain more innovative rights accessible by women, thus further entrenching inequalities.

There are moves within the tenure policy debate towards acknowledging the need to build on intermediary systems. However, developing such systems in relation to women's access is hard as there is a particular shortage of data on gender specifically focused on urban areas outside of Africa.

Gender-aware legislative reforms are essential, though not sufficient to secure enforceable access to, control over and use of, land resources by women. Other policy recommendations include:

- raising awareness and building grass-roots support for legal changes
- ensuring the active participation of women in the design and implementation of land projects and policy reforms to ensure more detailed understanding of local tenure and gender issues and the gender-specific

imperatives and consequences of transforming tenure systems

- increasing women's skills, knowledge and capacity for mass mobilisation which, as demonstrated by the success of community-led federations such as the South Africa Homeless People's Federation, can help women to pursue and secure their rights ■

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### See also

'A Field of one's own: gender and property in South Asia', by B. Agarwal, Cambridge: Cambridge University Press, 1995  
'Rights and Realities: Are women's equal rights to land, housing and property implemented in East Africa?', by M. Benschop, Nairobi: United Nations Human Settlements Programme, 2002  
'Gender and Access to Land', FAO Land Tenure Studies No. 4. Food and Agriculture Organization of the United Nations: Rome, 2002

thus be expected to survive and continue to expand their coverage.

- Neo-customary systems are effective enough to serve as alternatives to formal government and private-sector systems in providing people access to urban land, while providing major advantages to those who are poor.

The research questions the relevance of land management models put forward by international finance institutions, such as the World Bank – with the support of local government officials in charge of land management – in the name of modernisation. These models failed to take into account the diversity of tenure rules established under different property systems that coexist in a given area/location, thus worsening the exclusion of the majority of the African urban population.

Considerations for policy-makers include:

- Land policies that attempt to destroy neo-customary informal systems may reduce the

ability of the poor to access land.

- It may be easier and more effective to serve the land needs of poor people by strengthening neo-customary systems than by attempting to improve formal systems of land delivery.

Nevertheless, policy-makers may need to be on guard against neo-customary practices that threaten to significantly reduce the quality of governance ■

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## What's in a title? Land titling and poverty alleviation

**The linkages between land titling and third world development are receiving more attention from development researchers since the launch of the United Nations Global Campaign for Secure Tenure in 1999 and the publication of de Soto's 'The Mystery of Capital'.**

A multi-disciplinary team of researchers lead by the Law School of Anglia Polytechnic University, UK, have explored land titling and poverty alleviation among peri-urban settlements in three countries of Africa and the Caribbean. Field researchers in the peri-urban areas of Gaborone, Port-of-Spain and Kitwe interviewed poor households on plots with unclear titles.

All three countries researched had forms of intermediate land title, but few of the plot-holders were interested in obtaining documented title deeds, because of the costly and complex procedures involved. They felt secure enough and were overwhelmingly reluctant to pledge title deeds with the bank in case they lost their land. 'This land is my life; it has made me,' said one of them. Land and rental housing markets thrive in spite of, and even because of, the lack of legally recognised title, and attempts to enforce against unauthorised structures have been unpopular and unsuccessful. The implications for government are to undertake a cost benefit comparison between intermediate and full land titling, and for local, community-based land record-keeping.

In Trinidad, new legislation in 1998 led to a programme of tenure regularisation on state lands, affecting some 20 000 households. While so-called 'certificates of comfort' were issued (which offered a guarantee against households being summarily forced to leave plots awaiting full tenure regularisation), the subsequent progress towards individual plot regularisation has been slow because of

bureaucratic processes and costs. Households have generally supported the programme, especially where they can see tangible infrastructure improvements as a result, but the election of a new government has resulted in a scaling down of the programme.

The rapid growth of 'self-allocated' plots on tribal land in Botswana led to a 'zero tolerance' policy by the Government, which has recently been challenged successfully in the courts. Trained land surveyors in the tribal land boards are improving standards of site surveying and record-keeping, but informal building plans, or layouts, of thousands of self-allocated plots often cannot be reconciled with the official layouts prepared by planners, creating problems for subsequent infrastructure provision and title regularisation.

In Zambia, planned layouts have been prepared by the city council and procedures exist for upgrading tenure to a long lease, linked to phased building of modern structures. However, the collapse of the local mining economy has meant that few households have upgraded, preferring to build cheaper structures for rent and remove themselves to extra-legal areas. In both African cases, property transfer and inheritance has been made increasingly problematic with the impact of HIV/AIDS upon families and social structures.

Governments should evaluate:

- the cost-effectiveness of intermediate land titling programmes
- whether 'zero tolerance' policies towards illegal settlements represent best value principles
- compatibility of such policies with UN-Habitat's secure tenure campaign
- the potential of local community capacity-building in tenure security and infrastructure upgrading programmes ■

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#### See also

'Land Titling and peri-urban development in Africa and the Caribbean', by R. Home and H. Lim (eds.), Cavendish Publishing, (forthcoming early 2004)

## Room for manoeuvre

### Livelihoods and rental housing

**Rental housing often conjures up images of rich landlords exploiting poor tenants. However, research has shown that landlords in poor neighbourhoods of many cities in developing countries are often as poor or even poorer than their tenants. What is the link between rental housing and the livelihoods of tenants and landlords?**

Research from the Department of Social Policy at the London School of Economics has found that, in most cases, rental housing is integral to the livelihoods of the poor and a vital component of urban housing markets. Rental accommodation can offer tenants:

- proximity to employment
- savings in time and money spent on travel
- access to social networks
- flexibility in responding to livelihood opportunities.

While the proportion of urban tenant households in developing countries varies by country from 20 to 80%, no corresponding figures for landlords are available. The research indicates that a significant proportion of landlords were once tenants who, within 5-10 years, moved on to become landlords. Letting out accommodation can provide landlords with money for meeting essential needs, to improve their housing and in a few cases to purchase additional plots.

An often forgotten benefit for both parties is the psycho-social security that vulnerable tenants and landlords gain from each other's presence. Yet, few governments have considered supporting private or informal rental housing and in some cases actively discourage it. UN-Habitat has suggested that this may be due to the poor success of state-provided and managed social rental housing. Another more critical reason is that many transactions between landlords and tenants are informal, specific to the local context and involve networks that draw upon economic, labour market, social, ethnic, religious and political linkages.

The extra-legal nature of much rental housing provision means that landlord and tenant rights are secured by informal arbitration by economic and political power brokers. It is difficult to imagine that this would change, even if secure tenure and property rights existed, as long as formal legal processes remain cumbersome and lengthy.

Renting of rooms is an integral part of housing processes accompanying urbanisation in developing countries. Beyond a few isolated projects in Asia and Latin America, however, there has been little change in urban housing policies or practices to reflect this. Governments urgently need to re-examine the politics of home ownership and recognise the multi-faceted contribution rental housing makes to the lives of the poor and the room for manoeuvre that it provides. Civil society should be also encouraged to play a part in, not only providing rental housing, but also becoming more involved in arbitrating between tenant and landlord. This could be done by building on the growing networks between the urban poor and non-governmental organisations.

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# Avoiding forced evictions

**Every day many tens of millions of people throughout the world face the very real threat of eviction and the permanent loss of their homes. Numerous human rights standards equate forced evictions with the violation of housing rights. Nevertheless, too many governments continue to view eviction as an acceptable policy tool during broader efforts of urban beautification, city rejuvenation or economic development.**

COHRE (Centre on Housing Rights and Evictions) identified more than 6.7 million people worldwide who were forcibly evicted during 2001-2002 and acknowledges that the real number of evictees is far higher. African and Asian governments have carried out the largest proportion of the world's evictions in recent years.

As of early 2003, COHRE was involved in efforts to prevent the planned eviction of a further 6.3 million people. Planned evictions are set to take place on a large scale in China, South Africa, Thailand, Nigeria, Uganda, Colombia, Guatemala, Mexico, Pakistan, the Philippines and other countries.

Though the scale of this violation of human rights is considerable, there is a growing understanding that evictions can be avoided successfully, if the right mix of factors are in place. COHRE has found that creative combinations of community-level resistance, with the support of local non-governmental organisations (NGOs) and other political forces, together with carefully selected international interventions by groups such as COHRE, can bring positive results. This integrated approach to eviction resistance appears set to guide the emerging efforts of the United Nations' (UN) Forced Eviction Advisory Group which is currently being established under the auspices of the UN-Habitat Programme.

There is good news to report on the struggle against eviction. In 2002 in Ghana, the day after attending a housing rights training programme, a government minister publicly announced that a planned eviction of 8000 people would not go ahead, due to human rights considerations. In Indore, India and in several other Indian cities, a national housing rights movement has used the process of developing master plans (documents outlining citizens' entitlements) as a tool to prevent planned evictions. Some 70-80% of planned evictions can be prevented through intervening in the development of master plans, a manoeuvre that holds hope elsewhere.

The positive role that can be played by the UN is also important. Beyond the well-publicised case of eviction prevention in the Dominican Republic in the early 1990s, in recent months a UN human rights body requested the government of Thailand to refrain from planned evictions scheduled to affect some 22 Bangkok communities. Brazil's much heralded 'City Statute' is helping communities throughout the country to gain security of tenure through a creative mix of formal and informal tenure rights and to protect them from the sort of evictions that used to dominate its shanty towns. Among other things, the City Statute requires local

authorities to take concrete measures, in recognition of the social function of property in the city, through formal recognition of adverse possession rights. These rights are set within the broader context of the right to sustainable cities, which includes housing rights for all urban dwellers.

Some of the most positive developments in de-legitimising evictions have taken place in Bosnia-Herzegovina, Kosovo, South Africa, Tajikistan, Mozambique and throughout central and eastern Europe. Millions of people evicted during wars or by authoritarian regimes in the past have been formally accorded housing and property restitution rights under peace agreements and new national legislation. They have been allowed to return to and repossess their former homes. Also in a positive vein, the UN – recognising that women suffer disproportionately from forced evictions – has begun to take an increasingly firm stand on the rights of women to have equal access to protection against eviction and to inheritance rights to land and housing.

These moves and many others point to progress in the struggle against the de-housing of people everywhere, but they are clearly not enough. Evictions are still very much with us, and until this practice is treated as the human rights violation that it is, the global housing rights movement will need to develop new and innovative ways of preventing evictions before they can be carried out ■

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## Urban myths

**It is commonly assumed that granting clear land titles leads to increased investment by the urban poor in permanent housing and increased access to credit and therefore is a good strategy for improving their livelihoods (see article on de Soto).**

Research carried out by Homeless International and its partner organisations in Asia and Africa suggests, however, that:

- The poor invest in permanent housing when they regard their tenure to be secure in practice and not necessarily under formal law.
- The costs of obtaining clear land title can equal or exceed the costs of housing construction, making the approach unaffordable for the poor.
- Banks frequently continue to refuse credit to households, even those with clear land title, if they depend on uncertified incomes generated in the informal economy.
- Credit applications from households in settlements considered 'no-go' areas by banks are refused, even where they have clear land title, because it is thought either politically impossible or legally tortuous and expensive to seize the property if the applicant defaults on payments.

Where it exists at all, most bank lending for low-income housing in developing countries is not asset but income or revenue-based, even where reserve banks stipulate clear title as a requirement. To feel confident about granting loans, the lender relies on accurate information about the security of household income or

project revenues and the support available to ensure repayment. From the bank's perspective, the imbalance of information needs to be minimised – bankers want to know as much as the borrower does about the chances of repayment so they feel reassured about lending – and security needs to be maximised through organised support systems.

How can institutions that lend to the poor for housing minimise information imbalance and maximise security? The short answer is knowledge. That is, knowledge from the urban poor about their individual and collective situations and contexts, shared systematically in a form that borrowers and lenders can see as useful, reliable and legitimate. With respect to credit extension there are two important factors.

The first relates to household economics as reflected in daily savings patterns. Savings records can be an excellent means of determining how much money families have spare for housing. Understanding the savings process and procedures can also provide evidence of the organisational safety nets by which community-based savings and loan systems provide a means of covering crises that may delay and prevent repayment. Good examples of these systems are found among the federations of slum and shack dwellers belonging to Shack Dwellers International. These large informal organisations of the urban poor are usually structured on the basis of land tenure and work together systematically, sharing information and strategies within and between cities and countries.

The second factor is linked to wholesale lending to organisations that then either lend to individual households or use the funds to

facilitate collective investment by the poor in large-scale projects such as sanitation or slum upgrading, which may also entail re-financing by the state. In these circumstances it is the track record and credibility of the intermediary organisations that becomes important. The NGO SPARC in India, working in alliance with a large federation of the urban poor, has negotiated significant guarantees and credit from public and commercial institutions for federation-led urban development initiatives. The federations were able to take control of their own resettlement and ultimately gain secure tenure for the participating families thanks to the availability of bridging finance. The tenure obtained was secure collective leasehold, rather than clear land title, chosen to help ensure that the housing obtained by the poor would be retained by them, rather than sold on.

The researchers advise caution when assuming that clear land title leads to greater access to credit. In many situations the knowledge poor people have about what funds and income they have at their disposal is far more critical in ensuring 'comfort' for the lender. Also, clear land title may not be the best option to provide the livelihood security that poor households need in the longer term as they may become more vulnerable to the pressure to sell on to better-off households and move back to the slums.

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## Living outside the law? Regulating land delivery

**M**ost land for residential development in African cities is developed outside state regulatory frameworks. The channels through which land is made available can even vary from city to city.

Sometimes residential areas develop in unsuitable locations such as marshy areas, settlements are poorly laid out and it is difficult to provide services such as water and sanitation once houses are developed. As areas consolidate and densities increase, environmental problems worsen and more disputes may occur. However, the informal systems of provision that enable many households to access land are generally neither chaotic nor wholly detached from the political and administrative system.

Research on informal land delivery processes in six African cities, co-ordinated by the universities of Birmingham, UK and Lesotho is investigating how land is provided for urban residential development outside the formal systems of state allocation and administration and how this is regulated. To what extent do these informal processes and rules enjoy social legitimacy? Do they enable the poor and other vulnerable groups, especially women, to access land with secure tenure?

Early findings from the case studies indicate that, contrary to de Soto's position (see de Soto article), the semi-formal and customary patterns of land tenure surrounding cities are crucial elements in current land delivery systems. Where the British as colonisers appropriated only sufficient land for an urban settlement, little publicly-owned, undeveloped land remains and there are few opportunities today for poor urban residents to obtain plots for free.

However, where large areas of land were taken for settler farms, these have in the past provided a great deal of free (or almost free) land to urban house-builders through state allocation (Gaborone) or informal settlement (Lusaka). Today, the presence of large farms on the urban outskirts enables the state to acquire areas for urban expansion (Gaborone) and organised groups of middle-income residents or land-buying companies to purchase land for unauthorised subdivision (Eldoret, Kenya.)

### Indigenous systems

Elsewhere, land on the outskirts of colonial townships remained under indigenous systems of land management, however much they were changed by colonial intervention. Here, modified customary arrangements continue to provide land to group members, including the poor (but rarely the poorest or women in their own right) and as a means of resolving disputes. In addition, groups and families with customary claims are increasingly subdividing and selling land, thereby providing plots to those with the means, including women.

Many semi-formal and customary arrangements work well, especially if they are recognised by land administration agencies and the courts. However, the rights to land they transfer are often insecure. In particular, the insecurity arising

from multiple claims to land encourages many to seek ratification of their tenure rights by ensuring that local officials witness transactions or the registering of them. The time this takes, the complexity of bureaucratic procedures and the scope for corruption vary, depending on the details of local arrangements.

How can policy-makers ensure a supply of affordable and suitably located land for urban development?

A preliminary recommendation is that rather than opt for the immediate transfer to a formalised system of property rights, governments should make it easier to supply reasonably-priced land through subdividing land held by customary rights holders or purchased by co-operative groups, by:

- improving subdivision layouts by changing the emphasis of planners' roles from regulation to advice and adopting flexible planning standards
- using investment in main infrastructure such as roads and water mains to guide processes of land subdivision, while enabling incremental infrastructure improvement to occur within most informally developed residential areas. Initial improvements could include shared water connections and basic drainage, based on user charges for appropriate services and land tax for the remainder
- requiring neighbourhood levels of local governance and customary or administrative courts to operate simple administrative procedures for witnessing and registering land transactions and resolving disputes and, in addition, providing for recognition of their functions and decisions by higher levels of government and the courts.

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#### See also

'Informal Land Delivery Processes and Access to Land for the Poor in Six African Cities: Towards a Conceptual Framework'. Birmingham: School of Public Policy, International Development Department, Informal Land Delivery Processes in African Cities WP 1, by C. Rakodi and R. C. Leduka, 2003

## SITES FOR SORE EYES

**T**here are several good online sources of information on land and tenure.

[www.wisc.edu/lc/](http://www.wisc.edu/lc/) the Land Tenure Centre of the University of Wisconsin has an excellent links page on land issues. [www.idd.bham.ac.uk/research/urban-governance/urbgov.htm](http://www.idd.bham.ac.uk/research/urban-governance/urbgov.htm) the University of Birmingham's 'Urban governance, partnerships and poverty' programme considers urban development in 10 developing country cities. [www.nri.org](http://www.nri.org) the Natural Resources Institute and [www.eldis.org](http://www.eldis.org) the Eldis website, also have a good selection of references.

As an organisation dedicated to land and settlement issues, UN-Habitat offers a wealth of relevant resources, [www.unhabitat.org/campaigns/tenure/vision.asp](http://www.unhabitat.org/campaigns/tenure/vision.asp) presenting examples of recent campaigns and links to publications. <http://lnweb18.worldbank.org/ESSD/ardext.nsf/24B5DocName/Topics> is the World Bank's website on land administration, land markets and land reform.

One of several NGOs working on land and tenure issues, the Centre on Housing Rights and Evictions [www.cohre.org](http://www.cohre.org) provides good overviews on these issues and access to books, reports and other sources of information. As do, [www.homeless-international.org](http://www.homeless-international.org) Homeless International and [www.sdinet.org](http://www.sdinet.org) Slum Dwellers International. On the issue of housing rights and eviction, [www.unhabitat.org/programmes/housingpolicy](http://www.unhabitat.org/programmes/housingpolicy) has some useful materials.

Human Rights Watch has recently launched a campaign specifically addressing women's property rights, and its website [www.hrw.org/campaigns/women/property/](http://www.hrw.org/campaigns/women/property/) includes their report on this theme. [www.fao.org](http://www.fao.org) the Food and Agriculture Organization of the United Nations provides articles on gender and land tenure.

[www.sparcindia.org](http://www.sparcindia.org) the Society for the Promotion of Area Resource Centres and [www.indianlandtenure.org](http://www.indianlandtenure.org) the Indian Land Tenure Foundation, are good sites for the South Asian region. See also Oxfam's Land Rights in Africa page [www.oxfam.org.uk/landrights/](http://www.oxfam.org.uk/landrights/) or [www.landnetamericas.org](http://www.landnetamericas.org) LandNet Americas' site which focuses on Latin America.

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